



COMPLAINTS BOARD POARI WHAKAPAE

Rules for Complaints Procedure

Approved February 2025

CONTENTS

Rules for Complaints Procedure	3
Overarching principles	3
Rules for Complaints Procedure – Administrative processes	4
Process	5
CB to determine next steps for the complaint.....	6
Investigation process	7
The CBs provisional finding of fact.....	7
The CB's finding of fact and provisional decision on breach	8
Recommendations	8
Sanctions	8
Appendix 1	10
Appendix 2	11
Principles Applying to the Determination of Costs	11

Rules for Complaints Procedure

The following principles and rules apply to the proceedings of the New Zealand Audiological Society (NZAS) Complaints Board: Poari Whakapae (CB) in dealing with complaints involving all types of members of the New Zealand Audiological Society.

Overarching principles

1. The Complaints Board must act in accordance with the following principles. The CB must:
 - a) Act within the powers granted by the Constitution of the Society and the Code of Ethics.
 - b) Act for proper purposes.
 - c) Observe the principles of natural justice when making decisions that affect the interests of individuals, including but not necessarily limited to ensuring the subject of the complaint:
 - i) Must be able to know with reasonable accuracy the precise nature of the complaint.
 - ii) Must have an opportunity to present their position on the allegations constituting the complaint.
 - iii) Should have the opportunity to be heard in person and to be represented by counsel if they wish.
 - iv) Should be judged fairly on the basis of objective evidence.
 - v) Has a legitimate expectation that they would be told of the intended decision and be given an opportunity to comment.
 - d) Act reasonably and fairly.
 - e) Act in a timely way - making every reasonable effort to resolve the complaint within as short a period of time as possible.
 - f) Act proportionately – making every effort to resolve the complaint in a way that is proportionate to the gravity of the allegations
 - g) Act transparently – the Complaints Board must identify and manage conflicts of interest.
 - h) Flexibility where that will result in the earliest and satisfactory resolution of the complaint.
 - i) Accountability – the Complaints Board is an independent committee of the NZAS but remains accountable for its actions and process and must act in accordance with its Terms of Reference.

2. Resolution of complaints will be attempted through early resolution (such as mediation, dialogue, or facilitated discussions) where it is suitable and possible. The Complaints Board has discretion to determine what process of early resolution will be used in each particular complaint.¹

Rules for Complaints Procedure – Administrative processes

3. Complaints must be received in writing to the NZAS. Complaints will be forwarded to the Complaints Board: Poari Whakapae (CB).
4. Records of correspondence in respect to complaints against members of the NZAS will be kept by the NZAS.
5. In all cases of complaints made by a member of the NZAS against another member, the complainant will be encouraged in the first instance to try to resolve the complaint at a personal level where this is feasible and appropriate.
6. If any member of the CB is the complainant or the subject of the complaint or has a special interest in the complaint or relationship with any of the parties involved such that they cannot maintain impartiality in the complaints procedure then the CB shall at its discretion absolve that member from participation in the proceedings. The CB may also in this instance, at its discretion, appoint another member to act as a temporary member of the CB for the time taken to resolve the complaint.
7. The CB shall be entitled to collect information from third parties and/or persons affected by, or connected with, the subject matter of the complaint. In particular the CB may verify or investigate the circumstances giving rise to the complaint. The CB shall endeavour to make its enquiries in a manner which respects the confidentiality of the parties to the complaint, but without limiting the right of the CB to seek and obtain such information as it requires to make an informed decision on the matter.
8. If a complainant wishes to make a complaint against two or more members of the NZAS the complaint against each member should be recorded in a separate document. The CB may ask a complainant to reformulate any complaint that fails to comply with this rule.
9. The CB may investigate and/or make a recommendation or decision regarding matters referred to it by the Executive Council or its Committees, members of the NZAS, members of the public, users of audiological services or their whanau.
10. The CB may investigate and/or make a recommendation or come to a decision in circumstances where:

¹ Refer to the relevant Terms of Reference for the Complaints Board's delegations and authority to incur costs on behalf of the NZAS.

