

INFORMATION ABOUT THE PROCESSING OF FORMAL COMPLAINTS AGAINST PSYCHOLOGISTS UNDER THE HEALTH PRACTITIONERS COMPETENCE ASSURANCE ACT 2003

- PART A:** *Making a formal complaint against a psychologist.*
PART B: *Processes for managing complaints against Family Court appointed psychologists.*
PART C: *The Board's process for managing complaints against Psychologists.*

NOTE: If you have concerns about a psychologist you are welcome to discuss these informally with the Board in the first instance. You can do this by phone or in writing. You might like to complete and submit to the Board our optional "Raising a Concern about a Psychologist" form. You can download the form from our website www.psychologistsboard.org.nz or phone (04)471-4580 and ask for one to be sent to you. It may be possible for some concerns to be resolved without the need for them to progress to formal complaints. The following information is about how the Board deals with concerns that have progressed to become formal complaints.

PART A: MAKING A FORMAL COMPLAINT AGAINST A PSYCHOLOGIST

Information on how to make a formal complaint against a Psychologist and the referral processes.

1. The Psychologists Board (**the Board**) can only deal with complaints against practitioners who are on the Register of Psychologists. It is useful therefore to first check that a 'psychologist' who is the subject of a complaint is, or has previously been, registered with the Board. This can be checked by contacting the Board's Professional Standards Coordinator on (04) 471-4587, or by consulting the Board's online Register (see www.psychologistsboard.org.nz).
2. All formal complaints must be in writing. They can be submitted by post or by email. The Board's optional form "Raising a Concern about a Psychologist" can be used to submit a formal complaint. Please provide as much information as possible. You may wish to refer to the Code of Ethics for Psychologists Working in Aotearoa/New Zealand [2002] to help you draft your complaint. This document is also available on our website.
3. Letters of complaint should be sent to:

Chief Executive/ Registrar
New Zealand Psychologists Board
PO Box 10-626
Wellington 6143
E: steve.osborne@nzpb.org.nz

and/or The Health and Disability
Commissioner
PO Box 1791
Auckland
E: hdc@hdc.org.nz

Note that the Health and Disability Commissioner (HDC) have support systems in place to provide assistance, if required, with lodging a complaint. (Call 0800 11 22 33).

4. Whenever the Board receives a formal complaint alleging that the practice or conduct of a psychologist has affected a health consumer¹, the Board must promptly forward it to the Health and Disability Commissioner. This is a legal requirement under the HPCA Act and the Health and Disability Commissioner Act. The Board writes to the complainant² acknowledging receipt of the letter of complaint and sends a copy of the complaint to the psychologist.

¹ "Health Consumer" includes any person on or in respect of whom any health care procedure is carried out.

² "Complainant" means any person(s) who write a letter of complaint against a psychologist.

5. The Board cannot take any action under Part 4 of the HPCA Act³ on a complaint while it is with the Office of the Health and Disability Commissioner.
6. The Health and Disability Commissioner will consider the complaint under the provisions of the HDC Act. The Commissioner may, after reviewing the complaint, decide that it is more appropriate for the Board to deal with it under the complaints and discipline sections of the HPCA Act. If that is the case, the Commissioner's office will write to the complainant setting out the reasons for the decision and refer the complaint to the Board. (This stage can take up to a month or longer in some cases). To check progress by the HDC's office, call their free-phone number (0800 11 22 33).

PART B: PROCESSES FOR MANAGING COMPLAINTS AGAINST FAMILY COURT APPOINTED PSYCHOLOGISTS

This section references the Family Court Practice Note⁴ and applies to complaints made where Family Court proceedings are pending, in progress, or have been concluded.

