Professional Conduct Procedure

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Professional Conduct Procedure

This Procedure was made by the Board of Governors on 6 April 2018 pursuant to Article 4 (r) of BACP's Articles of Association and paragraph 5.1 of BACP's Standing Orders and is to be known as the Professional Conduct Procedure 2018. This Procedure will apply to all complaints received by the Association on or after 1 December 2018.

It is the responsibility of all Members and Complainants to ensure that they fully understand this Procedure and associated protocols. This Procedure forms an essential part of BACP's commitment to the protection of the public.

Members are expected to inform any clients, who indicate that they have a complaint or grievance, about the existence of this Procedure and any other applicable complaints or disciplinary procedures. If requested to do so, practitioners should inform their clients about how they may obtain further information concerning this Procedure, including via the BACP website.

Complainants, in making their complaints under this Procedure, agree to allow their complaint and other associated submissions and documents to be sent to the Member Complained Against and for their complaints to be processed in accordance with this Procedure.

Further information may be obtained by directly contacting the Professional Conduct team at BACP; alternatively, all documentation is available via the BACP (hereinafter referred to as the Association) website.

Copyright Information

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Definitions

In this Procedure (except where the contrary intention appears):

the Association means the British Association for Counselling and Psychotherapy

Member means the member/registrant who is the subject of a complaint and/or in relation to whom this procedure is being operated and includes a former Member falling within the jurisdiction of this Procedure by virtue of paragraph 1.6 a)

the IAC means the Investigation and Assessment Committee constituted under paragraph 3.1 of this Procedure

Independent Reviewer means a person appointed by the Registrar to review a decision pursuant to paragraphs 3.6 f), 3.7 and 6.3 of this Procedure

the Panel means the Professional Conduct Panel appointed pursuant to paragraph 4.1 of this Procedure

the Appeal Panel means the Panel appointed by the Registrar to hear an appeal pursuant to paragraph 6.3 b) of this Procedure

professional standards means the standards that should reasonably be expected of a Member having regard to the Ethical Framework and any other code or rules issued for the purpose of this Procedure by the Association from time to time concerning the standards expected of members

the *Ethical Framework* refers to the *Ethical Framework for the Counselling Professions* or the *Ethical Framework* in force at the time of the conduct, which is the subject of a complaint, and includes the relevant Codes of Ethics and Practice in force at the relevant time (if any)

therapeutic services means:

i. in respect of conduct which occurred on or after 1 July 2018, "therapeutically informed services" as defined in the BACP Ethical Framework for the Counselling Professions 2018;

ii. in respect of conduct, which occurred between 1 July 2016 and 30 June 2018, "therapeutically based services" as defined in the BACP Ethical Framework for the Counselling Professions 2015;

iii. in respect of conduct, which occurred before 1 July 2016, counselling/ psychotherapy related services.

professional misconduct means a failure to meet professional standards that is of sufficient seriousness that a period of suspension of membership or withdrawal of membership of the Association may be warranted

Disciplinary Proceedings Track means the disciplinary procedure where one or more allegations is of professional misconduct

Practice Review Process means the procedure for adjudicating complaints which the IAC determines do not include any allegations of professional misconduct

Case Manager means a person designated as such by the Association

Case Presenter means a person designated by the Registrar, pursuant to paragraph 4.2 b) of this Procedure, to present the complaint on the Disciplinary Proceedings Track on behalf of the Association

The Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

Section 1
Aims and application of the Professional Conduct Procedure

1.1 Aims

a. The Professional Conduct Procedure provides Complainants with an open and transparent avenue of complaint where complaints are made against Members of the Association.

b. The Association aims to act in the public interest to uphold standards of professional conduct and practice so as to maintain public confidence.

c. The Association aims to protect members of the public, the name and reputation of the Association and the professions referred to within the Ethical Framework.

d. These procedures are intended to promote the handling of complaints in an efficient, effective and proportionate way.

1.2 Resolution with the Member

Before submitting a complaint to the Association, the Complainant is expected to attempt to resolve the issue with the Individual or Organisational Member Complained Against and details of any attempt at resolution should be included within and form part of the complaint. If resolution with the Member is not possible/feasible or is considered inappropriate by the Complainant in the particular circumstances of the case, the Complainant should provide a written explanation within their complaint as to why this is the case.

1.3 The subject of a complaint

A complaint may be made in respect of:

a. the provision of therapeutic services; or

b. conduct which is materially relevant to a Member's fitness to provide such services.

1.4 Who can make a complaint?

a. A complaint can be made by:

i. A person who has received or is receiving services provided by a Member of the Association; or

ii. A person acting on behalf of another person who has received or is receiving a service from a Member of the Association, where that person's written permission has been obtained and where the Association is satisfied it would be unreasonable to expect that person to bring the complaint on their own behalf (an explanation is required in writing as to the nature of the inability); or

iii. A legal guardian or other appropriately authorised adult, accepted by the Association as having authority to act on behalf of a minor, a minor being under the age of 16. Where a minor reaches the age of 16 during the course of a complaint which is being processed, their consent to continue with the complaint will be required by the Association; or

iv. A person accepted by the Association as acting on behalf of an adult lacking mental capacity (within the meaning of the Mental Capacity Act 2005) to bring a complaint in their own right, where that lack of mental capacity has been satisfactorily evidenced; or

v. the Association.

b. The Investigation and Assessment Committee (IAC) may, at the request of the Registrar, make a determination on whether the requirements of paragraph 1.4 a) i)-v) of the Professional Conduct Procedure are satisfied.

1.5 Complaints brought by the Association

If, in the opinion of the Registrar, the conduct of a Member is such that it would be in the public interest for the conduct of that Member to form the basis of a complaint, the Association may prepare and submit a complaint pursuant to this Procedure.

1.6 Who can a complaint be made against?

a. Complaints made against Members

i. Complaints may only be made in relation to conduct which takes place whilst a person is a Member, but consideration of the complaint may include consideration of the whole period of the professional relationship where this is relevant.

ii. Subject to sub-paragraph i) above, complaints may be made against a former Member if they were a Member on 20 September 2013 or thereafter.

b. Complaints about Organisational Members

Complaints may be made in relation to an Organisational Member where it is alleged that:

i. The Organisational Member has failed to comply with professional standards or any conditions on membership imposed by or under any Standing Orders of the Association in force at the relevant time;

ii. Any person providing therapeutic services on behalf of the organisation has failed to comply with professional standards;

iii. The Organisational Member has failed to put in place suitable systems, arrangements and procedures (including, but not limited to, those in relation to training, supervision and complaints handling) to ensure that any person who provides therapeutic services on behalf of the organisation complies with professional standards.

