



## ROYAL COLLEGE OF SPEECH & LANGUAGE THERAPISTS

### Regulations governing complaints against members not registered with the Health Professions Council

#### Interpretation

1. In these Regulations the following words bear the following meanings:

|                           |   |
|---------------------------|---|
| <b>Chief Executive</b>    | the Chief Executive of the RCSLT or a person nominated by her to perform any of her functions under these Regulations |
| <b>Code of Conduct</b>    | the published Code of Conduct of the RCSLT, as amended from time to time  |
| <b>Complaints Manager</b> | the person designated in accordance with Regulation 5   |
| <b>Council</b>            | the Council of the RCSLT  |
| <b>day</b>                | working day   |
| <b>documents</b>          | information recorded in writing or in any other form  |
| <b>HPC</b>                | Health Professions Council  |
| <b>member</b>             | member of the RCSLT   |
| <b>PDSB</b>               | Professional Development Standards Board of the RCSLT   |

**Panel Chair** the Chair of a Panel established by the PDSB to consider a complaint

**RCSLT** Royal College of Speech & Language Therapists

words importing the female gender shall include the male, and the singular shall include the plural, and vice versa;

any reference to publications shall mean those publications as they may have been subsequently revised and retitled.

### **Scope of these Regulations**

2. These Regulations concern all members of the RCSLT who are not registered with the HPC. This may be because they are not practising or because they practise outside the United Kingdom and are not registered with the HPC. Non-practising members include members struck off by the HPC who have been admitted as de-certified members of the RCSLT under *RCSLT Regulations governing members struck off by the HPC*.

### **Complaints handling policy**

3. *RCSLT Complaints handling policy* applies to complaints the subject of these Regulations and should be read together with these Regulations.

### **Complaints**

4. A complaint shall relate to one or more acts or omissions of a member not registered with the HPC, which, it is alleged, provide evidence of failure to adhere to the Code of Conduct or failure in professional competence on the part of the member complained against.

### **Complaints Manager**

5. The RCSLT shall designate a person, in these Regulations called the Complaints Manager, to manage the procedures for handling and considering complaints and perform the functions of the Complaints Manager under these Regulations.

6. The functions of the Complaints Manager may be performed by her or any person authorised by the RCSLT to act on her behalf.

### **Persons who may make complaints**

7. A complaint can be made by:
  - (a) the client of the member complained against;
  - (b) a person who is affected by or likely to be affected by the act or omission which is the subject of the complaint; or
  - (c) the Chief Executive.
8. A complaint may be made by a representative acting on behalf of a person specified in Regulation 7(a) or (b) where that person:
  - (a) has died;
  - (b) is a child;
  - (c) is unable by reason of physical or mental incapacity to make the complaint himself; or
  - (d) has requested the representative to act on his behalf.
9. In the case of a client or person affected who has died or who is incapable, the representative must be a relative or other person who, in the opinion of the Complaints Manager, had or has a sufficient interest in his welfare and is a suitable person to act as representative.
10. In the case of a child, the representative must be a parent, guardian or other adult person who has care of the child. Where the child is in the care of a local authority or a voluntary organisation, the representative must be authorised by the local authority or voluntary organisation.
11. If it is brought to the attention of the Chief Executive that any person other than those mentioned in Regulations 7(a), 7(b) and 8 is aggrieved or dissatisfied at the act or omission of a member subject to these Regulations, she may, if in her

opinion the grievance constitutes a complaint worthy of further investigation, herself make complaint of the matter to the Complaints Manager.

### **Notification of complaints**

12. Before making a formal complaint, complainants are encouraged to try to resolve the issues between them and the members complained against. They are encouraged to seek the advice and assistance offered by the RCSLT in so doing.
13. Formal complaints must be made to the Complaints Manager in writing. They must include a full statement clearly setting out the background and the facts which the complainant considers justify the complaint. The Complaints Manager will not accept the complaint unless it adequately particularises (a) the complaint, (b) the steps taken by the complainant to resolve the issues, if any, and (c) the advice and assistance obtained from the RCSLT before making the formal complaint, if any. Neither will the Complaints Manager accept the complaint unless she is satisfied that the complainant has been provided with a copy of these Regulations and of *RCSLT Complaints handling policy*.
14. Subject to Regulation 15, a complaint must be made within six months of the date on which the matter which is the subject of the complaint occurred or first came to the notice of the complainant.
15. Where a complaint is made after the expiry of the period specified in Regulation 14, the Complaints Manager may accept the complaint if, in her opinion, the complainant in the circumstances had good reasons for not making the complaint within this period and, notwithstanding the time elapsed, it is still possible to investigate the complaint effectively and fairly.
16. The Complaints Manager shall send to the complainant a written acknowledgement within five working days of the date on which the complaint was received.
17. The Complaints Manager shall send a copy of the complaint to the member complained against within five working days of its receipt, requiring the member complained against to respond fully in writing to the Complaints Manager within 20 working days.