- a) The CB considers that there may have been an ethical violation but no formal complaint has been made; or
 - b) A complaint initiated by a member or any other person is later withdrawn; or
 - c) A complaint is being investigated and when further information subsequently becomes available to the CB.¹
11. Where the Executive Council or CB reasonably believes that the actions and/or behaviour of the person who is the subject of the complaint (the subject) presents a potentially serious and continuous risk to the public and that urgent steps are required to be taken to stop and/or mitigate the risk, the Executive Council can issue a notice on the subject to stop the potentially serious actions and/or behaviour until the matter has been investigated and a final decision has been made.
12. Unless and until the CB has made a decision in relation to the complaint, complainants and those subject to a complaint must only communicate in a manner consistent with any directions given to them by the Complaints Board.

Process

Receipt of the complaint

13. When a complaint is received, the Ethics Coordinator will acknowledge receipt of it. The Ethics Coordinator may seek further information from the complainant or the NZAS if needed.
14. The Ethics Coordinator and the Chair of the Complaints Board will consider the complaint to determine whether it will proceed to be considered by the Complaints Board, or whether no further action will be taken.
15. Where no further action will be taken at this stage, the complainant will be informed of this and may be directed to other relevant agencies, including but not limited to the Health and Disability Commission. The subject of the complaint should be notified but advised that no action is being taken.

Initial letters

16. Where a complaint is referred to the Complaints Board, the Complaints Board will contact the subject of the complaint and advise them of it. The Complaints Board will then send the following letters to the subject and complainant.
17. **Initial letter to complainant:** the initial letter to the complainant should:
- a) Include a copy of the CB Rules and the Code of Ethics

¹ Where “new information” is discovered that the CB considers warrants investigation, to be complying with the principles of natural justice, the CB must write to the subject of the complaint to notify them that the scope of the investigation has broadened to beyond the particulars of the initial complaint.

- b) Inform the complainant that their identity and a copy of their complaint will be provided to the subject of the complaint unless there is good reason to withhold it
 - c) Inform the complainant of the membership of the Complaints Board and of their right to reasonably request that any member or members of the CB who may not be free from bias in considering the complaint be replaced by another member.
18. **Initial letter to subject:** the initial letter to the subject of the complaint must contain:
- a) Details of the nature of the complaint
 - b) The information included in the complaint that is relevant to the subject of the complaint
 - c) Stating the membership of the CB, and the right of the subject of the complaint to comment on the membership of the CB if they believe the CB member (or members) may not be free from bias in considering the complaint.
 - d) Stating that the subject of the complaint has a right to be heard and providing sufficient detail of what it means to be heard, including that they can be heard in person.
 - e) Providing an opportunity to respond to the complaint within a reasonable stipulated period of time (usually being no less than two weeks).
 - f) Timetabling
 - g) Suggesting early resolution (such as mediation, dialogue, or facilitated discussion) between the complainant and the subject of the complaint if possible (and if not, why not). Providing sufficient detail of the process for early resolution, and options to create a supportive and safe environment (e.g., facilitated by Complaints Board, support persons welcome).
 - h) Communication protocols, and
 - i) Providing a copy of the Rules and the Code of Ethics.
 - j) Informing the subject of the complaint of their right to be represented (at their cost), and providing sufficient detail of what that means.
19. Unless the CB is satisfied in its sole discretion that there are good reasons for not doing so, the subject must receive a copy of the complaint and attachments, including the identity of the complainant.