1.7 Time limits

a. A complaint must be submitted within three years from the date of the most recent conduct giving rise to the complaint.

b. In the case of a client who was a minor at the time of conduct giving rise to the complaint, the three-year period referred to in paragraph 1.7 b) will run from the date of the client's 16th birthday.

c. The IAC may extend the time limit for submitting a complaint where the IAC considers that it is in the public interest to do so, having regard to the factors set out in protocol PR5.

1.8 Repeated complaints

The Association will not consider any complaints where the conduct complained of has previously been substantially considered by the Association under the Professional Conduct Procedure, or any other of its disciplinary procedures, or suitability for membership procedures, unless there is substantial and sufficient new evidence, which was not reasonably available to the Complainant at the time of the previous complaint, as laid out in the associated protocol PR1, such that the IAC or the Panel consider that it is reasonable and in the public interest that the case should be reconsidered.

Section 2
Making a complaint and initial processing

2.1 Submitting a complaint

The Complainant must:

a. Submit the complaint signed and in writing to the Registrar.

b. Confirm that the complaint relates to a service as defined in paragraph 1.3 a).

c. Identify clearly the Individual or Organisational Member complained against.

d. Where a complaint is about more than one Member, submit a separate complaint in respect of each relevant Member.

e. Provide a detailed account of the facts giving rise to the complaint(s) together with the dates when the event(s) occurred.

f. (To the extent relied upon) refer to relevant professional standards.

g. Provide any witness statement/s (signed by the witness) which are relied upon.

h. If the complaint is not within the time limit applied by these procedures, set out the reasons why it should nevertheless be considered.

i. Confirm that resolution has been attempted in accordance with paragraph 1.2 (or explain why not).

j. Explicitly consent to the use of the Complainant's personal information for the purpose of operating these procedures (and where necessary provide evidence of consent by any relevant third parties to the use of their personal information for the purpose of operating these procedures).

A complaint not satisfying the above conditions will not usually be accepted or processed under these procedures.

2.2 Notification

If the Registrar considers that:

a. the complaint:

i. has (where appropriate) been raised with the Member in accordance with paragraph 1.2;

ii. relates to the matters referred to in paragraph 1.3;

iii. is made by a Complainant falling within paragraph 1.4 or the Association in accordance with paragraph 1.5;

iv. is against a Member or former Member in accordance with paragraph 1.6;

v. is brought within the time limits specified in paragraph 1.7 (or provides reasons under paragraph 2.1 h);

vi. is not a repeated complaint within paragraph 1.8; and

b. the Complainant has adequately complied with the obligations set out in paragraph 2.1;

The Case Manager will give written notice of the complaint to the Member and provide the Member with a copy of the complaint and supporting materials within a reasonable time.

2.3 Preliminary investigation

a. The Case Manager will assess the complaint.

b. The Case Manager may request further information from the Complainant and/or Member to assist them in assessing the complaint. Any information requested should be submitted promptly, but in any event, within any time limit specified by the Case Manager.

c. The Case Manager may also give the Member the opportunity to submit a preliminary response with their observations within 21 days of the written notice specified under paragraph 2.2 being provided to the Member.

d. If the Member does not respond promptly, or at all, to a request for information under paragraph 2.3 b) without a reasonable explanation, this may be taken into account by the IAC should the complaint be referred to it pursuant to paragraph 2.8.

2.4 Case Manager's Threshold Test

a. Having assessed the complaint and any further information or preliminary response submitted in accordance with paragraphs 2.3 b) or c) the Case Manager will consider whether the complaint meets the threshold test.

b. A complaint meets the threshold test where it is a complaint which the Case Manager reasonably considers:

i. the facts alleged and evidenced by the Complainant could, if proved, amount to a failure by the Member to meet professional standards; and

ii. is not vexatious and/or frivolous in accordance with protocol PR2.

2.5 Case Manager outcomes

a. Where the Case Manager considers that a complaint does not meet the threshold test, they will inform the Complainant and the Member, and the complaint will be closed.

b. Where the Case Manager considers that a complaint meets the threshold test, they will consider whether a Letter of Advice is the appropriate outcome, with reference to paragraph 2.7, and either:

i. recommend to the Registrar that the complaint should be disposed of by way of a Letter of Advice in accordance with protocol PR3; or

ii. refer the matter to the IAC pursuant to paragraph 2.8.

2.6 Appeal against Case Manager outcomes

a. There is no appeal against a Case Manager's decision under paragraph 2.4, however, the Registrar may reconsider a Case Manager's decision and substitute their own decision where there is compelling new evidence which was not available earlier.

b. There is no appeal against the Case Manager's recommendation to the Registrar to resolve the complaint by way of a Letter of Advice in accordance with paragraph 2.7.

2.7 Letter of Advice

a. A Letter of Advice can be used where there may have been a minor or technical breach of professional standards and where the criteria set in protocol PR3 are met.

b. The Case Manager will follow the process in protocol PR3 and, where appropriate, make a recommendation to the Registrar. If the Registrar agrees, the Registrar will issue the Letter of Advice. The Complainant will also be advised of the outcome.

c. A Letter of Advice is not a finding of misconduct, however, whilst no further action is taken, the decision is recorded and may be taken into account if future allegations or concerns are received.

2.8 Referral to the Investigation and Assessment Committee

Unless the complaint is dealt with by way of a Letter of Advice under paragraph 2.7 or is closed under paragraph 2.5 a), the Case Manager will refer it to the IAC.

Section 3
The Investigation and Assessment Committee

3.1 Constitution of the IAC Panel

a. The Association will appoint Investigation and Assessment Committee members.

b. The Investigation and Assessment Committee will act in accordance with the provisions of this Procedure and the Terms of Reference at protocol PR5.

c. On receipt of a referral pursuant to paragraph 2.8, the Registrar will designate an IAC Panel to consider the complaint.

d. An IAC Panel will consist of not less than three persons from the Association's pool of IAC Panel members, including at least one lay person and at least one Member of the Association.

e. One member of the IAC Panel will be designated by the Registrar as Chair.