## **Investigation**

18. The Complaints Manager shall investigate the complaint to the extent necessary and in the manner which appears to her most appropriate (a) to resolve it speedily and efficiently or (b) to determine whether it should be referred to the PDSB. The Complaints Manager may consult with advisers and assessors within or without the RCSLT and, in the case of complaints about members working outside the United Kingdom, she may work with employers, local professional organisations and regulators and consult local complaints procedures.
19. The Complaints Manager may, in any case where she considers it would be appropriate to do so and with the agreement of the complainant, make arrangements for conciliation, mediation or other assistance for the purpose of resolving the complaint.
20. The Complaints Manager shall take such steps as are reasonably practicable to keep the complainant and the member complained against informed about the progress of the investigation.

## **Determination whether to refer the complaint**

21. The Complaints Manager shall prepare a written determination, which summarises the nature and substance of the complaint, describes the investigation carried out by the Complaints Manager and states her conclusion as to whether or not the complaint should be referred to the PDSB.
22. The determination shall be sent to the complainant and the member complained against within forty working days beginning on the date on which the complaint was received, or, where that is not possible, as soon as reasonably practicable. If the Complaints Manager's decision is that the matter should be referred to the PDSB, a copy of the determination shall simultaneously be sent to the Chair of the PDSB.
23. In some cases, it may be apparent at the end of an investigation or mediation process that no breach of the Code of Conduct or failure in professional competence has been established, but the working practices of the member complained about may be in need of revision. In such a case, the Complaints Manager shall refer the case to the Chief Executive, with a recommendation that the RCSLT endeavour to establish the member's needs and support the member in improving her practice.

### **Hearing by a panel of the PDSB**

24. On receipt of a determination by the Complaints Manager referring a complaint to the PDSB, the Chair of the PDSB shall without delay constitute a panel to hear the complaint and determine, on a balance of probabilities, whether a breach of the Code of Conduct or failure in professional competence has occurred. The determination by the Complaints Manager shall not limit the power of the panel to seek further information about the facts or to consider further possible breaches of the Code of Conduct.

### **Constitution of panels**

25. A panel shall consist of three members. Panel members may be drawn from the PDSB, from Council or from members of the RCSLT with particularly relevant knowledge or experience. The Chair of the PDSB may appoint herself a panel member.
26. No person shall act as a member of a panel if she:
- (a) has had any material previous contact with either of the parties personally or professionally; or
  - (b) has taken any part in the previous consideration of any aspect of the complaint.
27. The members of the panel shall nominate one of their number to serve as Panel Chair.
28. Where any member of a panel is not present at a hearing, the panel shall not proceed to hear the case but shall instead adjourn the hearing.
29. If a panel member for any reason relinquishes her membership of the panel after the hearing has begun, the case shall proceed by way of a complete re-hearing before a newly constituted panel.

### **Notice of appointment of a panel**

30. As soon as practicable after a panel has been constituted, the Chief Executive shall issue an appointment notice specifying the persons who have been appointed as members of the panel. Copies of the appointment notice shall be

given to both parties. The appointment notice shall also invite both parties, if they wish, to submit further material for consideration by the panel.

31. Either party shall have the right upon receipt of the appointment notice to give notice to the office of the Chief Executive objecting to any one or more of the members of the panel, stating the grounds of the objection.
32. Upon receipt of such objection, the Chief Executive shall, if satisfied that it is properly made, request the Chair of the PDSB to exercise her default power of nomination. Notice of nomination of a substitute member of a panel shall be given by means of a substitute appointment notice, copies of which shall be given to the parties. Upon receipt of notification of such nomination either party shall have the same right of objection as is conferred by Regulation 31.

#### **Assessors to assist the panel**

33. The panel shall be assisted by an experienced legal assessor. It shall particularly be the duty of the legal assessor to assist the Panel Chair in making any order, giving any direction or exercising any discretion under these Regulations.
34. The Panel Chair may direct that in dealing with the matters before the panel, the panel shall have the assistance of one or more further assessors who appear to the Panel Chair to have knowledge or experience which would be relevant in assisting the panel to determine the case.
35. The legal assessor and any further assessor(s) shall not form part of the panel and it shall be for the panel alone to determine the issues in the matter.

