



British  
Acupuncture  
Council



# The Code of Disciplinary Procedures 2018

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# The Code of Disciplinary Procedures

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## 1 Introduction

- 1.1 This document outlines the process for dealing with complaints against those who are on or have recently been on the membership register of the British Acupuncture Council (the BAAC).
- 1.2 As a self-regulatory body for traditional acupuncture it is imperative that the Registrants on our register are fit to practise i.e. have the skills, knowledge and character to practise acupuncture safely and effectively. However, Fitness to Practise is not just about professional performance it may also include acts by a Registrant which may affect public protection or confidence in the profession.
- 1.3 Fitness to Practise proceedings are about protecting the public. They are not a general complaints resolution process. They are not designed to resolve disputes between Registrants and patients and/or clients.

## 2 Purpose

- 2.1 The purpose of this Code is to ensure that Complaints and Fitness to Practise issues concerning Registrants are dealt with fairly, efficiently and expeditiously in the interests of Complainants, Registrants, and other interested parties. Any Panel may vary any of the procedures set out in this document subject only to such variation being fair to the Registrant, the British Acupuncture Council and any interested third parties.
- 2.2 The Code of Professional Conduct together with the Code of Safe Practice:
  - set out the standards of conduct and practice expected of Registrants of the BAAC; and
  - give advice in relation to the practice of acupuncture to improve the protection of the public.
- 2.3 Failure to comply with the Code of Safe Practice is a breach of the Code of Professional Conduct.
- 2.4 Throughout this Code, where the term 'shall' is used, the panel, committee, Professional Conduct Officer or party to the proceedings is required to comply. Where the term 'may' is used in this Code the panel, committee or Professional Conduct Officer may use their professional judgement in accordance with the principles set out in this Code.



- 2.5 The formality of the document is unavoidable due to the nature of the process however there are supplementing guidance and policies drafted to provide clarity around the process in more user friendly language.

### 3 Interpretation

- 3.1 In this Code, unless the context otherwise requires:

**Accredited Register** means a register of health and/or social care professionals that has been accredited by the Professional Standards Authority;

**Action Plan** means a plan, proposed by a Technical Advisor to be agreed by the Registrant and approved by the Investigating Panel, to improve aspects of a Registrant's practice or practice management, which have been found to fall short of the standards required by the Code of Professional Conduct or the Code of Safe Practice.

**the Allegation** means any alleged breach of the BAAC Code of Professional Conduct or Code of Safe Practice arising out of a Complaint;

**the Appellant** means the party who is appealing the order or sanction;

**the BAAC** means the British Acupuncture Council;

**this Code** means the BAAC Code of Disciplinary Procedures;

**Complaint** means any report or Allegation received by the BAAC, whether by way of written complaint from a Complainant or by way of documentary or other information from any source, which is considered by the BAAC to be a Complaint by reference to the provisions of the BAAC Code of Professional Conduct or Code of Safe Practice;

**Complainant** means any person (including an organisation) who makes a Complaint against a Registrant;

**Day** means any day including weekends, bank holidays and public holidays;

**the Ethics Committees** means the Health Committee, the Health Appeals Committee and the Restoration Committee;

**the Ethics Panels** means the Investigating Panel, the Interim Orders Panel, the Professional Conduct and Competence Panel, and the Appeals Panel;



**Fitness to Practise** means the Registrant has the skills, knowledge and character to practice acupuncture safely and effectively. The term “character” does not refer to the Registrant’s personality but may include (but is not limited to) acts by a Registrant which may have an impact on public protection or confidence in the profession or the regulatory process. This may include the fact that a Registrant has been convicted (at any time) in the United Kingdom or elsewhere of a criminal offence; cautions; adverse determinations made against the Registrant by another regulatory body; or matters not directly related to professional practice.

**Formal Allegation** means an allegation that a Registrant’s Fitness to Practise is impaired. The reasoning for impairment is detailed in the scope of this Code.

**Impaired** means the Registrant is not fit to practice without restriction;

**the Governing Board** means the Governing Board of the BAAC;

**Malicious** means a Complaint or allegation(s) with little or no merit intended to cause the Registrant anxiety, harm or distress including harm to their physical or mental health, or their livelihood or reputation;

**the Parties** means the Registrant and the BAAC;

**the Presenter** means the person acting on behalf of the BAAC at a hearing before a Committee or Panel and may include a solicitor or barrister engaged by the BAAC for this purpose;

**Professional Conduct Officer** means the member of staff employed by the BAAC to perform the duties allocated to the professional conduct officer set out in this Code; it may also refer to the Professional Conduct Manager or any other person who is allocated these duties;

**Referral Notice** means a document setting out the Allegations, summarising the evidence and the referring panel’s comments when a case is referred from the Investigating Panel to the Interim Orders Panel, the Professional Conduct and Competence Panel or the Health Committee as appropriate;

**Registered Medical Practitioner** means a doctor registered with the General Medical Council; a dentist registered with the General Dental Council or a nurse or midwife registered with the Nursing and Midwifery Council;

**Registrant** means a fellow, full member or overseas member of the BAAC;

**Vexatious** means a Complaint or allegation(s) which are intended, or tend to vex, worry, annoy or embarrass a Registrant, and include frequent and



persistent complaints without foundation. Further guidance on Vexatious and Anonymous Complaints has been drafted for Professional Conduct Officer, and the Ethics Panels and Committees to use when determining such issues.

## 4 Scope

4.1 The BAcC may consider a Complaint relating to any of the following that may put a BAcC Registrant's suitability to remain on the register unrestricted into question:

- breach of the Code of Professional Conduct or Code of Safe Practice whether by misconduct or lack of competence;
- a conviction or caution or a court finding leading to a conditional discharge in the UK for a criminal offence other than a minor road traffic offence (such as speeding) not leading to a disqualification from driving, or a conviction elsewhere for an offence, which if committed in England and Wales, would constitute such a criminal offence;
- his or her physical or mental health;
- a determination by a statutory regulator or an Accredited Register in the United Kingdom responsible for the regulation of health and social care to the effect that his or her Fitness to Practise is impaired, or a determination by an equivalent regulator outside the United Kingdom to that effect ('a relevant determination'); or
- an entry on the Register relating to him or her has been fraudulently procured or incorrectly made ('a false entry').

4.2 The Professional Conduct Officer must apply the BAcC's Code of Professional Conduct and the Code of Safe Practice to identify which parts of the Code or equivalent documents are relevant to the Complaint.

4.3 Where the complained of behaviour does not come within any of the categories in paragraph 4.1 above the Professional Conduct Officer will notify any Complainant of this and the Complaint will not progress under this procedure.

4.4 Where the complained of behaviour comes within one or more of the categories in paragraph 4.1 above the Professional Conduct Officer shall provide the Registrant with a copy of the Complaint and the Complaint will progress in accordance with this procedure.



## Who can raise a complaint?

### 5 Applicability

- 5.1 a. A Complaint can be raised if one or more of the following apply:
- the person complained about was a Registrant at the time of the conduct that is the basis of the Complaint and is still a Registrant at the time of the Complaint being lodged with the BAAC; or
  - the person complained about was a Registrant at the time of the conduct that is the basis of the Complaint but no longer is, and the Professional Conduct Officer determines that it would be reasonable and in the public interest to consider the Complaint; or
  - the person complained about was not a Registrant at the time of the conduct but currently is, and the Professional Conduct Officer determines that it would be reasonable and in the public interest to consider the Complaint
- b. A Complaint and/or Formal Allegation can be based on a matter which occurred either within or outside the United Kingdom.
- c. A Complaint and/or Formal Allegation may allege that the person complained of was convicted of a criminal offence, received a conditional discharge in relation to a criminal offence or accepted a caution for a criminal offence. Where a person was convicted of a criminal offence or received a conditional discharge in relation to a criminal offence, the certificate of conviction shall be conclusive proof of the facts of the offence.
- 5.2 A Complainant should complete the BAAC Complaint Form and submit it to the BAAC within three years of the conduct or since the date on which the Complainant became aware of the conduct, whichever is the later. The Professional Conduct Officer, in exceptional circumstances, may decide to waive the time limit if they decide that, in all the circumstances of the case, it would be reasonable and in the public interest to allow the complaint to proceed. Exceptional circumstances include, but are not limited to, Allegations of gross misconduct including Allegations of sexual misconduct, misuse of drugs, serious or sustained breaches of professional boundaries, or gross incompetence.
- 5.3 If the Registrant resigns from the BAAC register, or fails to renew BAAC membership, after a complaint has been received by the BAAC, the Complaint



shall not proceed pursuant to this Code unless, in exceptional circumstances, the Professional Conduct Officer determines it would be reasonable or in the public interest for it to do so.

## 6 Receipt of a Complaint or information about a Registrant

- 6.1 On receipt of a Complaint or information about a Registrant concerning their Fitness to Practise, the Professional Conduct Officer shall first consider:
- whether the subject of the Complaint is a Registrant or former Registrant of the BAAC;
  - whether the Complaint or information is sufficiently specific or capable of being clarified because the Complainant is identifiable and can be asked for further details;
  - the Complaint or information is Vexatious or Malicious; or
  - it is appropriate for the Complaint or information to be resolved informally or by mediation
- 6.2 Where the Complaint or information is unspecific or anonymous and it is not reasonably practicable to obtain any further details of the alleged behaviour, the Professional Conduct Officer shall not refer the Complaint or information to the Investigating Panel.
- 6.3 Where the Professional Conduct Officer determines that the Complaint or information is Vexatious or Malicious and even if proven the alleged behaviour would not pose a significant risk to members of the public or to the reputation of the profession, they shall not refer the Complaint or information to the Investigating Panel.
- 6.4 Matters suitable for informal resolution or by mediation include those where:
- there is no breach of the Code of Professional Conduct or the Code of Safe Practice; or
  - the breach of the Code of Professional Conduct or the Code of Safe Practice is minor or technical and there is either no risk to members of the public, or there is no significant risk to members of the public.



Where the Professional Conduct Officer finds that the matter is suitable for informal resolution or mediation, they shall not refer the Complaint or information to the Investigating Panel.

- 6.5 Where the Professional Conduct Officer does not refer the Complaint or information to the Investigating Panel in accordance with sections 6.2 – 6.4 they shall write to the Complainant, the Registrant and any interested third party within seven days to inform them of what action will be taken in relation to the Complaint or information and will provide an explanation for that decision.

The Complainant shall be invited to consider whether they have any additional significant evidence which the Professional Conduct Officer has not yet considered. If the Complainant has such additional evidence they shall send the evidence, within 14 days of the date of the letter or email informing them of the Professional Conduct Officer's decision, to the Professional Conduct Officer to consider. Where possible, a Professional Conduct Officer who has not had conduct of the case shall consider the additional evidence.

- 6.6 If it is not appropriate to seek for the Complaint to be resolved informally, or if informal resolution has not been successful, the Professional Conduct Officer may seek further information or evidence in support and may refer the Complaint to the Investigating Panel. The Professional Conduct Officer may make such inquiries and seek such advice as they consider necessary in the circumstances.
- 6.7 If the allegation is that a Registrant's Fitness to Practise is impaired by reason of ill health, the Professional Conduct Officer shall refer the allegation to the Health Committee.
- 6.8 Where the BAcC has received information about a Registrant and that Registrant is already the subject of an inquiry by the police or other regulatory body, or there are ongoing criminal or civil proceedings, the BAcC may defer all or part of the investigation or referral of a Complaint until the inquiry or proceedings has concluded.
- 6.9 Before the Professional Conduct Officer refers the Complaint to the Investigating Panel they shall send the Registrant a copy of the Complaint and any additional documentary or other evidence in support and a copy of this Code. The Registrant shall be invited to submit written representations together with any supporting documentary or other evidence, which shall be known as a Response. The response should be submitted within 28 days of service of the Complaint and any accompanying documentation on the Registrant.



