

# Disciplinary Procedure

Updated March 2021

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# I. Introduction

- I.1 The Association of Child Psychotherapists Ltd ('the Association') is established to further the objects set out in clauses 1-3 of the Association of Child Psychotherapists Rules ('the Rules'). In particular 3.1 which is 'To raise, maintain and regulate professional standards in relation to child psychotherapy in the UK.'
- I.2 To these ends, the Association has laid down a Code of Professional Conduct and Ethics ('the Code'), and has established the Ethical Practice Group with the functions described below at paragraph 2.2.
- I.3 The primary purpose of the present document is to set out a procedure (at paragraphs 3 to 18) whereby complaints of misconduct against members of the Association as defined in the Code may be investigated and dealt with promptly and fairly and with proper regard to the interests of the public, the patient, the Complainant, the Member, the profession, and to the balances between those interests. Further procedures can be viewed on the Association's website ([www.childpsychotherapy.org.uk](http://www.childpsychotherapy.org.uk)) under 'Register and Standards'.
- I.4 This procedure applies in full even if, before exhaustion of this procedure, a Member resigns from the Association, fails to renew their registration or comply with the Continuing Professional Development (CPD) requirements. In such a case, the Association will retain all powers which would have been available to it if the former Member were still in membership.
- I.5 References below to 'Members' or 'the Member' are to members of the Association whose conduct has been complained of, or who are otherwise under investigation under this procedure. References to 'Complainant' or 'Complainants' are to persons who have brought concerns to the ACP's attention that a Member has, or may have, breached the Code. 'Complaint' means an expression of concern that a Member has, or may have, breached the Code that is confirmed as a formal complaint under paragraph 4.6 or an indication there is a possible Code breach that is treated as a complaint under paragraph 4.2 or 4.3. References to 'working day' and 'working days' are to days other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a Bank Holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom. References to 'data protection law' are to the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018.

## 2. The Ethical Practice Group

### Accountability

- 2.1 The Ethical Practice Group is a sub-group of the Association's Professional Standards Committee and is accountable to the Director of Professional Standards. The Director of Professional Standards is a member of the Association's Board of Directors ('the Board') and is required to report on a regular basis to the Board about any complaints or any issues relating to Professional Conduct and Ethics. The Chair/Lead of the Ethical Practice Group attends the Professional Standards Committee meetings. S/he provides feedback on themes and pertinent issues relating to current complaints to the Association and gives advice on conduct and any ethical matters that may arise.

## Functions

- 2.2 The functions of the Ethical Practice Group are to:
- 2.2.1 investigate and adjudicate upon potential breaches of the Association's Code that are brought to its notice and, where appropriate, impose sanctions;
  - 2.2.2 agree or impose interim measures in accordance with the procedure pending the outcome of proceedings;
  - 2.2.3 identify evidence-based concerns about poor practice short of Code breaches that come to light in the course of investigating such breaches and make recommendations of action that may be taken to address those concerns when appropriate;
  - 2.2.4 administer the Serious Impairment to Fitness to Practise Procedure (which is documented separately);
  - 2.2.5 produce a report on an anonymised basis for the Professional Standards Committee as part of the annual report to the membership, identifying the lessons that may be learned from the complaints and other concerns that have been investigated; and
  - 2.2.6 consider, give guidance upon, advise and/or report upon any ethical issue concerning the profession of psychoanalytic child psychotherapy.

## Membership of the Ethical Practice Group

- 2.3 Procedures regarding appointments, membership of and resignation from the Ethical Practice Group are set out in the document '*Functions and Job descriptions for The Ethical Practice Group*' which can be found at <http://www.childpsychotherapy.org.uk/complaints-against-member>.

## Conflicts of interest and confidentiality

- 2.4 All members of the Ethical Practice Group are required to comply with the Association's Conflict of Interest and Confidentiality Policies. The Ethical Practice Group members shall play no part in investigations of complaints where there is, or could reasonably appear to be, a conflict between their own professional or personal interests, including a prior relationship with any party to a complaint, and their obligations to fairly and thoroughly investigate and determine disciplinary matters under this policy.

# 3. The Legal Members' Panel

## Membership of the Legal Members' Panel

- 3.1 The Director of Professional Standards in consultation with the Chair/Lead of the Ethical Practice Group may appoint a legal members' panel of currently practising barristers or solicitors. The members of this panel may be appointed to sit as members of Disciplinary Panels when dealing with cases of unusual seriousness or complexity.
- 3.2 The members of the Legal Members' Panel may not be members of the Ethical Practice Group for other purposes.

### *Conflicts of interest*

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

## **4. Preliminary consideration of possible breaches of the Association's Code**

### *Matters considered for investigation*

- 4.1 To ensure the interests of the public, patients, formal Complainants, members and the profession are properly protected, the Association will consider whether there should be an investigation into:
- 4.1.1 indications that there is a possible Code breach where there is no formal complaint and Complainant (see paragraphs 4.2 below);
  - 4.1.2 a formal complaint about a Member or the expression of a concern that raises issues about a possible breach of the Code (see paragraph 4.6 below).

### *Indications of possible Code breaches where there is no formal complaint or complainant*

- 4.2 Indications of possible Code breaches will be treated as complaints in the following circumstances:
- 4.2.1 first, if a member of the Association receives from any other person or by any means information which indicates that another Member may have committed a breach of the Association's Code which either: (a) has occurred in the course of the conduct of the Member's profession as a child psychotherapist and has compromised or may compromise the welfare of a child or a vulnerable adult; or (b) could, if proven, bring the profession into disrepute;
  - 4.2.2 secondly, if information which comes to the attention of the Association that indicates a Member may have committed a breach of the Association's Code, it shall be treated as a complaint about that Member's conduct if: (a) it is in the public domain; or (b) it has come to light as a result of an investigation by another professional or statutory body; or (c) it is in writing

and in all cases a record will be made of the information by the recipient and it will be referred to the Chair/Lead of the Ethical Practice Group for preliminary consideration under paragraph 4.8.

### *Timing of complaints*

- 4.3 Complaints should normally be made within five years of the events they relate to and matters treated as complaints under paragraphs 4.2 or 4.6 should be brought to the Association's attention within the same time frame. Where a complaint is made or such a matter is brought to the Association's attention outside this time frame, it will only be investigated if the possible Code breach:

- 4.3.1 seriously risked, compromised or may compromise the welfare of a child or a vulnerable adult; or
- 4.3.2 could, if proven, bring the profession into disrepute;

and, in either case, it is also in the public interest to investigate bearing in mind the difficulties there may be in establishing the facts, given the passage of time.

### ***Actual and potential complainants***

- 4.4 The Association recognises that complaints may be made by colleagues, patients, families, employers or outside agencies, and that complaints may be expressed in the first instance either orally or in writing, or in terms which do not state expressly that they amount to a complaint. It also recognises that some vulnerable adults, disabled people or children may not be able to make a written complaint. It is for that reason that this part of the procedure makes provision for clarification of the intentions of potential Complainants.
- 4.5 Anonymous complaints will not be accepted by the Association. However, the Director of Professional Standards and/or the Ethical Practice Group Chair/Lead would encourage and support any Complainant who wishes to remain anonymous to approach the relevant statutory authorities.
- 4.6 Upon receipt of a complaint or the expression of a concern that raise issues about a possible breach of the Code (whether or not the word “complaint” is used or reference is made to the Code), the Director of Professional Standards shall forward it to the Chair/Lead of the Ethical Practice Group who shall write to the Complainant:
  - 4.6.1 asking her/him to confirm (if the Complainant has not already done so) that s/he wishes to make a formal complaint and (if necessary) to confirm or clarify the full grounds of the complaint in writing or, if this is not possible because of the vulnerability, disability or age of the Complainant, to contact the Ethical Practice Group Chair/Lead to summarise the complaint on the telephone or in person;
  - 4.6.2 sending the Complainant a copy of the Code and a copy of this Procedure;
  - 4.6.3 seeking authorisation for disclosure of the complaint to the Member complained against; and
  - 4.6.4 where appropriate (and in particular to comply with data protection law), seeking the Complainant’s authority for the Member to disclose information to the Investigating Panel to the extent necessary to allow the Panel to properly investigate.
- 4.7 The Complainant will be asked to sign and return a pro forma authorisation for disclosure for the purposes of 4.6.3, and where appropriate 4.6.4, to the Chair/Lead of the Ethical Practice Group.