#### **The procedural powers of the Panel Chair**

36. It is intended that panels should operate in a spirit of ensuring the swift and informal resolution of complaints, subject always to the overriding duty to give both parties a fair chance to present their cases fully. In this spirit the Panel Chair shall have power at any stage to make such orders as she thinks fit governing all matters necessary for the preparation of the case for hearing, including requiring further evidence from one or both parties.
37. If the Panel Chair believes it may be helpful, she shall have the power to arrange an initial procedural meeting (by telephone if practical and if the parties agree)

between the parties and the Panel Chair. Subsequent hearings shall be fixed by the panel as necessary.

38. Decisions of the Panel Chair on all procedural matters shall be final.

**The powers of the Panel Chair to deal with clear cases**

39. The Panel Chair shall have the power to reject cases without a hearing. This may be on one or more of the following grounds, or on any other grounds that the Panel Chair determines in the circumstances:

- (a) the panel has no jurisdiction to consider the complaint;
- (b) the determination of the Complaints Manager and supporting evidence is materially incomplete;
- (c) the complaint has been commenced too early or too late;
- (d) the facts alleged as a breach of the Code of Conduct or failure in professional competence could not, even if true and established, amount to a breach of the Code of Conduct or failure in professional competence;
- (e) the complaint is frivolous or vexatious;
- (f) in the reasonable opinion of the Panel Chair, the matter would more appropriately be dealt with by litigation or in another forum;
- (g) the complaint has been fully responded to by the member complained against and the convening of a panel would have no added value to either party;
- (h) the complainant has failed to comply with the obligations of the complainant under these Regulations.

40. Cases shall not be resolved in reliance on these powers without giving the parties an adequate opportunity to make written and (subject to a reasonable time limit) oral submissions to the panel.

## **Evidence**

41. Panels shall be guided, but not bound, by the strict rules of evidence. They shall therefore be able to consider any evidence which they believe relevant to the issues in the case and to give such evidence the weight which they consider appropriate.
42. Panels shall also have power to require parties to provide details of the evidence on which they rely (including statements or narratives from those involved) according to a fixed timetable, and the power to exclude such evidence where there is non-compliance with that timetable, or for other good reason.

## **Hearings**

43. Subject to the discretion of the Panel Chair to appoint otherwise in any particular case, hearings shall take place in London. The date and time shall be reasonably acceptable to both parties.
44. Other than in clear cases (Regulation 39), parties shall be entitled to an oral hearing, but this may be waived if both parties and the Panel Chair agree or if the Panel Chair concludes that it would serve no useful purpose.
45. The Panel Chair shall have the power to impose a reasonable limit on the length of oral submissions or statements appropriate to the case. It is the parties' responsibility, above all, to explain their cases fully in writing.
46. Either party may be accompanied at the hearing and may be represented by another person whether legally qualified or not and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights to which the parties are entitled.
47. Hearings shall be held in private unless the parties and the Panel Chair agree to the contrary.
48. If either party fails to appear at the hearing, the Panel Chair may, having regard to all circumstances including any explanation offered for the absence, direct that the panel proceed to hear and determine the case in the absence of the party in question, or give such directions with a view to the conduct of the proceedings as she may consider proper.

### **Postponement, adjournment and withdrawal of cases**

49. Where a party wishes to apply for a hearing to be postponed, she shall do so in writing to the office of the Chief Executive stating the reason for the application, and the matter shall be decided by the Panel Chair who shall have discretion to grant or refuse the application, whichever she thinks fit.
50. The Panel Chair may of her own motion or upon the application of either of the parties adjourn the hearing upon such terms as she considers proper.
51. The complainant may withdraw the complaint at any time before it is determined by giving notice of intention to withdraw to the office of the Chief Executive. Once the complainant has withdrawn the complaint, it may not be renewed.

### **Record of hearings**

52. Unless the Panel Chair in her discretion decides in any particular case that a record of the proceedings at an oral hearing should be made in any other manner, the Panel Chair shall take a hand-written note of the proceedings.
53. A copy of the Panel Chair's note of the proceedings (or of any other record of the proceedings made in the discretion of the Panel Chair) shall be made available to either party if the party requests one within 20 working days of the date of the hearing and reimburses the cost of supplying the same.