- 6.10 The Complainant may be sent a copy of any written representations and documentary or other evidence submitted by the Registrant and may be invited to provide written comment on those representations and evidence for consideration by the Investigating Panel.
- 6.11 The Registrant may be sent a copy of any further written comments or evidence submitted by the Complainant.
- 6.12 The Professional Conduct Officer may grant both the Complainant and the Registrant two reasonable extensions for submitting a response where the Complainant or Registrant has good cause not to be able to respond within the 28 day period. Good cause may include ill health of the Registrant or close family member, bereavement of a close family member or friend, and being on holiday or jury service. This list is not exhaustive. Any further requests for extensions should be determined by a Chair of the Investigating Panel.
- 6.13 After 28 days have elapsed since service of the Complaint and any accompanying material, and subject to any extension or further extension of that deadline, the Investigating Panel may meet forthwith to consider the Complaint, even if no Response has been received.
- 6.14 Once the Registrant has submitted their Response or the 28 day time period or extended time period for doing so has elapsed, the Professional Conduct Officer may:
- make arrangements for an Investigating Panel to meet within 56 days from that date unless exceptional circumstances apply. Such circumstances may include, but are not limited to: an extension of time given to the Registrant or Complainant making it impossible for the Investigating Panel to meet within that time frame; lack of availability of panel members whether due to conflict of interest or any other matter; illness of the Professional Conduct Officer or panel member; annual leave of the Professional Conduct Officer; jury service of the Professional Conduct Officer or panel member; furlough or sabbatical of the Professional Conduct Officer; compassionate leave of the Professional Conduct Officer or panel member.
  - draft the Formal Allegations;
  - add additional Formal Allegations arising from the evidence which have not been raised by the Complainant
  - prepare the case papers, including all documents and evidence supplied by the Complainant, the Registrant or any witnesses, any relevant codes or guidance, for the Investigating Panel;



- notify the Complainant, the Registrant and any interested parties of the date, time and members of the Investigating Panel at least 14 days before the panel meeting to allow either the Registrant or Complainant to object to a member of the panel on the grounds of a potential or actual conflict of interest; and
- send the Formal Allegations and the case papers to the Investigating Panel at least 14 days before the panel meeting.

6.15 At any time before a Complaint or the allegation(s) are referred to the Investigating Panel, the Health Committee or the Professional Conduct and Competence Panel, the Professional Conduct Officer may make an application to the Interim Orders Panel that an Interim Order should be imposed on the Registrant's registration, on the grounds that:

- such an order is necessary for the protection of members of the public; or
- it is otherwise in the public interest; or
- it is in the interests of the Registrant concerned.

6.16 Any Panel or Committee covered by this Code may make a finding that the complaint or information before it is vexatious or malicious and may dismiss a case or application before it, if it considers that the complaint or information before it is vexatious or malicious.

## 7 Investigating Panel

7.1 a. In respect of each Formal Allegation, all members of the Investigating Panel shall consider the Allegation, all the documents and evidence provided to them, including copies of the relevant codes and guidance. Having considered these documents and the evidence panel members shall decide whether, in their opinion, there is a realistic prospect of a finding of impairment in relation to the Allegation(s) either individually or collectively.

b. The Investigating Panel may add any additional Allegations it may feel appropriate.

### Referrals and disposals by Investigating Panel

7.2 After considering each Formal Allegation and/or a report from a Technical Advisor, the Investigating Panel may:



- request further evidence from the Complainant, the Registrant or any person in accordance with sections 7.5.1 and 7.5.2;
- refer the Registrant to the Interim Orders Panel in accordance with section 7.6.1;
- instruct a Technical Advisor in accordance with sections 7.7.1 – 7.7.4;
- refer the Formal Allegation to the Professional Conduct and Competence Panel in accordance with section 7.9.1;
- refer the Formal Allegation to the Health Committee in accordance with section 7.10.1; or
- ratify an Action Plan in accordance with sections 7.11.1 – 7.11.3;
- issue a Letter of Advice in accordance with sections 7.13.1 – 7.13.5;
- take no further action in accordance with section 7.8.1.

7.3 The list of options available to the Investigating Panel set out in section 7.2 is exhaustive. The Investigating Panel shall not dispose of any Allegations otherwise than in accordance with that section. However, if the Investigating Panel decide that the complaint or information is vexatious or malicious, it may dismiss the case.

7.4 If the Registrant is facing multiple Formal Allegations, the Investigating Panel may choose different options as set out in section 7.2 for each Formal Allegation. The Investigating Panel shall take into account whether the Formal Allegations should be heard together or separately.

## 7.5 Further Evidence

7.5.1 Where the Investigating Panel finds that there is not yet sufficient evidence to decide whether there is a realistic prospect of a finding of impairment in relation to any Formal Allegation and it is reasonably practicable to obtain further evidence, the panel shall instruct the Professional Conduct Officer to obtain that further evidence. The Investigating Panel shall adjourn the case for a reasonable time period for the evidence to be obtained.

7.5.2 Where the Investigating Panel requests further evidence in accordance with section



7.5.1 it may also refer the Registrant to the Interim Orders Panel to consider whether an Interim Order should be made pending investigation in accordance with Part 8.

## 7.6 Interim orders

7.6.1 The Investigating Panel may, at any time before a Formal Allegation is referred to the Professional Conduct and Competence Panel or the Health Committee, make an application to the Interim Orders Panel that an Interim Order should be imposed on the Registrant's registration, on the grounds that such an order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned.

## 7.7 Instructing a Technical Advisor

7.7.1 Where the Investigating Panel decides that further evidence is required and it is more appropriate to instruct a Technical Advisor to obtain that evidence and/or to provide specialist advice, the Investigating Panel shall request that the Professional Conduct Officer instructs a Technical Advisor to arrange interviews and practice visits with the Registrant's consent and to report his findings expeditiously to the Investigating Panel.

7.7.2 If the Technical Advisor is of the opinion that the Formal Allegation(s) is not a substantial breach of the Code of Professional Conduct or the Code of Safe Practice that would put members of the public at significant risk, but the Registrant's behaviour highlights aspects of the Registrant's practice and practice management, which fall short of the standards of the codes, the Technical Advisor may recommend an Action Plan. An Action Plan may contain tasks, recommended CPD, tests or amendments to working practices specifically chosen to address the aspects of the Registrant's practice and practice management, which fall short of the standards of the codes.

7.7.3 An Action Plan does not become final until it is agreed to by the Registrant and approved by the Investigating Panel.

7.7.4 The Technical Assessor's report should set out:

- any evidence of breaches of the Code of Professional Conduct or the Code of Safe Practice, or aspects of the Registrant's practice and/or practice management, which fall short of the standards required by the codes;
- inform the Investigating Panel of any apparent breaches of the codes;
- explain why the Technical Advisor believes that an Action Plan is appropriate;



- set out the proposed steps to resolve the aspects of the Registrant's practice and/or practice management, which fall short of the standards required by the codes;
- explain why the proposed steps are recommended; and
- record whether the Registrant agrees to co-operate with the proposed Action Plan.

## 7.8 No Further Action

7.8.1 Where the Investigating Panel finds that even if the facts are proved there is not a realistic prospect of a finding of impairment in relation to the Formal Allegations, the panel may take no further action against the Registrant in relation to that matter.

## 7.9 Referral to Professional Conduct and Competence Panel

7.9.1 Where the Investigating Panel finds that there is a realistic prospect of a finding of impairment in relation to the Formal Allegations individually or collectively and the behaviour that has led to any Formal Allegation has not been caused, or substantially contributed to, by the Member's ill health, the panel shall refer the Formal Allegation(s) to the Professional Conduct and Competence Panel.

## 7.10 Referral to Health Committee

7.10.1 Where the Investigating Panel finds that:

- it is more appropriate to refer the case to the Health Committee; or
- there is a realistic prospect of a finding of impairment in relation to any Formal Allegation(s) and the behaviour that has led to any Allegation(s) has been caused, or substantially contributed to, by the Registrant's ill health;

the panel shall refer the Formal Allegation(s) to the Health Committee. The Health Committee procedures are provided for in the Code of Health Committee Procedures. If the Investigating Panel decides that the conduct of the Registrant is sufficiently serious, it should refer the case to the Professional Conduct and Competence Panel.

## 7.11 Technical Advisor



- 7.11.1 Where a Technical Advisor has recommended an Action Plan as per sections 7.7.2 and the Registrant has agreed to comply with the Action Plan, the Investigating Panel may ratify the Action Plan.
- 7.11.2 The Investigating Panel shall not ratify an Action Plan if it believes that the Formal Allegation(s) is/are so serious that, if proven, an Action Plan would not adequately protect the safety of members of the public and/or the public interest.
- 7.11.3 If the Investigating Panel declines to ratify an Action Plan and there is a realistic prospect of a finding of impairment in relation to the Formal Allegations, it shall refer the Formal Allegation to the Professional Conduct and Competence Panel or the Health Committee in accordance with sections 7.9.1 or 7.10.1 respectively.

## **7.12 Failing to co-operate with Technical Advisor or to complete an Action Plan**

- 7.12.1 If an Action Plan has been ratified by the Investigating Panel in accordance with section 7.11.1, and the Registrant subsequently refuses to co-operate with the Technical Advisor or to complete the Action Plan to the satisfaction of the Technical Advisor, the Technical Advisor shall inform the Professional Conduct Officer in writing requesting that a referral to the Investigating Panel is considered.
- 7.12.2 The Technical Advisor shall write a report for the Investigating Panel explaining how the Registrant has refused to co-operate with the Technical Advisor, which steps of the Action Plan have been completed and those outstanding.
- 7.12.3 The Professional Conduct Officer shall send the Technical Advisor's report made in accordance with section 7.12.2 to the Registrant at least 21 days before the Investigating Panel meeting at which the matter is to be considered with an invitation to make written representations which must be served on the Professional Conduct Officer at least 7 days in advance of the Investigating Panel meeting at which the matter is to be considered.
- 7.12.4 On receipt of a request from the Technical Advisor explaining how the Registrant has refused to co-operate with the Technical Advisor or failed to complete the Action Plan, the Professional Conduct Officer shall arrange for the Investigating Panel to meet within 28 days unless it is not reasonably practicable.
- 7.12.5 The Professional Conduct Officer shall send all members of the Investigating Panel a copy of the Technical Advisor's written request and report, and any written representations received from the Registrant.



7.12.6 The Professional Conduct Officer shall also notify the Complainant and the Registrant and may notify any interested parties of the date and time of the Investigating Panel meeting at which the matter is to be considered..

### 7.13 Letters of Advice

7.13.1 Where the Investigating Panel has decided that there is not a realistic prospect of a finding of impairment it may consider whether to issue a Letter of Advice. In deciding whether to issue a Letter of Advice consideration shall be given to whether the matter(s) complained of, if repeated, might meet the 'realistic prospect' test.

7.13.2 The Investigating Panel shall not issue a Letter of Advice where there is a realistic prospect of a finding of impairment.

7.13.3 Where the Investigating Panel issues a Letter of Advice it shall not refer the Complaint or Allegation to the Professional Conduct and Competence Panel.

7.13.4 Letters of Advice will be disclosed to the Registrant's current employer but will not be published. This is because the evidence will not have been tested by means of oral evidence and cross examination.

7.13.5 Letters of Advice will be kept on record and may be used to identify patterns of behaviour that could be used in any subsequent investigation relating to the Registrant.

### 7.14 General Matters

7.14.1 The Professional Conduct Officer shall record the decision including:

- which Formal Allegations (if any) have been referred to the Professional Conduct and Competence Panel or the Health Committee;
- which Formal Allegations have not been referred to the Professional Conduct and Competence Panel or the Health Committee and no further action will be taken in relation to; and
- the reasons for those decisions.

7.14.2 Within 10 working days of the date of the decision, the Professional Conduct Officer may inform any interested third party of the decision of the Investigating Panel and shall send the Registrant and Complainant the following:-



- a. A summary of the evidence which was considered by the Investigating Panel
- b. The decision made by the Investigating Panel
- c. Brief reasons for the decision which need not be the full determination
- d. In the case of the Complainant, an invitation to consider whether they have any additional significant evidence which the Investigating Panel has not considered. If the Complainant has such additional evidence they shall send the evidence, within 14 days of the date of the letter or email informing them of the Investigating Panel's decision, to the Professional Conduct Officer to consider whether it should be submitted to the Investigating Panel. If the Complainant provides anything further within 14 days, the Professional Conduct Officer shall then decide whether or not it should be referred to the Investigating Panel. The Professional Conduct Officer should take into account whether it is additional evidence; whether it is significant evidence and whether it is proportionate to hold a further meeting of the Investigating Panel.

