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A Guide to Investigations by Professional Conduct Committees

**For people who have made a formal complaint
against a psychologist**

PLEASE READ THIS DOCUMENT CAREFULLY

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TABLE OF CONTENTS

Part 1. Introduction.....	Page 3
Part 2. Background	Page 3
Part 3. Glossary of Terms.....	Page 4
Part 4. The complaints process before a PCC is appointed.....	Page 5
Part 5. Appointment of a PCC.....	Page 5
Part 6. PCC Chairperson's role	Page 7
Part 7. How a PCC works	Page 7
Part 8. Natural Justice	Page 7
Part 9. Evidence received by PCCs.....	Page 8
Part 10. Appointment of a Legal Advisor and Investigator.....	Page 9
Part 11. Suspension of a psychologist's practising certificate if public is at risk	Page 9
Part 12. What a PCC may decide at the end of their investigation	Page 9
Part 13. What happens after the PCC has submitted their report.....	Page 10
Part 14. Management of recommendations and determinations made by the PCC	Page 10
Part 15. Restriction on information obtained	Page 11
Part 16. Contact details for the Psychologists Board.....	Page 11

A Guide to Investigations by Professional Conduct Committees

For people who have made a formal complaint against a psychologist

PART 1 INTRODUCTION

The New Zealand Psychologists Board recognises that making a formal complaint about services you have received from a psychologist can be a difficult thing to do, particularly if you are not familiar with the Board's complaints procedures or the law governing the investigation process by Professional Conduct Committees (**PCCs**). This guide has been developed by the Board to assist people who have made a formal complaint against a psychologist in situations where that complaint has been referred by the Board to a PCC.

This guide has been written to address the most common situation of a complaint involving one psychologist and one complainant. They also apply however, if the complaint going to a PCC involves more than one psychologist or if the complainant is acting on behalf of another person or organisation.

If necessary, further clarification can be sought from the Board's Secretariat (See Part 16 for contact details)

PART 2 BACKGROUND

The Health Practitioners Competence Assurance Act 2003 (the **Act**) is the governing legislation for all psychologists in New Zealand. The principal purpose of the Act is to **"protect the health and safety of members of the public by providing mechanisms to ensure that health practitioners are competent and fit to practise their professions"**.

Complaints made against psychologists are dealt with under the provisions of Part 4 of the Act. The Act provides the Psychologists Board with the option to refer a complaint matter to a PCC.

Some complaint matters will only require a short investigation (2-6 months), while others may require longer investigations (6-12 months). Complainants should remember that PCCs only investigate complaints, and then recommend or determine what should happen next. PCCs do not decide whether a psychologist is guilty or not. If the PCC decides that disciplinary charges should be brought against a psychologist, it is the responsibility of the independent Health Practitioners Disciplinary Tribunal (**HPDT**) to determine whether the psychologist is 'guilty' or 'not guilty' of the charges brought against them.

PART 3 GLOSSARY OF TERMS

Complainant means a person who has made a formal complaint against a psychologist.

Health Practitioner or Practitioner means a person who is, or is deemed to be, registered with an authority as a practitioner of a particular profession. This guide applies to all **psychologists**, including Counselling Psychologists, Clinical Psychologists, Educational Psychologists, Intern Psychologists and Trainee Psychologists.

HPDT or Tribunal means the Health Practitioners Disciplinary Tribunal.

Layperson means a person who is neither registered nor qualified to be registered as a health practitioner. (Membership of a PCC includes one layperson.)

Notice is a legal term that refers to the instrument conveying the PCC's decision (e.g., a letter or report depending on the context).

PCC or Committee (where mentioned in this guide and unless otherwise defined) means a Professional Conduct Committee appointed by the Psychologists Board.

PCC Report (where mentioned in this guide) means the final report prepared by the PCC at the conclusion of their investigation. Sometimes it is also referred to as a "Section 81 Notice" under the Act.

Psychologist (for the purpose of this guide) means a psychologist who is the subject of a complaint.

Required standard of competence means the standard of professional competence reasonably to be expected of a registered psychologist practising within their scope of practice.

Scope of Practice means one or more health services that the psychologist is, under authorisation granted by the Board, permitted to perform (subject to any conditions imposed by the Board).

PART 4 THE COMPLAINTS PROCESS BEFORE A PCC IS APPOINTED

COMPLAINTS AND THE HEALTH AND DISABILITY COMMISSIONER

Whenever the Board receives a formal complaint alleging that the practice or conduct of a psychologist has affected a health consumer, the first thing the Board must do is promptly forward the complaint to the office of the Health and Disability Commissioner (**HDC**). The Board's Secretariat will also send a copy of the letter of complaint to the psychologist being complained about. This is in accordance with the Board's procedure for processing complaints.

