

# The Guild of Psychotherapists

## COMPLAINTS PROCEDURE

### **PART A. Procedure where a complaint is made against a member under the Ethical Principles and Code of Professional Conduct**

1. Who can complain, whom to contact and when.
  - 1.1. For the purposes of the Ethical Principles and Code of Professional Conduct and Complaints Procedure a complaint against a member (hereinafter referred to as the “Respondent”) alleging a breach of the Ethical Principles and Code of Professional Conduct may be initiated by a person (hereinafter referred to as the "Complainant") who is a patient (current or former) of that member, a member of The Guild of Psychotherapists, or a professional member of an organisation as determined by the Council, provided they have a connection to the Respondent which must be shown to be relevant to the reported case.
  - 1.2. Any such complaint against a member shall be made in writing and addressed to the Chair of The Guild, who shall without delay forward a copy of such written complaint to the Complaints Clerk (as described next), and to the person about whom the complaint has been made.
    - 1.2.1. The Complaints Clerk is elected for an initial term of three years. The primary responsibility is to organise the complaints procedure, without participating in adjudication decisions or having a voting right. Duties include, receiving and sending notifications about complaints, seeking advice on *prima facie*, arranging mediation, calling a quorum of Complaints Panel, and clerking of adjudications.
  - 1.3. Any complaint alleging a breach of the Ethical Principles and Code of Professional Conduct must be made within three (3) years from the time when the conduct complained about occurred or within three (3) years from the time the facts of the complaint first became known to the Complainant, whichever is later. Complaints received outside of this time limit may be considered, subject to determination by the *prima facie* panel that in all circumstances of the complaint it would be fair and reasonable to both parties and in the interest of public safety to allow the complaint to proceed.
2. *Prima facie* determination.
  - 2.1. The Complaints Clerk or, in his/her absence, another member, shall refer the complaint to a panel (see 2.1.1 below), who shall determine whether there is a *prima facie case* to answer in respect of the said complaint, defining *prima facie case* as the facts complained about would, if established, be sufficient to constitute a complaint under a provision of the Ethical Principles and Code of Professional Conduct. This panel shall meet within 21 days of the receipt of any complaint by the Complaints Clerk. When the Complaints Clerk is informed by the panel of such a determination, s/he shall immediately notify in writing the Chair of The Guild of their decision.
    - 2.1.1. The Complaints Clerk sets up a panel of two (2) persons for this purpose alone consisting of one Guild member (for recruitment pool, see complaints panel, paragraph 6.2) and one person with suitable knowledge and experience, who is independent of The Guild, as appointed by the Council. Any determination that there is a *prima facie case* to answer in respect of a complaint shall be unanimous.

- 2.2. For the purpose of carrying out the duties to determine whether any complaint discloses a *prima facie case* for the Respondent to answer, the panel shall:
  - 2.2.1. Base their determination solely on the written complaint submitted by the Complainant together with such further and better particulars as may be elicited by the panel under the provisions (2.2.2) of this section.
  - 2.2.2. Have no power to interrogate or question either the Complainant or the Respondent or to otherwise investigate the nature or merits of such complaint save that where the nature of the complaint is unclear or where it is not specified which provision(s) of the Ethical Principles and Code of Professional Conduct is/are alleged to have been breached, then the panel may in writing request the Complainant to provide such further and better particulars of the complaint as may be sufficient to establish the nature of the complaint and/or the provision(s) of the Ethical Principles and Code of Professional Conduct alleged to have been breached. In the event of the *prima facie* panel asking for further clarification, the Complainant shall have up to 21 days in which to respond.
- 2.3. If the panel is satisfied that the Complaint discloses a *prima facie case* to answer, they shall forthwith send written notice of their decision to the Complaints Clerk, the Complainant and Respondent together with copies of any documents considered by the panel but not yet seen by the Complainant or Respondent together also with written particulars of the date time and place at which the Complainant and Respondent shall be requested to attend together before the Complaints Clerk such date to be not less than 21 days from the date of the notice. Ahead of this meeting the Complaints Clerk shall formally send a copy of the Ethical Principles and Code of Professional Conduct and the Complaints Procedure to the Complainant and the Respondent. At this meeting the Complaints Clerk may discuss any queries arising so far about the procedure, and shall inform the Complainant and the Respondent of the subsequent process.
- 2.4. If the panel is not satisfied that the complaint discloses a *prima facie case* to answer, they shall forthwith send written notice of their decision to the Complaints Clerk, the Complainant and Respondent.
  - 2.4.1. If the Complainant accepts the decision, no further action is required.
  - 2.4.2. If the Complainant feels aggrieved, then the Complaints Clerk may invite both the Complainant and Respondent to enter a process of mediation as described in section 4.
  - 2.4.3. If the *prima facie* panel cannot arrive at a decision, they may refer the case decision, through the Complaints Clerk, to an Appeal panel consisting as described in Part B, section 3.3.
3. In the event that both the Complainant and Respondent appear before the Complaints Clerk in accordance with the provisions of paragraph 2.3 hereof, the Complaints Clerk shall invite both the Complainant and Respondent to enter a process of mediation.
4. Mediation.
  - 4.1. The mediation process shall be referred to an independent Mediation Service, as appointed by the Council. Conciliation may proceed to, or be combined with, arbitration leading to determination as agreed with the Mediation Service. The mediation process shall commence as soon as it can be arranged with the Mediation Service.