7.14.3 If at any stage, following service of the Formal Allegation(s) upon the Registrant, it appears to the BAcC that the matter should no longer proceed to a hearing, the BAcC may make an application to the Professional Conduct and Competence Panel or Health Committee to have the Formal Allegation(s) withdrawn.

## 8 Interim Orders Panel

### 8.1 General

8.1.1 An Interim Order may only be imposed if:-

- a. such an order is necessary for the protection of members of the public; or
- b. is otherwise in the public interest; or
- c. is in the interests of the Registrant concerned

8.1.2 The Interim Orders Panel's purpose is not to resolve disputes of fact but to conduct a risk assessment as to whether an Interim Order is necessary for any of the reasons set out in 8.1.1 above.

8.1.3 The proceedings of the Interim Orders Panel shall be held in private.

### 8.2 Application for Interim Orders



- 8.2.1 Where the Professional Conduct Officer, the Investigation Panel or the Professional Conduct and Competence Panel wish to apply for an Interim Order pending investigation, the Professional Conduct Officer shall:
- a. prepare a Referral Notice setting out details of the Allegation(s) upon which the application is based and setting out why the field of practice of the Registrant should be restricted or the registration of the Registrant should be suspended;
  - b. convene an Interim Orders Panel of three members including a Chair from the pools referred to in sections B1.1 and B1.2;
  - c. fix a date and time for the hearing of the application;
  - d. inform the Registrant of the right to attend the hearing;
  - e. inform the Registrant of the time and venue for the hearing;
  - f. inform the Complainant of the date of the hearing; and that any Interim Order made will be published on the website of the British Acupuncture Council;
  - g. inform the Registrant of the right to make oral submissions to the Interim Orders Panel in person or by an appropriately qualified legal representative or another representative of the Registrant's choosing. This representative may not be called as a witness at the hearing;
  - h. request confirmation as to whether the Registrant intends to attend the hearing or be represented at the hearing; and
  - i. inform the Registrant and Complainant of the names of the members of the panel to allow the Complainant or Registrant to object to a member of the panel on the grounds of a potential or actual conflict of interest
  - j. the Professional Conduct Officer may inform any other interested parties of the names of the members of the panel to allow any other interested parties to object to a member of the panel on the grounds of a potential or actual conflict of interest
- 8.2.2 Subject to section 8.2.3, where notice of the hearing is served upon the Registrant, an application for an Interim Order shall be heard no earlier than seven days after the date upon which notice of the hearing was served upon the Registrant.
- 8.2.3 Where an urgent application for an Interim Order is made by the Professional Conduct Officer on the grounds of protection of members of the public, they



may dispense with the notice period referred to in section 8.2.2 and the matter shall be referred for the urgent attention of the Interim Orders Panel.

8.2.4 Where the Professional Conduct Officer dispenses with the notice period, the Interim Orders Panel may conduct a hearing provided the Registrant has been given such notice as is reasonable of the application and the opportunity to make oral and/or written representations to the panel. Where the Interim Orders Panel conducts an expedited hearing in accordance with this section it may only issue an Interim Order which will be in force for up to 6 months. Where an Interim Order has been made following an expedited hearing, the Registrant is permitted to apply for review after 3 months. Where the Registrant has not had the opportunity to make representations, whether oral or written, at the expedited hearing, the Registrant is permitted to apply for review earlier than 3 months.

8.2.5 Any interim measures required after Formal Allegation(s) have been referred from the Investigating Panel to the Professional Conduct and Competence Panel and before a final hearing shall be heard by the Interim Orders Committee.

8.2.6 The Interim Orders Panel shall not make an Interim Order after a Formal Allegation has been referred to the Health Committee. Such applications will be heard in accordance with the Code of Health Committee Procedures.

### 8.3 Interim Orders hearings

8.3.1 Where the Interim Orders Panel is considering whether or not to make an Interim Order, it is in charge of its own procedure, but should take into account the guidelines below for the order of proceedings.

- a. The Presenter may outline the facts of the case and set out the reasons why the Registrant's registration should be made subject to an Interim Order, together with any evidence in support.
- b. The Registrant (if present) may set out the reasons why such an application should not be granted by the panel, together with any evidence in support.
- c. The Interim Orders Panel may hear representations from the Registrant's representative and take advice from the Legal or Medical Advisors.
- d. The Interim Orders Panel shall deliberate in private.
- e. The Interim Orders Panel shall determine the application and announce its decision and the reasons for that decision.



8.3.2 The Registrant may be represented by a legally qualified representative or another representative of the Registrant's choosing before the Interim Orders Panel and that representative has the right to be heard by that panel. This representative may not be called as a witness in any hearing relating to the case being considered.

8.3.3 The Professional Conduct Officer shall notify the Registrant of the decision within seven days of the conclusion of the hearing including:

- a. the decision and reasons for the decision;
- b. setting out the period of suspension or restriction, beginning on the date on which the Interim Order is made;
- c. informing the Registrant of the right of appeal in accordance with Part 10 of this Code; and
- d. informing the Registrant that any adverse decision shall be published on the BAAC website.

8.3.4 The decision of the Interim Orders Panel shall be published on the BAAC website unless no interim order is made.

#### **8.4 Disposals by the Interim Orders Panel**

8.4.1 Having considered the facts of the case, any evidence, and the representations the Interim Orders Panel may:

- make a Suspension Order pending investigation and/or conclusion of the case;
- make an order to limit the practice of the Registrant, namely a Conditions of Practice Order pending investigation and/or conclusion of the case;
- take no further action.

8.4.2 When making a decision under section 8.4.1, the Interim Orders Panel shall take into account whether it is proportionate to make any order in the all the circumstances including:

- whether an Interim Order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned; and
- the effect the making of an Interim Order will have on the Registrant.



- 8.4.3 The Interim Orders Panel shall only make a Suspension Order if there are no other relevant limits to the practice of the Registrant that will adequately protect members of the public, or otherwise be in the public interest, or be in the interests of the Registrant concerned.
- 8.4.4 Where the Interim Orders Panel decides to make an order limiting the Registrant's practice, the restrictions should be only those necessary to reduce the risk to the public or are in the public interest, or the interests of the Registrant concerned, as identified in the Complaint or Allegation(s).
- 8.4.5 The Interim Orders Panel shall not make an order or consecutive orders in excess of 24 months unless exceptional circumstances apply.
- 8.4.6 Following a decision by the Interim Orders Panel to impose a Suspension Order or Interim Order, the name of the Registrant, the basic details of the Suspension Order or Interim Order including the duration of any such order and the conditions for a Conditions of Practice Order shall be published on the BAAC website and reflected on the Registrant's entry on the Register. This is to ensure the protection of the public and the public interest.
- 8.4.7 Interim Orders and Suspension Orders pending investigation or the conclusion of the case shall be published on the BAAC website and reflected on the Registrant's entry on the Register for the duration of the order.

## **8.5 Review of Interim Orders**

- 8.5.1 Where an Interim Order has been made, it may be reviewed, if, in the judgment of the Professional Conduct Officer, circumstances have materially changed since the Order was made, such that there is a reasonable prospect that an Interim Orders Panel would vary or revoke the Order.
- 8.5.2 Where an Interim Order has been made it may be reviewed at the request of any person in respect of whom the Interim Order was made after a period of not less than twelve months has elapsed since the Order was last reviewed or if it has not been reviewed, since the Order was made.
- 8.5.3 An application whether to grant a request for a review and the conduct of a review shall be considered by the Interim Orders Panel.
- 8.5.4 Where a review is to take place, the Registrant should be notified in writing including:
- a. informing the Registrant of the time and venue for the hearing;



- b. providing the Registrant with details of the Allegations and the reasons for the Interim Order;
- c. informing the Registrant of the right to make written representations;

8.5.5 After reviewing an Interim Order the Interim Orders Panel may:

- a. continue the Interim Order;
- b. revoke the Interim Order;
- c. amend the Interim Order; or
- d. impose a further Interim Order, to commence upon the expiry of the existing order.

8.5.6 The Professional Conduct Officer shall notify the Registrant in writing within seven days of the hearing setting out the period of suspension or restriction, beginning on the date on which the Interim Order is made; and informing the Registrant of the right of appeal in accordance with Part 10 of this Code.

## 9 Professional Conduct and Competence Panel

### 9.1 General

9.1.1 Any Ethics Panel or Committee may determine together two or more Formal Allegations against a Registrant and/or Formal Allegation(s) against two or more Registrants, if the Panel considers it fair to do so.

9.1.2 The Professional Conduct and Competence Panel may, at any time before the case is concluded, make an application to the Interim Orders Panel that an Interim Order should be imposed on the Registrant's registration, on the grounds that such an order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned.

9.1.3 The Professional Conduct and Competence Panel may refer the case to the Health Committee if it considers this would be a more appropriate committee to hear the Formal Allegations. If the case is referred to the Health Committee, the Registrant shall be notified in writing within seven days of the decision.

### 9.2 Notice of hearing and publication of determinations and sanctions



- 9.2.1 As soon as practicable after the Formal Allegation(s) has/have been referred to the Professional Conduct and Competence Panel, the Professional Conduct Officer shall send the Registrant a notice of hearing which shall:
- a. state the date, time and venue for the hearing;
  - b. specify the Formal Allegation(s) against the Registrant;
  - c. state that the case is to proceed under this Code rather than the Code of Health Committee Procedures;
  - d. inform the Registrant of their respective rights to attend the hearing, give evidence to the Professional Conduct and Competence Panel, make oral submissions to the panel either in person or through a representative, and call and cross-examine witnesses;
  - e. inform the Registrant of the possible sanctions open to the Panel in the event of a finding of impairment;
  - f. inform the Registrant of the panel's power to proceed in the absence of the Registrant, or the Registrant's representative, at the hearing; and
  - g. invite the Registrant to state whether he will be attending the hearing.
  - h. inform the Registrant of the names of the members of the panel to allow the Registrant to object to a member of the panel on the grounds of a potential or actual conflict of interest
- 9.2.2 Within seven days after the conclusion of the hearing, the Professional Conduct Officer shall send a Notice of the Decision to the Registrant.
- 9.2.3 The Notice of Decision shall:
- a. specify the reasons for the panel's decisions;
  - b. where a Suspension Order or Conditions of Practice Order has been imposed, set out the period of suspension or restriction;
  - c. inform the Registrant of the right of appeal;
  - d. inform the Registrant that any sanction imposed by the panel took effect from the date on which it was made; and
  - e. specify where and for how long the panel's determination and details of the sanction will be published in accordance with sections 9.2.4 and 9.2.5.



9.2.4 Following a Professional Conduct and Competence hearing the panel’s determination shall be published on the BAaC website and reflected on the Registrant’s entry on the Register. This is to ensure the protection of the public and the public interest.

9.2.5 Determinations and sanctions shall be published on the BAaC website and reflected on the Registrant’s entry on the Register for the periods set out in the table below.

Sanction	Publication Period
Caution	Duration of caution
Conditions of Practice	Duration of conditions
Suspension Order	Duration of suspension
Removal	Indefinitely, or until the former member is re-instated after applying successfully to the Restoration Committee

9.2.6 The hearing shall not be fixed for any date earlier than 28 days from the day after the serving of the notice of hearing except with the consent of the Registrant.

9.2.7 The Professional Conduct Officer shall send a copy of the notice of hearing to the Complainant and may send a copy to any interested third party.

**9.3 Disclosure of case and service of documents**

9.3.1 No later than 28 days before the date of hearing the Professional Conduct Officer shall serve on the Registrant and/or their legal adviser a copy of this Code, any reports, written statements or other documents the BAaC intends to rely on. The Registrant shall be invited to submit any further documents they would like the Professional Conduct and Competence Panel to consider.