### ***Preliminary consideration, decisions on referral and appointment of Investigating Panel***

- 4.8 On completion of the above steps, the Chair/Lead of the Ethical Practice Group will give the complaint preliminary consideration together with a lay member and a child psychotherapist member. Subject to paragraphs 4.3 (complaints relating to events that occurred more than five years ago) and 17 (Provision for Overseas Members), if the Screening Group considers that information received, together with any information about similar concerns that has come to the attention of the Chair/Lead or their predecessor/s in the last six years, indicates a breach of the Code amounting to professional misconduct may have occurred and that an investigation is called for to establish the facts, s/he will inform the Complainant accordingly.

- 4.9 If the Screening Group has made a decision that there should be an investigation, the Chair/Lead of the Ethical Practice Group will appoint two members of the Ethical Practice Group (the 'Investigating Panel') to investigate and, if appropriate, present the case against the Member in due course. The Chair/Lead of the Ethical Practice Group will not share with the Investigating Panel any information about previous complaints against the Member. Unless it is wholly impracticable, the panel will consist of one child psychotherapist member and one lay member of the Ethical Practice Group.
- 4.10 The Chair/Lead of the Ethical Practice Group will write to the Member to inform her/him that the matter is to be investigated further. Her/his letter shall:
- 4.10.1 identify which provision/s of the Code appear/s may have been breached on the face of the material being considered;
  - 4.10.2 enclose copies of the material considered by the Ethical Practice Group Chair/Lead with the Screening Group, identifying those that appear to be relevant to the matters to be investigated by the Investigating Panel;
  - 4.10.3 explain to the Member that they will have the opportunity to respond in full during the Investigating Panel's enquiries and that, at this point in the procedure, the Ethical Practice Group has reached no concluded view on the complaint save that there is a prima facie case of breach of the Code which calls for an investigation;
  - 4.10.4 indicate that the Member is free to take legal advice on her/his position if they wish and, if the subject matter of the complaint might have financial consequences for them, notify their insurers; and
  - 4.10.5 identify the Investigating Panel members, if they have been appointed;
  - 4.10.6 offer support to the Member from a senior member of the profession.

#### ***Time frame for a decision on referral to an Investigating Panel***

- 4.12 The Screening Group will endeavour to reach a decision on whether a complaint should be referred to an Investigating Panel as quickly as possible and within 20 working days of receipt of the material or information that prompted preliminary consideration. If no decision has been reached 25 working days after receipt of the material, the Ethical Practice Group Chair/Lead will write to the Member concerned along with the Complainant or the person who provided the material or information, explaining that the Screening Group are considering making a referral to an Investigating Panel, why a decision has yet to be made and when it is expected that a decision will be made.

#### ***Maintaining records of complaints that are not referred for investigation***

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



## 5. Power to impose interim measures

### *Circumstances where interim measures may be necessary*

5.1 If, at any point between preliminary consideration of the complaint under paragraph 4.8 and a final decision on the complaint (either by the Investigating Panel under paragraph 6.8, by a Practice Review Panel under paragraph 7.11 or by the Disciplinary Panel under Part 10), the majority of the Screening Group reach the view that one or more interim measures are necessary for the protection of members of the public against a risk of harm given:

- 5.1.1 the nature and seriousness of the complaint; and/or
- 5.1.2 the complaint is one that involves criminal charges being brought against a Member or their prosecution or conviction for offences relevant to their practice as a child psychotherapist; and/or
- 5.1.3 the public interest or the interests of the Member concerned;

then such measures should be agreed or imposed subject to the procedure set out below at paragraphs 5.3 to 5.16. Interim measures are not penalties or sanctions. Their sole purpose is to mitigate risk of harm to actual or prospective patients, or otherwise protect the public interest or the interests of the Member pending the completion of an investigation.

### *Potential interim measures*

5.2 The potential interim measures available are:

- 5.2.1 an agreement between the Chair/Lead of the Ethical Practice Group and the Screening Group and the Member that, pending the final decision on the complaint as defined at paragraph 5.1, the Member will practise subject to the terms of written undertakings s/he gives (including arrangements to allow adherence to the terms of those undertakings to be effectively monitored by the Chair/Lead of the Ethical Practice Group);
- 5.2.2 a conditions direction requiring that the Member practises subject to specified conditions for a period of up to six months or until the final decision, whichever is sooner (such conditions may include requirements as to personal health, restrictions and requirements regarding the Member's practice and arrangements to allow adherence to the conditions to be effectively monitored); and
- 5.2.3 suspension of the Member from membership of the Association on an interim basis for a specified period of up to six months during which period the Member must not practise as a child psychotherapist on the basis of their ACP Membership or hold themselves out as being permitted to do so.

### *Process to decide on interim measures*

5.3 If a majority of the group comprising the Chair/Lead of the Ethical Practice Group and the Screening Group form the view that an interim measure may be appropriate on any of these bases, the Chair/Lead of the Ethical Practice Group shall write to the Member:

- 5.3.1 identifying the risk/s of harm or the apparent need to protect the public interest or the interests of the Member that have prompted consideration of interim measures;

- 5.3.2 stating what potential interim measures are to be considered;
  - 5.3.3 giving two dates not less than 10 working days after the date of the letter but as soon as practicable on which the Chair/Lead of the Ethical Practice Group and two members of the Screening Group will be available to hear any representations or evidence that the Member wishes to put forward about the complaint, any risk of harm and the appropriateness of any interim measure;
  - 5.3.4 indicating that, regardless of the Member's ability to attend that meeting, the Chair/Lead of the Ethical Practice Group and the Screening Group will consider any written representations made or evidence received prior to the meeting on these issues;
  - 5.3.5 seeking any information or documents the Chair/Lead of the Ethical Practice Group and the Screening Group consider may assist them in making a decision; and
  - 5.3.6 confirming that no decision on an interim measure has been made and will not be until the meeting takes place.
- 5.4 The Chair/Lead of the Ethical Practice Group and the Screening Group may, at their absolute discretion, arrange an alternative date for the meeting upon no less than 10 working days' notice to the Member.
- 5.5 At the meeting, the Chair/Lead of the Ethical Practice Group or a member of the Screening Group shall identify the basis on which one or more interim measures may be imposed and the Member shall have a reasonable opportunity themselves, or with the assistance of a representative, to make representations or present evidence about the seriousness of the complaint, any risk of harm and the appropriateness of any interim measure.
- 5.6 The decision on whether to seek an agreement to undertakings or to impose any other interim measures shall be made with regard to:
- 5.6.1 the Member's representations;
  - 5.6.2 the nature of the Member's practice;
  - 5.6.3 any known information about supervision of the Member's practice;
  - 5.6.4 the nature and seriousness of the complaint;
  - 5.6.5 any credible evidence of actual harm to patients in connection with the subject matter of the complaint;
  - 5.6.6 evidence of any risk of harm to actual or potential patients (including the degree of risk and nature of the harm);
  - 5.6.7 the specific public interest or interests of the Member that could be protected by taking an interim measure;
  - 5.6.8 any steps that have been taken by another body in relation to the matters that are the subject of the complaint that may make interim measures unnecessary (for example, suspension from work, or a requirement to practise under supervision);
  - 5.6.9 the likely duration of the investigation and timing of a final decision as defined at paragraph 5.1;

and, where one or more interim measures are considered necessary, the Chair/Lead of the Ethical Practice Group shall seek to agree or impose those that will have the least impact on the Member's practice, livelihood and professional reputation while achieving the objective of mitigating risk of harm and/or providing protection.