1. The Family Court should deal with most complaints involving psychologists as part of its jurisdiction to regulate its own process, and exercise the powers and functions conferred upon the Court by statute. In addition, the Board will typically deal with matters that go beyond the process of the Court and raise questions about professional competence, conduct or ethics. This may include matters such as inappropriate relationships between the report writer and the parties, breaches of privacy, and incompetence. The Court will formally refer all such cases to the Board. Furthermore, the HDC should deal with complaints about the examination of the child, who in this context is defined as the consumer of the health service provided. The parents and other parties are not deemed to be health consumers in this context.
2. Many complaints to the Family Court will be those that raise questions about the quality of the evidence before the Court. Matters that will generally be dealt with by the Court may include:
 - allegations of perceived bias;
 - that the report writer has a sexist, racist or otherwise discriminatory approach;
 - the methodology used;
 - that one parent was treated differently from the other parent without sufficient reason given; and
 - any matter relating to the content of the report, such as failure to deal with any fact or issue, the length of the report, or the style of the report.
3. Complaints made to the Court about the examination of the child may be directed to the HDC, or an Advocate under the HDC Act. The child may choose to lay such a complaint with any appropriate party, including the Court.
4. Complaints to be dealt with by the Court where proceedings are pending or in progress should be referred to the presiding Judge. Complaints after proceedings have concluded should be referred to the Regional Administrative Family Court Judge.
5. Where a complaint to the Family Court relates to proceedings that are pending or in progress, the presiding Judge will deal with the complaint, where possible, either before the hearing or in the course of the hearing, for example, through cross-examination, submission, or evidence called on behalf of the complainant.
6. Where a complaint to the Court relates to proceedings that have concluded, the Regional Administrative Family Court Judge will consider the complaint and produce a minute⁵

³ Part 4 of the HPCA Act relates to complaints and discipline matters.

⁴ The Family Court Practice Note is a Family Court guideline document implemented originally in June 2006 and revised in October 2010.

⁵ "Minute" means a brief summary recording matters reviewed.

containing the view of the Court regarding the complaint. The complaint and minute need not be formally referred to the Board unless it appears to the Judge there are issues of competence, or other issues best dealt with by the Board.

7. The Family Court will generally consider all complaints at first instance. Any complaint referred by the Board to the Court shall be directed to the Registrar of the Court at which the report was requested. The Registrar will refer the complaint to the presiding Judge, or Regional Administrative Family Court Judge, to consider. Where the Board has referred a complaint to the Court, the Judge considering it shall provide a written minute to the Board as soon as practicable, detailing any opinion on the merits of the complaint, and any action that will be taken by the Court. The Court will advise whether:
 - The complaint relates to a matter within the Court process, and will initially be dealt with by the Court; and/or
 - The complaint appears to be of sufficient seriousness to require formal referral to the Board.
8. The Board will deal with complaints according to its own procedure and the requirements of the HPCA Act and is not bound by any decision of the Court.
9. Where a complaint is dealt with by the Board and relates to a report under s 133 of the Care of Children Act, or s 178 of the Children Young Persons and their Families Act, the Board may make a written request for a copy of the report. The FC will release a copy of the report to the Board for the sole purpose of dealing with the complaint. If the Board appoints a Professional Conduct Committee to assess the complaint, the Committee will also follow this procedure to request access to the report.

PART C: THE BOARD'S PROCESS FOR MANAGING COMPLAINTS AGAINST PSYCHOLOGISTS

How complaints are typically processed by the Board (following consideration by the HDC and/or the Family Court).

When a complaint is formally referred back to the Board by the HDC or the Family Court, (or returned as a "no action taken" by those organisations), it will be considered by the Parts 3 and 4 Committee⁶ (**the Committee**). The Professional Standards Coordinator (**the Coordinator**) will inform the complainant and psychologist of the next steps to be taken. These steps will normally involve inviting a response to the complaint from the psychologist and then providing the complainant with an opportunity to comment on the psychologist's response. Once all relevant information has been received the Committee will assess the nature and circumstances of the complaint. The Committee will then make one of the following decisions:

- to refer the complaint to a Professional Conduct Committee (**PCC**) for a full investigation; or
- to submit the complaint to the competence or fitness review procedures as outlined in Part 3 of the Act; or
- to issue an advisory "letter of education" to the psychologist; or
- to refer the complaint to another agency (e.g., Privacy Commissioner, Police); or
- take no further action.

Reasons for taking no further action on a complaint may include:

- a) other options are considered more appropriate;
- b) the Committee considers there is insufficient information to assess the complaint; and/or

⁶ The committee delegated by the Board to deal with complaints, competence, and fitness issues and named after the relevant parts of the HPCA Act.

c) the complaint does not fall under the Board's jurisdiction.

The Committee will normally give a reason if it decides to take no further action.