9.3.2 No later than 14 days before the date of the hearing, the Registrant may advise the Professional Conduct Officer which parts, if any, of the evidence served by the Professional Conduct Officer they agree and shall:

- serve on the Professional Conduct Officer, copies of all documents and reports upon which they intend to rely and
- indicate which witnesses they require to attend the hearing



- 9.3.3 The Parties may make arrangements for original documents to be inspected no later than seven days before the date of the hearing.
- 9.3.4 Upon receipt of the Registrant's case, the Presenter shall consider whether there is any further evidence in the BAcC's possession which may assist the Registrant, and shall serve copies of such evidence, if any, on the Registrant and request that the Professional Conduct Officer makes arrangements for evidence to be sent to all members of the panel.
- 9.3.5 No later than seven days before the hearing, the Professional Conduct Officer shall send the panel copies of:
- a. the notice of hearing; and
  - b. any documents, reports or photographs provided by and agreed as admissible the Parties in a paginated bundle known as The Agreed Bundle.
- 9.3.6 No later than seven days before the hearing, the Professional Conduct Officer shall send the paginated bundle referred to in section 9.3.5 b to the Registrant and/or their legal adviser.
- 9.3.7 Any documents, reports or photographs not agreed by the parties shall be available at the hearing in a paginated bundle known as The Non-Agreed Bundle. The Parties shall have the opportunity to make representations on whether the material is admissible. The Legal Assessor shall advise the panel whether or not it is appropriate for the panel to see any of the documents reports or photographs in the non-agreed bundle. This also applies to evidence which is not in documentary format including but not limited to video footage, needles and other equipment.

#### **9.4 Postponement of the hearing**

- 9.4.1 Where either Party wishes the hearing to be postponed, such application shall be made in writing to the Chair of the panel.
- 9.4.2 The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.
- 9.4.3 The Party served with the application may submit a written response to the Chair of the panel.
- 9.4.4 The application shall be considered by the Chair of the panel who shall determine the application, taking into account:
- a. the submissions of the Registrant and the BAcC;



- b. any likely prejudice to either Party; and
- c. the public interest in the prompt disposal of the case.

9.4.5 In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Professional Conduct Officer shall inform the Registrant and the Complainant of the new hearing date as soon as possible.

## **9.5 Procedure at the hearing**

9.5.1 Subject to the requirements of a fair hearing, the panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.

9.5.2 If at any time during the hearing it appears to the panel that the alleged conduct has been caused by, or substantially contributed to, by the Registrant's physical or mental health, the panel may adjourn the hearing and refer the case to the Health Committee.

9.5.3 The hearing shall be conducted in three stages as follows:

- a. preliminaries and findings of fact;
- b. findings regarding misconduct, lack of competence, conviction or caution, relevant determination, ill health; false entry or impairment; and
- c. mitigation and sanction.

## **9.6 Hearings before Professional Conduct and Competence Panels**

9.6.1 The hearing shall be held in public unless the Panel decides that it is in the interests of justice that it be held in private or that the interests of a Complainant, Registrant or Witness should override the normal practice that it should be held in public.

9.6.2 For the purpose of arriving at any decision under section 9.6.1, the panel shall deliberate in the absence of the Parties. However, the panel shall announce any decision in the presence of the parties.

## **9.7 Representation and entitlement to be heard**

9.7.1 The Presenter and the Registrant shall be entitled to be heard by the panel. The Complainant is usually a witness and has no individual right to be heard by the panel.



- 9.7.2 The Registrant may be represented by a legally qualified representative or another representative of the Registrant's choosing before the Professional Conduct and Competence Panel and that representative has the right to be heard by that panel. This representative may not be called as a witness in any hearing relating to the case being considered.
- 9.7.3 The panel may exclude from the whole or part of the hearing any person whose conduct, in the opinion of the panel, has disrupted or is likely to disrupt the hearing.
- 9.7.4 Whilst the panel has no power to compel a witness to attend the hearing, give evidence or produce any documents, the panel may request that the Complainant attends the hearing, gives evidence and produces documents where the Parties have not called the Complainant to do so.
- 9.7.5 Where the Complainant is to give evidence, they shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the panel and have been formally released by the Chair of the panel.
- 9.7.6 Where the Complainant has been called as a witness, the Parties shall have the opportunity to question them.

## 9.8 Evidence

- 9.8.1 Subject to the advice of the Legal Advisor, if appointed, the requirements of a fair hearing, and of relevance, the panel may:
- admit evidence whether or not it would be admissible in a Court of Law;
  - exclude evidence in order to ensure fairness to the Registrant and between the Parties.
- 9.8.2 Whilst the panel has no power to compel the attendance of witnesses or the production of documents, it may of its own volition, request the Parties to provide documentation or request any person to give oral evidence, which it considers might assist it in its decision making under sections 9.19.1 – 9.19.4.
- 9.8.3 The panel may admit evidence adduced by a Party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing:
- if the Parties consent; or
  - where, after consultation (including with the Legal Advisor if appointed), it is satisfied that:



- i. the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the party which has not previously seen such evidence; and
- ii. there is good reason why such evidence was not previously disclosed.

9.8.4 The findings of fact and certification of convictions of any UK criminal court or the findings of a judge in any UK civil court shall be conclusive proof of the conviction or finding and the underlying facts.

9.8.5 Any relevant determination and findings of fact by any United Kingdom statutory regulator or an equivalent regulator outside the United Kingdom shall be conclusive proof of the determination and the underlying facts.

## **9.9 Burden and standard of Proof**

9.9.1 The burden of proving the facts alleged in the Formal Allegations shall rest upon the BAcC.

9.9.2 The standard of proof shall be on the balance of probabilities.

## **9.10 Adjournment of the hearing**

9.10.1 Subject to the requirements of a fair hearing and after hearing representations from the Parties, the panel may, at any stage of the hearing, adjourn the proceedings.

9.10.2 Where the hearing has been adjourned, the Professional Conduct Officer shall, as soon as practicable, notify the Registrant and the Complainant, and may notify any interested parties, of the time and date fixed for the hearing to be resumed.

## **9.11 Attendance at the hearing**

9.11.1 Where the Registrant fails to attend and is not represented at the hearing, the Chair of the panel shall:

- a. require evidence that the Registrant has been served with the notice of hearing in accordance with section 9.2.1 and that reasonable efforts have been made to inform the Registrant of the hearing; and
- b. inquire whether any reasons for the Registrant's non-attendance have been communicated to the Professional Conduct Officer.



- 9.11.2 Where the panel is satisfied that the notice of hearing has been duly served on the Registrant, and that reasonable efforts have been made to inform the Registrant of the hearing it may:
- a. hear and determine the case in the absence of the Registrant; or
  - b. adjourn the hearing and give directions.

### **9.12 Introduction of panel and reading of the Formal Allegations**

- 9.12.1 At the opening of the hearing, the Chair of the panel shall introduce the members of the panel and ask the Parties or their legal representatives to introduce themselves.
- 9.12.2 The Chair of the panel shall ask the Registrant to confirm their name and registration number.
- 9.12.3 The Presenter shall then read out the Formal Allegation(s) against the Registrant.

### **9.13 Amendment of the Formal Allegation(s)**

- 9.13.1 Subject to the requirements of a fair hearing, the panel may amend the Formal Allegation(s) at any stage prior to the finding of fact.
- 9.13.2 The panel shall first hear representations from the Parties, and take advice from the Legal Advisor, if appointed, before deciding whether or not the Formal Allegation(s) should be amended.

### **9.14 Admissions**

- 9.14.1 After the Formal Allegation(s) has/have been read, the Chair of the panel shall ask the Registrant whether any facts or convictions, cautions, relevant determinations, health issues or false entries (hereinafter “relevant facts”) alleged in the Formal Allegation(s) are admitted and whether there is an agreed statement of facts.
- 9.14.2 Where any relevant facts are admitted, the Chair of the panel shall announce that such facts have been found proved.

### **9.15 Presentation of the BAcC’s case**

- 9.15.1 Where no admissions are made, or some relevant facts remain disputed, the Presenter shall present the case against the Registrant to the panel by



making an opening submission and adducing evidence in support of those relevant facts which are not admitted.

#### **9.16 Witnesses**

- 9.16.1 Witnesses shall be examined by the party calling them and may then be cross-examined by the opposing party. The party calling the witness may then re-examine the witness.
- 9.16.2 Witnesses may then be questioned by the panel.
- 9.16.3 The Parties may then question the witness on matters arising out of the panel's questions. The Party calling the witness shall question the witness last.
- 9.16.4 Any further questioning of witnesses shall be at the discretion of the panel.
- 9.16.5 Witnesses shall not be allowed to attend the hearing or watch the proceedings until they have completed giving evidence and have been formally released by the Chair of the panel.

#### **9.17 Registrant's evidence**

- 9.17.1 At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and witnesses in their support.

#### **9.18 Closing submissions**

- 9.18.1 The Presenter and then the Registrant may make closing submissions to the Panel. The Registrant shall make the final closing submissions.

#### **9.19 Findings**

- 9.19.1 The panel shall then consider in private
  - a. whether the relevant facts in the Formal Allegation(s) have been proved on the balance of probabilities;
  - b. if the Formal Allegation(s) is one of misconduct or a lack of competence whether, on the facts found proved, the Registrant has committed misconduct or lacks competence;
  - c. in all cases, whether the Registrant's fitness to practise is impaired.



- 9.19.2 In deciding upon the issues in section 9.19.1, the panel shall have regard to the Code of Professional Conduct and Code of Safe Practice issued by the BAaC.
- 9.19.3 The panel shall announce its findings in the presence of the Parties and give reasons for its findings.
- 9.19.4 If no relevant facts have been proved or (where appropriate) there is no finding of misconduct or lack of competence, or where there is no finding that the Registrant's fitness to practise is impaired, the Formal Allegation(s) shall be dismissed.

## **9.20 Mitigation**

- 9.20.1 Where the panel finds that the Registrant's fitness to practise is impaired, the Presenter shall provide the panel with details of the Registrant's previous disciplinary record with the BAaC, if any, and may adduce evidence and make submissions in relation to the appropriate sanction, if any, to be made by the panel.
- 9.20.2 The Registrant may then address the panel in mitigation and may adduce references and testimonials, and may call character witnesses in support. The Presenter may then make submissions in relation to this evidence.
- 9.20.3 Where character witnesses are called, they may be questioned by the Presenter and the panel.
- 9.20.4 Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Professional Conduct Officer. The Professional Conduct Officer shall provide such mitigation documents to the Presenter to provide to the panel at this stage.
- 9.20.5 After hearing the Parties, the panel shall decide in private, what sanction if any it should impose.

## **9.21 Sanctions**

- 9.21.1 Upon a finding of impairment, the Professional Conduct and Competence Panel shall:
- a. decide to take no further action; or
  - b. caution the Registrant and direct that a record of the Caution be placed on the Registrant's entry in the Register, for a period of up to two years; or



- c. issue a Conditions of Practice Order, for a period of not less than one year and not more than three years; or
  - d. make an Order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order'); or
  - e. make an Order for removal of the Registrant's name from the Register ('a Removal Order');
  - f. decide whether any Interim Order should be continued, revoked or amended or whether a further Interim Order should be imposed; and/or
- 9.21.1A Where any order is made under Rule 21.1 (c) or (d) above, the Panel shall specify whether it should be subject to review before it expires.
- 9.21.2 In making a decision under section 9.21.1, the panel shall take into account:
- a. the seriousness of the Registrant's conduct;
  - b. the protection of the public;
  - c. the public interest in maintaining confidence in acupuncture; and
  - d. the principle of proportionality.
- 9.21.2A The Panel may order the Registrant to pay a reasonable contribution towards the costs of bringing the case and holding the hearing.
- 9.21.3 The panel shall announce its decision on sanctions in the presence of the Parties, and shall give reasons for its decision.
- 9.21.4 Any decision of the panel shall take effect as soon as it is made.
- 9.21.5 If the panel decides to impose a sanction, it shall also specify where and for how long the sanction will be published in accordance with section 9.2.5.
- 9.22 Notice of Decision**
- 9.22.1 Within seven days after the conclusion of the hearing, the Professional Conduct Officer shall send a Notice of the Decision to the Registrant and to the Complainant and may send one to any interested third parties.
- 9.22.2 The Notice of Decision shall:
- a. specify the reasons for the panel's decisions;



- b. where a Suspension Order or Restriction of Practice Order has been imposed, set out the period of suspension or restriction;
- c. inform the Registrant of the right of appeal;
- d. inform the Registrant that any sanction imposed by the panel took effect from the date on which it was made; and
- e. specify where and for how long the sanction will be published in accordance with section 9.2.5.