- 4.2. Attendance at independent Mediation shall be paid by The Guild for as many hours as approved by the Complaints Clerk and The Guild's Treasurer in consultation with the Mediation Service, then at the parties' own expense.
- 4.3. The Complaints Clerk shall specify a further date within 28 days when both parties shall be required to attend again before him/her.
- 4.4. In the event of both parties agreeing to participate in any mediation procedure as hereinbefore provided, the Complaints Clerk shall, when the parties again appear before him/her, enquire whether any agreement has been reached between the Complainant and Respondent.

As agreement by such mediation is final, no adjudication by The Guild is then required.

5. In the event that both the Complainant and Respondent shall not appear before the Complaints Clerk as requested or in the event that there is no agreement to participate in the mediation process (conciliation and/or arbitration) hereinbefore specified or in any other eventuality following mediation, then the Complaints Clerk shall on the first occasion on which the Complainant and Respondent are requested to appear before him/her inquire if the complaint still stands.
  - 5.1. If the Complainant confirms that the complaint stands, the Complaints Clerk may direct that the complaint proceeds to adjudication as provided by The Guild of Psychotherapists. To maintain equitable access, if the Respondent and/or the Complainant choose to bring a representative to the adjudication hearing such person shall not be a current or former member of the legal profession.
  - 5.2. Should the two parties wish to avail themselves of legal professional representation, they are free to take the complaint to court.
6. Adjudication at a hearing.
  - 6.1. When the Complaints Clerk decides or directs that any complaint shall proceed to adjudication at a hearing, s/he shall within seven days thereof send written particulars to the Complainant and Respondent of the date time and place proposed for the adjudication, such date to be within 42 days of the date on which the said written particulars are sent.
  - 6.2. The Complaints Clerk shall set up a Complaints Panel who thereafter shall handle the complaint. S/he shall serve as the clerk of the hearing, but have no vote in the proceedings.
    - 6.2.1. No member shall sit on the Complaints Panel to deal with any complaint where there is likely to be some conflict of interest.
    - 6.2.2. A quorum of the Complaints Panel to adjudicate on any complaint shall consist of three (3) persons: one member of The Guild; two persons who are not members of The Guild of Psychotherapists, one who shall be so trained and affiliated to a different psychoanalytic organization as determined by the Council, and one of who shall not be a trained psychotherapist and who shall be invited to act as the Chair of the Panel. In cases where there would otherwise be no quorum, the Complaints Clerk shall be empowered to co-opt an appropriate disinterested person.