3.2 Consideration by the Investigation and Assessment Committee

a. The IAC may request such further information or make such further investigations as it considers appropriate, including interviewing the Complainant and/or the Member in accordance with protocol PR6. The IAC may consider all of the information available to it whether or not the Complainant has specifically referred to it as a matter of complaint.

b. The IAC will invite both the Complainant and the Member to make such written representation as it considers is required to ensure a fair consideration of the complaint.

c. The IAC will consider the matter on the papers without the attendance of the parties unless it considers that fairness requires an interview.

The IAC will decide whether:

i. The proceedings test is met; or

ii. The complaint should be dismissed.

d. The proceedings test is met if in the opinion of the IAC:

i. the facts alleged would (if proven) amount to a failure to meet professional standards; and

ii. there is a realistic prospect that facts justifying a finding of such a failure will be proved; and

iii. that it is in the public interest for the complaint to be dealt with by way of the Disciplinary Proceedings Track or the Practice Review Process.

e. The decision of the IAC will be on a majority basis.

f. If the IAC decides that the complaint should be dismissed, the IAC will notify the parties and provide reasons for its decision.

g. If the IAC decides that the proceedings test is met, it will set out the formal allegations in relation to which it has found that the proceedings test is met and specify in relation to each allegation, whether it is an allegation of professional misconduct.

h. Where the IAC decides that one or more of the allegations is an allegation of professional misconduct, the case will be allocated to the Disciplinary Proceedings Track (see paragraph 5.7).

i. Where there are no allegations of professional misconduct, the IAC will allocate the case to the practice review process (see paragraph 5.8).

j. The IAC may set standard case management directions.

3.3 Formal allegations

a. The Case Manager will notify the Member and the Complainant of the formal allegations in writing, as formulated by the IAC in accordance with paragraph 3.2 g). The Member must formally respond to the allegations in writing within 28 days of notification or such further time as the Chair of the IAC may allow.

b. Where the Member does not provide a formal response in accordance with paragraph 3.3 a):

i. this may be taken into account by any determining Panel; and

ii. the IAC may, before referring the matter for a Hearing pursuant to paragraph 3.5, add an additional allegation that the Member has failed to co-operate with BACP and/or observe the Professional Conduct Procedure.

c. The Member may, in their response, request that the complaint be dealt with by way of consensual disposal (see paragraph 3.4). If such a request is not made at this point, any subsequent request may be rejected by reason of delay.

d. The Complainant will be provided with a copy of the Member's formal response to the allegations.

3.4 Consensual Disposal

a. On receipt of a request, the IAC will consider whether or not to deal with the complaint by means of consensual disposal in accordance with protocol PR7. The IAC may, where it considers it fair and appropriate, invite representations from the Complainant in relation to a proposed consensual disposal.

b. If the complaint is dealt with by means of consensual disposal, there will be no formal Hearing of the complaint. However, the agreement will be deemed to be a disciplinary decision and notified to the Complainant.

c. The agreement will be published in accordance with paragraph 8 a) of this Procedure.

d. Any material breach of the terms of the consensual disposal agreement by the Member will be referred to a Sanction Panel and may result in termination of membership/registration. Such a decision will be published in accordance with section 8 of this Procedure.

e. Where a sanction has been imposed by the IAC as part of the agreement relating to consensual disposal, it will be monitored by a Sanction Panel (see section 7).

f. Where membership of the Association is terminated as a result of consensual disposal, readmission shall be at the discretion of the Association, but in any event no readmission shall be permitted within five years of the removal.

g. If the IAC decides not to accept a request for consensual disposal, the complaint will be referred to the Professional Conduct Panel.

3.5 Referral to Professional Conduct Panel

a. If no request is made for consensual disposal, or such a request is made but following the procedure in protocol PR7 no outcome is agreed, the allegations will be referred by the IAC either for a Hearing on the Disciplinary Proceedings Track or for resolution under the Practice Hearing Process (see paragraph 3.2 h) and i).

b. At any time prior to a referral under paragraph 3.5 a) (or if a complaint is referred back to the IAC pursuant to paragraph 4.11), the Panel may reconsider in accordance with paragraph 3.2 whether the proceedings test is met, whether an allegation is an allegation of professional misconduct, and the allocation of a complaint to either the Disciplinary Proceedings Track or the Practice Review Process.

3.6 Interim Suspension

a. The IAC may, in accordance with protocol PR9, decide to suspend a Member from membership of the Association pending the outcome of an investigation and/or disciplinary proceedings ("Interim Suspension") where it considers this is necessary for the protection of the public or otherwise in the public interest.

b. The duration of an Interim Suspension imposed under paragraph 3.6 a) cannot exceed 18 months.

c. In making any decision in relation to an Interim Suspension, the IAC will have regard to the particular circumstances of the case.

d. The Member will be notified of any decision to impose an Interim Suspension.

e. The Member may request a review of the decision to impose an Interim Suspension by written notice to the Registrar within 28 days of being notified of the decision.

f. The review will be considered by the Independent Reviewer, in accordance with protocol PR8, and their decision notified to the Member. The Member may require that the review take place at a public Hearing.

g. If the Interim Suspension is maintained following a review, or if a request for a review is not received in accordance with paragraph 3.6 e), notice of the suspension will be placed on the Association's website and may be published in the next issue of the Association's journal in accordance with the Association's Publication Policy.

h. A suspended Member may apply in writing for their suspension to be reviewed where the circumstances, since the suspension was imposed or last reviewed, have materially changed.

3.7 Review of the decision of the Investigation and Assessment Committee

a. If a complaint is dismissed in its entirety, a Complainant may make a written request within 28 days of notification of the decision for the decision to be reviewed. The Complainant may request a review on the following grounds:

i. The decision was clearly made against the weight of evidence; or

ii. There is new evidence that was not available at the time of the IAC's decision (subject to the conditions laid down in Protocol PR4); or

iii. There has been a clear error of fact or failure of procedure which was material to the decision made.

b. The Complainant must set out in the request a sufficient statement of the grounds for the review and provide any supporting documentary evidence.

c. Reviews will be carried out by an Independent Reviewer. The role of the Independent Reviewer is to consider the complaint that was assessed by the IAC. A review cannot deal with a new complaint or additional allegations.

d. The ground(s) of review, together with the original submissions and any new evidence, will be considered by an Independent Reviewer in accordance with the Independent Review Procedure as set out in protocol PR8. The Independent Reviewer's decision will be final. A copy of the Independent Reviewer's decision will be provided to the Complainant and the Member.

e. The Independent Reviewer may either confirm the decision of the IAC under review or refer the case back to a freshly constituted IAC for reconsideration and, in both cases, shall provide written reasons.

f. Upon a reconsideration, the IAC shall consider the complaint afresh. Following its decision, no further review is available.