### **9.23 Notes and transcript of the proceedings**

- 9.23.1 If the proceedings take place virtually, the BAcC shall take and keep a recording of the proceedings before the panel.
- 9.23.2 If the proceedings take place in person, the BAcC shall appoint someone to take a verbatim note of the proceedings before the panel.
- 9.23.3 Upon application by the Registrant, the Professional Conduct Officer shall arrange for a transcript to be prepared and shall send the Registrant a transcript of the verbatim note or recording of the proceedings.

### **9.24 Consensual Disposal**

- 9.24.1 The use of procedures for disposing of cases by consent is an effective case management tool that reduces the number of contested hearings which need to be held. A panel cannot simply agree to resolve a case by consent without having regard to its wider obligations, in particular the obligation to protect public safety.
- 9.24.2 Where the Professional Conduct Officer believes that the Registrant may be willing to admit all or the majority of the substantial Formal Allegation(s) and that it may be appropriate for the panel to impose sanctions without a contested hearing, the Professional Conduct Officer shall write to the Chair of the Professional Conduct and Competence Panel to ascertain whether the Chair believes that a full hearing is necessary.
- 9.24.3 Where the Chair determines that a full hearing is not necessary the procedure in sections 9.24.4 – 9.24.7 applies.
- 9.24.4 Where the Chair determines that a full hearing is not necessary, he or she may request that the Professional Conduct Officer convenes a panel to meet in private to decide the sanctions in respect of the Formal Allegation(s) that the Registrant has indicated that he/she will admit.



- 9.24.5 At a panel meeting under section 9.24.4, the Professional Conduct and Competence Panel may dispense with the calling of witnesses and considering evidence to decide whether the relevant facts in the Formal Allegation(s) have been proved on the balance of probabilities. The panel shall still consider:
- a. if the Formal Allegation(s) is one of misconduct or a lack of competence, whether on the facts found proved, the Registrant has committed misconduct or lacks competence; and
  - b. whether the Registrant's fitness to practise is impaired.
- 9.24.6 The panel may hear from the Registrant or their legal representative or consider written representations before imposing sanctions. The full range of sanctions shall be available to the Panel. The Panel will take into account the fact that a full hearing may not be required when considering a Costs Order.
- 9.24.7 The Professional Conduct Officer shall, within 7 days of the Professional Conduct and Competence Panel meeting at which the sanction(s) were proposed, inform the Registrant of the proposed sanction(s).
- 9.24.8 The Registrant or their legal representative shall, within 14 days of the proposed sanctions being sent to them by the Professional Conduct Officer, inform the Professional Conduct Officer whether or not the Registrant intends to accept the proposed sanctions. If neither the Registrant nor his/her legal representative contacts the Professional Conduct Officer within 14 days of the proposed sanction(s) being sent to him/her, the Registrant is deemed to have accepted the sanctions.
- 9.24.9 If the Registrant does not accept the proposed sanctions, a hearing shall take place before an entirely different Professional Conduct and Competence Panel to determine which sanction(s), if any, should be imposed.
- 9.24.10 Where the panel considers that any Formal Allegation(s) which have not been admitted by the Registrant would be likely, if they were proved, to make a difference to the sanction(s), it may order a full hearing before an entirely different Professional Conduct and Competence Panel, which will not be made aware of the Formal Allegation(s) the Registrant indicated that he/she was prepared to admit unless the Registrant chooses to bring the proposal to its attention.

## **9.25 Substantive Order Reviews**

- 9.25.1 Before the expiry of an order made under section 9.21.1, where the Panel has decided under Rule 9.21.1A that the order should be reviewed before expiry,



the Professional Conduct Officer shall refer the matter to the Professional Conduct and Competence Panel for a Review Hearing.

- 9.25.2 The Professional Conduct Officer may refer a case to the Professional Conduct and Competence Panel for an early Review Hearing where information is received that, in the opinion of the Professional Conduct Officer makes an early Review Hearing desirable.
- 9.25.3 No later than 28 days before the Review Hearing under section 9.25.1 or 9.25.2 ('the Review Hearing'), the Professional Conduct Officer shall send to the Registrant, and may send to the Complainant or other interested parties, a Notice of Hearing which shall:
- a. State the date, time and venue for the Review Hearing;
  - b. Specify the direction made at the previous hearing relating to holding a Review Hearing;
  - c. state that this case is to proceed under this Code rather than the Code of Health Committee Procedures;
  - d. inform the Registrant of their respective rights to attend the Review Hearing, give evidence to the Professional Conduct and Competence Panel, make oral submissions to the Panel either in person or through a representative, and call and cross-examine witnesses;
  - e. inform the Registrant of the possible sanctions open to the Panel in the event that the Panel finds that the Registrant is still impaired;
  - f. inform the Registrant of the Panel's power to proceed in the absence of the Registrant, or the Registrant's representative, at the Review Hearing;
  - g. invite the Registrant to state, within 14 days of the date of the Notice of Hearing, whether he will attend the Review Hearing; and
  - h. inform the Registrant of the names of the members of the Panel to allow the Registrant to object to a member of the Panel on the grounds of a potential or actual conflict of interest.
- 9.25.4 Disclosure and service of documents shall be in accordance with section 9.3 above.
- 9.25.5 Before exercising its powers under section 9.25.1 or section 9.25.2 above, the Professional Conduct and Competence Panel shall give the Registrant an opportunity to appear before it and make representations.



- 9.25.6 The Registrant may be represented by a legally qualified representative or another representative of the Registrant's choosing and that representative has the right to be heard by the panel. This representative may not be called as a witness, or be someone who has been called as a witness, in any hearing relating to the case being considered.
- 9.25.7 The Panel may exclude from the whole or part of the Review Hearing any person whose conduct, in the opinion of the Panel, has disrupted or is likely to disrupt the Review Hearing.
- 9.25.8 Once the Panel has made a decision, a Notice of Decision shall be prepared in accordance with section 9.22.
- 9.25.9 The Registrant has the right to appeal against the decision of the Professional Competence and Conduct Panel. Any appeal under this section should follow the rules in section 10 below. This includes the fact that any appeal under this section must be made within 28 days from the day on which the order or sanction was made.
- 9.25.10 A Review Hearing may be considered on the papers with the consent of the Registrant on the basis that, if the decision is anything other than to revoke the existing order(s) or to allow it/them to lapse, the Registrant may request an oral hearing. Consideration on the papers under this section may be carried out by the Chair of the Panel or by the Panel itself.
- 9.25.11 If, since the previous hearing, a new allegation against the Registrant has been referred to the Professional Conduct and Competence Panel, the Panel shall first proceed with that allegation in accordance with sections 9.5 to 9.24 above. The Panel shall then proceed in accordance with section 9.25.24 except that, when determining whether the fitness to practise of the practitioner is impaired and what direction or order to impose, it shall additionally have regard to its findings in relation to the new allegation.
- 9.25.12 Subject to the requirements of a fair hearing, the Panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.
- 9.25.13 The Panel shall decide whether the Registrant's fitness to practise is still impaired. If the Panel decides that the Registrant's fitness to practise is no longer impaired it shall:
- a. revoke the order with immediate effect or



- b. allow the order to lapse on the date upon which it was due to expire

If the Panel decides that the Registrant's fitness to practice is still impaired, it may make any of the sanctions or orders set out in section 9.21 above.

- 9.25.14 The Review Hearing shall be held in public unless the Panel decides that it is in the interests of justice that it be held in private or that the interests of a Complainant, Registrant or Witness shall override the normal practice that it should be held in public.
- 9.25.15 For the purpose of arriving at a decision under section 9.25.13, the Panel shall deliberate in the absence of the Parties. However, the Panel shall announce any decision in the presence of the Parties.
- 9.25.16 Whilst the Panel has no power to compel a witness to attend the hearing, give evidence or produce documents, the Panel may request that the Complainant attends the Review Hearing, gives evidence and produces documents where the Parties have not called the Complainant to do so.
- 9.25.17 Any witness, including the Complainant, shall not be allowed to attend or watch the proceedings until after they have completed giving evidence and have been formally released by the Chair of the Panel.
- 9.25.18 Admission of evidence shall be in accordance with section 9.8 above.
- 9.25.19 The standard of proof shall be on the balance of probabilities.
- 9.25.20 Any adjournment of the Review Hearing by the Panel shall be in accordance with section 9.10.
- 9.25.21 The Registrant's failure to attend the Review Hearing shall be dealt with in accordance with section 9.11.
- 9.25.22 Any request for postponement of the hearing shall be made in accordance with section 9.4 above.
- 9.25.23 The order of proceedings at a Review Hearing shall be as follows:-
- a. The Chair of the Panel shall introduce the members of the Panel and ask the Parties or their representatives to introduce themselves.



- b. The Chair of the Panel shall ask the Registrant to confirm their name and registration number unless the Registrant is not present in which case the Presenter shall confirm the Registrant's name and registration number.
- c. The Panel shall hear any preliminary legal issues.
- d. The Presenter shall inform the Panel of the background to the case and that sanction previously imposed; shall direct the attention of the Panel to any relevant evidence and may adduce evidence and call witnesses in relation to the Registrant's fitness to practice or his failure to comply with any requirement imposed upon him as a condition of registration.
- e. the Registrant or his representative may present his case and may adduce evidence and call witnesses in support of it.
- f. the Panel may receive further evidence and hear any further submissions from the Parties as to whether the fitness to practise of the Registrant is impaired or whether he has failed to comply with any requirement imposed upon him as a condition of registration.
- g. the Panel shall make its decision under section 9.25.13 and announce it to the Parties.

## 10 Appeals Panel

Reviews of decisions of the Professional Conduct Officer or the Investigating Panel not to refer cases to the Professional Conduct and Competence Panel

- 10.1 There is no right of review or appeal against a decision of the Professional Conduct Officer not to refer a case to the Investigating Panel.
- 10.2 There is no right of review or appeal against a decision of the Investigating Panel not to refer a case to the Professional Conduct or Competence Panel.

### 10.3 Time limit for Appeal

- 10.3.1 An appeal under this Part must be made within 28 days from the day on which the order or sanction was made.
- 10.3.2 Appeals must be made in writing setting out which order and/or sanction is being appealed and the grounds for appeal.

### 10.4 Notice of Hearing



- 10.4.1 As soon as practicable after the written notice and grounds of appeal have been served and referred to the Appeals Panel, the Professional Conduct Officer shall send the Appellant and the Respondent a Notice of Hearing which shall:
- a. state the date, time and venue of the hearing;
  - b. specify the grounds of Appeal;
  - c. inform the Parties of their respective rights to:
    - i. attend the hearing;
    - ii. make oral submissions to the Appeals Panel either in person or through a representative;
    - iii. call fresh evidence at the discretion of the Appeals Panel;
  - d. inform the Parties of the possible options open to the Appeals Panel in the event of an appeal being allowed or dismissed
  - e. inform the Registrant of the names of the members of the panel to allow the Registrant to object to a member of the panel on the grounds of a potential or actual conflict of interest.
- 10.4.2 The Professional Conduct Officer shall inform the Complainant and may inform any interested third parties of the date of the Appeals Panel hearing.
- 10.4.3 The hearing shall not be fixed for any date earlier than 28 days from the date after the serving of the notice and grounds of appeal except with the agreement of the Registrant.
- 10.4.4 The Professional Conduct Officer shall send with the Notice of Hearing:
- a. a copy of this Code; and
  - b. any reports, written statements or other documents which the Appeals Panel will have before it.

## **10.5 Postponement of the hearing**

- 10.5.1 Where either party wishes the hearing to be postponed, such application shall be made in writing to the Chair of the Appeals Panel.



- 10.5.2 The party making such application shall serve a copy of the application on the other party, together with any supporting documentation.
- 10.5.3 The party served with the application may submit a written response to the Chair of the Appeals Panel.
- 10.5.4 The application shall be considered by the Chair of the Appeals Panel who shall determine the application, taking into account:
- a. the submissions of both Parties;
  - b. any likely prejudice to either Party;
  - c. the public interest in the prompt disposal of the case.
- 10.5.5 In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Professional Conduct Officer shall inform the Parties of the new hearing date as soon as possible.

## **10.6 Notice to any interested third parties**

- 10.6.1 The Professional Conduct Officer may send a copy of the Notice of Hearing to any interested third parties.