- 5.7 If practicable, the Chair/Lead of the Ethical Practice Group or a member of the Screening Group shall communicate the decision on interim measures orally at the meeting and, in any event, the decision shall be communicated in writing with reasons within 7 working days of the meeting.
- 5.8 If the decision is to seek the Member's agreement to give undertakings, the terms of those undertakings shall be communicated and the Member shall be allowed seven working days to respond either:
- 5.8.1 agreeing to give the undertakings sought; or
  - 5.8.2 agreeing to give the undertakings subject to an appeal (which the Member shall be entitled to pursue); or
  - 5.8.3 refusing to agree to give the undertakings sought or any part of them.
- 5.9 In the event the Member refuses to agree to give the undertakings sought or any part of them, the decision on interim measures will be revisited by the Chair/Lead of the Ethical Practice Group and the Screening Group and a further decision will be communicated to the Member within 7 working days of receipt of the Member's refusal. The Chair/Lead of the Ethical Practice Group and the Screening Group may, at their absolute discretion, arrange a further meeting with the Member to discuss interim measures again upon no less than 10 working days' notice to the Member, but the normal course in these circumstances will be for a decision to be made without a further meeting.

### **Notification and publication of decisions**

- 5.10 The Chair/Lead of the Ethical Practice Group shall inform the Board of the Association, in such manner as s/he thinks fit, of any agreed undertakings or decision to impose an interim measure. In the event any interim measure is imposed, the Chair/Lead of the Ethical Practice Group shall also produce a concise notice for posting on the Association's website stating the terms of the conditions direction or interim suspension but also making clear that the measure is an interim one made without any finding of a breach of the Code pending the outcome of an investigation which is ongoing. The notice shall be removed as soon as practicable in the event of a successful appeal or when a final decision as defined at paragraph 5.1 is made, whichever is the sooner.
- 5.11 The Ethical Practice Group Chair/Lead may write to any employer of the Member identifying the Member and supplying the information contained in the notice once it is published on the Association's website. The Ethical Practice Group Chair/Lead has discretion to provide further information, if requested, subject to the need to protect any confidentiality information that comes to light as a result of a complaint investigation.
- 5.12 The decision to offer undertakings for agreement or impose any conditions direction may be revisited under the procedure set out at 5.3 to 5.16 at any time before a final decision is made if the Chair/Lead of the Ethical Practice Group or the Screening Group becomes aware of evidence that the undertakings or conditions are not being adhered to by the Member. There shall be a further meeting in accordance with paragraphs 5.3 to 5.5 to which the Member will be invited before any variation is made to the interim measures.
- 5.13 A conditions direction or interim suspension may be reimposed when or shortly before it expires provided that, in no circumstances, shall interim measures remain in place for more than a total of 18 months.

### *Interim measures appeals*

- 5.14 Subject to the following provisions, the Member may bring an interim measures appeal against any decision of the Chair/Lead of the Ethical Practice Group and the Screening Group to seek an undertaking (which the Member has agreed to subject to an appeal) or impose an interim measure on the grounds that:
- 5.14.1 the conduct of the matter by the Chair/Lead of the Ethical Practice Group and the Screening Group was procedurally unfair; or
  - 5.14.2 there is new evidence which could not reasonably have been made available to the Chair/Lead of the Ethical Practice Group and the Screening Group; or
  - 5.14.3 the Member considers the interim measure harsh or disproportionate;
- but such an appeal shall not have the effect of suspending the interim measure.
- 5.15 The Member shall institute any such appeal within 14 working days of the date of the written decision of the Chair/Lead of the Ethical Practice Group and the Screening Group by writing to them setting out the grounds of the appeal and, in respect of any new evidence, the reasons why it was not presented before or at the meeting established under paragraph 5.3.
- 5.16 The interim measures appeal shall then be dealt with in accordance with paragraphs 13.1 to 13.9 below.

## **6. Investigating a complaint against a Member**

### *Investigating Panel functions*

- 6.1 The members of the Investigating Panel have the duty of investigating the complaint thoroughly and promptly, and deciding in light of their investigation whether there is a case that should be examined at a Practice Review meeting, requires a Disciplinary Hearing or need not proceed further under this procedure. If there is a Disciplinary Hearing, the members of the Investigating Panel will present the case against the Member which arises out of their investigation.

### *The investigation*

- 6.2 The members of the Investigating Panel shall take such steps to investigate either jointly or alone as in their discretion they consider appropriate; Their decisions should be taken jointly. If they cannot agree on any matter, it should be determined by the Ethical Practice Group Chair/Lead.
- 6.3 The sequence of interviews and enquiries will be a matter for the Investigating Panel to determine, but they shall offer the Member the opportunity to respond to the complaint either in writing or personally at a meeting and/or by putting forward documents for consideration and at any such meeting (and at subsequent meetings and hearings under this procedure) the Member shall have the right to be represented by any one person of her/his choice, including a union representative or, at the expense of the Member, a practising barrister or solicitor. The chosen representative may at any stage be excluded from the proceedings if s/he is disruptive and has been warned about the consequences of continuing to behave in that way, or is plainly unsuitable, for instance due to a prior relationship with any person involved in the case other than the Member who is subject to the Proceedings.

- 6.4 The Investigating Panel shall also offer any Complainant the opportunity to be interviewed and, if they agree, will interview them. Subject to duties of confidentiality owed to third parties, they shall also ensure that any Complainant has a fair opportunity to comment in response to the information provided by the Member during the investigation in response to the complaint whether at interview or in writing, as appropriate.
- 6.5 The members of the Investigating Panel may, at their discretion, interview any person suggested by the Complainant, Member or any other person they believe might assist their investigation. They may also ask the Complainant, Member or any other person to provide such documents as they may consider appropriate and consider any documents that are otherwise provided. In dealings with third parties, members of the Investigating Panel will have particular regard to the need for confidentiality.
- 6.6 The members of the Investigating Panel will maintain an accurate written record of any meeting or interview which they hold, whether with the Complainant, the Member, or any other person. They will disclose a copy of such record to the interviewee and invite the interviewee to agree it as an accurate summary of the interview or meeting. They may also make a tape or digital recording of any meeting or interview, provided they first obtain the consent of those present.
- 6.7 If the Investigating Panel consider they may need expert assistance during their investigation, including legal advice, they will ask the Ethical Practice Group Chair/Lead who will seek permission from the Director of Professional Standards.

### ***Investigating Panel's case to answer decision and Report***

- 6.8 At the end of their investigation, the Investigating Panel shall make a decision ('the case to answer decision') on whether:
- 6.8.1 there is a case to answer of a breach of the Code; and
  - 6.8.2 if so, there is a realistic prospect that facts justifying a finding of such a breach will be proved if they are disputed or have not been admitted by the Member;
- and, if these tests are met, will then decide how to proceed ('the decision on appropriate proceedings' – see paragraphs 6.13 to 6.21).
- 6.9 The Investigating Panel shall produce a report ('the Investigating Panel Report') which sets out:
- 6.9.1 relevant documents they have identified and considered;
  - 6.9.2 other evidence considered (including statements made at interview);
  - 6.9.3 their decision as to which, if any, aspects of the complaint amount to a case to answer of a breach of the Code;
  - 6.9.4 their reasons for their conclusions;
  - 6.9.5 the facts supporting those reasons;
  - 6.9.6 any facts which are disputed; and
  - 6.9.7 any recommendations (see paragraph 6.12);

but the Investigating Panel Report shall not reach any conclusion that there has been a breach of the Code.