Section 4
Complaints referred to a Panel

4.1 Constitution of the Professional Conduct Panel

a. The Association will appoint Professional Conduct Panel members ("the Panel") to hear complaints.

b. The Panel will consist of not less than three persons from the Association's pool of Professional Conduct Panel members, including at least one lay person and at least one member of the Association.

c. The Registrar will appoint one member of the Panel to be the Chair.

d. The Registrar will appoint a Clerk to the Panel, who may be an employee of the Association or other suitable person.

e. If, at any time during the proceedings, a member of the Panel or the Clerk is unable or unwilling to continue acting in that capacity, the Registrar may appoint a replacement.

f. The Registrar may (having sought representations from the parties) direct that a case allocated to the Practice Review Process should be heard by a single member of the Association's pool of Professional Conduct Panel members appointed by the Registrar (and references in the Procedure to the Panel shall be construed accordingly).

4.2 Parties

Disciplinary Proceedings Track

a. Where a complaint is allocated by the IAC to the Disciplinary Proceedings Track pursuant to paragraph 3.2 h), unless at any time the IAC or Panel directs otherwise:

i. the parties to a complaint are the Association and the Member;

ii. the complaint and any appeal will be presented by the Association;

iii. the Complainant may attend the Hearing subject to any decision of the Panel under paragraph 5.2 d).

b. The Registrar will designate a person or persons as Case Presenter.

Practice Review Process

c. Where a complaint is allocated by the IAC to the Practice Review Process pursuant to paragraph 3.2 i):

i. the parties to a complaint allocated to the Practice Review Process are the Complainant and the Member;

ii. the Complainant may nominate a representative or other person (such as a friend or family member) to support and/or assist them in presenting the complaint;

iii. the Registrar shall, at the request of the Complainant, nominate a "professional supporter" to support and assist the Complainant, the reasonable costs of which shall be met by the Association;

iv. a professional supporter, nominated by the Association, pursuant to paragraph 4.2 c) iii), need not be legally qualified and their role is not to provide the Complainant with legal advice;

v. the Complainant and their representative/nominated person may attend the Hearing.

4.3 Duties of the parties

a. When presenting a complaint on the Disciplinary Proceedings Track, the Case Presenter must be fair and objective.

b. In all cases the parties must use their best endeavours to ensure that all relevant evidence is put before the Panel and must not mislead the Panel.

c. It is the duty of all parties to assist the Panel.

4.4 Co-operation with the Procedure

a. It is the duty of the parties to comply with this Procedure (including the protocols) and decisions made or directions issued pursuant to this Procedure. Any failure to co-operate with the operation of this Procedure may result in the termination of the complaint, or a new complaint by the Association, pursuant to paragraph 1.5 concerning a Member's failure to co-operate.

b. The Member's duty to co-operate in paragraph 4.4 a) includes a duty to supply such records and information as the IAC or the Panel directs concerning their professional relationship with a client to whom a complaint relates (including seeking such consent as is necessary from the client concerned).

c. The Panel may draw such inference as it considers appropriate in respect of a party's failure to comply with paragraph 4.4 a).

4.5 The Procedure

a. Subject to the provisions of this Procedure, the Panel (or Appeal Panel as the case may be) may regulate its own procedure.

b. The Panel shall have regard to any relevant guidance which may be issued by the Association from time to time.

4.6 Case Management Directions

a. In conjunction with a referral, the IAC may send the parties a set of standard case management directions.

b. At any time thereafter, the Panel or a person designated as its Chair, may make such case management directions as they consider necessary to ensure the just, expeditious and effective management of the complaint.

c. Directions may be made which promote the just and efficient disposal of the case and can include, but are not limited to:

i. extending or shortening the time for compliance with any deadline;

ii. holding a Hearing and receiving evidence by telephone, video or by any other method of remote oral communication;

iii. directing a separate Hearing of a preliminary issue; and

iv. dismissing all or part of a complaint after a decision on a preliminary issue.

4.7 Joinder

At its discretion, and in line with the associated protocol PR10, the Panel may consider or hear a complaint or complaints against two or more Members at the same time, or multiple complaints against the same Member, except where it would not be in the interests of justice to do so.

4.8 Disclosure

In respect of a complaint allocated to the Disciplinary Proceedings Track:

a. The Case Presenter must disclose to the Member any documents in the Association's possession or control which might reasonably be considered capable of undermining the Association's case and/or assisting the Member's case.

b. On an application by a party for disclosure of specific documents or classes of documents, the Panel may direct a party to disclose such documents as the Panel considers necessary to ensure that the complaint can be disposed of fairly.

c. Where the Case Presenter fails to comply with an order made under paragraph 4.8 b), the Panel may stay the proceedings indefinitely if it considers that, in the absence of the disclosure ordered and after considering alternative directions, the complaint cannot be disposed of fairly.

4.9 Evidence

a. The rules of evidence will not apply to proceedings under this Procedure.

b. The Panel may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil or criminal proceedings, subject to any relevant statutory requirements and the requirements of relevance and fairness.

c. Where evidence is not submitted in accordance with case management directions issued pursuant to paragraph 4.6, a party may apply to the Panel to admit late evidence in accordance with protocol PR4.

4.10 Expert evidence

a. The Panel in a Disciplinary Proceedings Track case shall be entitled to instruct an independent expert, in any discipline, to prepare a report for the use of the Panel on any issue that the Panel considers necessary to enable the proceedings to be disposed of justly.

b. Where an expert's report is obtained by the Panel, the Clerk will serve a copy on the parties within a reasonable time before the Hearing.

c. The cost of the Panel instructing an independent expert shall be borne by the Association.

d. A party in a Disciplinary Proceedings Track case wishing to adduce expert evidence must seek the permission of the Panel, in accordance with protocol PR11, and bear the cost of obtaining such evidence.

e. If the Panel gives permission to a party to adduce expert evidence, the Panel will give directions requiring that party to serve any expert evidence on which they rely on the Panel and the other party.

f. Where expert evidence is served in accordance with paragraph 4.10 b) and/or e), the Panel will give directions providing that any party may give notice within a specified period that they require the independent expert to attend the Hearing to give oral evidence and answer questions from the parties or the Panel.

g. The Panel may require an expert witness to attend the Hearing to give oral evidence and answer questions from the parties or the Panel.

h. Expert evidence shall not be adduced where the complaint is being adjudicated under the Practice Review Process.