## **10.7 Disclosure of case and service of documents**

- 10.7.1 Appeals should usually be conducted on the basis of the evidence before the original panel.
- 10.7.2 The Appeal Panel has a discretion to receive further evidence on behalf of the Registrant if the Panel is satisfied that the evidence could not reasonably have been obtained for and presented at the original hearing.
- 10.7.3 The Appeal Panel will overturn an order or sanction of the substantive Panel if the order or sanction was wrong or manifestly disproportionate, or the hearing, or the relevant part of the hearing, was unfair due to some serious procedural irregularity.
- 10.7.4 The Appeal Panel retains a residual discretion to admit further evidence in exceptional circumstances if, in the view of the Appeals Panel, it would be unjust not to do so.
- 10.7.5 No later than 21 days before the date of the hearing, the Appellant shall serve on the Respondent and upon the Professional Conduct Officer, if applicable,



copies of any written submissions upon which they intend to rely and any fresh evidence (where appropriate).

- 10.7.6 No later than 14 days before the date of the hearing, the Respondent shall serve on the Appellant and upon the Professional Conduct Officer, if applicable, copies of any written submissions upon which they intend to rely and any fresh evidence (where appropriate).
- 10.7.7 If the Appellant is the Registrant, upon receipt of the Appellant's submissions, the Professional Conduct Officer shall consider whether there are any further documents in the BAcC's possession, which may assist the Appellant, and shall serve copies of such documents, if any, on the Appellant and members of the Appeals Panel.
- 10.7.8 No later than seven days before the hearing, the Professional Conduct Officer shall send the Appeals Panel, copies of:
- a. the notice and grounds of appeal;
  - b. Notice of Hearing;
  - c. any written submissions provided by the Parties;
  - d. any fresh evidence upon which the Parties intend to rely;
  - e. all the material and written evidence that was before the previous panel or committee;
  - f. a transcript of the proceedings to which the appeal relates; and
  - g. a copy of the order or sanction to which the appeal relates.

## **10.8 Procedure at the hearing**

- 10.8.1 Subject to the requirements of a fair hearing, the Appeals Panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.
- 10.8.2 The appeal hearing shall be conducted by the Appeals Panel in three stages as follows:
- a. it shall consider the information provided under sections 10.7.1 – 10.7.4 and it shall hear submissions from the Parties;
  - b. it shall make a decision on whether the appeal is allowed or dismissed; and



- c. in the event that it allows the appeal, it shall make a decision on whether to vary the order, remit the case for a re-hearing, or amend or vary a sanction.

## **10.9 Private hearings**

10.9.1 The hearing shall be held in private.

10.9.2 For the purpose of arriving at any decision in relation to the hearing, the Appeals Panel shall deliberate in the absence of the Parties. However, the panel shall announce any decision in the presence of the Parties.

## **10.10 Representation and entitlement to be heard**

10.10.1 The Appellant and the Respondent shall be entitled to be heard by the Appeals Panel.

10.10.2 The Registrant (whether appearing as an Appellant or a Respondent) may be represented by a legally qualified representative or another representative of the Registrant's choosing before the Appeals Panel and that representative has the right to be heard by the panel. This representative may not be called as a witness in any hearing relating to the case being considered.

10.10.3 The Appeals Panel may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the panel, has disrupted or is likely to disrupt the hearing.

## **10.11 Evidence**

10.11.1 Subject to the advice of the Legal Advisor if appointed, the requirements of a fair hearing and of relevance, the Appeals Panel may:

- a. admit evidence that was not available or not known to the Appellant at the time of the original hearing ('fresh evidence'); and/or
- b. exclude evidence in order to ensure fairness to the Appellant and the Respondent.

10.11.2 When making a decision under section 10.11.1, the panel may admit evidence adduced by a party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing:

- a. if the Parties consent;
- b. where, after consultation (including with the Legal Advisor, if appointed), it is satisfied that:



- i. the evidence is fresh evidence;
- ii. the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the party which has not previously seen such evidence; and
- iii. there is a good reason why such evidence was not previously disclosed.

10.11.3 Whilst the panel has no power to compel a witness to attend and give evidence, the panel may of its own volition request the Parties to provide documentation or request any person to give oral evidence which it considers might assist in its determination of the appeal.

10.11.4 The findings of fact and certification of conviction of any UK criminal court or the findings of a judge in any UK civil court shall be conclusive proof of the conviction or finding and the underlying facts.

10.11.5 Any relevant determination and findings of fact by any statutory regulator or any equivalent regulator outside the United Kingdom shall be conclusive proof of the determination and the underlying facts.

## **10.12 The nature of the appeal**

10.12.1 An appeal shall be limited to a review of the decision of the original panel including varying sanctions provided that the sanction imposed by the Appeals Panel is made in accordance with section 9.21.1 and take into account any fresh evidence submitted.

10.12.2 The Appeals Panel shall allow an appeal:

- a) in cases where no fresh evidence is admitted, if it decides that the original panel ought to have reached a different decision on the material before it.
- b) In cases where fresh evidence is admitted if:
  - i. in the light of that evidence, the original panel would have reached a different decision;
  - ii. notwithstanding that evidence, the original committee or panel ought to have reached a different decision on the material before it.

## **10.13 Adjournment of the hearing**



10.13.1 Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Appeals Panel may, at any stage of the hearing, adjourn the proceedings.

10.13.2 Where the hearing has been adjourned, the Professional Conduct Officer shall, as soon as practicable, notify the Registrant and the Complainant and may notify any interested third parties, of the time and date fixed for the hearing to be resumed.

#### **10.14 Attendance at the hearing**

10.14.1 Where the Registrant, if they are the Respondent, fails to attend and is not represented at the hearing, the Chair of the Appeals Panel shall:

- a. require evidence that the Registrant has been served with the Notice of Hearing in accordance with this Code and that reasonable efforts have been made to inform him of the hearing; and
- b. inquire whether any reasons for the Registrant's non-attendance have been communicated to the Professional Conduct Officer.

10.14.2 Where the panel is satisfied that the Notice of Hearing has been duly served on the Parties, and that reasonable efforts have been made to inform the Registrant of the hearing it may:

- a. hear and determine the case in the absence of the Appellant or Registrant if he is not the Appellant; or
- b. adjourn the hearing and give directions;
- c. dismiss the Appeal without a determination of its merits.

#### **10.15 Order of proceedings**

10.15.1 At the opening of the hearing, the Chair of the Appeals Panel shall introduce the members of the Panel and invite the Parties or their legal representatives to introduce themselves.

10.15.2 The Chair of the panel shall ask the Appellant, if they are the Registrant, to confirm their name and registration number.

10.15.3 The legal representative for the Party appealing or the Presenter shall then read out the reason(s) for the appeal (if provided) and state which party is appealing and the nature of the decision appealed.



- 10.15.4 The Chair of the panel shall ask the Appellant to make oral submissions in support of their appeal.
- 10.15.5 Any application to adduce fresh evidence shall be made and the panel shall rule on the admissibility, relevance and weight of the evidence.
- 10.15.6 At the end of the case presented by the Appellant, the Respondent may make submissions in support of their case.
- 10.15.7 The panel shall then consider in private whether the appeal is upheld or dismissed.
- 10.15.8 The panel shall announce its decision in the presence of the Parties and give reasons for its findings.

#### **10.16 Witnesses**

- 10.16.1 Should the Appeals Panel rule that fresh evidence can be admitted and that evidence involves the calling of a witness, the provisions in sections 10.16.2 – 10.16.6 shall apply.
- 10.16.2 Witnesses shall be examined by the party calling them and may then be cross-examined by the opposing party. The party calling the witness may then re-examine the witness.
- 10.16.3 Witnesses may then be questioned by the panel.
- 10.16.4 The Parties may then question the witnesses on matters arising out of the panel's questions. The Party calling the witness shall question the witness last.
- 10.16.5 Any further questioning of witnesses shall be at the discretion of the panel.
- 10.16.6 Witnesses shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the panel and been formally released by the Chair of the panel.

#### **10.17 Appeal against an Interim Order**

- 10.17.1 Where the Registrant is appealing against an Interim Order, the panel must consider the appeal as if it were the original Interim Orders Panel in accordance with sections 8.3.1 – 8.4.7 and shall:
  - a. allow the appeal and remit the matter to the Interim Orders Panel for a re-hearing; or



- b. allow the appeal and amend, vary or revoke the Interim Order imposed; or
  - c. allow the appeal and, if an Interim Suspension Order was imposed, impose an Interim Restrictions of Practice Order instead; or
  - d. Dismiss the appeal, in which case, the Interim Order will continue.
- 10.17.2 Where the Appeals Panel varies a decision by the Interim Orders Panel, the Appeals Panel's determination shall be published and reflected on the Registrant's entry on the Register as if the decision had been made by the Interim Orders Panel in accordance with sections 8.4.6 and 8.4.7. This is to ensure the protection of the public and the public interest.
- 10.17.3 Where the Appeals Panel varies a decision of the Interim Orders Panel and publishes its determination in accordance with section 10.17.2, the original determination of the Interim Orders Panel or Professional Conduct and Competence Panel shall be removed.
- 10.18 Appeal against a determination of the Professional Conduct and Competence Panel**
- 10.18.1 Where the Registrant is appealing against a determination of the Professional Conduct and Competence Panel, the panel shall determine the appeal as if it were the original Professional Conduct and Competence Panel in accordance with sections 9.5.1 – 9.23.2 and shall:
- a. allow the appeal; or
  - b. dismiss the appeal.
- 10.18.2 If the panel allows the appeal it must either:
- a. quash the decision of the Professional Conduct and Competence Panel and dismiss the Formal Allegation(s);
  - b. quash the decision of the Professional Conduct and Competence Panel and substitute any decision that the original panel could have made; or
  - c. remit the matter to the original Professional Conduct and Competence Panel for a re-hearing.
- 10.18.3 Where the Registrant appeals the determination and the sanction made by the Professional Conduct and Competence Panel, the Appeals Panel shall:
- a. consider the appeal against the determination first;



- b. consider the appeal against the sanction thereafter.

10.18.4 In considering the appeal against the sanction, the panel shall proceed in accordance with sections 10.19.1 – 10.19.7.

### **10.19 Appeal against sanction**

10.19.1 Where the appeal relates to the imposition of a sanction, the Appeals Panel shall consider the appeal as if it were the original Professional Conduct and Competence Panel in accordance with sections 9.5.1 – 9.23.2 and shall:

- a. allow the appeal; or
- b. dismiss the appeal.

10.19.2 The powers of the panel in relation to an appeal against sanction are as follows:

- a. it may revoke, amend, vary or extend the sanction imposed; or
- b. remit the matter to the original panel for re-consideration.

10.19.3 In deciding upon the issue of the sanction, the panel shall have regard to the Code of Professional Conduct and the Code of Safe Practice.

10.19.4 The sanctions available to the Appeals Panel are those that were available to the Professional Conduct and Competence Panel at the original hearing as set out in section 9.21.1.

10.19.5 Where the Appeals Panel varies a decision or sanction previously imposed by the Professional Conduct or Competence Panel, the Appeals Panel's determination shall be published on the BAAC website and reflected on the Registrant's entry on the Register as if the decision had been made by the Professional Conduct and Competence Panel in accordance with sections 9.2.4 – 9.2.5. This is to ensure the protection of the public and the public interest.

10.19.6 Where the Appeals Panel varies a decision or sanction of the Professional Conduct and Competence Panel and publishes its determination in accordance with section 10.19.5, the original determination of the Interim Orders Panel or Professional Conduct and Competence Panel shall be removed.

### **10.20 Appeal against an order of the Restoration Committee**



- 10.20.1 Where the Registrant is appealing against the order of the Restoration Committee, the Appeals Panel must determine the appeal in accordance with sections 11.6.1 – 11.7.6 and shall:
- allow the appeal and restore the Registrant to the register; or
  - allow the appeal and vary, amend or remove the Conditions of Registration imposed;
  - dismiss the appeal.

10.20.2 In making this decision, the panel shall have regard to the provisions of sections 11.7.1 to 11.7.6.

### **10.21 Notice of Decision**

10.21.1 Within seven days, after the conclusion of the hearing, the Professional Conduct Officer shall send a Notice of Decision to:

- the Appellant and the Respondent;
- the Complainant;
- and may send a Notice of Decision to any interested third parties.

