

Raising Concerns about a Counsellor

Procedures for Ethical Concerns and Complaints

This information is for people wishing to express a concern or to make a complaint about an NZAC member. *'Member'* throughout this document refers to all forms of NZAC Membership.

Counsellors who are Members or Provisional Members of the New Zealand Association of Counsellors are required to abide by the Association's Code of Ethics. A copy of the Code can be obtained by writing to the NZAC or can be found on the Association's website: under 'Ethics'.

You may have a concern about how a counsellor has behaved in terms of that Code. This might arise because you are:

- The client of the counsellor.
- The person with legal responsibility for the client of the counsellor, for example, a parent, guardian, or person with enduring power of attorney.
- In a support or professional role with the client of the counsellor. In this case you would need the permission of the client to act.
- A professional colleague, supervisor, or manager of the counsellor. In this case you are encouraged to consult your own supervisor or a fellow professional before acting.
- A supervisee of the counsellor. In this case you are encouraged to consult an experienced counsellor before acting.
- Affected by the actions of the counsellor in some other role you have.

The Association encourages you to express your concern directly to the counsellor, providing the matter is not of a very serious nature. This is often the most effective and timely way to clear misunderstanding or to remedy a problem. NZAC counsellors are expected to facilitate open expression of difficulties that may arise in the course of their work.

You may choose to approach the counsellor with your own supporter(s). If you would like help or guidance in making an approach you may: write to the Ethics Secretary, Ethics Office, PO Box 25287, Wellington 6140; or email ethicssecretary@nzac.org.nz.

If a direct approach does not resolve the issue for you, or if the behaviour of the counsellor is very serious, you may wish the Association to address it. This might involve either assistance in resolving the issue, or investigating the matter in a formal way, depending on the severity of the alleged behaviour. You are invited to communicate with us by writing to the Ethics Secretary (see contact details above).

We have Procedural Advisors available to help you at any stage of the process. The Ethics Secretary can arrange this upon request. We appoint an Advisor from outside your region because we may need Ethics representatives in your region to be available at another stage of processing your complaint. The contact with the Adviser is therefore usually by phone.

The Association's Criteria for receiving complaints:

The Ethics Committee receives written concerns or complaints from any person about a named Member or Members relating to:

- Behaviour potentially prejudicial to the interests of the Association;
- Professional misconduct; and
- Behaviour which is unbecoming a Member.

Guidelines for Making a Complaint (*Box 1 of the flowchart*).

The terms "counsellor" and "counselling" apply to all professional roles undertaken by Members and Provisional Members, with the Code applying to all NZAC Members and Provisional Members in the full range of their professional practices. Professional practice may include work in the roles of: counsellor, supervisor, therapist, trainer, educator, researcher, advocate, mediator, consultant, manager, coach, community worker, group facilitator, mentor and spiritual advisor. The generic terms "counsellor" and "counselling" apply to all professional roles undertaken by members. The term "client" then refers to anyone receiving the "counselling" services.

To assist the Association in processing your concerns, it helps if you include the following information:

1. Your names, address, telephone numbers (home and work, if possible), email address. Choose contacts where you can be contacted safely.
2. Name, address and telephone number of the workplace of the member whom you have concerns about (whom we then call 'the respondent').
3. If your concern relates to the member's counselling work, tell us what your understanding of the counselling relationship was. Also tell us what the context of the counselling or other service was, e.g. ACC, Family Court, community agency, voluntary counselling service, health service, private practice, school, training organisation etc.
4. List the time period of the counselling or other contact with the counsellor, relevant to your complaint. This can be with specific starting and finishing dates, or if this is not possible, then give more general times i.e. month and year of starting and finishing. This is so we can check that the person was a member of NZAC at the time and which version of the Code of Ethics applies, since there have been small changes over time.
5. Indicate what kind of counselling this was, e.g. group, consultation, supervision, training or other service from the counsellor.
6. Was the counselling service or contact you are concerned about with you or someone else? If with someone else, who is that person and what is their relationship to you?
7. If the behaviour you are concerned about was not in relation to the member's counselling work with you or someone known to you, specify the behaviour of concern, where and when it occurred, and who else witnessed it.
8. Whether the behaviour was part of a counselling relationship or to do with conduct outside the counselling room, what did the member do or say that caused you concern? Describe this as clearly as possible. If there is more than one thing, please list all of these.
9. If you are receiving this information by email or post, we have enclosed a copy of our Code of Ethics for your information, otherwise see the website address above. You may like to read this to help you consolidate your ideas on how the member you are concerned about may have breached the Code.