4.11 Re-allocation of complaints to Disciplinary Proceedings Track

a. If at any time the Panel considers that a complaint allocated to the Practice Review Process may raise matters which, if proved, may amount to professional misconduct, the Panel may refer the matter back to the IAC.

b. Where a complaint is referred to the IAC pursuant to paragraph 4.11 a), the IAC will reconsider the complaint in accordance with paragraph 3.2.

c. If the IAC decides in accordance with paragraph 4.11 b) that any of the allegations are allegations of professional misconduct, the complaint will be allocated to the Disciplinary Proceedings Track and referred to a fresh Panel in accordance with paragraph 4.1 for consideration afresh.

d. A complaint may not be referred back to the IAC pursuant to this section a second time.

4.12 Amendment of allegations

At any stage before making its findings of fact, and having considered any representations by the parties as to the appropriateness of doing so, the Panel may permit or direct the amendment of the allegations.

4.13 Adjournments

The Panel may, on the application of either party or of its own initiative, and having regard to protocol PR12, adjourn a Hearing if it considers that to do so is in the interests of justice.

Section 5
The Hearing

5.1 Application

Except where specific provision is made below and subject to paragraph 4.5 above, this section applies to all complaints which are subject to this Procedure (whether being heard on the Disciplinary Proceedings Track or being resolved under the Practice Review Process) and to any Appeal Hearing.

5.2 Venue of Hearing

a. Hearings will be held in a venue in the vicinity of the Association's headquarters, unless the Registrar directs otherwise in accordance with protocol PR13.

Disciplinary Proceedings Track

b. Disciplinary Proceedings Track Hearings will generally be heard in private.

c. The Panel may, in a particular case, order that a first instance Hearing on the Disciplinary Proceedings Track should be held in public, where the Panel considers that a private Hearing would be contrary to public interest.

d. On the application of either party, the Panel may direct that a witness (including the Complainant) who is yet to give evidence may be excluded from some or all of the Hearing where the Panel considers this is in the interests of justice.

e. Any Hearing before the Independent Reviewer pursuant to paragraph 6.3 d) or Appeal Hearing will take place in public, unless the Member concerned waives their right to a public Hearing, in which case the Hearing may be held in private at the discretion of the Independent Reviewer or Appeal Panel as the case may be.

Practice Review Process

f. Practice Review Hearings and Practice Review Appeals will be held in private and will be recorded.

5.3 Basis of findings

a. Findings in all cases are on the basis of a balance of probabilities, which means that the Panel must be satisfied that it is more likely than not that the material facts alleged are true.

b. Where a case is being presented on the Disciplinary Proceedings Track, the burden is on the Association to prove the allegations.

c. The Panel must determine whether the established facts amount to a failure to meet professional standards or, where alleged, professional misconduct.

5.4 Consideration on the papers

With the consent of the parties, cases allocated to the Practice Review Process may, at the Panel's discretion, be considered by the Panel on the papers without the attendance of the parties.

5.5 Presence of a representative

a. The Member may be accompanied by a representative who may support and/or speak on their behalf.

b. Where a complaint is allocated to the Practice Review Process, the Complainant may be accompanied by a representative or support person who may support and/or speak on their behalf (whether or not the support person is nominated by the Association).

c. Where a party has a representative/support person, they must provide details to the Registrar at least 28 days prior to the date fixed for the Hearing (or if they are instructed/nominated within 28 days of the Hearing, as soon as reasonably practicable after they are instructed/nominated).

5.6 Attendance by witnesses

a. A witness can only be called if that witness has supplied a signed statement in writing, verified by a statement of truth.

b. A party wishing to call a witness to attend a Hearing must notify the Association who will inform the Panel and (where applicable) the other party, in accordance with case management directions, if any.

c. If the case is allocated to the Practice Review Process, a party must seek the permission of the Panel to call witnesses other than the Member and the Complainant.

d. Witnesses may be questioned by the Panel and by both parties in relation to their evidence.

e. Where a case is allocated to the Practice Review Process, the Panel may call witnesses to the Hearing, notwithstanding that they have not been called by a party.

f. Where the Panel admits a late witness statement in accordance with paragraph 4.9 c), the Panel may give directions requiring a party wishing to call the witness to provide a copy of the witness statement to the other party and the Panel within a specified period.

g. Where an Appeal Panel considers it necessary in the interests of justice to hear evidence from a witness, whose evidence was relied upon by a party or the Panel in the proceedings to which the appeal relates, the Appeal Panel may call that witness to the Appeal Hearing.

h. The parties to an appeal will not be entitled to call a witness to the Appeal Hearing.

i. The Panel may direct that the identity of the witness, or any other person having a connection with the proceedings, should not be revealed in public.

j. The Panel may, having received representations from the parties, make such directions as it considers necessary to enable it to receive evidence from a vulnerable witness, including (but not limited to) the use of video links, pre-recorded evidence, interpreters and the hearing of evidence in private.

k. For the purposes of paragraph 5.6 j) the Panel may treat the following as vulnerable witnesses:

i. any witness under the age of 18;

ii. any witness with a mental disorder;

iii. any witness who is significantly impaired in relation to intelligence or social functioning (for example by reason of a learning disability or diagnosed mental health condition);

iv. any witness with physical disabilities who requires assistance to give evidence;

v. any witness in respect of a complaint where one or more of the allegations against the Member are of a sexual nature and the witness was the alleged victim; or

vi. any witness who complains of intimidation.

l. Where one or more of the allegations against the Member is sexual in nature, a Member may not directly cross-examine a witness who is the alleged victim in relation to those allegations. If the Member is represented by a legally qualified representative, their representative may cross-examine a witness who is the alleged victim. Otherwise the questioning of the witness shall by undertaken by the Panel and/or such other person as the Panel considers appropriate. The Panel may direct the Member to submit questions in writing in advance, which the Panel may, if appropriate (but need not), ask on the Member's behalf.