10.21.2 The Notice of Decision shall:

- record any advice given by the Legal or Technical Advisor, if appointed;
- set out the Appeals Panel's decision on the Appeal;
- specify the reasons for the panel's decision;
- where an order has been imposed, set out the nature of the order;
- inform the Registrant that any further sanction imposed by the panel took effect on the date on which it was made.

### **10.22 Notes and transcript of the proceedings**

10.22.1 A person shall be appointed by the BAcC to take a verbatim note of the proceedings before the Appeals Panel.

10.22.2 Upon application, the Professional Conduct Officer shall send the Registrant a transcript of the verbatim note, of any part of the proceedings at which the Registrant was entitled to be present.



### **10.23 Publication of Notice of Decision**

- 10.23.1 The BAcC shall publish the Appeals Panel's determination, by any such means as it considers appropriate, as soon as is reasonably practicable following any such determination.
- 10.23.2 The BAcC may also at any time provide a copy of the panel's determination, to any of the statutory regulatory bodies or interested third parties if it is in the interests of justice to do so.

## **11 Restoration Committee**

- 11.1 An application for restoration shall be deemed to be an initial application for registration and should comply with the BAcC's current Admissions criteria.

### **11.2 Documents to be provided to the BAcC**

- 11.2.1 In addition to the documents specified for an application for admission to the Register, the applicant may send to the BAcC any report, statement or other document which, in the applicant's opinion, supports the application for restoration.

### **11.3 Documents to be provided to the applicant**

- 11.3.1 As soon as practicable after receipt of a completed application for restoration to the Register, the Professional Conduct Officer shall send the applicant notice of the hearing, including:
- a copy of the transcript of the Professional Conduct and Competence Panel hearing at which the order for removal from the Register was made;
  - a copy of the decision and order made by the Professional Conduct and Competence Panel that made the Removal Order;
  - any documents to be relied on by the BAcC; and
  - a copy of this Code.

### **11.4 Notice of Restoration Hearing**

- 11.4.1 The notice of the hearing shall:
- state the date, time and venue of the hearing;



- b. inform the applicant of the right to attend the hearing and make oral submissions to the Restoration Committee or to be represented by a solicitor, barrister or chartered legal executive advocate or another representative of the applicant's choosing. This representative may not be called as a witness at the hearing.

11.4.2 The hearing shall not be fixed for any date earlier than 28 days after the posting of the notice of the hearing, except with the agreement of the applicant.

### **11.5 Documents to be provided to the Restoration Committee**

11.5.1 No less than seven days before the hearing, the Professional Conduct Officer shall send to the committee, copies of:

- a. the notice of restoration hearing;
- b. the application for restoration and any documents provided by the applicant in support of the application;
- c. a copy of the decision and order made by the Professional Conduct and Competence Panel that made the Removal Order;
- d. any documents relied on by the BAAC.

### **11.6 Procedure at a restoration hearing**

11.6.1 Proceedings of the Restoration Committee shall be held in private.

11.6.2 The Presenter shall outline the history of the applicant's case and the circumstances in which the Order for Removal of the applicant's registration was made.

11.6.3 The Presenter may adduce to the committee any documents which were exhibited to the Professional Conduct and Competence Panel, which made the Removal Order and any documents which have since come into possession of the BAAC and which relate to the applicant's good character, conduct, competence or health and may call witnesses to give evidence on these issues.

11.6.4 The applicant or the applicant's representative may then address the committee as to the reasons why an order for restoration should be made. The applicant may be represented by a barrister, solicitor, chartered legal executive advocate or another representative of the applicant's choosing.



That representative has a right to be heard by the Restoration Committee.  
This representative may not be called as a witness at the hearing.

11.6.5 The Applicant may adduce evidence and call witnesses in support of the application for restoration.

11.6.6 Witnesses shall be examined by the party calling them, and may be questioned by the other party and by members of the committee.

### **11.7 Decision of the Committee**

11.7.1 The Restoration Committee shall determine an application for restoration in two stages as per sections 11.7.2 and 11.7.3.

11.7.2 The committee shall first consider whether the applicant should be restored to the Register, having regard to:

- a. the reasons why the applicant was removed from the register;
- b. evidence as to the applicant's current good character, competence or health;
- c. evidence as to the applicant's conduct since removal from the register;
- d. the protection of the public; and
- e. the public interest in maintaining confidence in acupuncture.

11.7.3 Where the committee is minded to restore an applicant's registration, it shall then consider whether the applicant's registration should be made subject to conditions ('Registration Conditions') for a specified period not exceeding three years.

11.7.4 Where the committee is minded to impose Registration Conditions on the applicant's registration, it shall invite representations from the applicant before making its decision.

11.7.5 In deciding whether to restore an applicant's registration, and if so, whether an applicant's registration should be made subject to Registration Conditions, the committee shall take into account the principle of proportionality.

11.7.6 The committee shall give reasons for its decision.

### **11.8 Notice of Decision**



11.8.1 Within seven days of the conclusion of the proceedings, the Professional Conduct Officer shall send a Notice of Decision to the applicant and to the BAAC.

11.8.2 The Notice of Decision shall:

- a. record any advice given by the Legal or Medical Advisor;
- b. set out the Restoration Committee's decision;
- c. specify the reasons for the committee's decision;
- d. clearly set out any Registration Conditions imposed on the applicant's registration; and
- e. set out the applicant's right of appeal.

### **11.9 Time limits for application**

11.9.1 No application for restoration to the Register under this rule shall be made to the Restoration Committee:

- a. within five years from the date of removal; or
- b. in any period of twelve months in which an application for restoration has already been made on behalf of the person who has been removed.

### **11.10 Barring Order**

11.10.1 Where an applicant has made a previous unsuccessful application for restoration and the BAAC has refused the current application for restoration, the Restoration Committee may order that the applicant's right to make further restoration applications be suspended indefinitely ('a Barring Order').

11.10.2 The committee shall not make a Barring Order until it has heard representations on this issue from the applicant.

11.10.3 In deciding whether or not to make a Barring Order, the committee shall take into account the principle of proportionality.

11.10.4 Where a Barring Order has been made, the applicant may apply to the committee, in writing, for permission to make any further applications for restoration and the committee shall grant such an application if the applicant provides evidence to the committee demonstrating that there has been a change in the circumstances which lead to the decision to remove the



applicant from the Register such that the Committee, acting reasonably, should consider the application for restoration.

### **11.11 Review of conditions imposed by the Restoration Committee**

- 11.11.1 Where Restoration Conditions have been imposed against the applicant's registration:
- a. they shall be reviewed before they expire; and
  - b. subject to section 11.11.2 the BAcC or any person in respect of whom the Conditions were made may request a review at any other time.
- 11.11.2 The Restoration Committee shall not review any Registration Conditions imposed upon an Applicant's registration unless there has been a material change of circumstances since the Registration Conditions were imposed.
- 11.11.3 A decision whether to grant a request for a review and the conduct of a review shall be undertaken by the Restoration Committee.
- 11.11.4 The procedure at a review hearing shall be as follows:
- a. the Presenter shall outline the facts of the case and the circumstances in which the Registration Conditions were imposed;
  - b. the applicant or the BAcC, may then make submissions as to why the Registration Conditions should be revoked, varied or amended and may adduce documents and call witnesses in support.
- 11.11.5 Where Conditions of Practice were imposed following the procedures under the Code of Health Committee Procedures, the review hearing shall be held under those procedures.
- 11.11.6 The committee may, after reviewing the Registration Conditions, revoke, vary or amend the conditions. The committee may also impose further Registration Conditions to commence upon the expiry of the existing Registration Conditions.
- 11.11.7 The powers of the Restoration Committee shall be the same as the committee that imposed the original Registration Conditions.
- 11.11.8 At the conclusion of the review hearing, the committee shall announce its decision and the reasons for its decision, in the presence of the Parties.



- 11.11.9 Within seven days of the conclusion of the hearing, the Professional Conduct Officer shall send a Notice of Decision, containing the reasons for the Panel's decision to:
- a. the applicant;
  - b. the Registrar;
  - c. the Complainant;
  - d. and may send a Notice of Decision to any interested third parties.

#### **11.12 Notice of Review Hearing**

- 11.12.1 As soon as practicable after the applicant or the BAAC has requested a review of his Registration Conditions or a review becomes necessary by virtue of section 11.11.1a), the Professional Conduct Officer shall send the applicant a Notice of Review Hearing which shall:
- a. inform the applicant of the right to attend the hearing;
  - b. state the date, time and venue of the hearing;
  - c. specify the grounds of the review (if applicable);
  - d. provide the applicant with:
    - i. the notice of decision made by the Professional Conduct and Competence Panel that made the Removal Order;
    - ii. the notice of decision made by the Restoration Committee that made Registration Conditions;
    - iii. a copy of the transcript of the hearing of the Professional Conduct and Competence Panel that made the Removal Order;
    - iv. a copy of the transcript of the hearing of the Restoration Committee that made the Restoration Conditions;
  - e. inform the applicant of the right to give evidence in person, to call witnesses and to cross-examine any witnesses called by the BAAC;
  - f. inform the applicant of the right to make oral submissions to the committee in person or to be represented by a solicitor, barrister or chartered legal executive advocate or another representative of the Registrant's choosing;



- g. request confirmation as to whether the applicant intends to attend the hearing or be represented at the hearing; and
- 11.12.2 The hearing shall not be fixed for any date earlier than 28 days from the day after the posting of the Notice of Review Hearing except with the agreement of the applicant.
- 11.12.3 The Professional Conduct Officer shall send with the Notice of Review Hearing:
- a. a copy of this Code; and
  - b. any reports, written statements or other documents which the committee will have before it.

## 12 The Moderator

- 12.1 The Governing Board of the BAAC shall appoint a person to be the Moderator who shall not be an employee, member of the Governing Board or member of any BAAC Committee.
- 12.2 The Moderator shall prepare an annual report for the Governing Board of the BAAC which examines all cases in which the Professional Conduct Officer has decided not to refer to the Investigating Panel in accordance with sections 6.1 – 6.4 or the Investigating Panel has decided not to refer to the Professional Conduct and Competence Panel or Health Committee in accordance with section 7.8.1, 7.11.1 – 7.11.3 and 7.13.1 – 7.13.6.
- 12.3 The Moderator shall also prepare a generalised summary of the cases according to the nature of the allegations and the principal reasons for not pursuing the investigation, and shall make whatever recommendations and conclusions they feel necessary to improve the functions of Professional Conduct Officer or the Investigating Panel. The summary shall be published on the BAAC website or in such other medium as the Governing Board deems appropriate.
- 12.4 The Moderator shall also have such other functions as may be conferred upon them by rules made by the Governing Board.
- 12.5 The Moderator shall be a non-acupuncturist (lay person).



- 12.6 The Governing Board of the BAAC may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Moderator.



## Appendices

### Appendix A - Service and time limits

- A1 In this Code, any reference to the sending of a letter, notice or other written communication to a Registrant, former Registrant, applicant, Complainant, witness or potential witness is a reference to either:
- the sending of a letter or notice by Royal Mail Signed For or Royal Mail Special Delivery to the addressee's last known address; or
  - sending an email to the addressee's known current email address.
- A2 Where any letter, notice or written communication is sent by post in accordance with section A.1, it shall be treated as having been served on the Day after it was posted.
- A3 Where any letter, notice or written communication is sent by email in accordance with section A.1, it shall be treated as having been served on the Day it was sent.
- A4 The Professional Conduct Officer or any of the BAAC Ethics Committees or Panels may extend any time limit in this Code which provides for the service of documents or notices, either by:
- a. the consent of all Parties and the agreement of the Professional Conduct Officer, committee or panel; or
  - b. where the Professional Conduct Officer, committee or panel considers it fair to do so without causing unreasonable delay to the proceedings and/or causing significant risk to the public.
- A5 Before deciding whether to extend a time limit, the Professional Conduct Officer, Committee or Panel shall consider any representations made by the Parties.

## Appendix B - Constitution of panels and committees

### General provisions concerning Ethics Panels and Committees

B1.1 The BAcC shall maintain a pool of individuals who have been recruited to be potential panel members for the Investigating Panel, the Interim Orders Panel, the Professional Conduct and Competence Panel, and the Appeals Panel. The Professional Conduct Officer shall recruit individuals for this pool together with a member of the Governing Board. One or more of the following people may also be included:

- the CEO
- an additional member of the Governing Board
- the Safe Practice Officer or equivalent role
- the Head of Professional Standards or equivalent role.