- 6.2.3. The Guild members serving on Complaints Panels shall be chosen from a pool of suitably qualified members elected for the purpose of serving on complaints procedure but have not participated in the *prima facie case* decision (see above 2.1.1).
- 6.3. The Complaints Panel shall hear and determine any complaint which it has been decided or directed should proceed to adjudication. Any such determination shall be by a decision of those members of the Complaints Panel who are present which is either unanimous or by a majority.
- 6.4. The Complaints Panel may hear and determine the complaint notwithstanding the failure of the Complainant or the Respondent to attend provided that if the Respondent shall have failed to attend, the Complaints Panel shall first be satisfied that s/he received or should have received the notices referred to in paragraphs 2.3 (*prima facie*) and 6.1 (Guild adjudication) hereof.
- 6.5. The proceedings of the Complaints Panel shall in all respects accord with the principles of natural justice as recognised by English law, including fairness.
- 6.6. The Complaints Panel may at any stage of the hearing appoint any person suitably qualified to advise the Complaints Panel on any matter arising and if considered necessary to attend the hearing to give such advice. The costs of such advice shall in all cases be payable by The Guild and shall be referred to the Council.
- 6.7. The Complaints Panel may at any stage of the hearing ask questions, invite comments on the questions, and call for further investigation. They may ask each party to present his or her side, the Panel identifying issues for which they need further information, and then questioning each party themselves.
- 6.8. The Complainant and the Respondent may at any stage of the hearing at their own expense make submissions, give oral evidence to the Complaints Panel, call witnesses, and question the other party or their witnesses. The Respondent shall have the right to remain silent if s/he so wishes or is so advised. The two parties may do the above by themselves, by their interpreter (such as translator), or by other chosen representative (subject to 5.1, above). At the conclusion of the evidence the Complainant and the Respondent may make representations to the Complaints Panel.
- 6.9. Documents which are to be relied on or presented as evidence by the Complainant or Respondent should be sent to the Complaints Panel and the other party at least 14 days before the hearing. They may be redacted for sensitive or irrelevant items. Such documents shall be formally produced by the party relying on them at the appropriate point in the hearing. The producer of such documents may be examined and cross-examined on the content and implications of such documents.
- 6.10. The proceedings shall be recorded by machine and a transcript made of the recording, and the veracity of the transcript shall be agreed with the Complainant and the Respondent. The transcript may be seen by the Complainant, the Respondent and the Complaints Clerk only at The Guild's office in the presence of a Guild official. The recording and the transcript shall remain confidential, and shall not be allowed to be made public in part or whole in any way.

- 6.11. Burden of Proof. For a complaint to be upheld the Complaints Panel must be satisfied that, having fully taken into account the facts of the case examined in the evidence produced by both parties, and all the arguments and responses presented to them by both parties, they are entirely satisfied that the complaint has been established on the balance of probabilities, as is typically the standard for cases of civil wrong in English law.
- 6.12. The conduct of the hearing, the length of the evidence and the admissibility of evidence shall in all respects be determined by the Complaints Panel.

## **PART B. Disciplinary Action and Appeals Process**

1. If the Complaints Panel shall be satisfied that the complaint has been proved and that a breach of the Ethical Principles and Code of Professional Conduct has been committed by the Respondent, it may impose any one or more of the following sanctions:
  - 1.1. A formal written warning.
  - 1.2. The requirement that the member be supervised by a senior practitioner to be approved by Council for such term as stipulated by the Complaints Panel.
  - 1.3. The recommendation that the member attends further therapy with a senior practitioner to be approved by Council for such term as stipulated by the Complaints Panel.
  - 1.4. Make recommendation to Council that the member be:
    - 1.4.1. Removed from any office or membership of any committee or the exercise of any other specific function within The Guild.
    - 1.4.2. Suspended from membership of The Guild for a stipulated term.
    - 1.4.3. Expelled from The Guild of Psychotherapists.

Where applicable the Complaints Panel shall specify the duration for which any sanction imposed shall remain in force and/or the conditions for it to be lifted.

2. The Complaints Panel shall notify the Complaints Clerk who shall within five working days of the hearing notify the Complainant and Respondent and the Chair of Council of the determination of the Panel, including of any disciplinary action taken.
3. Appeal process.
  - 3.1. The Complainant or the Respondent may within 21 days of the date of such notification give written notice to the Council of appeal against the decision of the Complaints Panel whereupon the Council shall fix a date within 35 days for the consideration of the appeal and shall notify the Complainant and the Respondent of such date.
  - 3.2. An appeal may be made by the Complainant or the Respondent on one or more of the following grounds:
    - 3.2.1. If they believe that there has been an error in the way the Complaints Procedure has been applied which has had a material effect on the Complaint Panel's decision and/or sanction.
    - 3.2.2. A piece of evidence was not available or considered at the hearing which would have had a material effect on the Complaint Panel's decision.
    - 3.2.3. The sanction imposed by the Complaints Panel is not proportionate to its finding.

