

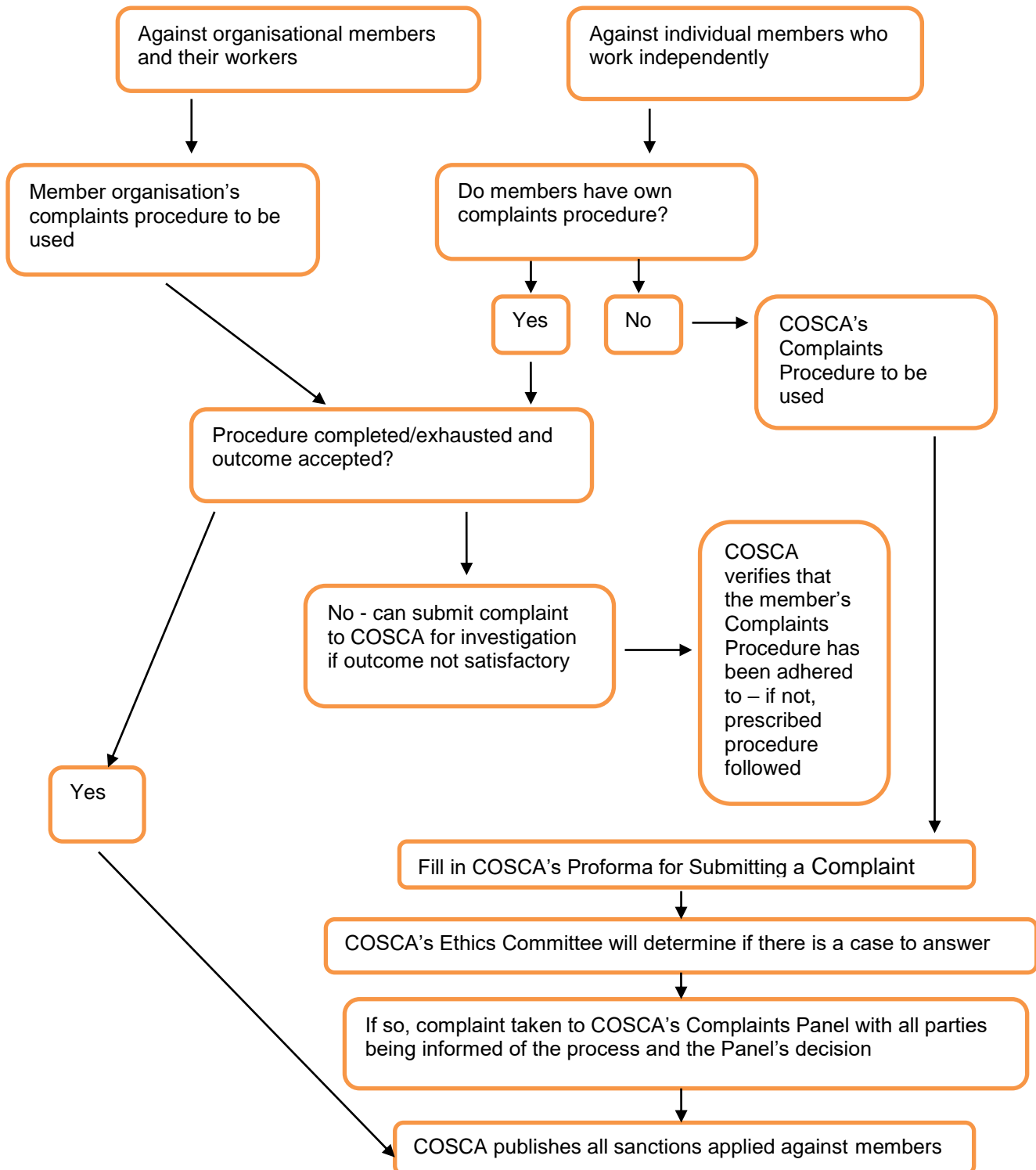


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COSCA COMPLAINTS PROCEDURE

HOW TO MAKE A COMPLAINT ABOUT A MEMBER OF COSCA

(COSCA Complaints Procedure – www.cosca.org.uk – Complaints)