The Professional Conduct Officer shall report the names of new members of the pool to the Governing Board at the next Governing Board meeting.

B1.2 The BAcC shall also maintain a pool of individuals who have been recruited to be potential panel Chairs for the Investigating Panel, the Interim Orders Panel, the Professional Conduct and Competence Panel, and the Appeals Panel. The Professional Conduct Officer shall recruit individuals for this pool together with a member of the Governing Board. One or more of the following people may also be included:

- the CEO
- an additional member of the Governing Board
- the Safe Practice Officer or equivalent role
- the Head of Professional Standards or equivalent role.

The Professional Conduct Officer shall report the names of new members of the pool to the Governing Board at the next Governing Board meeting.

B1.3 Members of the pool referred to in section B.1 cannot also be members of the pool referred to in section B.2 at the same time. The head of professional standards or the Professional Conduct Officer may move members from one pool to the other as they see fit and with the agreement of the member of the pool.

B1.4 A person shall not be prevented from being a member of an Ethics Committee or Panel because he has previously been a member of that or another Ethics Committee or Panel.



B1.5 Any member of an Ethics Committee or the pools referred to in sections B1.1 or B1.2 shall hold office for no longer than the maximum term set out in any policies approved by the Governing Board.

B1.6 The Governing Board may make rules or policies in respect of any Ethics Committee or Panel including, in particular:

- provision as to the functions and powers to be conferred on the Ethics Committee or Panel, its composition and relationship with the Governing Board or other committee or panel; and
- rules regulating the procedure of the Ethics Committees and Panels including provision as to rules of evidence to be observed in proceedings before any such committee or panel.

B1.7 No proceedings of an Ethics Committee or Panel shall be invalidated by any defect in the appointment of a member.

B1.8 No member of the pool of members or pool of Chairs shall be appointed to an Ethics Panel to deal with a particular case if they have had any previous involvement with that case except in accordance with sections 7.12.4 and 8.5.5.

B1.9 Decisions of all Panels and Committees shall be taken by simple majority.

B1.10 Both formal hearings and meetings may be in person, by video, telephone conference, Skype, Facetime, Zoom, Teams, email and by any other electronic means. This section only applies if all the members participating in the meeting:

- a. have access to all of the case papers and the Codes; and
- b. are privy to all that takes place within the meeting howsoever held.

### The Investigating Panel

B2.1 The Investigating Panel is a filtering panel and its role is to determine whether the allegation should be considered by the Professional Conduct and Competence Panel. The wider purpose of this process is not to punish the Registrant for past misconduct, but rather to consider whether the Registrant's conduct has fallen short of the issues alleged and therefore potentially is in breach of the relevant Codes.

B2.2 The Investigating Panel shall consider Complaints and Allegations referred to the panel by the Professional Conduct Officer.



B2.3 The Investigating Panel shall comprise of three members, at least one of whom shall be a non-acupuncturist (lay person) and at least one of whom shall be a Registrant. No member of the Governing Board or any other committee, or member of the BAcC staff team shall be a member of the Investigating Panel.

B2.4 The Chair shall be allocated from the pool of Chairs referred to in section B1.2. The remaining two members shall be allocated from the pool of members referred to in section B1.1.

B2.5 The quorum of the Investigating Panel shall be three.

### The Interim Orders Panel

B3.1 The Interim Orders Panel shall consider whether it is necessary to make an order affecting a Registrant's registration for the protection of the public or otherwise in the public interest.

B3.2 The panel does not investigate or conduct a fact-finding exercise.

B3.3 The Interim Orders Panel shall consider referrals from the Professional Conduct Officer and Investigating Panel whether a member should be suspended pending investigation or whether any other Interim Orders should be made. The Interim Orders Panel shall also consider referrals from the Professional Conduct and Competence Panel for Suspension and Interim Orders pending conclusion of the case.

B3.4 The Interim Orders Panel shall comprise of three members, at least one of whom shall be a non-acupuncturist (lay person) and at least one of whom shall be a Registrant. No member of the Governing Board or any other committee, or member of the BAcC staff team shall be a member of the Interim Orders Panel.

B3.5 The Chair shall be allocated from the pool of Chairs referred to in section B1.2. The remaining two members shall be allocated from the pool of members referred to in section B1.1.

B3.6 The quorum of the Interim Orders Panel shall be three.

### The Professional Conduct and Competence Panel

B4.1 The Professional Conduct and Competence Panel is a Fitness to Practise panel and its role is to consider whether on the balance of probabilities an Allegation referred to it amounts to misconduct or lack of capability, namely a breach of the BAcC Code of Professional Conduct or the Code of Safe Practice and if this misconduct/lack of capability amounts to an impairment of the Registrant's Fitness to Practise.

B4.2 The Professional Conduct and Competence Panel shall consider Formal Allegations referred to the Panel by the Investigating Panel.

B4.3 The Professional Conduct and Competence Panel shall comprise of three members, at least one of whom shall be a non-acupuncturist (lay person) and at least one of whom shall be a Registrant. No member of the Governing Board or any other committee, or member of the BAAC staff team shall be a member of the Professional Conduct and Competence Panel.

B4.4 The Chair shall be allocated from the pool of Chairs referred to in section B1.2. The remaining two members shall be allocated from the pool of members referred to in section B1.1.

B4.5 The quorum of the Professional Conduct and Competence Panel shall be three.

### The Health Committee

B5.1 The Health Committee shall consider Complaints, Allegations or reports of alleged impairment of physical and/or mental health, which may impair a Registrant's fitness to practise acupuncture safely.

B5.2 The composition, powers and procedures of the Health Committee are provided for in the Code of Health Committee Procedures.

### The Appeals Panel

B6.1 The Appeals Panel shall consider Appeals against decisions of:

- the Professional Conduct and Competence Panel that the Formal Allegation(s) has been proven; or
- the Professional Conduct and Competence Panel to impose any sanction under this Code.

B6.2 The Appeals Panel shall comprise of three members, at least one of whom shall be a non-acupuncturist (lay person) and at least one of whom shall be a Registrant. No member of the Governing Board or any other committee, or member of the BAAC staff team shall be a member of the Appeals Committee.

B6.3 The Chair shall be allocated from the pool of Chairs referred to in section B1.2. The remaining two members shall be allocated from the pool of members referred to in section B1.1.

B6.4 The quorum of the Appeals Panel shall be three.



B6.5 The Chair shall be allocated from the pool of Chairs referred to in section B1.2. The remaining two members shall be allocated from the pool of members referred to in section B1.1.

### The Health Appeals Committee

B7.1 The Health Appeals Committee shall consider Appeals against decisions of the Health Committee whether: the Allegation is well-founded; to make a Conditions of Practice Order or to suspend the Member.

B7.2 The composition, powers and procedures of the Health Appeals Committee are provided for in the Code of Health Committee Procedures.

### The Restoration Committee

B8.1 The Restoration Committee shall consider:

whether Registrants who have been removed from the register after Fitness to Practise proceedings should be restored to the register;

applications to review Registration Conditions imposed by the Restoration Committee when Registrants have been restored to the register; and

- whether to make a Barring Order where an applicant has made a previous unsuccessful application for restoration and the Restoration Committee has refused the current application for restoration.

B8.2 The Restoration Committee shall comprise of three to five members, at least one of whom shall be a non-acupuncturist (lay person) and at least one of whom shall be a Registrant. No member of the Governing Board or any other committee, or member of the BAcC staff team shall be a member of the Restoration Committee.

B8.3 The members of the Restoration Committee shall elect a Chair from among themselves.

B8.4 The quorum of the Restoration Committee shall be three.

B8.5 In the event of a tie in voting in respect of any decision by the Restoration Committee, the Chair shall have a casting vote.

## Appendix C - Advisors to the panes and committees

### Legal Advisor



- C1.1 Any Ethics Panel or Committee may appoint a person to be a Legal Advisor.
- C1.2 The Legal Advisor shall have the general function of giving advice to any of the Ethics Panels or Committees on questions of procedure or law arising in connection with any matter the panel or committee is considering. Where a panel or committee appoints a Legal Advisor the provisions set out in sections C1.3 – C1.12 shall apply.
- C1.3 To be qualified for appointment as a Legal Advisor under this section, a person must:
- a. have a General Qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or
  - b. be an advocate or solicitor in Scotland; or
  - c. be a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland.
- C1.4 The BAAC may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Legal Advisor.
- C1.5 In the case of a Legal Advisor who is also a member of any of the BAAC panel or committee, any such payment shall be made to him in his capacity as a Legal Advisor and not as a member of a panel or committee.
- C1.6 The role of Legal Advisor shall be to advise the panel or committee on questions of law and procedure to ensure that the proceedings before the panel or committee are conducted in accordance with the principles of public protection, natural justice, equality of representation, human rights, transparency and all relevant legislation. To this end the Legal Advisor shall inform a panel immediately of any irregularity in the conduct of the proceedings.
- C1.7 Where the Parties are present during the proceedings, the advice of the Legal Advisor shall be given in the presence of the Parties. Advice given by the Legal Advisor during private deliberations of the panel shall subsequently be repeated before the Parties.
- C1.8 Where the Legal Advisor has given advice to the panel or committee in private, the Parties or their legal representatives shall have the opportunity to make representations on the contents of the advice given by the Legal Advisor before any decision has been taken by the panel.
- C1.9 Section C1.8 does not apply to proceedings before any Ethics Panel or Committee where the Registrant has chosen not to attend the hearing and has not instructed a legal representative to attend on his behalf.



C1.10 Where the Registrant or former Registrant or their legal representative is not present during the proceedings of a panel, the panel shall maintain a record of any advice given by the Legal Advisor.

C1.11 The Legal Advisor shall not be entitled to vote.

C1.12 The Legal Advisor may also advise a panel or committee in relation to the drafting of reasons for any findings, determinations or decisions of that panel or committee.

### Medical Advisor

C2.1 Any Ethics Panel or Committee may appoint a Registered Medical Practitioner or suitably qualified clinical psychologist who is a member of an Accredited Register to be a Medical Advisor.

C2.2 The Medical Advisor shall have the general function of giving advice to any of the Ethics Panel's or Committees on matters within his professional competence arising in connection with any matter which the panel or committee is considering.

C2.3 The BAAC may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Medical Advisor.

C2.4 In the case of a Medical Advisor who is also a member of any of the BAAC committees, any such payment shall be made to him in his capacity as a Medical Advisor and not as a member of a panel or committee.

C2.5 Where the Registrant or former Registrant or their legal representative is not present during the proceedings of a panel or committee, the panel or committee shall maintain a record of any advice given by the Medical Advisor.

C2.6 Where the Parties are present during the proceedings, the advice of the Medical Advisor shall be given in the presence of the Parties. Advice given by the Medical Advisor during private deliberations of the panel shall subsequently be repeated before the Parties.

C2.7 Where section C2.6 applies the Parties or their legal representatives shall have the opportunity to make representations on the contents of the advice given by the Medical Advisor before any decision has been taken by the panel.

C2.8 The Medical Advisor shall not be entitled to vote.

### Technical Advisor

- C3.1 The Governing Board may appoint a Registrant or other appropriately qualified specialist consultant to be a Technical Advisor who shall not be a member of the Governing Board.
- C3.2 The Technical Advisor shall have the general function of giving advice to any of the Ethics Committees or Panels on matters within his professional competence in connection with any matter which he or the committee or panel is considering.
- C3.3 The BAAC may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Technical Advisor.
- C3.4 In the case of a Technical Advisor who is also a member of any of the BAAC panels or committees, any such payment shall be made to him in his capacity as a Technical Advisor and not as a member of a panel or committee.
- C3.5 Where the Registrant or former Registrant or their legal representative is not present during the proceedings of a panel or committee, the panel or committee shall maintain a record of any advice given by the Technical Advisor.
- C3.6 Where the Parties are present during the proceedings, the advice of the Technical Advisor shall be given in the presence of the Parties. Advice given by the Technical Advisor during private deliberations of the panel shall subsequently be repeated before the Parties.
- C3.7 Where section C3.6 applies the Parties or their legal representatives shall have the opportunity to make representations on the contents of the advice given by the Technical Advisor before any decision has been taken by the panel or committee.
- C3.8 The Technical Advisor shall not be entitled to vote.