- 6.10 In making their case to answer decision, the Investigating Panel shall not place the burden of proving or disproving that there is a case to answer of a breach of the Code on either the Complainant or the Member respectively and, bearing in mind paragraph 6.8.2, shall resolve any doubt in favour of the matter proceeding either to a Practice Review or a Disciplinary Hearing. If the members of the Investigating Panel decide that there is not a case to answer, subject to paragraph 6.12 (recommendations) the matter will be taken no further under this procedure once the Report is issued.
- 6.11 The Investigating Panel shall send their Investigation Report to the Ethical Practice Group Chair/Lead who will, as soon as practicable, send it to the Member and the Complainant.

### *Investigating Panel recommendations*

- 6.12 Provided the Investigating Panel has given the Member, Complainant or other party notice and a reasonable opportunity to respond before preparing its Investigating Panel Report, it may identify in a supplementary document or letter, or at an informal meeting, any evidence-based concerns it has about matters beyond the complaint and make recommendations of action that may be taken to address those concerns. Any concerns recorded in a supplementary document or letter, or expressed at such a meeting, are not disciplinary findings and any recommendations made are not binding on the person or organisation to whom they are addressed.

### *Investigating Panel's decision on appropriate proceedings and timescale*

- 6.13 The members of the Investigating Panel will endeavour to complete the Investigation Report and then reach their decision on referral to a Practice Review or Disciplinary Hearing within 60 working days of their appointment. If it appears to the Investigating Panel that the timescale cannot be met, they will inform the Ethical Practice Group Chair/Lead in writing giving reasons that explain the need for an extension. If the Ethical Practice Group Chair/Lead agrees to an extension, s/he will give agreement in writing to the Investigating Panel and send appropriate letters of apology and explanation to the Complainant and the Member complained against.
- 6.14 Before deciding whether a Practice Review or Disciplinary Hearing is appropriate, the Investigating Panel shall consult the Ethical Practice Group Chair/Lead on the complaints history of the Member, if any, including any complaints that have not been investigated, but recorded for the purposes of paragraph 4.13 or have been investigated but have not progressed beyond Investigating Panel stage.
- 6.15 Once they have received and considered that information, they shall consult the Ethical Practice Group Chair/Lead whether the matters that form the basis of a case to answer should be referred for a Disciplinary Hearing.
- 6.16 Following that consultation, the Investigating Panel shall refer the matter for a Disciplinary Hearing if, taking into account of all the circumstances, they conclude:
- 6.16.1 it would be in the public interest for there to be a Disciplinary Hearing; and/or
  - 6.16.2 if the matters that form the basis of the case to answer were found to be a Code breach, or breaches, at a Disciplinary Hearing, there would be a real possibility of either a sanction of suspension or expulsion or some other sanction which it would be in the public interest for the ACP to publish being imposed on the Member by a Disciplinary Panel; and/or



- 6.16.3 there are significant disputes of fact which make the case to answer unsuitable for resolution at a Practice Review;

The Investigating Panel will inform the Chair / Lead of the Ethical Practice group of their decision under this paragraph in writing within seven working days.

The Chair / Lead of the Ethical Practice Group will, as soon as practicable, inform the Member and the Complainant.

- 6.17 If none of the conditions at paragraph 6.16 appear to be met, the Investigating Panel shall consult with the Member and any Complainant as to the appropriateness of a referral to a Practice Review once the Ethical Practice Group Chair/Lead has sent the Member and any Complainant the Investigation Report under paragraph 6.11. In doing so, they shall explain the nature of a Practice Review, the sanctions available and the facility under paragraph 7.14 for referral back to them for a further decision on whether there should be a Disciplinary Hearing.
- 6.18 The Member should be told they can elect for the matter to be dealt with at a Disciplinary Hearing if they wish, and a Practice Review, if offered, will only proceed if they:
- 6.18.1 agree to resolution of the complaint in that way;
  - 6.18.2 accept the facts set out in the Investigating Panel's Report which the Panel have identified as supporting the case to answer of a breach, or breaches, of the Code; and
  - 6.18.3 accept there has been a breach, or breaches, of the Code of the kind identified as case to answer in the report.
- 6.19 The Complainant, if any, should also be informed of their opportunity to contribute to the Practice Review if one takes place and that their views on the decision on appropriate proceedings will be taken into account, but that they are not determinative.
- 6.20 Once the Investigating Panel have consulted with the Member and any Complainant under paragraphs 6.17 to 6.19 they shall offer the Member a Practice Review unless:
- 6.20.1 one or more of the conditions at 6.16 are met; or
  - 6.20.2 the Member has positively elected for a Disciplinary Hearing;
- in which case they shall refer the complaint for a Disciplinary Hearing.
- 6.21 If the Member is offered a Practice Review, they shall be given 10 working days to respond to the offer to indicate that they agree to resolution of the complaint and will accept the matters listed at paragraphs 6.18.2 and 6.18.3 above. Subject to the Member's agreement and written acceptance within this time frame, the referral to a Practice Review shall be made in 7 working days. If they agree the Member, Complainant and Ethical Practice Group Chair/Lead shall be informed of the Investigating Panel's referral under this paragraph in writing within 7 working days.

### **Preparation and dissemination of the Preliminary Bundle for a Practice Review or Disciplinary Hearing**

- 6.22 If a Member has been notified there is a case to answer, the Investigating Panel members shall prepare a bundle of documents ('the Preliminary Bundle') including at least the referral decision, the original complaint or complaints, an account of the investigation carried out by the members of the Investigating Panel, notes of any interviews or meetings conducted by the Panel and any other documents which the members of the Panel consider relevant at that time. This bundle

should be sent to the Member, or their appointed representative, not less than 10 working days before the Practice Review meeting/telephone discussion referred to in paragraph 7.2 or the Disciplinary Panel arrangements meeting referred to in paragraph 8.2.

- 6.23 Bearing in mind duties of confidentiality owed to third parties, the Investigating Panel members shall decide what, if any, documents from the Preliminary Bundle may be provided to the Complainant (or the person or organisation that was the source of information that led to a matter being treated as complaint under paragraphs 4.2 or 4.3) to enable them to properly understand the decision on the appropriate proceedings.

## **7. Practice Review**

### ***Appointment of Practice Review Panel***

- 7.1 If the Investigating Panel's decision on appropriate proceedings is to refer the case to answer to a Practice Review, the Ethical Practice Group Chair/Lead will, as soon as practicable, appoint a Practice Review Panel comprising two members of the Ethical Practice Group who have not taken part in any consideration of the complaint, one of whom shall be a child psychotherapist and the other of whom shall be a lay member of the Ethical Practice Group.

### ***Review of Preliminary Bundle and arrangement of Practice Review Meeting***

- 7.2 The Practice Review Panel will meet or arrange a telephone discussion between themselves to review the preliminary bundle and then set a date for a Practice Review Meeting. The Practice Review Panel will, wherever practicable, set the date of the Practice Review Meeting within 35 working days of this meeting/telephone call giving at least 20 working days' notice. They may set an alternative date if the Member or Complainant cannot attend on the original date set for good reason. The Member and Complainant shall be invited to submit any new documentation they consider relevant to the Practice Review along with a note explaining its relevance not later than 7 working days before the date of the Practice Review Meeting. This additional material will be added to the preliminary bundle.

### ***Procedure at a Practice Review Meeting***

- 7.3 Practice Review Meetings shall be held in private, will not be recorded and shall be conducted in a non-adversarial manner to explore the breach, or breaches, of the Code accepted by the Member, the impact, how the Member might have acted differently and what might be done to prevent repetition of the Code breach or breaches or poor practice short of a Code breach. It is not the function of a Practice Review to resolve significant disputes of fact or find that there was a breach or breaches of the Code beyond the matters identified in the Investigating Panel Report as the basis of the case to answer which have been accepted as such by the Member under paragraphs 6.18.2, 6.18.3 and 6.21.
- 7.4 The Member and (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives) her/his representative shall be entitled to be present throughout, to make representations about the accepted breach, or breaches, of the Code and any other concerns about the Member's practice that have arisen (see paragraph 7.9.2) and to present information in mitigation.



