

## INFORMATION ABOUT PROCESSING COMPLAINTS AGAINST PSYCHOLOGISTS UNDER THE HEALTH PRACTITIONERS COMPETENCE ASSURANCE ACT 2003 (HPCA ACT)

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

### **PART A: MAKING A COMPLAINT AGAINST A REGISTERED PSYCHOLOGIST**

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

1. The Board can only deal with complaints against 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 New Zealand Psychologists Board. This can be checked by contacting the Board's Professional Standards Coordinator, telephone (04) 471-4587.
2. All complaints must be in writing and addressed to the Psychologists Board and/or the Office of the Health and Disability Commissioner (HDC). Complaints can be sent by post or by email. Please provide as much information as possible. You may wish to refer to the [Code of Ethics for Psychologists Working in Aotearoa/New Zealand \[2002\]](#). Letters of complaint should be sent to:

Chief Executive/ Registrar New Zealand Psychologists Board PO Box 10-626 Wellington 6143 Email: <a href="mailto:steve.osborne@nzpb.org.nz">steve.osborne@nzpb.org.nz</a>	<b>and/or</b>	The Health and Disability Commissioner PO Box 1791 Auckland Email: <a href="mailto:hdc@hdc.org.nz">hdc@hdc.org.nz</a>
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Note that the HDC have support systems in place to provide assistance, if required, with lodging a complaint. They can be contacted on 0800 11 22 33.

3. Whenever the Board receives a complaint alleging that the practice or conduct of a psychologist has affected a health consumer, it will promptly be forwarded 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 complainant<sup>1</sup> acknowledging receipt of the letter of complaint and sends a copy of the complaint to the psychologist.
4. The Board cannot take any action on a complaint when it is with the Office of the Health and Disability Commissioner.
5. 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 his 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.

<sup>1</sup> "Complainant" means any person(s) who write a letter of complaint against a registered psychologist.

## **PART B: MAKING A COMPLAINT AGAINST A FAMILY COURT APPOINTED PSYCHOLOGIST**

*This applies to complaints made where proceedings are pending, in progress, or have been concluded.*

1. The Family Court should deal with most complaints involving psychologists (appointed by the Family Court) as part of its jurisdiction to regulate its own process, and exercise the powers and functions conferred upon the Court by statute. The Board should deal with complaints that raise questions about professional conduct or ethics. The Health and Disability Commissioner should deal with complaints about the examination of the child, who in this context is defined as the consumer of the health service provided<sup>2</sup>. The parents and other parties are not deemed to be health consumers in this context.
2. The Board will typically deal with matters that go beyond the process of the Court and raise questions about professional conduct or ethics. This may include matters such as inappropriate relationships between the report writer and the parties, breaches of privacy, and incompetence.
3. Complaints made to the Family Court about the examination of the child may be directed to the Health and Disability Commissioner, or an Advocate under the Health and Disability Commissioner 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 Family Court relates to proceedings that have concluded, the Regional Administrative Family Court Judge will consider the complaint and produce a minute<sup>3</sup> containing the view of the Court regarding the complaint. The complaint and minute need not be referred to the Board unless it appears to the Judge there are issues of competence, or other issues best dealt with by the Board in accordance with paragraph 2 above.
7. The Family Court will generally consider all complaints in the first instance. Complaints made directly to the Board should be referred to the Registrar of the Family 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 within 14 days of receipt of the complaint, detailing any opinion on the merits of the complaint, and any action that will be taken by the Court. The Court will advise whether:
  - (a) The complaint relates to a matter within the Court process, and will be dealt with by the Court; and/or
  - (b) The complaint appears to be of sufficient seriousness to require referral to the Board in accordance with paragraph 2 above.
8. The Board will deal with complaints according to its own procedure and the requirements of the Health Practitioners Competence Assurance Act 2003 (*as set out in Part C*).
9. Where a complaint is dealt with by the Board and relates to a report under s133 of the Care of Children Act, or s178 of the CYPF Act, the Board may make written request for a copy of the report. The Family Court 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 above protocol applies to the Committee.

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<sup>2</sup> "Health Consumer" includes any person on or in respect of whom any health care procedure is carried out.

<sup>3</sup> "Minute" means brief summary recording matters reviewed.

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

*How complaints are processed after being referred to the Board by the HDC or Family Court.*

If a complaint is referred back to the Board by the HDC or the Family Court, (or returned as a "no action taken" by those organisations), the Professional Standards Coordinator (the 'Coordinator') will inform the complainant and psychologist that the referral has been made and that it will be forwarded to the committee delegated by the Board to deal with complaints and competence matters, (the 'Committee') for further assessment. The Coordinator will then give the psychologist an opportunity to comment. Once all relevant information has been received the Committee will assess the nature and circumstances of the complaint. The Committee will then decide to:

- refer the complaint to a Professional Conduct Committee; or
- refer to another agency e.g. Privacy Commissioner; or
- take no further action.

The Committee may take no further action on a complaint. Reasons for this may include: a) other options, are considered more appropriate; b) the Committee considers there is insufficient information to assess the complaint; and/or c) the complaint does not fall under the Board's jurisdiction. The Committee will give a reason if it decides to take no further action.

### **Professional Conduct Committees (PCC)**

1. If the Committee decides to refer a complaint to a PCC, the Coordinator will inform both parties<sup>4</sup> that a PCC will be appointed. The PCC must consist of 2 psychologists and 1 layperson. (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 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 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 operates at arms length from the Board and may adopt and follow its own procedures but must ensure that psychologist, the Board and the complainant are kept informed about the progress of the complaint investigation. Rules of natural justice apply.
4. The PCC may appoint legal advisers 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, 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 the complainant and that person, with the leave of the PCC, may be heard by the PCC on the complainant's behalf.

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<sup>4</sup> "Party/Parties" means parties to the complaint, i.e. Psychologist and Complainant.

8. The PCC may, in writing, require any person to produce to them 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).
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 ('a final report') to the Board, the psychologist and the complainant, make 1 or more recommendations or 1 of the determinations, or both, as set out below. The Committee must promptly consider any recommendation(s) made by the PCC in their final report but must accept any determinations. Both parties will be informed if any further procedures are required following consideration of any recommendation(s).

12.

**Recommendations that a PCC may make:**

- a) Board review psychologist's competence to practice
- b) Board review psychologist's fitness to practice
- c) Board review psychologist's scope of practice
- d) Refer subject matter of investigation to police
- e) Board counsel the psychologist

**Determinations that a PCC may make:**

- a) No further steps be taken
- b) A charge be laid before the HPDT
- c) The complaint be submitted to conciliation

13. If 'No Further Steps' is determined by the PCC, no recommendation can be made.
14. 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 Discipline Tribunal<sup>5</sup> (HPDT) or make one or more of the available recommendations or decide that no further steps be taken.
15. If the PCC decides to lay a charge before the Health Practitioners Discipline Tribunal, 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.
16. If the PCC makes a determination that no further steps be taken, the PCC must give to the psychologist, Board and complainant, written notice of determination and PCC's reasons.
17. 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.

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 Professional Standards Coordinator  
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 Email: stathia.golding@nzpb.org.nz

**New Zealand Psychologists Board, PO Box 10626, Wellington 6143**

<sup>5</sup> <http://www.hpdt.org.nz>