5.7 Procedure at a Disciplinary Proceedings Track Hearing

Format

a. Where a complaint is allocated to the Disciplinary Proceedings Track, the Chair will confirm the format and timetable for the Hearing having regard to any relevant guidance issued by the Association from time to time.

Witnesses

b. Where a witness (including a party) gives evidence at the Hearing:

i. the witness will be required to take an oath, or to affirm, before giving evidence;

ii. the statement of each witness will be taken as read as their evidence in chief;

iii. subject to paragraph 5.6 j) – l), the witness may be cross-examined by the opposing party.

c. The Case Presenter may (subject to paragraph 5.6) call witnesses, including the Complainant, on whose evidence they rely.

d. The Member may (subject to paragraph 5.6) call witnesses, on whose evidence they rely.

e. Where the parties or the Panel require any expert witness to attend to give oral evidence (having given the requisite notice in accordance with paragraph 4.10), they will be called.

Conclusion of the Hearing

a. The Panel will deliberate in private in order to make findings on the fact and determine whether the allegations are found proven.

b. The Case Manager will notify the parties of the Panel's decision in accordance with paragraph 5.13.

c. If one or more of the allegations is found proven, the Panel will invite the Member to make submissions in writing within a specified period, concerning the appropriate sanction.

d. The Panel will decide what (if any) sanction is appropriate and may do so on the papers without requiring the attendance of the parties, or may, where the Panel considers it appropriate, list a further Hearing for that purpose.

e. The Case Manager will notify the parties of the Panel's decision in accordance with paragraph 5.13.

5.8 Procedure at a Practice Review Hearing

Format

a. Where a complaint is allocated to the Practice Review Process, the Chair will confirm the format and timetable for the Hearing having regard to any relevant guidance issued by the Association from time to time.

Consensual resolution

b. If, at any point during a Practice Review Hearing (prior to the Panel retiring to deliberate in accordance with paragraph 5.8 m) both parties indicate that they would like to discuss a consensual resolution of the complaint, the Panel may suspend the Hearing to enable such a discussion to take place.

c. If, following a discussion concerning consensual resolution the parties agree a proposal for resolution of the complaint, they may refer their proposal to the Panel.

d. The Panel will consider any agreed proposal for resolution referred to it by the parties and may decide to resolve the complaint on the basis proposed, unless the Panel considers that the proposed resolution is contrary to the public interest.

Opening of the Hearing

e. The Panel will act as an inquisitor and may ask questions of both the Member and the Complainant.

f. The Complainant will be able to give their own personal account of the complaint and the events underlying the allegations in an opening statement.

g. The Member will be able to respond to the allegations and offer any information concerning remediation, if appropriate.

h. The Member and Complainant will also have the opportunity to ask questions of the other. If requested by the Complainant, any questions will be communicated by the Panel.

Witnesses

i. Where permission has been granted to one or more of the parties to call other witnesses in accordance with paragraph 5.6 c) the party calling those witnesses (or their representative) will ask questions of them first, then the Panel, followed by the other party.

j. The Panel may question any witness it has called pursuant to paragraph 5.6 e), who may then be questioned by the parties.

k. The Panel may seek such further clarification or ask such further questions as it considers appropriate of the parties or witnesses.

Conclusion of the Hearing

l. The Panel will invite the parties to make any closing submissions.

m. The Panel will deliberate in private in order to make findings on the facts and determine whether the allegations are found proved.

n. If one or more of the allegations is found proved, the Panel will determine the appropriate sanction (if any) in accordance with paragraph 5.12 b).

o. The Case Manager will notify the parties of the Panel's decision in accordance with paragraph 5.13.

Practice Review Paper Procedure

p. Where the Panel considers the complaint on the papers pursuant to paragraph 5.4, the Panel will review all the documents and evidence submitted by the parties and either:

i. make findings on the facts and determine whether the allegations are found proved; or

ii. if the Panel considers that it has insufficient information to determine the complaint, direct that a party provides further information and/or submissions in respect of a particular issue or issues, whether in writing or at a Hearing fixed for that purpose (the format of which shall be at the discretion of the Panel).

q. If the Panel determines that one or more allegations is found proved, the Panel will determine the appropriate sanction (if any) in accordance with paragraph 5.12 b).

r. The Case Manager will notify the parties of the Panel's decision in accordance with paragraph 5.13.

5.9 Failure to attend the Hearing

a. Where a party fails or refuses to attend a Professional Conduct Hearing or Appeal Hearing, the Panel (or Appeal Panel where applicable) may decide to:

i. proceed with the Hearing in the absence of one or both parties; or

ii. adjourn the Hearing to a new date; or

iii. dismiss the allegations (or appeal).

b. The decision will be notified to both parties.

5.10 Expenses

The Association is not responsible for travel or any other expenses incurred either by the Complainant or the Member or any representative in connection with any stage of the complaint.

However, where a witness, not nominated by the parties, is called by the Chair of a Panel, the Association will reimburse reasonable travel expenses upon the production of valid receipts and completion of an expense claim form, in accordance with the Association's expenses policy current at the time.

5.11 Costs

The Panel has no power to order one party to pay another party's costs of the proceedings.

5.12 Sanction

a. Where a case is allocated to the Disciplinary Proceedings Track and one or more of the allegations is found proved, the Panel may impose one or more of the following sanctions:

i. A requirement to send a written apology to a relevant recipient of therapeutic services provided by the Member (whether or not that recipient is the Complainant) by a specific date;

ii. A requirement to demonstrate specific change/improvement in practice by a specific date;

iii. A requirement to undertake specific training by a specific date;

iv. Suspension of membership, for a specified period not exceeding 18 months, or until specified conditions have been met;

v. Withdrawal of membership.

b. Where a complaint is resolved under the Practice Review Process and one or more of the allegations is found proved, the Panel may impose the sanctions at paragraph 5.12 a) i) – iii).

c. In deciding an appropriate sanction, the Panel (or Appeal Panel as the case may be) must have regard to the Guidance on Sanctions in protocol PR14 and may, in accordance with the relevant protocol PR15, take into account any sanctions previously imposed on the Member under this Procedure or previous Association conduct procedures.

d. The Panel (or Appeal Panel as the case may be) may decide to impose no sanction, notwithstanding that one or more the allegations is found proved.