CB to determine next steps for the complaint

20. If the subject of the complaint chooses not to respond to the CB, the CB may act on the complaint on the basis of the information which it possesses.
21. The CB will consider the complaint, any information or response received, and consider whether it will:
- a) Attempt to resolve the complaint between the parties through early resolution,
 - b) Commence an investigation, or
 - c) Take no further action.
22. When deciding what next steps to take, the CB will consider
- a) The appropriateness of resolving the complaint through early resolution, including parties' willingness to cooperate with any early resolution process

- b) Any previous complaints against the subject of the complaint, including their cooperation with the processes and compliance with any sanctions imposed or recommendations made
 - c) Whether investigations into the same conduct have been already been undertaken by any other relevant parties
 - d) whether the complaint involves professional conduct, fitness to practice, material breaches of the Code of Ethics, and any other relevant factors that warrant investigation
23. The CB will then inform both the subject of the complaint and the complainant of the intended course of action.
24. If the matter is resolved through early resolution, the CB will inform the Executive Council of the outcome of the complaint.
25. Where early resolution is attempted, but the complaint remains unresolved, the CB will consider the next steps for the complaint, including whether to commence an investigation, whether to make a recommendation (without investigating), or whether to take no further action. The CB will inform the subject of the complaint, the complainant, and the EC of the next steps and/or outcome.

Investigation process

The CBs provisional finding of fact

26. If an investigation is commenced, the CB will determine the parameters of the investigation, and its provisional findings of fact.
27. The parameters of the investigation and the provisional finding of fact will be provided to the complainant for comment. Once this has been received, the subject of the complaint will be invited to respond in a reasonable timeframe.
28. The subject of the complaint may request to be heard in person and to be represented by counsel if they wish. The person who is the subject of the complaint may request to meet with the CB remotely (e.g., by zoom) or in person. If there is a hearing:
- a Before the hearing occurs, the subject of the complaint should be provided with all relevant information and have had reasonable time to consider it and seek advice
 - b A recording may be taken if all parties agree.
 - c Irrespective of (b), a transcription of the meeting must be taken.
 - d The CB must send the transcription to the subject of the complaint to ensure the transcription is a true and accurate record of the hearing.
 - e The subject of the complaint should be given opportunity to be represented or supported by another person.
29. The CB will meet and consider all responses.

The CB's finding of fact and provisional decision on breach

30. In keeping with the principles of natural justice, the CB shall notify in writing the person who is the subject of the complaint of its findings of fact and its provisional decision on breach. It must offer the subject of the complaint an opportunity to respond to the provisional decision on breach in a reasonable timeframe. It may also offer the complainant an opportunity to respond in a reasonable timeframe.
31. **The CB's Decision on breach:** Having received any/all responses, the CB will make its decision on breach. Where the CB is unable to reach a unanimous decision, it may be made by way of a simple majority. In such a situation, the majority and minority CB members must provide their reasons to the Executive Council. The Executive Council may remit the matter back to the CB with recommendations.
32. **Provisional decision on sanctions:** Having made a final decision on the findings of breach, the CB then forms a provisional decision on sanctions. The subject of the complaint will be provided with a reasonable opportunity to respond to the provisional decision on sanctions.
33. **Final decision:** having made a final decision on sanctions, the outcome will be communicated to the complainant and the subject of the complaint.

Recommendations

34. The CB may make recommendations or decisions regarding matters referred to it, even when an investigation has not been undertaken, or where a breach of the Code of Ethics has not been established or determined. A recommendation may arise as an outcome of an early resolution procedure.
35. The CB may make recommendations to parties that are not the subject of the complaint, such as the Executive Council.
36. Recommendations made to the Executive Council should be communicated through the Ethics Coordinator to the Executive Director of the NZAS.

Sanctions

37. When making a decision on sanctions, the CB must record and take into account the background and experience of the subject of the complaint.
38. A decision on sanctions by the CB may include, but is not limited to:
 - a. Costs that can be awarded if the complaint is upheld against the member – see appendix 2 Principles for awarding costs.
 - b. Reprimand. Notification of reprimand is limited to the subject of the complaint and the complainant.