- 7.5 The Practice Review Panel will allow any Complainant to attend (with a supporter, if they wish) to explain their position on the complaint, including the impact of the conduct complained of, and on the Investigating Panel's Report. Subject to duties of confidentiality owed to third parties, the Practice Review Panel shall also ensure that any Complainant has a fair opportunity to respond to the information provided by the Member.
- 7.6 The Practice Review Panel shall have discretion to decide whether questions may be put to the Member or the Complainant and whether the Complainant may remain for other parts of the meeting.
- 7.7 The Practice Review Panel may also, at its discretion, accept documents submitted after the period provided for in paragraph 7.2 if there is a good reason why they could not practically have been submitted within that period.

### ***Outcome of a Practice Review***

- 7.8 Subject to paragraph 7.14, Practice Review Panel shall then proceed to decide the outcome of the Practice Review. It may do so in private without the Member or any Complainant present at its discretion. It shall take into account all the relevant circumstances including:
  - 7.8.1 the evidence gathered by the Investigating Panel;
  - 7.8.2 the facts and Code breach, or breaches, accepted;
  - 7.8.3 what has been said by or on behalf of any Complainant;
  - 7.8.4 the position taken by the Member at the Practice Review Meeting including on the Code breach or breaches and any poor practice short of a Code breach;
  - 7.8.5 the Member's insight into the Code breach, or breached, or poor practice short of a Code breach, and willingness to change their practice;
  - 7.8.6 any remediation by the Member that has already occurred;
  - 7.8.7 the supervision available for the Member and their amenability to being supervised;
  - 7.8.8 any other mitigation; and
  - 7.8.9 the Member's Association complaint history, if any.
- 7.9 The Practice Review Panel may:
  - 7.9.1 accept a Member's admission of a breach, or breaches, of the Code;
  - 7.9.2 identify evidence-based concerns it has about poor practice and make recommendations of action that may be taken to address those concerns; or
- 7.10 The Practice Review Panel shall have the power to impose one or more of the following sanctions for the breach, or breaches of the Code that the member has accepted:

- 7.10.1 to require that the Member continue in membership, or continue in practice, subject to conditions to be specified for a period to be specified. Conditions may include requirements as to personal health, further training and conditions, restrictions and requirements regarding the Member's participation in the activities of the Association (e.g. attendance at specified meetings or holding office or membership of committees and sub-committees);
  - 7.10.2 formally warning the Member in writing as to matters specified; and
  - 7.10.3 formally advising the Member and/or counselling her/him in writing as to matters specified.
- 7.11 The Practice Review Panel will give its decision and reasons in writing in a Practice Review Decision. If the Panel considers legal advice on the Decision is necessary, it may ask the Ethical Practice Group Chair/Lead who will seek permission from the Director of Professional Standards.
- 7.12 The Practice Review Decision will be sent by the Chair of the Ethical Practice Group, within 10 working days of the Practice Review Meeting to the Member, the Complainant and the Director of Professional Standards. Subject to any Practice Review Sanction Appeal (see paragraph 7.17), the Practice Review Decision will be sent to the Member's supervisor once 25 working days have passed since the Practice Review Meeting.
- 7.13 The Association shall maintain a record of the Practice Review Decision together with the Investigation Report, but it shall not publicise the Decision, the fact of the Code breach, or breaches, or any sanction imposed on the ACP website save as provided under paragraph 7.12 above.

### ***Referral back to the Investigating Panel***

- 7.14 The Practice Review Panel shall refer the complaint back to the Investigating Panel if, at any point prior to issuing its Practice Review Decision one or more of the following occurs:
- 7.14.1 having agreed to participate in the Practice Review Meeting, the Member fails to do so without good reason;
  - 7.14.2 having accepted the facts set out in the Investigating Panel's Report which the Panel have identified as supporting the case to answer of a breach of the Code and that there has been a breach, or breaches, of the Code of the kind identified as case to answer in the report (see paragraphs 6.18.2 and 6.18.3), the Member materially changes their position on the facts or the Code breach or breaches accepted;
  - 7.14.3 new evidence comes to light during the Practice Review Meeting which, in the opinion of the Practice Review Panel, would have made a difference either way to the Investigating Panel's appropriate proceedings decision had it been known earlier;

and in any such case, the Practice Review Panel shall give reasons for the referral and the Investigating Panel shall make a second appropriate proceedings decision under paragraphs 6.13 to 6.20.

### ***Practice Review Sanction Appeal***

- 7.15 Subject to the following provisions, the Member may bring an appeal against a decision of the Practice Review Panel to impose a sanction under paragraph 7.10.

- 7.16 Any such Practice Review Sanction Appeal shall be on the grounds that:
- 7.16.1 the conduct of the matter by the Practice Review Panel was procedurally unfair; or
  - 7.16.2 there is new evidence which could not reasonably have been made available to the Practice Review Panel; or
  - 7.16.3 the Member considers any sanction harsh or disproportionate.
- 7.17 The Member shall institute any such appeal within 10 working days of the date of the Practice Review Decision by writing to the Practice Review Panel setting out the grounds and basis of the appeal. The Practice Review Sanction Appeal shall then be dealt with in accordance with paragraphs 13.1 to 13.9 below.
- 7.18 An in-time appeal will suspend the effects of a Practice Review Panel's decision as regards its communication with the Member's supervisor along with the sanction until the final decision to the Appeal is issued. An appeal will not otherwise affect the decision made against the Member by the Practice Review Panel unless and until it is upheld.

## **8. Preparation for a Disciplinary Panel hearing**

### ***Disciplinary Panel appointment***

- 8.1 If the Investigating Panel's decision on appropriate proceedings is to refer the case to answer to a Disciplinary Panel, the Ethical Practice Group Chair/Lead will appoint a Disciplinary Panel of three members of the Ethical Practice Group who have not taken part in any consideration of the complaint during the period of investigation. So far as practicable, the Disciplinary Panel will consist of a member or members whose specialist experience or expertise may be material to the issues in question. Unless it is wholly impracticable, the Disciplinary Panel will have a majority of lay members. If, in the view of the Ethical Practice Group Chair/Lead, the case is an unusually serious or complex one s/he may invite a member of the Legal Members' Panel to sit as a member of the Disciplinary Panel in addition to the three members already appointed. The members of the Disciplinary Panel shall not include the members of the Investigating Panel or the Chair/Lead of the Ethical Practice Group. The Ethical Practice Chair/ Lead shall appoint the Chair of the Disciplinary Panel.

### ***Arrangements meeting***

- 8.2 The members of the Disciplinary Panel shall, within 30 working days of their appointment, convene a meeting ('the arrangements meeting') of the members of the Investigating Panel and the Member and/or her/his representative (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives) for the purposes of making procedural arrangements for the Disciplinary Hearing. The arrangements meeting is administrative in nature and does not form part of the Disciplinary Hearing. At least 7 working days' notice of the arrangements meeting shall be sent to the Member and/or her/his representative along with the current Arrangements Meeting Protocol that has been agreed by the Ethical Practice Group (see the appendix to this procedure).
- 8.3 The purpose of the arrangements meeting will be:
- 8.3.1 to identify the issues to be dealt with at the Disciplinary Hearing;