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COSCA COMPLAINTS PROCEDURE

1. Information about the Complaints Procedure and Process

- 1.1 This Complaints Procedure provides a means of examining a complaint against an individual or organisational member of COSCA (Counselling & Psychotherapy in Scotland). Its aim is to determine whether a breach of the COSCA Statement of Ethics and Code of Practice has taken place (see Appendix 1), and whether any action should be taken by COSCA under this Procedure.
- 1.2 In addition to this complaints procedure, COSCA has a system for dealing with information about members that is known to COSCA and is not examined under the complaints, appeals or grievance procedures. This system provides COSCA with the discretion to act promptly to protect the public where needed and when it becomes aware of a possible breach of its standards including the COSCA Statement of Ethics and Code of Practice. See COSCA's website under complaints: System for Dealing with Information Known to COSCA about Members.
- 1.3 An interim suspension order is an order to annotate the name of a Registrant on the COSCA Register of Counsellors and Psychotherapists with the information that an interim suspension order has been imposed for a specific period of time. When such an order is imposed on a Registrant, they cannot practise counselling or psychotherapy under their membership of COSCA for the above specified period. For more information on an interim suspension order, please see Appendix 2: Interim Suspension Order.
- 1.4 In the interests of transparency and fairness, all members of COSCA are required to pass information about COSCA's Complaints Procedure onto their clients and/or those to whom they provide counselling related services including training and supervision.

- 1.5 A complaint can be brought by a member of the public or a current member of COSCA, seeking, receiving or having received counselling, psychotherapy or counselling/counselling skills training provided by a COSCA member, and other services which pertain to counselling. Anonymous complaints cannot be brought against a member because they cannot be dealt with fairly under this complaints procedure. Complaints against former workers of member organisation who were individual members of COSCA at the time of the allegation and who are still members will be dealt with under the system for dealing with information about members that is known to COSCA and is not examined under the complaints, appeals or grievance procedures. An appropriately authorised third party e.g. personal tutors, social workers, and legal guardians can bring a complaint on behalf of a minor and/or an adult lacking capacity. The complainant must submit the complaint to COSCA's Chief Executive, within three years of the alleged breach of the COSCA Statement of Ethics and Code of Practice. COSCA will consider investigating complaints older than three years if such investigations are in the public interest, such as in alleged cases of serious breaches. The Ethics Committee will determine whether it is in the public interest for it to be investigated.
- 1.6 Third parties are those who have not personally received services related to counselling and psychotherapy from a COSCA member.
- 1.7 Third parties who have themselves been directly and adversely affected by the services of a COSCA member can submit a complaint against members of COSCA in certain circumstances. As part of the complaint, the onus is on third parties to evidence the above direct and adverse affect on them.
- 1.8 Complaints submitted by third parties will be dealt with under the same procedure for dealing with other complaints against members of COSCA i.e. the COSCA Complaints Procedure.
- 1.9 COSCA will only consider complaints from third parties that allege that the service provided by the COSCA member was a) a breach of the COSCA Statement of Ethics and Code of Practice and/or illegal and b) that it had a direct and adverse affect on the third party submitting the complaint.
- 1.10 In the event that COSCA investigates a complaint by a third party, COSCA will not disclose any information to the third party complainant that is confidential between the COSCA member and the recipient of the service(s) from that COSCA member unless it has the authority from the above parties to do so. The third party complainant will, therefore, only receive a limited amount of information about the investigation into the complaint.
- 1.11 Complaints will not be accepted from third parties who are acting on behalf of complainants or COSCA members involved in a complaint e.g. professionals such as solicitors, accountants, claims management companies, friends, colleagues, consumer advisers, councillors, and elected members of parliament.
- 1.12 Every complaint received will be treated in confidence.