5.13 Notification of decision

a. The decision of the Panel will be notified to the parties in writing within 28 days of the Hearing.

b. Any subsequent decision of the Panel in relation to sanctions will be notified to the parties in writing within 14 days of the Panel's decision.

c. If no appeal has been lodged within 28 days of notification of the complete findings and decision of the Panel (including as to sanction) in accordance with paragraph 6.2, the decision of the Panel, including details of any sanction, will be published in accordance with section 8 of this Procedure.

Section 6
Appeals

6.1 Who may appeal?

Disciplinary Proceedings Hearing

a. Where a complaint is allocated to the Disciplinary Proceedings Track, the Member or the Association may appeal against the Panel's decision on the ground(s) detailed in paragraph 6.4.

b. The Complainant may make representations to the Association concerning an appeal on the ground(s) detailed in paragraph 6.4 within 14 days of notification of the complete findings and decision of the Panel (including as to sanction) and the Association shall have regard to any representations when deciding whether to appeal under paragraph 6.1 a).

Practice Review Hearing

c. Where a complaint is resolved under the Practice Review Process, the Member or the Complainant may appeal against the Panel's decision on the ground(s) detailed in paragraph 6.4.

6.2 Requirements and timescale for an appeal

a. An appeal must be in writing, specify the ground(s) on which it is made and be accompanied by any supporting documentation.

b. An appeal must be served upon the Registrar within 28 days of notification of the complete findings and decision of the Panel (including as to sanction).

6.3 Preliminary consideration of an appeal

a. The ground(s) for appeal will be considered by the Independent Reviewer who will decide, in accordance with protocol PR8, whether the appeal should proceed to an Appeal Hearing and notify the Registrar of their decision and reasons in writing.

b. If an appeal is accepted under paragraph 6.3 a), a written notice to that effect shall be given to the parties by the Registrar and the case will proceed to an Appeal Hearing, where the appeal will be considered by an Appeal Panel.

c. If the appeal is not accepted, the Registrar will give written notice to the parties accordingly.

d. Where a complaint is allocated to the Disciplinary Proceedings Track, the Member may, on receipt of a written notice pursuant to paragraph 6.3 c) rejecting the appeal, request within 14 days, that the grounds of appeal are reconsidered at an oral Hearing before the Independent Reviewer.

e. A Hearing convened pursuant to paragraph 6.3 d) will be held in public unless the Member concerned waives his right to a public Hearing, in which case the Hearing may be in private.

f. In respect of a complaint resolved under the Practice Review Process, the Independent Reviewer may determine the appeal and:

i. exercise any of the powers of the Appeal Panel under paragraph 6.6 e); or

ii. remit the complaint to a freshly constituted Professional Conduct Panel for a re-hearing.

g. If the Independent Reviewer proposes to determine the appeal pursuant to paragraph 6.3 f), they will give notice to the parties of their intention to do so and invite representations.

6.4 Grounds of Appeal

An appeal may be accepted by the Independent Reviewer if there is a realistic prospect that an appeal would succeed on any of the following grounds:

a. The findings were clearly wrong;

b. The sanction is disproportionate to the findings and decision of the Professional Conduct Panel and is unjust in all the circumstances;

c. a procedural error had a material effect on the findings and decision;

d. A manifest error of fact was material to the decision made;

e. There is new evidence, which for good reason was not available at the time of the Professional Conduct Hearing, subject to the conditions laid down in the relevant protocol PR4.

6.5 Suspension of sanctions

Any sanction imposed by a Panel will not take effect until the time period for appeal has expired or, where an appeal is served within that time period, until the final determination of the appeal by the Independent Reviewer or Appeal Panel as the case may be:

a. If the Independent Reviewer rejects the appeal on the papers, the sanction will not take effect until the end of the time period for requesting a reconsideration pursuant to paragraph 6.3 d);

b. If a request for reconsideration is made pursuant to paragraph 6.3 d) the sanction will not take effect until the Independent Reviewer notifies the relevant party of their decision following the reconsideration;

c. If, following a reconsideration pursuant to paragraph 6.3 d) the Independent Reviewer accepts the appeal, the sanction will not take effect until the Appeal Panel notifies the parties of its decision.

6.6 Powers of the Appeal Panel

a. The Appeal Panel may review all aspects of a Panel's decision, including its findings as a whole, its findings on a specific aspect or allegation, or the sanction imposed by the Panel or the Association. The Appeal Panel has discretion over which element(s) of the complaint to hear and may review aspects of a complaint or sanction which have not been raised by the Member.

b. When the appeal is an appeal against a sanction, the Appeal Panel may review all of the Panel's findings to determine whether the sanction is necessary and proportionate.

c. The Appeal Panel will only consider the allegations which were part of the original complaint. The Appeal Panel will not hear new allegations.

d. The Panel may make any direction necessary to ensure the smooth running of the appeals process. This may include (without limit):

i. directing the Appellant to limit their representations and argument to those aspects of the appeal in relation to which grounds to appeal have been established; or

ii. directing that the Appeal Hearing proceeds on the basis of the evidence considered by the Panel without the recalling of witnesses.

e. On hearing an appeal, the Appeal Panel may:

i. reject or allow the whole appeal or any part of it;

ii. uphold the Panel's decision or any part of it;

iii. substitute the whole or any part of the Panel's decision with its own; and

iv. uphold the Panel's sanction, substitute its own sanction or order that any sanction be lifted.

f. If the Appeal Panel (or the Independent Reviewer in accordance with paragraph 6.3 d) decides to make its own decision to impose a sanction, it shall only impose a sanction which the Professional Conduct Panel that heard the complaint could have imposed pursuant to paragraphs 5.12 a) or b).

g. Any decision made by the Appeal Panel must be communicated to the Complainant and the Member in writing. The decision must make clear the Panel's reasons for its decision.

Section 7
Compliance with sanctions

7.1 Sanction Panel

a. A Sanction Panel will consist of not less than three persons from the Association's pool of Professional Conduct Panel members, including at least one lay person and at least one member of the Association, to monitor the discharge of sanctions and consider evidence of compliance.

b. A Panel Member shall not be disqualified from sitting on a Sanction Panel because they sat on the Professional Conduct Panel which determined the complaint that the Sanction Panel is considering.