Professional Conduct Committees

1. If the Committee decides to refer a complaint to a PCC, the Coordinator will inform both parties⁷ that a PCC will be appointed. The PCC must consist of 2 psychologists and 1 layperson⁸. (It can take several weeks for a PCC to be established). Once the potential PCC members are appointed, the Coordinator will write to both parties providing a brief description of each PCC member so that they may know a little more about them.
2. The psychologist and/or the complainant may request changes in membership of the PCC within 5 working days. Either party may give notice in writing requesting that any or all of the PCC members not be appointed and state their reasons for the request. The Board must have regard to the request but does not have to comply with it. If no request for change is received, membership of the PCC is confirmed. The Coordinator will write to both parties confirming PCC membership and will provide the PCC members with all the information in relation to the complaint.
3. On confirmation of the PCC's membership, the PCC will officially commence its investigation into the complaint. The PCC is a Board committee which operates at arm's length from the Board and may adopt and follow its own procedures but must ensure that the psychologist, the Board, and the complainant are kept informed about the progress of the complaint investigation. The rules of natural justice apply.
4. The PCC may appoint legal advisors to advise them on matters of law, procedure or evidence. They may also appoint an investigator to collect information required by them and to investigate complaints. A PCC-appointed legal advisor and investigator must not be present during the deliberations of the PCC.
5. The PCC may receive as evidence any statement, document, information or matter that, in its opinion, may assist it to deal effectively with the subject of its investigation, whether or not that information or matter would be admissible in a court of law. The PCC may hear oral evidence and receive statements and submissions from any or all of the following: the psychologist, any employer of the psychologist, any person in association with whom the psychologist practices, the complainant, and any clinical expert.
6. The PCC must give the psychologist and complainant reasonable opportunity to present evidence on each matter referred to them. Both parties should keep in mind that the efficiency of the PCC's progress is dependent at times on how quickly requests for information are met. (As a guide, a response should be provided to the PCC within 14 days of the request).
7. The complainant may be supported by a person nominated by them and that person, with the leave of the PCC, may be heard by the PCC on the complainant's behalf.
8. The PCC may write to any person, requiring them to produce (to the PCC) any papers, documents, records or things. This excludes any information or document that would be privileged in a court of law or would breach the Official Information Act or Privacy Act. A person who receives this notice must, without charge, comply with the requirement stated in the notice and within the period specified in the notice (i.e., not less than 10 working days after the notice is given to the person).

⁷ "Party/Parties" means parties to the complaint (i.e., the Psychologist and Complainant).

⁸ "Layperson" means a person who is neither registered nor qualified to be registered as a health practitioner.

9. No civil or disciplinary proceedings lie against any person in respect of any evidence given, or statements or submissions made, unless that person has acted in bad faith.
10. If at any time in the course of investigating the complaint the PCC believes that the psychologist's practice poses a risk of serious harm to the public, it may recommend to the Board that the psychologist's practising certificate be suspended.
11. At the conclusion of the complaint investigation, the PCC must, by written notice ('final report') to the Board, the psychologist, and the complainant, make one determination and/or one or more recommendation(s) as set out below. The Committee must promptly consider any recommendation(s) made by the PCC in their final report and must accept any determinations. Both parties will be informed if any further procedures are required following consideration of any recommendation(s).

Determinations that a PCC may make:

1. That no further steps be taken.
2. That a charge be laid before the Health Practitioners Disciplinary Tribunal⁹.
3. That the complaint be submitted to conciliation.

Recommendations that a PCC may make:

1. That the Board review the psychologist's competence to practise.
2. That the Board review the psychologist's fitness to practise.
3. That the Board review the psychologist's scope of practice.
4. That the subject matter of investigation be referred to the police.
5. That the Board counsel the psychologist.

12. If 'No Further Steps' is determined by the PCC, then no recommendations can be made.
13. If the PCC has decided to submit a complaint to conciliation, it must appoint an independent person (**the Conciliator**) to assist the psychologist and complainant concerned to resolve the complaint by agreement. The conciliator will report the outcome to the PCC who will decide whether the complaint has been successfully resolved or not. If not, the PCC must promptly decide whether it should lay a charge against the psychologist before the Health Practitioners Disciplinary Tribunal or make one or more of the available recommendations or decide that no further steps be taken.
14. If the PCC decides to lay a charge before the HPDT, it must formulate an appropriate charge and lay it before the Tribunal, together with the Conciliator's report, and give a copy of the charge and report to the psychologist.
15. If the PCC makes a determination that no further steps be taken, the PCC must give to the psychologist, the Board, and the complainant, written notice of the determination and the PCC's reasons.

The Psychologists Board's Professional Standards Coordinator can be contacted regarding further information about complaints against psychologists and for progress updates on current complaints being handled by the Board:

Ms Stathia Golding
Professional Standards Coordinator
Telephone: (64 4) 471-4587
Email: stathia.golding@nzpb.org.nz

New Zealand Psychologists Board, PO Box 10626, Wellington 6143

⁹ <http://www.hpdt.org.nz>