- 1.13 The procedure is designed to be respectful and supportive to both the complainant and the COSCA member complained against.
- 1.14 Normally, the complaint must be made in writing using the Proforma for Submitting a Complaint to COSCA, be signed and dated, and be marked 'Private and Confidential'. Where this is not possible for the complainant, the Chief Executive will make special arrangements for the submission of the complaint (see also Complaint Procedure: General points no 5.9).
- 1.15 COSCA does not require individual members to have their own complaints procedure regardless of whether they work independently or for an organisational member. When individual members work independently and choose to have their own complaints procedure, then complaints should first be submitted under the individual member's complaints procedure. In the event that the complainant remains dissatisfied, the complaint can be submitted to COSCA for investigation. The internal complaints procedure of the individual member is required to be exhausted before such a complaint can be submitted to COSCA. A time limit of one month from the time the complainant was informed about the outcome of his/her appeal under the member's complaints procedure is allowed for the above complaint to be submitted to COSCA.
- 1.16 Where the complaint is against an individual member working independently and that individual member does not have a complaints procedure, the complaint should be submitted direct to COSCA. COSCA will make known to the party complained against the identity of the complainant.
- 1.17 All organisational members of COSCA require to have their own complaints procedure.
- 1.18 Where the complaint is against an organisational member or an individual member who works for an organisational member, complaints must be submitted to the organisational member. Where the complaint is against an individual non-member working for an organisational member, complaints must be submitted to the organisational member and not to COSCA. In the event that the complainant remains dissatisfied, the complaint can be submitted to COSCA for investigation. The internal complaints procedure of the individual member is required to be exhausted before such a complaint can be submitted to COSCA. A time limit of one month from the time the complainant was informed about the outcome of his/her appeal under the member's complaints procedure is allowed for the above complaint to be submitted to COSCA.
- 1.19 To ensure consistency and robustness of the complaints procedures used by organisational members and individual members with their own complaints procedures (referred to as "above members" below), the above members, when applying for membership are required to submit their complaints procedures for review by COSCA. To be awarded membership, all complaints procedures submitted need to meet COSCA's standards for complaints procedures. COSCA's Standards for Complaints Procedures are on COSCA's website under complaints: COSCA's Standards for Complaints Procedure. In

accordance with the above Standards, the complaints procedures of the above members are required to be managed by an appropriate individual and heard by an independent panel.

- 1.20 In addition, if the above members are selected under COSCA's annual audit of organisational and individual members, they are required to submit their complaints procedures for review and assessment by COSCA under the above Standards for Complaints Procedures.
- 1.21 COSCA can act as a first point of contact to those considering a complaint against the above members to provide advice and, at COSCA's discretion, to offer to submit the complaint to the above members to be dealt with under its own complaints procedure.
- 1.22 The above members are required to provide evidence, on request, to COSCA that their own complaints procedures have been exhausted in respect of particular complaints.
- 1.23 Where the complaint is against the above members and their own complaints procedure has been exhausted, and the complainant remains dissatisfied, the role of COSCA is to verify:
- that the above members' procedures have been followed and that there has not been a breach of the COSCA Statement of Ethics and Code of Practice in the course of investigating the complaint
 - that the outcome of their procedures is not unlawful, unreasonable, unjust, oppressive, discriminatory or otherwise wrong
 - that the above outcome is based on policies and practices that are not unreasonable, unjust, oppressive or discriminatory
 - that the above outcome was explained properly to the complainant.
- 1.24 COSCA reserves the right to review the substance of a complaint in addition to examining the process followed or the complaints procedure used by the above members to consider a complaint.
- 1.25 COSCA also reserves the right to re-hear or re-investigate the complaint previously heard or investigated by the above members.
- 1.26 If the COSCA investigation into the complaint finds that the above members have not followed procedures and/or that the outcome of the above member's procedures is deficient and/or erroneous as described under 2.3 above, COSCA can require that the above members review their decisions related to the complaint under investigation within a period of 3 months. If COSCA requires the above members to carry out the above review, COSCA can require the above members to:
- process with speed and efficiency the decision(s) of their own investigation into the complaint
 - change or reconsider their decisions
 - give the complainant an explanation, or a better explanation, for the above members' actions and decisions