The Board cannot take any action on a complaint when it is with the HDC. This can mean a slight delay before the Board can consider it further. It is only when the complaint has been returned to the Board by the HDC that consideration will be given as to whether a PCC should be appointed.

For more information on how the Health and Disability Commissioner investigates complaints, the options available to deal with complaints and for advocacy services, go to www.hdc.org.nz/complaints.php. The Health and Disability Commissioner's office may be contacted by:

Telephone: (09) 373 1060
Email: hdc@hdc.org.nz

Freephone: 0800 11 22 33

COMPLAINTS AGAINST FAMILY COURT APPOINTED PSYCHOLOGISTS

Complaints against Family Court appointed psychologists are processed in accordance with section 16 of the Family Court's *Practice Note – Specialist Report Writers* (2010).

Typically, the Board will consider complaint 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.

In summary, it is normally only after a complaint comes back from HDC or the Family Court, that the Board will consider what to do. If it is decided that the complaint should be referred to a PCC, then the process to identify and appoint members of a PCC will commence as soon as practicable.

The Board's Secretariat is able to advise complainants about what stage the Board is up to in the complaint process. (See Part 16 for contact details)

PART 5 APPOINTMENT OF A PCC

When a complaint against a psychologist is referred to a PCC, the Board's Secretariat will write to the complainant and psychologist informing them that the matter has been considered and referred to a PCC.

Two psychologists and one layperson will be appointed by the Board as members of the PCC. The Board will appoint one member of the PCC to preside as Chairperson at PCC meetings.

It should be noted it may take up to two months to appoint a PCC to investigate a complaint. This is primarily due to the (sometimes difficult) task of finding three suitable people who are at any given time, ready, willing, and able to take on the PCC roles, and who have no conflict of interest with the parties to the complaint. In each and every case, however, the PCC appointment process is done with efficiency in mind and the utmost care and consideration of all parties concerned.

The layperson is a critical member of the PCC "team". They can be seen as the "check" or "balance" in the work of the Committee. The layperson is not an advocate for the complainant.

When the PCC members have been nominated by the Board, the Board's Secretariat will write to the complainant and psychologist to inform them of the names of the proposed PCC members.

A copy of a 'Client Profile'¹ from the Register of Psychologists for each psychologist appointed to the PCC and a brief curriculum vitae of the layperson will be also be provided. While it is not a requirement that the Board gives this information, it does help the complainant and psychologist to know a little more about each PCC member.

The Board's Secretariat's letter will advise the complainant and psychologist that within five days of being informed of the names of the proposed PCC members, each may request that any or all of the proposed members not be appointed as members of that committee.

Any such request must be in writing and the reasons for the request need to be stated. Requests for changes to the PCC membership may be made by email or by post to the Registrar. In the past, reasons have included having a close pre-existing personal or professional relationship with proposed PCC members, or other clear conflicts of interest. The Act states that the Board *must have regard to a received request but need not comply with it*.

If the Registrar does not receive any request for change to the proposed PCC within the time allowed, then membership of the PCC will be confirmed.

The Board's Secretariat will then write to the complainant, the psychologist, and the PCC members to officially confirm the appointment of the committee. A copy of the letter of complaint and any other relevant documentation (e.g., the Board's correspondence with each party, further submissions provided by either party, responses from the HDC, Family Court or other agency), will be forwarded to the PCC so that they can start their investigation. Once the PCC starts the

¹ The Client Profile from the Register of Psychologist contains only that information the board has resolved to make public about any registered psychologist. It will include the *psychologist's name, registration number, date of registration, legislation registered under, qualifications, practising status, scope of practice and any conditions on the scope of practice*.

investigation, communications with the Board regarding the complaint generally cease. The complainant and psychologist will be asked to direct any further communications about the complaint matter to the PCC Chairperson.

Note: The Board's Secretariat is available to both the complainant and the psychologist to advise them on matters related to the progress of the PCC investigation, but not on decisions made or processes undertaken by the PCC during the course of the investigation.

PART 6 PCC CHAIRPERSON'S ROLE

The PCC Chair leads the PCC 'team' and ensures that it undertakes its responsibilities in a fair and efficient manner. The PCC will try to complete its task as soon as practicable. The PCC Chair is the person that the complainant will normally communicate with.

The PCC Chair usually makes a courtesy introductory telephone call to the complainant and the psychologist to inform them that the PCC's investigation has commenced. You should use this opportunity to establish your preferred method of communication (e.g., telephone, email, letter). Please note that this introductory call is not usually an opportunity to discuss the complaint at length. An opportunity for that will be given once the PCC has developed an investigation plan and decides what other information (if any) is required from both parties.