- 8.3.2 to understand the gist of the Member's argument, including what facts are disputed and the extent to which, if at all, breaches of the Code are admitted or disputed;
  - 8.3.3 to enable the Investigating Panel and the Member to indicate the amount and nature of the documentation which they intend to present;
  - 8.3.4 to clarify whether the Member proposes to be represented and, if so, by whom;
  - 8.3.5 to clarify the number of witnesses the Investigating Panel and the Member intend to call; and
  - 8.3.6 to fix the dates for the hearing with an estimated duration of the hearing and to address any other procedural or administrative matters which they think fit.
- 8.4 In all cases the Disciplinary Panel shall consider what arrangements can be made to ensure any witnesses to be called will not be discouraged from giving evidence and are adequately supported (for example, through provision of a person other than a Disciplinary Panel member who has had no involvement in the investigation to explain the process, facilitating the attendance of a friend or other supporter, designating separate waiting areas for witnesses and the Member, using screens to protect vulnerable witnesses giving evidence or, exceptionally, requiring a Member representing themselves, or any representative, to put questions through the Chair of the Disciplinary Panel).
- 8.5 The arrangements meeting may proceed despite the absence of any of the above parties, who will nevertheless be invited to set out their view in writing on these or any other material points to be received by the Association no less than 48 hours before the start of the meeting. The meeting will consider any such views when making the arrangements for the hearing. In the event it appears for good reason impracticable to convene the meeting within 30 working days of the Disciplinary Panel's appointment, its Chair shall have power to extend the time limit. The Chair may make a tape or digital recording of the meeting, provided they first obtain the consent of those present.
- 8.6 If the Investigating Panel decides not to call any Complainant as a witness they shall explain their reasons for not doing so to the Disciplinary Panel at the arrangements meeting. The Disciplinary Panel may, if it wishes to do so, ask for witnesses who have relevant evidence to give to be called by the Investigating Panel including the Complainant even if the Investigating Panel does not consider it necessary to call them.

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

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

#### ***Preparation and dissemination of the Member's and Hearing bundles***

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

- 8.10 Bearing in mind duties of confidentiality owed to third parties, the Disciplinary Panel shall decide what, if any, documents from the Hearing Bundle it is appropriate to provide to witnesses (including, where they are to be called, the Complainant or the person, or a representative of the organisation, that was the source of information that led to a matter treated as complaint under paragraphs 4.2 or 4.3) to enable them to properly understand the issues that arise for determination and to prepare to give evidence.

### *Use of late documents*

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

### *Representation and assistance*

- 8.12 The Member shall have the right to be represented by any one person of her/his choice, including a union representative or a practising solicitor or barrister (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives). If the Investigating Panel consider they may need legal support preparing for or at the hearing, they should notify the Ethical Practice Group Chair/Lead who will seek permission from the Director of Professional Standards.

### *Hearing note*

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

### *Hearings, adjournments and postponements*

- 8.14 Disciplinary hearings shall be held in private. The Investigating Panel, and the Member and (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives) her/his representative shall be entitled to be present throughout the hearing but witnesses including the Complainant shall be entitled to be present only while giving evidence. Witnesses are called to help establish facts relevant to the conduct being considered, its impact and, if a breach of the Code is established, the extent to which it has been mitigated. Witnesses, including the Complainant, do not have the right to be represented. Witnesses may be accompanied with the agreement of the Chair of the Disciplinary Panel, if, for example, they need support. Any person accompanying a witness may do so on the understanding that s/he is not a representative and may not participate in the proceedings and must before the start of the meeting undertake in writing to maintain confidentiality about the proceedings as a condition of attendance. Others may attend at the discretion of the Disciplinary Panel.
- 8.15 The Disciplinary Panel may adjourn or postpone the hearing or any part of it and may proceed in the absence of any person. It may, exceptionally, adjourn or postpone to allow a witness to be called when the need for their evidence has arisen due to a development at the hearing that was not, and could not reasonably have been, anticipated at the arrangements meeting. When a request is made to call a witness in these circumstances, regard will be had to the extent to which the person making the request has complied with the current Arrangements Meeting Protocol.

## 9. Procedure at a Disciplinary Panel hearing

### Objective

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

### Introductions and housekeeping

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

### Presentation of the case to answer

- 9.3 A member of the Investigating Panel will begin with a presentation of the case against the Member. The presentation will usually include a summary of the allegations, the investigation, and the documentary evidence.
- 9.4 The presenting member of the Investigating Panel may then call witnesses and ask questions. Each witness may be questioned by the Member or her/his representative, and then (as re-examination) by the presenting member of the Investigating Panel. Disciplinary Panel members may ask questions at any stage.

### Presentation of the Member's case

- 9.5 The Member or her/his representative may address the members of the Disciplinary Panel before calling evidence.
- 9.6 The above procedure will be followed with suitable modification in relation to each of the witnesses called on behalf of the Member including the Member her/himself when (s)he gives evidence.

### Evidence

- 9.7 Either side may, instead of or in addition to calling witnesses, present a written statement or affidavit by or on behalf of a witness who is unable to attend the hearing. Any such document must clearly identify the name and address of the person making the document and must be signed and dated. The members of the Disciplinary Panel may at their discretion agree to receive or reject such written evidence having regard among other things to the reasons for the absence of the person giving the evidence, the nature of what is set out in the written evidence, the unavailability for questioning of the witness and the extent to which the person making the request to rely on the statement has complied with the current Arrangements Meeting Protocol.
- 9.8 The rules of evidence do not apply at the hearing. Accordingly, the Disciplinary Panel may, at its discretion, accept an adult third party's account of the evidence of a child, or a child's written account, whether or not signed or sworn, or a video or tape recording of a child giving evidence. The Disciplinary Panel shall take into account the extent to which the person making the request to rely on any evidence of this kind has complied with the current Arrangements Meeting Protocol.



### *Closing submissions*

- 9.9 After completion of the evidence, the Investigating Panel will be invited to make a closing submission. This will be followed by an invitation to the Member or her/his representative to make a closing submission. At the conclusion of the closing submissions the Disciplinary Panel will declare the proceedings concluded and will withdraw to consider its decision.
- 9.10 Where the Member has admitted a breach of the Association's Code, evidence and submissions at the hearing may be directed to the question of the nature and duration of any sanction to be imposed.

## **10. Disciplinary Panel decisions**

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

- 10.1 The members of the Disciplinary Panel shall not give their decision orally or immediately. Their decision may be by a majority, and in that case the written decision will state that it is a majority decision, but the decision shall not include a statement of the dissenting minority view.
- 10.2 The members of the Disciplinary Panel will prepare a written decision, setting out their findings of fact, with reasons and, where the Member has admitted a breach of the Association's Code, will state any sanction which they impose, with reasons. The decision will be signed by the Chair of the Disciplinary Panel, or, in her/his incapacity, by all other members of the Committee.
- 10.3 The Chair of the Disciplinary Panel will send the written decision to the Member, to the Complainant and to the Ethical Practice Group Chair/Lead within 20 working days of the conclusion of the hearing. In the event it appears for good reason impracticable to send the decision within this time frame the Chair shall have power to extend it for up to 10 working days.

### *Decision to make recommendations related to other concerns*

- 10.4 Provided the Disciplinary Panel has given the Member, Complainant or other party notice and a reasonable opportunity to respond before preparing its decision, it may identify in a supplementary document or letter, or at an informal meeting, any evidence-based concerns it has about matters beyond the complaint and make recommendations of action that may be taken to address those concerns. Any concerns recorded in a supplementary document or letter, or expressed at such a meeting are not disciplinary findings and any recommendations made are not binding on the person or organisation to whom they are addressed. The Disciplinary Panel shall have discretion in deciding who, besides the subject of such concerns, should receive the supplementary document or letter, but in all cases, the Ethical Practice Group Chair/Lead will be sent one and the Association shall retain a copy for six years and then destroy it.

### *Dissemination of the decision*

- 10.5 The Ethical Practice Group Chair/Lead will inform the Director of Professional Standards of the outcome of all hearings.
- 10.6 The Director of Professional Standards shall inform the Board and the members of the Association, in such manner as s/he thinks fit, of any decision that a Member has committed a breach of the Association's Code and the resulting sanction. Subject to paragraphs 13.11 and 13.12 below, this will not be done until either the time for appealing provided by paragraph 12.2 has expired without

the Member giving notice of appeal within the time allowed, or until any such appeal has been dismissed.