### **Panel decisions**

54. If the members of the panel are not unanimous as to their decision, the decision recorded shall be that decided by the majority.
55. The decision in each case shall:
  - (a) be recorded in writing by the Panel Chair and signed by her and each other member of the panel;
  - (b) include a statement of the reasons for the decision;
  - (c) have regard to the need to preserve the confidentiality of any evidence heard or of other confidential material supplied to the panel; and

- (d) conclude with a finding that the complaint is dismissed or upheld, in full or part, and state the consequences to follow from their conclusions:
- either (a) no further action;
- or (b) one of the following courses of action:
- (i) censure;
  - (ii) censure with permission to remain in membership on prescribed conditions;
  - (iii) suspension from membership with prescribed conditions and timescale for application for readmission;
  - (iv) removal from membership.

The prescribed conditions and timescale under (ii) and (iii) above shall be determined by the PDSB immediately after the hearing and shall form part of the panel decision. In any event no member may apply for or hold office in the RCSLT for three years after censure as described in (i) or (ii) above. Censures shall be removed from the record after such period as the PDSB may direct. Conditions and timescales for application for readmission may, on good cause being shown, be modified by the PDSB.

56. Panels shall endeavour to reach decisions which are consistent with past panel decision, but are not bound by any formal doctrine of precedent and are free to reconsider issues where appropriate.
57. The panel's decision shall be binding and final, subject to appeal (Regulation 63), within the scope of these Regulations, but shall not affect any rights, duties and remedies of the complainant which arise other than under these Regulations.
58. As soon as practicable after a case has been determined, a copy of the decision shall be given to the parties and the Chief Executive, who shall arrange for Council to make the order recommended by the panel at the next convenient meeting of the Council not earlier than 20 working days after the notification of the decision.

### **Correction of accidental errors in decision**

59. On written application by either party to the Chief Executive within 20 working days beginning with the date the decision was sent to the parties, accidental errors in the record of the decision shall be corrected by the Panel Chair, with notice to the parties and the Chief Executive.

### **Setting aside of decision on certain grounds**

60. On written application by either party to the Chief Executive within 20 working days beginning with the date the decision was sent to the parties, a decision may be set aside by the Panel Chair, in a case where it appears to her just to do so on the grounds that:
- (a) a document relating to the case was not sent to, or was not received at an appropriate time by, either party or was not received at an appropriate time by the panel; or
  - (b) either party or either party's representative was not present at a hearing; or
  - (c) the interests of justice so require.
61. Notice in writing of the decision reached on an application to set aside a panel decision shall be given to the parties as soon as practicable and the notice shall contain a statement giving the reasons for reaching the decision.

### **Curing of irregularities connected with complaints**

62. Any irregularity resulting from failure to comply with any provision of these Regulations before the conclusion of a hearing shall not of itself render the proceedings void, but the Panel Chair may, and shall if she considers that either party may have been prejudiced, take such steps as she thinks fit before the panel makes a decision in the case to cure the irregularity, whether by the amendment of any document, the giving of any notice, the taking of any step or otherwise.

## **Appeals**

63. A member who is suspended or removed from membership has the right of appeal to an Appeal Body empanelled by Council. An appeal must be lodged with the office of the Chief Executive within 20 working days of the decision of the panel being given to the parties. An appeal may only be made against the sanction imposed or on the grounds of an alleged breach of the formal procedure. It is not available for a second hearing of evidence.
64. Appeals shall be conducted in accordance with *RCSLT Regulations governing appeals from decisions of the Professional Committee*.

## **Publicity**

65. Decisions disposing of complaints may be published by the RCSLT, provided all information of a personal and private nature is deleted. Censure, suspension and removal from membership shall be published in the *Bulletin* of the RCSLT. The RCSLT shall consider what wider publicity to give to such sanctions in any particular case.

## **Restoration**

66. Applications for restoration to membership must be made in writing with reasons to the office of the Chief Executive. An application shall be considered at the next convenient meeting of Council. The applicant shall be informed of the decision of Council within ten days thereafter.

## **Expenses**

67. The RCSLT shall not be responsible for travel or any other expenses incurred by the complainant (other than the Chief Executive) or the member complained against in relation to any aspect of the complaints procedure.

## **Governing law and disputes**

68. These Regulations shall be governed by and construed in all respects in accordance with the laws of England.
69. If any question or difference shall arise with regard to the interpretation or application of these Regulations, or on any matter whatsoever concerning the

conduct of any proceedings under these Regulations, it shall be referred to and settled conclusively by the Chair of Council.