10. Outline any other action you have already taken in addressing your concerns e.g. talking to the member, contacting the member's supervisor or employer, contacting another professional association, etc.
11. Have you taken a complaint about this matter to any other organisation? If so, tell us about what stage of their process your complaint is at and, if there has been an outcome, what this is.
12. In the event that your concern becomes a formal complaint with NZAC and a Regional Team process or a Hearing is organised, please indicate whether you would be available to participate, i.e. can you get time off work or are there any other restrictions that would prevent you attending, or cause delays in having the case addressed?

Procedure

On receiving your letter, the Ethics Secretary checks that the counsellor is a current member or provisional member of NZAC and establishes whether the concern meets the criteria (see above) for receiving concerns and complaints (*Box 2 of the flowchart*).

If it does not, you are offered information about what other avenues might be available to you (*Box 3 of the flowchart*).

If NZAC can respond to your concern or complaint, you are sent a copy of the procedures and a form to sign, seeking your agreement for us to proceed with the matter. You are asked to give consent for NZAC to send a copy of your original letter to the member. Be aware when you give consent you are agreeing that your entire complaint to NZAC will be provided to our member for their response, which will include their account and reflective response. You may request to receive the Respondent's account. The reflective response is confidential to the NZAC. If you choose to see the account, you have the option to then respond to this. However, please note that should you choose to add additional information, this should be accompanied by further informed consent. The counsellor will then have the opportunity to provide a further response themselves.

NZAC may decide at this point that there is no action to take, and therefore not ask you to sign the informed consent form. Your material is then returned (*Box 4 of the flowchart*).

If your concern or complaint relates to more than that one member, you may be asked to lodge your concerns about each of them separately. It is an aspect of natural justice that each person's behaviour is enquired into separately.

On receipt of your consent and any other information that you may have added to your initial letter, the Ethics Convenor and the Ethics Secretary, or their substitutes if necessary, read and carefully consider your concerns (*Box 5 of the flowchart*).

Please note that any member undertaking Ethics work on behalf of the NZAC is required to exclude themselves if they have a conflict of interest with any of the parties involved in a complaint.

You are then notified of which of the following steps will be taken:

1. Assistance to you to seek private resolution
2. No further action (*Box 6 of the flowchart*)
3. Request for a written response from the member (*Box 7 of the flowchart*).

Further Elaboration

1. Assistance to seek private resolution.

The Ethics Secretary offers suggestions about how you might go about approaching the member and how you might access support for this step e.g. supervision, union or legal representation, employer assistance, a manager, colleague, family meeting, Privacy Commission, other professional associations.

2. No further action

If the Secretary and Convenor, or their substitutes, agree that the behaviour complained about does not meet the threshold for potentially professional misconduct or behaviour that adversely reflects on NZAC or on the profession of counselling, then no further action is taken. In this case you are informed and advised about any other courses of action you might choose to take. A copy of your original letter is sent to the member for their information.

3. Request for a written response from the member

The member is given 20 working days in which to reply to the complaint.

Further correspondence may occur. This could extend the time taken before a meeting of the Initial Assessment Group (IAG), which decides on whether further steps should be taken, and if so, what steps. The IAG consists of the Convenor, Secretary (or their substitutes) and one further Committee Member (*Boxes 7 and 8 of the flowchart*).

Options available to the IAG after viewing both the complaint and response are:
(*Boxes 9-14 of the flowchart*)

1. No further action
2. Seek further information.
3. Refer to another professional or regulatory body for consideration.
4. Resolve through Convenor communication.
5. Send to the relevant Regional Ethics Team for handling.
6. Institute a formal Hearing.

Further Elaboration of Steps Available to the IAG

1. No further action

Both parties are informed that there is no further action that NZAC will take, but other avenues may be suggested. The case is closed and may be considered for reopening only on receipt of new information (*Box 9 of the flowchart*).

2. Seek further information.

This may be either from you, as Complainant, or from the member, as Respondent. Also, for example, it may be that other parties have been referred to in the material and the IAG deems it necessary to hear from those parties (*Box 10 of the flowchart*).

3. Refer to another professional or regulatory body for consideration.

If the matter does not meet NZAC criteria for accepting the complaint or is potentially outside of NZAC's ability to manage the complaint, and if the issue warrants further investigation, the case

may be referred to another body, such as another professional body to which the counsellor belongs, or the Health and Disability Commission (*Box 11 of the flowchart*).