- 10.7 The Chair of the Disciplinary Panel shall also produce a concise note for posting on the Association's website which identifies the allegation made, nature of the breach of the Code found, save for health-related breaches, the Member responsible and any sanction applied. Subject to paragraphs 13.11 and 13.12 below, the note will be posted on the Association's website 20 working days after the outcome of the disciplinary hearing or 20 working days following the outcome of any in-time appeal that does not overturn the finding of a breach of the Code. The note shall remain posted for 18 months, save where the sanction is:
- 10.7.1 a restriction on practice, in which case the note shall remain posted for the period of the restriction or 18 months, whichever is the longer;
  - 10.7.2 a suspension, in which case the note shall remain posted for 18 months or six months after the suspension has lapsed, whichever is the longer; or
  - 10.7.3 an expulsion, which shall remain posted for 10 years.
- 10.8 The Ethical Practice Group Chair/Lead may write to any employer of the Member identifying the Member and supplying the information contained in the concise note once it is published on the Association's website. The Ethical Practice Group Chair/Lead has discretion to provide further information, if requested, subject to the need to protect any confidentiality in information that comes to light as a result of a complaint investigation.

## 11. Disciplinary Panel sanctions

### *Available sanctions*

- 11.1 The Disciplinary Panel shall have the power to impose the following sanctions:
- 11.1.1 to expel the Member from the Association;
  - 11.1.2 to suspend the Member from membership of the Association for a specified period of up to 3 years;
  - 11.1.3 to require that the Member continue in membership or continue in practice subject to conditions to be specified for a period to be specified. Conditions may include requirements as to personal health, further training and conditions, restrictions and requirements regarding the Member's participation in the activities of the Association (e.g. attendance at specified meetings or holding office or membership of committees and sub-committees);
  - 11.1.4 to formally warn the Member in writing as to matters specified; and
  - 11.1.5 to formally advise the Member and/or counsel her/him in writing as to matters specified.



## ***Sanctions to be dealt with separately from disputes over conduct and breaches of the Code***

- 11.2 Where the Member has not admitted a breach of the Association's Code, and the Disciplinary Panel finds that the Member has committed such a breach, it shall, before deciding what sanction to impose, invite the Member to make written representations to it within a period of 10 working days beginning with the date on which its findings are communicated to the Member, and it shall not impose any sanction until that period has expired and any representations received within it have been considered.
- 11.3 Such representations shall normally be in writing only, but the Disciplinary Panel may hold a further hearing if, having regard to the evidence, the nature of the allegations, or to the written representations on sanction, it considers it appropriate to do so.
- 11.4 Subject to paragraphs 13.11 and 13.12 below, any sanctions imposed by a Disciplinary Panel shall not take effect until 15 working days have passed following communication of a sanctions decision to a Member or until any in-time appeal brought against sanctions, or the findings on which they are based, has been determined, whichever is the later date.
- 11.5 The Chair of the Disciplinary Panel will send a written decision on sanction to the Member, to the Complainant and to the Chair/Lead of the Ethical Practice Group within 20 working days of the conclusion of receipt of the Member's representations or the conclusion of any hearing held pursuant to paragraph 11.3. In the event it appears for good reason impracticable to send the decision on sanction within the time frame, the Chair shall have power to extend it for up to 10 working days. The decision on sanction will concisely state whether or not a sanction is to be imposed and, if one is, the reasons for doing so.

## **12. Appeals against Disciplinary Panel decisions**

### ***Permitted grounds of appeal***

- 12.1 Subject to the following provisions, the Member may appeal against any decision of the Disciplinary Panel on the grounds that:
  - 12.1.1 the conduct of the matter by the Disciplinary Panel was procedurally unfair; or
  - 12.1.2 there is new evidence which could not reasonably have been made available to the Disciplinary Panel; or
  - 12.1.3 the Member considers the sanction harsh or disproportionate.

### ***Initiating an in-time appeal in respect of Disciplinary Panel decisions***

- 12.2 The Member shall institute any such appeal within 15 working days the date of the written decision of the Disciplinary Panel by writing to the Ethical Practice Group Chair/Lead, setting out whether s/he wishes to appeal against the decision, or sanction, or both and the grounds on which the appeal is brought. If s/he wishes to submit fresh evidence, s/he must state in the letter, what the new evidence is and why it was not presented at the original hearing.

## 13. General appeal procedure

### *Appointment of an Appeal Panel*

- 13.1 On receipt of an appeal (whether in respect of an interim measure, a Practice Review sanction or Disciplinary Panel decision), the Ethical Practice Group Chair/Lead shall consult with the Director of Professional Standards and they shall appoint an Appeal Panel of three members of which at least two shall be members of the Association who are not current members of the Ethical Practice Group, and who have been qualified as Child Psychotherapists for not less than 6 years and who have no previous involvement in the matter. Whenever practicable the Ethical Practice Group Chair/Lead shall appoint an Appeal Panel that includes former Ethical Practice Group (formerly the Ethics Committee) members and a former lay member. If the case is an unusually serious or complex one s/he may invite a member of the Legal Members' Panel to sit as a member of the Appeal Panel.

### *Appeal Hearings*

- 13.2 An appeal hearing shall take place within 30 working days of receipt of the Member's written notification of appeal.
- 13.3 Appeals will be heard in private. The Member may attend the appeal. The same rules of representation will apply as above. In respect of:
- 13.3.1 an interim measures appeal, one or more members of the group comprising the Chair/Lead of the Ethical Practice Group and the Screening Group may attend;
  - 13.3.2 a Practice Review Sanction Appeal, the Practice Review Panel may attend; and
  - 13.3.3 an appeal against a Disciplinary Panel decision, the members of the Investigating Panel may attend but not the members of the Disciplinary Panel;

and in all cases the members of the Appeal Panel and any parties' representatives shall have available to them the set of papers used at the interim measures meeting, Practice Review or Disciplinary Hearing and any written statements in evidence available at that hearing or meeting, copies of any notes of proceedings, the decision under appeal and the Member's letter of appeal.

- 13.4 The Member or (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives) her/his representative may make representations in support of her/his appeal. If the appeal seeks to rely on fresh evidence, the Appeal Panel may hear or refuse to hear that evidence at its discretion, having regard to the cogency of the reasons why this evidence was not produced at the original hearing, to the potential weight of the new evidence, and the overriding objective.
- 13.5 In respect of:
- 13.5.1 an interim measures appeal, a member of the group comprising the Chair/Lead of the Ethical Practice Group and the Screening Group may reply;
  - 13.5.2 a Practice Review Sanction Appeal, a member of the Practice Review Panel may reply; and
  - 13.5.3 an appeal against a Disciplinary Panel decision, a member of the Investigating Panel may reply.

- 13.6 The members of the Appeal Panel may ask the parties and any representatives questions. After questions, the Appeal Panel will declare the appeal hearing closed.

### **Decisions on appeals**

- 13.7 The Appeal Panel may reach its decision by a majority. It shall give its decision with reasons in writing within 20 working days of the appeal hearing, and the decision will be sent to the Member, to the Director of Professional Standards, Ethical Practice Group Chair/Lead and to the Complainant.
- 13.8 In respect of:
- 13.8.1 an interim measures appeal, the Appeal Panel may reject or uphold the decision of the group comprising the Chair/Lead of the Ethical Practice Group and the Screening Group in whole or part and the Appeal Panel has power to impose a lesser or more serious interim measure;
  - 13.8.2 an appeal against a Disciplinary Panel or Practice Review sanction, the Appeal Panel may reject or uphold the decision appealed against in whole or part and the Appeal Panel has power to vary any sanction imposed by substituting a lesser or more serious sanction.
- 13.9 A decision of the Appeal Panel on an appeal shall be final.