- 3.3. The Council shall set up an Appeal Panel to determine any appeal on its behalf. Such Appeal Panel shall comprise of five (5) participants, of which two are senior members of The Guild with qualifications and experience which are deemed suitable; two who shall be so trained and affiliated to different psychoanalytic organizations as determined by the Council; one of who shall not be a trained psychotherapist, as determined by the Council, who shall be invited to act as the Chair of the Panel. Such a Panel shall exclude any person that may have participated in the prima facie case appeal (see above Part A. 2.1.1 and 2.4.3) or in the Complaints Panel. It shall exclude any member of the Ethics Committee.
- 3.4. At the hearing of the appeal the Complainant and the Respondent may make oral or written representations in person or through his representative to the Appeal Panel in support of his/her appeal. If written representation is made, a copy shall be made available to the other party at least 14 days prior to the date of the hearing. The Appeal Panel shall review a summary of the evidence presented at the hearing before the Complaints Panel and such further evidence which had not been presented at that hearing and which the Appeal Panel in its sole discretion considers to be relevant to the appeal.
- 3.5. The Appeal Panel may
  - 3.5.1. Allow or dismiss the appeal, and quash the decision or the disciplinary action imposed by the Complaints Panel or
  - 3.5.2. Substitute for the disciplinary action imposed by the Complaints Panel some alternative course of action specified in section 1 of this part of the Complaints Procedure.
- 3.6. For the purposes of receiving any notification provided for under the Ethical Principles and Code of Professional Conduct or the hearing of an appeal under Part B section 3 of the Complaints Procedure, the Council shall exclude any trainee or student who might otherwise be entitled to attend meetings of the Council.

#### 4. Publication of the sanctions.

After the complaint has been upheld and a sanction imposed by the Complaints Panel (Part B, section 1), which may have been subject to variation by Appeal (Part B, section 3), the Complaints Clerk shall consider publication of the findings and the sanction. In the event of suspension or expulsion from membership, The Guild shall within 14 days publish the decision, the sanction and the reason for the sanction, and the Complaints Clerk shall notify the UKCP accordingly. In the event of lesser sanctions, the Complaints Clerk may not proceed to publication, save where the Complaints and Appeals Panels have identified material risk to public safety.

#### 5. Final confirmation and notification.

The Complaints Clerk shall appoint a senior member of The Guild to supervise that the disciplinary actions have been carried out according to the instructions of the Complaints Panel or the Appeal Panel, as cited above, and when the terms of the sanctions have lapsed. Such supervisor shall inform the Complaints Clerk, who shall notify the Chair of the Council.

### **Part C. Special provisions relating solely to Trainees and Students**

1. All trainees and students of The Guild of Psychotherapists shall be subject to all the provisions of the Ethical Principles and Code of Professional Conduct and Complaints Procedure (save as herein expressly provided) as if they were full members of The Guild of Psychotherapists but shall not thereby acquire any voting rights in respect of any proceedings of the Guild of Psychotherapists whether at the AGM or otherwise nor be entitled to be elected to the Ethics Committee.
  2. In the event of a complaint being made against a trainee or student under the terms of the Ethical Principles and Code of Professional Conduct and this Complaints Procedure, a mentor shall be appointed by Council to support the trainee or student. Such mentor shall be an appropriately experienced member of The Guild but need not be a member of the Training Committee.
  3. So far as the provisions of part B section 1 of the Complaints Procedure in respect of disciplinary action are concerned there shall be substituted in relation to trainees and students provision for suspension or expulsion from training or registration as a student in lieu of the provision for suspension or expulsion from membership.
  4. In the event of any complaint against a trainee or student under the terms of the Ethical Principles and Code of Professional Conduct and the Complaints Procedure, the Complaints Panel shall in addition to the obligations imposed under the Ethical Principles and Code of Professional Conduct and this Procedure inform the Complaints Clerk who shall send a copy of the complaint to the Training Committee and at all times keep the Training Committee sufficiently informed of the progress of the complaint.
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