- provide an apology to the complainant
 - consider reducing, waiving or writing off a debt or sanction
 - consider paying the complainant some form of financial compensation
- 1.27 If the above investigation into the complaint finds that the time limits set by the above members for the investigation of complaints were not adhered to, COSCA can require the above members and the complainant to explain the reasons for this. In the event that the above members are deemed by COSCA to be responsible, or partially responsible for the time limits being exceeded, COSCA can require them to provide evidence to COSCA within a period of three months that robust measures are in place to prevent the above members exceeding their investigation time limits again.
- 1.28 All the above members who have their own complaints procedure are required to submit to COSCA immediate reports at the conclusion of their complaints proceedings related to counselling and psychotherapy, whether upheld or not upheld, and notify COSCA of any sanctions applied. This will reduce the potential conflict of interest in the above members being unwilling to criticise and recommend a sanction against themselves. The proforma for submitting the above reports is on COSCA's website under complaints - Report to COSCA at the Conclusion of Complaints Proceedings.
- 1.29 On receipt of the above report, the Chief Executive will check whether any sanctions were applied to an individual member of COSCA. If so, the Chief Executive will:
- inform the individual member to whom the sanction is applied about the notification of the sanction to COSCA
 - enter the sanction on COSCA's internal membership database and the COSCA Register of Counsellors and Psychotherapists under the individual member's name, stating which member applied the sanction
 - inform the individual member complained against that they must comply with the sanction and provide evidence to the member that applied the sanction and to COSCA of having done so
 - inform the member who applied the sanction to notify COSCA regarding compliance by the member complained against
 - remove the sanction from COSCA's internal membership database and the COSCA Register if compliance is evidenced to COSCA.
- 1.30 Notifications of sanctions will also be submitted to the Ethics Committee for consideration.
- 1.31 On receipt of notifications, the Ethics Committee checks the sanctions applied by organisational members and individual members who have used their own complaints procedures.
- 1.32 The Ethics Committee then determines the appropriateness of the sanction applied and the time limits set for it to be fulfilled. In reaching its determination the Ethics Committee will review whether the public interest was protected.

- 1.33 If the Ethics Committee determines that the sanction imposed and/or recommended does not protect the public interest then it has the powers to require the above members to re-consider the sanction imposed and/or recommended.
- 1.34 Depending on the nature, seriousness, impact and implication of the complaint that led to the sanction, the Ethics Committee will also consider whether to:
- suspend membership of COSCA and make entries of this on the Register and internal membership database
 - remove the member from COSCA membership, make an entry of this on the internal membership database, and publish removal on the Sanctions Notices on COSCA's Register of Counsellors and Psychotherapist if the individual is a registrant.
- 1.35 COSCA maintains a sanctions database. This is used to monitor the time limits and fulfilment of sanctions applied by organisational members and individuals who have their own complaints procedure. The Chief Executive confirms to the Ethics Committee whether sanctions have been fulfilled and arranges for the member's details to be updated on all relevant systems as required. This ensures that only organisations and individuals who are entitled to be members are appropriately listed.
- 1.36 COSCA will notify where relevant an organisational member in the event that COSCA applies sanctions to an individual(s) working for that organisational member.
- 1.37 Where the complaint is against an employer/organisation that is not an organisational member of COSCA but involves an individual member of COSCA who is employed by, engaged as a volunteer with, or works on a self-employed basis for the above employer/organisation, COSCA has no powers to proceed with the complaint against the above organisation.
- Even in the event of the exhaustion of the complaints procedure of the above employer/organisation, its refusal to implement its own procedure, or the absence of a complaints procedure, COSCA has no powers to proceed with the complaint.
- 1.38 Where the complaint is made against an individual member of COSCA who is employed by, volunteers for, or works on a self-employed basis for an organisation that is not an organisational member of COSCA, then COSCA can consider the above complaint. The complaint should be submitted direct to COSCA and COSCA can proceed with the complaint. The role of COSCA then is to determine the extent of the responsibility of the individual member of COSCA in the complaint as opposed to that of the non-member organisation.