4. Resolve through Convenor Communication

Options available to the Convenor include written correspondence between all parties; phone conversation with both or either party; or meeting in person with the member, with attendance of their supervisor a possible expectation (*Box 12 of the flowchart*).

5. Referral to Regional Ethics Team (RET)

This process has been designed to enable NZAC to:

- a. Formulate an understanding of the circumstances that led to the complaint.
- b. Identify any ways in which the counsellor may have contributed to the situation, and if this is found to be the case.
- c. Propose educational and/or restorative actions to minimise the likelihood of such events recurring.

The time frame for a complaint to go through a RET process from the time it is received with informed consent is on average 6-12 months.

The RET Process (*Box 13 of the flowchart*).

This process is led by a Regional Coordinator (RC). Once the RC receives a copy of the correspondence, they choose two members of the Regional Ethics Team (RET) handle the complaint. If there is a conflict of interest for both the coordinator and, if there is one, the Deputy Coordinator in that region, the matter is referred to the Coordinator in another region.

The two RET members arrange to meet with the Complainant, who may choose to bring a support person to that meeting. There is no electronic recording of the discussion. The meeting provides an opportunity for the RET to hear the Complainant's account of what happened, to learn more about the circumstances that led to the complaint, and to discuss expectations and possible outcomes.

After this, the RET members meet separately with the member (Respondent), who is accompanied by their supervisor, to discuss the concerns raised by the complaint. The meeting provides an opportunity for the RET to hear the Respondent's account of what happened, to learn more about the circumstances that led to the complaint, and where appropriate, to engage in reflection and review.

The RET then determines what steps are to be taken.

Possible Outcomes of a Regional Ethics Team intervention (*Box 13a of the flowchart*)

1. Deciding that no further action is necessary.
2. Identifying relevant educational and/or restorative steps to instigate, for example this could include, undertaking further education or training, specialist consultation or additional supervision, or making an acknowledgment.
3. Referring the matter back to the Initial Assessment Group (IAG) to consider alternative courses of action, for example, communication with the Convenor, further investigation, or a formal Hearing (*Box 13b of the flowchart*).

Complainants are informed of the outcome, or of progress towards an outcome, by the RET manager within 4 - 6 weeks of the meeting. They are told if the Respondent has been given tasks to do but not the details of these.

The Ethics Secretary informs the Complainant once the RET is satisfied that the identified needed outcomes have been achieved to their satisfaction and the complaint is closed. This may take some months, depending on the extent of any tasks set.

6. A formal Hearing. (*Box 14 of the flowchart*)

This procedure is adopted when the behaviour complained about warrants an inquiry to establish the facts and is of such a nature that if the complaint is upheld sanctions will be imposed by the Association. Potential sanctions can be viewed in NZAC's Constitution, on the NZAC website.

It usually takes 12 to 18 months from receiving a complaint with informed consent, to the time of a Hearing. If the member has charges upheld and sanctions are applied, this could extend the time a further 12-18 months while the member completes required tasks to the satisfaction of the Committee.

1. At this point, the complaint is taken up by the Association against the member (Respondent). The Respondent is required to answer to NZAC. The Complainant is invited to become a witness for the Association's case and can be assisted and advised by one of NZAC's Procedural Advisors.
2. A formal Hearing must follow the principles of natural justice, involving the Respondent's right to reply, and may involve seeking advocacy and legal advice. This can take some months.
3. A Hearing Panel is appointed by the Convenor of the National Ethics Committee (or substitute). It consists of at least two members of the National Ethics Committee and a lay-person, who together prepare for the Hearing, with the assistance of one of the legal advisors to NZAC.
4. An NZAC Ethics Committee Hearing follows an 'inquisitorial' court procedure. The Hearing Panel gathers information to determine whether the behaviour complained about did occur, and whether it is found to be professional misconduct, or behaviour that adversely reflects on the NZAC or on the profession of counselling.
5. The Complainant is invited to attend as a witness for NZAC and to give their account of the events. The Complainant may be asked questions by: Panel members; the Respondent; and/or their legal representative. This communication occurs through the Panel Chair.
6. If the behaviour described is confirmed by the Panel and is found to be professional misconduct, or behaviour that adversely reflects on NZAC, or on the profession of counselling, the Panel then determines any sanctions to be imposed.
7. Sanctions that involve a change to membership status, and/or publication of the member's name, are recommended to the National Executive of NZAC. The Executive vote to receive the outcome and endorse publication, as relevant. Other Hearing outcomes are also formally received by the National Executive without the member being named. The Complainant will be provided a summary of the outcome.