PART 7 HOW THE PCC WORKS

The Act stipulates that a PCC appointed by the Psychologists Board "may regulate its own procedure as it thinks fit." However, the PCC must adopt and follow procedures that will ensure that, in relation to each matter referred to the PCC, the complainant, the Psychologists Board, and the psychologist are each kept informed about the progress of the investigation. The PCC is subject to the rules of natural justice and to any regulations made under the Act.

Generally, PCCs will gather as much information as they think is necessary in the preliminary stages of the investigation. The PCC will provide an early opportunity for both parties to be heard (i.e., to meet with the PCC in person if this is the wish of either party) or make written submissions (i.e., provide written documentation) on any matter referred to the PCC after it has received the initial complaint documentation. PCCs may hear from the parties individually or together depending on what has been agreed. It should be noted that the psychologist and complainant are entitled to be represented by a lawyer and/or support person(s). (See Part 9 below for more details about 'being heard' and making 'written submissions')

PART 8 NATURAL JUSTICE

"Natural Justice" is a well-defined concept that can be substituted by the expression "duty to act fairly."

The law requires that decision-making bodies act in good faith and fairly listen to both sides. There are two fundamental principles:

- a) that the parties be given adequate time and opportunity to be heard; and
- b) that the decision-maker(s) be disinterested in the outcome, and unbiased.

The PCC procedures as set out in the Act and this guide have been developed with the concepts of natural justice squarely in mind.

PART 9 EVIDENCE RECEIVED BY PCCs

A 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 statement, document, information, or matter would be admissible in a court of law.

PCCs may receive written statements and submissions and/or "hear" oral (spoken) evidence from any or all of the following persons:

- the complainant
- the psychologist who is the subject of the PCC's investigation
- any employer of the psychologist
- any person in association with whom the psychologist practises, e.g. supervisor, colleague, associate, partner, manager
- any clinical expert.

If a meeting is to be held between the PCC and the complainant, the style of the meeting is likely to be semi-formal. The complainant and PCC will meet around a table to discuss the issues in question or of concern. The topics for discussion will have previously been confirmed by the PCC Chairperson.

Such meetings will be chaired by the PCC Chairperson. Complainants may be represented by a lawyer or a support person if they wish. A support person may be particularly important if the complainant is disabled or distressed. With the permission of the PCC, any support person can also be heard at the meeting. The PCC's Legal Advisor may be present at any such meeting. (See Part 10 below).

Evidence given honestly and in good faith will protect a person from civil or disciplinary proceedings.

The PCC may require that any evidence it receives be supported by a statutory declaration (an officially signed and witnessed statement).

A PCC may also require a person to produce to the committee any papers, documents, records or things considered necessary and reasonable to enable the PCC to carry out its investigation.

There are some exceptions to this. The PCC's request for documents does not apply if the document would be privileged in a court of law or if there would be a breach of an obligation of secrecy or non-disclosure (other than Official Information Act 1982 or the Privacy Act 1993).

It is an offence under the Act (with a fine not exceeding \$10,000) for a person to knowingly produce for a PCC any document, which is false or misleading. It is also an offence to refuse or fail, without reasonable excuse, to supply information requested by the PCC.

PCCs are not subject to the Privacy Act, but in accordance with the principles of Administrative Law, the psychologist who is the subject of the complaint should be given the opportunity to see all documents on which the PCC has relied in coming to their decision. Therefore, PCCs should provide copies of all documents upon which it relies to the practitioner.

PART 10 APPOINTMENT OF A LEGAL ADVISOR AND INVESTIGATOR

The PCC generally appoints their own Legal Advisor to advise the committee on matters of law, procedure, or evidence.

The PCC may also engage the services of an Investigator (e.g., private investigator) to collect information and to investigate complaints. Appointing an Investigator may sometimes be the most efficient way for a matter to be dealt with. The PCC must have a sound rationale for wanting to appoint an Investigator.

Any person appointed as the PCC's Legal Advisor or Investigator must not be present during the deliberations of the PCC. The Legal Advisor may (if necessary) be present at meetings that the PCC has with any party. Fees and expenses related to the PCC appointed Legal Advisor and Investigator are paid for by the Board.

Please note – The Board does not appoint or pay for any legal counsel engaged by the complainant or psychologist. Free legal advice is available nation-wide from local Citizens Advice Bureaus and Community Law Centres.

PART 11 SUSPENSION OF THE PSYCHOLOGIST'S PRACTISING CERTIFICATE IF PUBLIC IS AT RISK

If at anytime in the course of investigating a complaint against a psychologist the PCC has reason to believe that the psychologist's practice poses a serious risk of harm to the public, the PCC Chair will notify the Psychologists Board of its reasons for that belief and may recommend that the psychologist's practising certificate be suspended. It is then up to the Board to consider the recommendation.

