



# **Review of Complaints Board Decisions Policy**

**Adopted 11 November 2020**

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# Interim Policy

## Preamble

The NZAS is currently undertaking a process to review and update its complaints investigation procedures, including consideration of an appeal process. This document is an interim policy for Review of Complaints Board Decisions (**Interim Policy**) to ensure that NZAS members who are the subject of a complaint investigation have access to a review process while the NZAS is undertaking the complaint process review and update.

The Interim Policy also allows the Executive Council to consider requests from complainants for a review of a decision on a case by case basis as outlined below.

## Interim Policy

A member who has been the subject of a complaint investigation may request a review of the findings of the NZAS Complaints Board. Any request for a review must be made in writing within 20 working days of receipt of the final findings from the Complaints Board and must clearly state the grounds on which the review is sought – (see paragraph 1.1 and 1.2 below). A decision on whether a review will be granted is at the discretion of the Executive Council. The review process is as set out in this Interim Policy.

### 1. Criteria for Review

A member may request a review of the findings of the NZAS Complaints Board on the following grounds:

- 1.1. **Procedural error** – the investigation was not conducted in a manner that complied with the Complaints Board Rules, NZAS Constitutional requirements, or the principles of natural justice, and/or
- 1.2. **Errors of Fact** – the findings are factually incorrect

### 2. Process

The process for the review is as follows:

- 2.1. The Executive Council is to consider the request for a review and determine whether it meets the criteria as specified in 1.1 and 1.2 above.

- 2.2. The Executive Council will seek to resolve the matter to the satisfaction of the parties involved in the complaint through informal discussion, or mediation in the first instance.
- 2.3. If the request for a review is granted, the matter will be referred to a Review Panel appointed by the Executive Council. The Review Panel may be a committee or a suitably qualified independent person (such as a lawyer). The member will be given an opportunity to comment on the proposed membership of the Review Panel and the possible cost implications – see paragraph 3.2 – 3.3 below.
- 2.4. The Review Panel:
  - 2.4.1. May receive submissions relating to the original complaint and the basis for the member's challenge to the decision of the Complaints Board;
  - 2.4.2. Is to look at the material afresh and reach its own decision on the original complaint and (if relevant) any sanctions;
  - 2.4.3. Must adhere to the principles of natural justice and procedural fairness when undertaking the review
- 2.5. The findings of the review will be circulated to the member, the Executive Council, and the Complaints Board. The findings may be provided to the original complainant(s) if appropriate.
- 2.6. The findings of the review are final.
- 2.7. For the avoidance of any doubt, the Executive Council may delegate its functions under 2.1 – 2.3 inclusive.

### **3. Costs**

- 3.1. If the Review Panel finds in favour of the member and does not uphold the findings of the Complaints Board, the costs of the review process will be met by the NZAS.
- 3.2. If the Review Panel upholds the findings of the Complaints Board the member will be required to contribute to the costs incurred by NZAS in undertaking the review.
- 3.3. The starting point for the recovery of cost will be 50% of the reasonable costs incurred by NZAS, including any fees or expenses charged to the NZAS by the Review Panel or consultants engaged as part of the review process.

## **4. Timeframes**

- 4.1. A member has 20 working days from receipt of the findings of the Complaints Board to request a review, in writing. A working day is defined as Monday to Friday and excludes public holidays.
- 4.2. This Interim Policy takes effect from 25th September 2020.
- 4.3. For the avoidance of any doubt, this Interim Policy will not be applied retrospectively.

## **5. Addendum – Requests for review of Complaints Board Decision by complainants**

As noted above the Interim Policy is primarily for the benefit of members subject to an investigation and findings against them. The Executive Council acknowledges that there may be occasions when a complainant wishes to have the findings of the Complaints Board in respect to their complaint reviewed. The Executive Council has discretion, on a case by case basis, to review a Complaints Board decision at the request of a complainant, as follows:

- 5.1. A complainant may request a review of the Complaints Board findings in respect of a complaint they have made about an NZAS member.
- 5.2. Requests for a review must be in writing and must be on the grounds of procedural error and/or errors of facts as noted in paragraph 1.2 and 1.2 above. The request must be made within 20 working days of receipt of the Complaints Board findings.
- 5.3. No request seeking compensation, or a refund will be considered by the Executive Council, as this is outside the scope of the NZAS complaints process.
- 5.4. The Executive Council will consider the request for review and may decide to refer the complainant to an appropriate external body such as the Health and Disability Commissioner or the Disputes Tribunal.
- 5.5. A decision on whether to grant a review is at the discretion of the Executive Council. Should the Executive Council accept a request for a review -
  - 5.5.1. a review fee of \$150 will be payable by the complainant before the review commences; and

5.5.2. the process for the review will be as outlined in paragraphs 2.1 to 2.7 above.

5.6. This Addendum to the Interim Policy takes effect from 11 November 2020.