7.2 Compliance with sanctions

a. This paragraph applies where a Panel has imposed a sanction on a Member pursuant to paragraphs 3.4 d) and e) and 5.12 a) and b), which requires specified action to be taken by the Member and/or provides for suspension of the Member's membership until specified conditions have been met.

b. The Sanction Panel will decide if the requirements of the sanction have been fulfilled and whether (where applicable) the conditions for lifting a suspension have been satisfied.

c. The Member will be notified in writing of any decision made.

d. Where a suspension is lifted, a sanction compliance notice will be published in accordance with the Association's Publication Policy.

7.3 Failure or refusal to comply with sanction

a. Where a Member fails to comply with a sanction, the Sanction Panel may:

i. having provided an opportunity for the Member to make representations, decide to extend the time for complying with the sanction if the Sanction Panel considers there is good reason why the Member has not complied, and it is not contrary to the public interest to do so; or

ii. having given notice to the Member that it is considering suspension or withdrawal of membership and provided a fair opportunity in the circumstances for the Member to make representations, withdraw or suspend the Member's membership.

b. Where a Member's membership has lapsed, or they have resigned from membership prior to their complying with a sanction, the Sanction Panel may nonetheless apply the provisions of paragraph 7.3 a) and where appropriate make a finding that had the Member's membership not lapsed, or they had not resigned, the Panel would have withdrawn or suspended the Member's membership.

Section 8
Publication

a. In accordance with the Association's Publication Policy, where:

i. a complaint is upheld in whole or in part; or

ii. a complaint has been disposed of by means of consensual disposal.

the decision of the Professional Conduct Panel (or Appeal Panel) or details of the consensual disposal (as the case may be), together with details of any sanction, will be published on the Association's website and may also be published in its journal in such detail as the Registrar deems appropriate in light of the findings.

b. The Association may, in accordance with its Publication Policy, publish the details of any breach of any sanction or a consensual disposal agreement, including any decision pursuant to paragraph 7.3 a) ii) to suspend or withdraw a Member's membership or decision pursuant to paragraph 7.3 b) that had the Member's membership not lapsed, or they had not resigned, the Panel would have withdrawn or suspended the Member's membership.

c. Any notification that the Association is entitled to publish on its website or in its journal may be published elsewhere by the Association at its discretion.

d. The Association may, once a decision has been published, notify such third parties as the Registrar deems appropriate, including but not limited to other professional bodies and/or agencies/organisations concerning the complaints and to distribute any findings upheld against a Member.

Section 9
Miscellaneous

9.1 Dual accountability

a. Where a complaint has been submitted about a Member and substantially the same complaint has also been submitted to another professional body of which they are also a Member, the Registrar will, having consulted the other professional body, decide whether:

i. the Association will process the complaint; or

ii. the Association will stay its complaints process until the outcome of the complaints process of the other professional body is finalised.

b. Where a complaint is stayed pursuant to paragraph 9.1 a) ii), on the final determination or discontinuance of the complaint by the other professional body, BACP will consider whether the complaint will be processed through its Professional Conduct Procedure subject to Standard 10 (e) of the Professional Standards Authority for Accredited Registers, which states:

Standard 10 (e) requires such a body [an accredited register] to "recognise decisions regarding professional conduct made by regulatory bodies and other registers accredited by the Professional Standards Authority when deciding whether a person should be admitted, kept on or removed from their register"

9.2 Legal proceedings/police investigations

The IAC or the Panel may, on the application of either party or of its own initiative, defer consideration of a complaint or stay proceedings under this Procedure where:

a. there are criminal or civil proceedings (or the possibility of such proceedings) relating to the same or substantially the same underlying facts as a complaint under this Procedure; and

b. the IAC/Panel reasonably considers that there is a genuine risk that the continuation of this Procedure may impede or prevent justice being done in relation to those proceedings, such that there is a risk of injustice if the Procedure is not stayed for such period as is appropriate.

9.3. Staying the Procedure

The IAC or the Panel may, on the application of either party or of its own initiative, defer consideration of a complaint or stay proceedings under this Procedure at any time if it considers it necessary in the interests of justice.

9.4 Records

a. The Association's Data Protection Policy as to the keeping of records and the publication of decisions, as modified from time to time, will apply. Any published decision (see Publication at Section 8) or notice will be retained on file by the Registrar and remain available to the public in accordance with the BACP Publications Policy.

b. Where the outcome of a complaint has resulted in withdrawal of membership/registration of the Association, the outcome decision/decisions will be kept in accordance with the Association's retention policy. Such records will be considered by the Association, under its admission procedures, in any re-application for membership/registration of the Association in line with the relevant protocol.

c. Information concerning any proceedings under these procedures may be provided by the Association to the Professional Standards Authority where it considers it appropriate to do so.

9.5 Recordings and transcripts

a. The Association will make audio recordings of:

i. Hearings on the Disciplinary Proceedings Track and under the Practice Review Process; and

ii. interviews conducted under the Professional Conduct Procedure.

b. Copies of the recordings (and any transcripts thereof) may be made available to the parties to the complaint upon request and will not be made available to any third party without the permission of the Registrar save that:

i. the Association may allow a third-party service provider access to the recordings on confidential terms for the purpose of preparing transcripts;

ii. recordings or transcripts may be provided to the Professional Standards Authority on confidential terms for its statutory purposes.

9.6 Delegation

The functions of the Registrar under these procedures may be exercised by an individual nominated by the Registrar, whether or not they are an employee of the Association.

9.7 Lapsed membership/registration

Failure to renew membership/registration by a Member during the course of a complaint will not terminate a complaint under this Procedure, including the enforcement of any sanctions outstanding.

A Member's resignation from membership/registration of the Association will not terminate nor invalidate the processing and/or hearing of a complaint by the Association.

9.8 Declaration of interest

Any Panellist appointed by BACP has a duty to declare any interest which may reasonably be considered to affect their impartiality or be perceived so to do.

9.9 Status of protocols

In the event of any conflict between the terms of this Procedure and any Protocol to this Procedure, the terms of this Procedure shall take precedence.

9.10 Deemed Date of Service

Any notice required to be served by the Association, the Registrar or Clerk by post or email shall be deemed to be served on the day following posting or emailing.

All notices (including email) will be sent to the last known address.

9.11 Guidance

The Association may from time to time issue such guidance as it considers appropriate to assist Members and Complainants or potential Complainants in understanding and operating this Procedure.

Any such guidance will not have interpretive effect in relation to this Procedure.

In the case of any inconsistency between any guidance and this Procedure, the provisions of this Procedure will prevail.