PART 12 WHAT THE PCC MAY DECIDE AT THE END OF THE INVESTIGATION

Within 14 working days after completing its investigation, the PCC will submit a report (section 81 Notice) to the complainant, the psychologist, and the Board.

The report will make:

- a) one or more of the following recommendations; or
- b) one of the determinations specified; or
- c) both.

RECOMMENDATIONS

- 1) that the Board review the competence of the psychologist to practise his or her profession;
- 2) that the Board review the fitness of the psychologist to practise his or her profession;

- 3) that the Board review the psychologist's scope of practice;
- 4) that the Board refer the subject matter of the investigation to the police;
- 5) that the Board counsels the psychologist.

DETERMINATIONS

- 1) that no further steps are taken under the Act in relation to the subject matter of the investigation;
- 2) that a charge be brought against the psychologist before the HPDT;
- 3) in the case of a complaint, that the complaint be submitted to conciliation.

PART 13 WHAT HAPPENS AFTER THE PCC HAS SUBMITTED THEIR REPORT

The signing and submitting of the PCC's final report (to the complainant, the psychologist and the Board) marks the official end of the PCC's involvement in the complaint matter. Their investigation is now over, and the PCC will be thanked for their service by the Secretariat and disbanded.

No further communication should be made by any party (including the complainant) to the PCC following receipt of their final notice.

The information in the PCC's report is private and confidential and should not be disclosed to persons other than those involved in the investigation nor used for any other purposes not connected with this matter. Please note that this also applies to any and all information obtained (by any involved party) in the course of the PCC investigation.

On receipt of the PCC's final report, the Registrar will forward it to the Board's Parts 3&4 (P3&4) Committee² for consideration.

PART 14 MANAGEMENT OF RECOMMENDATIONS AND DETERMINATIONS MADE BY THE PCC

If the PCC recommends a review of competence, a review of fitness to practise, counselling of the psychologist, or referral of the matter to the police, the P3&4 Committee will consider these recommendations. The psychologist will then be informed of what (if anything) is required of them in completing any of the above recommendations. The complainant is not involved in any follow-up plan arising from recommendations.

If the PCC determines that "no further steps be taken" in relation to the complaint, then the PCC will notify the complainant, the psychologist, and the Board of that determination. That marks the official end of the matter, and the complaint file will be closed.

If the PCC decides to lay a charge against the psychologist before the HPDT, the PCC will be assisted by a prosecuting lawyer to formulate an appropriate charge and lay it before the HPDT. The complainant will be given a copy of the charge and may be needed to give evidence at the disciplinary hearing. (An Executive Officer of the HPDT will keep the complainant informed of anything they need to do in relation to the actual hearing). The Chairperson of the Tribunal will convene a hearing as soon as reasonably practicable. The Psychologists Board itself is not

² Parts 3&4 Committee: this is the committee delegated by the Board to deal with complaints and competence matters.

involved in HPDT hearings. For further information about the HPDT go to www.hpdt.org.nz.

If the PCC determines that the complaint matter should be submitted to conciliation, the Board will send the complainant and the psychologist an additional guide helping to explain the process in more detail. In brief, the P3&4 Committee must appoint a Conciliator to attempt to assist the complainant and psychologist concerned to resolve the complaint by agreement. The Conciliator is required to report back to the PCC. The possible results of a conciliation process are set out below.

If the PCC thinks that the complaint has been successfully resolved by agreement, it must promptly (i.e., within 14 working days of the agreement being reached) inform the Board in writing.

If the PCC thinks that the complaint has not been successfully resolved by agreement, it will then promptly decide whether:

- a) the PCC should lay a charge before the HPDT against the psychologist; or
- b) the PCC should make one or more of the recommendations described above (refer Part 12); or
- c) no further steps should be taken in relation to the complaint.

If the PCC decides to lay a charge before the HPDT, the PCC Chair will inform the Prosecutor drafting the Notice of Charge of the matters on which the psychologist and complainant reached agreement during conciliation and the matters on which they did not reach agreement during conciliation.

PART 15 RESTRICTION ON INFORMATION OBTAINED

The PCC members or former members of the PCC or a person who assists or has assisted the PCC, may use or disclose any information obtained in the course of the PCC's work only for the purposes set out in the Act. Please note that PCC members send in all of their paperwork to the Board at the end of the investigation. If there is no further use for it the documentation is shredded. Some information may be used by the Board to follow through on PCC recommendations, but this generally only includes the PCC's final report rather than any information provided by the complainant or the psychologist.

PART 16 CONTACT DETAILS FOR THE PSYCHOLOGISTS BOARD

For questions related to this guide or about the processing of complaints and PCC investigations, please contact the Board's secretariat. We also would welcome feedback on this guide.

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