### **General suspensive effect of appeals against Disciplinary Panel decisions and exceptions**

- 13.10 Paragraphs 7.18, 10.6, 10.7 and 11.4 above provided that an in-time appeal will normally suspend the effects of a Disciplinary Panel's decision as regards communication to Association members and the public along with sanctions. An appeal will not otherwise affect the findings made against the Member by the Disciplinary Panel unless and until it is upheld.
- 13.11 Disciplinary Panels are to be notified of all in-time appeals, once filed. In circumstances where a Disciplinary Panel having consulted with the Chair of the Association, the Director of Professional Standards and the Ethical Practice Group Chair/Lead is satisfied that it is necessary in the exceptional circumstances of the case for the protection of members of the public or otherwise in the public interest for the Member's registration to be suspended or be made subject to conditions or restrictions pending the outcome of an in-time appeal, it shall have an additional power to impose any suspension, conditions or restrictions it deems necessary for up to three months, or until the outcome of the appeal, whichever is sooner. These measures will take effect immediately upon communication of a decision with written reasons to the Member concerned, but if the Member objects, the Disciplinary Panel shall meet as soon as is reasonably practicable to consider any representations made to it in writing and orally by the Member as to why the measures should be lifted pending the outcome of the appeal. If it decides to maintain the measures, it shall give written reasons for doing so, but this decision will not be subject to any appeal.
- 13.12 In the event that the Disciplinary Panel exercises its additional power under paragraph 13.11, a concise note shall be published on the Association's website indicating the measures taken and the fact that there is a linked outstanding appeal against a decision or decisions of the Disciplinary Panel. The Ethical Practice Group Chair/Lead may also write to any employer of the Member identifying the Member and supplying the information contained in the concise note issued under this paragraph once it is published on the Association's website. The Ethical Practice Group Chair/Lead has discretion to provide further information, if requested, subject to the need to protect any confidentiality in information that comes to light as a result of a complaint investigation.

## **14. Restoration**

### ***Restoration applications***

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

### ***Meetings to consider restoration applications***

- 14.2 Any such application shall be considered by a meeting of all members of the Ethical Practice Group, 5 of whom will for these purposes form a quorum.
- 14.3 The applicant will be invited to supply to the Ethical Practice Group in advance of the hearing any documents, including signed statements and/or Affidavits in support of her/his application.
- 14.4 The Ethical Practice Group will also have copies of the decision letters set out at paragraphs 11.5 and, if applicable, 13.7.
- 14.5 The applicant will be entitled to be present and to address the Ethical Practice Group in person and/or to be represented by any one person of her/his choice, including a union representative or a practising barrister or solicitor (subject to the provisions of paragraph 6.3 regarding disruptive and plainly unsuitable representatives).
- 14.6 The application will be heard in private. The applicant or her/his representative may make any representations which they wish and may produce or refer to any documents.
- 14.7 The members of the Ethical Practice Group may ask the applicant and/or her/his representative questions.
- 14.8 The applicant and/or her/his representative may then address the Ethical Practice Group in closing.

### ***Decisions on restoration***

- 14.9 The Ethical Practice Group will then withdraw to consider its decision. The decision may be a majority decision. In the event of a tied vote, the Ethical Practice Group Chair/Lead shall exercise a casting vote. The Ethical Practice Group Chair/Lead will inform the applicant and the Director of Professional Standards and the Registrar in writing of its decision giving reasons.
- 14.10 The decision of the Ethical Practice Group on restoration will be final.

## **15. Power to stay the procedure**

- 15.1 In circumstances where another disciplinary, investigatory or legal process is taking place which, in the view of the Ethical Practice Group Chair/Lead, members of an Investigating Panel, Review Panel or Chair of the Disciplinary Panel (at the Preliminary Consideration, Investigation and Disciplinary Panel stages of this procedure respectively) either:

- 15.1.1 is likely to make findings that will be relevant to decisions on the complaint against the Member being considered under this procedure; or
- 15.1.2 makes it impractical to make progress within the timescales set out in this procedure;

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

15.2 This power:

- 15.2.1 may only be exercised after consulting with the Complainant, the Member under investigation and Investigating Panel, Review Panel and Disciplinary Panel members that have been involved in the investigation to date; and
- 15.2.2 in all cases must be exercised consistently with the overarching objectives of the Code, particularly that of protecting patients and the public.

15.3 Written reasons will be given to the Complainant and the Member under investigation for any decision to grant a stay. The power to stay should not be exercised by members of an Investigating Panel, Review Panel or Chair of the Disciplinary Panel to create a total period of stays exceeding 12 months save where this is agreed by the Ethical Practice Group Chair/Lead.

## 16. Power to set aside in response to concerns

### *Availability of the set aside power*

- 16.1 Certain decisions of the Ethical Practice Group Chair/Lead, Investigating Panel or Disciplinary Panel identified below may, exceptionally, be set aside and reconsidered in response to concerns raised by a Complainant, a person who supplied information that led to a matter being treated as a complaint under paragraphs 4.2 or 4.3, or a member. Decisions on whether to set aside shall be made by a panel appointed by the Director of Professional Standards on an ad hoc basis ('a Set Aside Panel'). A Set Aside Panel shall comprise a former lay member of the Ethical Practice Group, a lay member of the Association and a member of the Board. Those asked to join a Set Aside Panel shall recuse themselves if they have had any previous involvement in the handling of the complaint or there is, or could reasonably appear to be, a conflict between their own professional or personal interests, including a prior relationship with any party to a complaint, and their obligations to fairly and thoroughly determine the request for a set
- 16.2 Any written representations asking the Set Aside Panel to exercise its set aside power shall be made within 21 working days of the written notification of decision sought to be set aside.

### *Bases on which a decision may be set aside*

- 16.3 The sole circumstances in which this power may be exercised are where the decision attracts no right of appeal under this procedure by the person raising concerns and was either:
  - 16.3.1 not one which the Ethical Practice Group Chair/Lead, Investigating Panel, Review or Disciplinary Panel had the power to make in the circumstances;
  - 16.3.2 made in a procedurally unfair manner that could have made a material difference to the outcome; or
  - 16.3.3 otherwise unlawful.

### ***Decision on whether to use the set aside power***

- 16.4 The Set Aside Panel shall determine, with legal advice and following further enquiries as necessary, whether the representations demonstrate to their satisfaction that the decision meets one or more of the criteria for set aside listed in paragraph 16.3 and, if so, they shall set it aside giving reasons for doing so in writing. The set aside power shall be used on these bases only and not on the grounds of a mere difference in view about an issue of professional conduct.

### ***Remaking a decision that has been set aside***

- 16.5 If a decision is set aside, the Set Aside Panel and the person or persons who originally made it shall discuss whether it can properly be made again by that person or persons having regard to paragraphs 1.3 and 2.4. The Set Aside Panel shall make the final decision on this question and, if appropriate and in consultation with the Ethical Practice Group Chair/Lead, appoint a substitute or substitutes to make the decision again. If the decision can properly be made again by the person or persons who made it, it shall be referred back to them by the Set Aside Panel.
- 16.6 In either case, the decision shall be made again promptly. However, the Member must have the same opportunities to make representations as they would have had at they would have had in the Disciplinary Hearing at which the decision would normally have been made.

## **17. Provision for Overseas Members**

- 17.1 Paragraphs 4.4 to 16 of this procedure do not apply to Overseas Members as defined in the Rules save in respect of issues concerning their practice identified as appropriate for investigation in the Code and breaches of the Association's Rules.
- 17.2 When an issue concerning any other actual or potential breach of the Code by an Overseas Member is brought to the attention of the Ethical Practice Group Chair/Lead, whether as a formal complaint or one which would normally lead to a matter treated as complaint under paragraphs 4.2 or 4.3, and it would merit investigation if it concerned practice in the UK, he or she shall refer it to the responsible authorities in the country where the Overseas Member resides and practises.

## **18. Prospective Effect**

- 18.1 This Disciplinary Procedure was adopted on 19.7.19 by the Association and shall have prospective effect to all complaints, matters to be treated as complaints under paragraphs 4.2 or 4.3 and applications for restoration received after that date.
- 18.2 The former Disciplinary Procedure shall continue to have effect for all other complaints, matters treated as complaints and applications for restoration.