- c. Cease and Desist Order. The subject of a complaint will be required to cease non-compliant behaviour and to demonstrate that such behaviour has been reformed. Such demonstration of reformed behaviour may take place from time to time through peer review and/or audit or by such other means as the CB may decide. The subject of the complaint may be required to sign a Cease-and-Desist Order, which specifies the non-compliant behaviour and the terms of the Order. Notification of a Cease-and-Desist Order will be made to the subject of the complaint and the complainant and may be reported in an official publication of the Society.
39. Sanctions against members may be recommended to the Executive Council by the CB depending on the severity of the violation of the Code of Ethics as determined by the CB following its investigations into a complaint. In the following circumstances the Executive Council will make the final decision on sanction.

a. **Suspension of Membership**

Suspension may range from a minimum of three (3) months to a maximum of twelve (12) months. Notification of the suspension will be made to Government agencies which require Membership of the Society for Audiologists rendering services on their behalf. No refund of membership dues shall accrue to the suspended individual.

b. **Expulsion from the Society**

Expulsion from the Society is considered the maximum punishment for violation of the Code of Ethics. Expulsion will be notified in an official publication of the Society. Notification of the expulsion will be made to Government agencies which require Membership of the Society for Audiologists or Audiometrists rendering services on their behalf. Individuals whose membership has been revoked will not be entitled to a refund of membership dues.

Expulsion from the Society can be for a specified period.

When considering expulsion, the Executive Council must decide that the conduct of the member:

- Amounts to gross misconduct and/or
- The member is intransigent in their behaviour and/or the member has been defiant in the CB's attempt to investigate the complaint; or
- The member has previously been found in breach of their ethical obligations and has received two (2) written warnings in relation to breaches of the code or for non-compliance with the sanctions imposed.

Gross misconduct includes serious misconduct and serious wrongdoing and conduct that significantly and substantially falls below the standard of care that members of the public and the profession should be able to expect from a member of the NZAS.

Appendix 1

Code of Ethics 5.11 states that members must be aware of and comply with all relevant New Zealand Law associated with their profession.

Such laws include, but are not limited to:

- The Privacy Act 2020
- The Human Rights Act 1993
- The Health Information Privacy Code 1994
- The Health and Disability Commissioner Act 1994
- The HDC Code of Health and Disability Services Consumers' Rights 1996
- Fair Trading Act 1986
- Vulnerable Children Act 2014
- Therapeutic and Health Advertising Code 2016
- The Protected Disclosures Act 2000
- Health and Safety at Work Act 2015

Appendix 2

Principles Applying to the Determination of Costs

Costs should 'follow the event':

The principle that 'costs follow the event' means that if a breach is found, costs can be awarded against the person found to be in breach.

However, there are exceptions, for example costs can still be awarded when:

- Although a breach is not found, shortcomings have been identified
- The subject of the complaint has not abided by the rules of the Complaints Board
- There is a lack of co-operation by the subject of the complaint in the investigation

Exceptions to the general principle that costs 'follow the event':

In some cases it is not appropriate to award costs, for example:

- There is reasonable co-operation with the investigation
- Remedial steps have been taken at a cost to the clinician who is the subject of the complaint
- Remorse is shown by the subject of the complaint
- Evidence in a change of behaviour is seen
- The complainant acknowledges the steps that have been undertaken by the clinician who is the subject of the complaint

Factors relevant to costs decisions - Complexity and Significance:

The following factors may see an increase in the costs awarded:

- Multiple breaches proven against the subject of a complaint
- The breaches have arisen over a long duration of time
- Keeping of poor records
- Complex factual situations
- Clinically complex issues
- When the outcomes for the patient have serious consequences
- There have been previous or repeated breaches

Costs are assessed objectively. This means the amount of costs that are awarded are based upon what the case involved and should reflect the complexity and significance of the case.

There are three tiers of costs awards:

- Band one: straightforward
- Band two: average complexity
- Band three: high complexity or significance

Costs are a reasonable contribution to the actual costs

Costs should represent a reasonable contribution to the costs actually incurred