2. Making a Complaint

- 2.1 “As stated in Section 1, the complainant must submit the complaint to COSCA’s Chief Executive, within three years of the alleged breach of the COSCA Statement of Ethics and Code of Practice, although COSCA will consider investigating complaints older than three years as outlined above in Paragraph 1.5. If the alleged breach took place more than 3 years ago, and the Ethics Committee decided that it was not in the public interest to investigate it, the Complaints Procedure will not proceed and the complainant will be notified of this.

In particular, the complainant must complete the Proforma for Submitting a Complaint to COSCA, and identify therein:

- the member(s) complained against
 - whether the complaint is against an individual member or an organisational member
 - the part(s) of COSCA’s Statement of Ethics and Code of Practice which have been breached
 - specific grounds for complaint.
 - how the above part(s) of the Statement have been breached (maximum 1000 words).
- 2.2 When it is not possible for the complainant to submit the complaint in writing, COSCA offers assistance for the complaint to be made –see paragraph 1.13 above and paragraph 5.9 below.
- 2.3 On receipt of a complaint, the Chief Executive will:
- check that in the event of the complaint being against an organisational member, against an individual member who has their own complaints procedure or against an individual member who is employed by, engaged as a volunteer with, or works on a self-employed basis for an employer/organisation that is not a member of COSCA, that the relevant complaints procedure has been exhausted and that evidence of this and the outcome of this process has been submitted. If it is not evident from the complainant’s letter to COSCA that the relevant complaints procedure has been exhausted, the Chief Executive can write to the complainant in the first instance requesting written documentary evidence that the organisation’s internal complaints procedure has been exhausted.
 - If the complainant confirms in writing that the organisation complained against failed to complete its own internal complaints procedure, the Chief Executive will forward a summary of the complaint to the organisation.
 - acknowledge in writing receipt of the complaint to the complainant

- verify that the party complained against was a member of COSCA at the time of the alleged breach

2.4 On completion of the above tasks, the Chief Executive will:

- send to the COSCA member complained against a summary of the complaint
- notify both parties that the complaint will be submitted to a meeting of COSCA's Ethics Committee which will decide whether there is a case to answer and/or if further evidence is required from the parties involved

3. COSCA Ethics Committee

3.1 COSCA may decide to hear a complaint against a member when another organisation is involved in a similar process arising out of the same substantive matter.

3.2 On completion of the tasks laid down in paragraph 2.3, the Chief Executive will submit the complaint to a meeting of COSCA's Ethics Committee scheduled to take place at least 5 weeks following the completion of the above tasks. The Chief Executive or his/her nominee will attend to ensure an accurate record of the meeting is made.

3.3 The Chief Executive will give all parties 5 weeks notice concerning the date of the Ethics Committee. This allows all parties to have 2 weeks to submit further evidence. Any further evidence, to be signed and dated, needs to be submitted to this Ethics Committee, 21 days in advance of the date of its meeting. This further evidence should be sent direct to the Chief Executive. Late submissions will not be accepted. Evidence submitted from all parties involved in the complaint, including third parties, will be acknowledged by COSCA. The Chief Executive may take legal and/or other specialist advice on these papers.

3.4 The Ethics Committee will:

- decide whether to take legal and/or other specialist advice on any complaint submitted to COSCA and can request further evidence to be submitted by all parties involved in the complaint
- consider all relevant issues raised by each party to ensure an accurate understanding of each party's viewpoint
- decide on any mitigating circumstances or defence raised by the member complained against for each of the alleged breaches in the COSCA Statement of Ethics and Code of Practice
- determine whether any legal action on the matter of the complaint is under way, pending or intended

- decide whether there is a case to answer and/or if further evidence is required from the parties involved
 - decide whether to terminate the procedure or proceed the complaint to the Complaints Panel Stage – see section 4. Complaints Panel Process below. In the event of the procedure being terminated at this stage, all parties will be told the general grounds for the termination of the procedure
 - in the event of an alleged breach of the law (civil or criminal), the Ethics Committee will decide whether to pass information regarding the complaint to the appropriate legal authorities, the Police and Social Services
 - The Ethics Committee decides whether there is a prima facie (on the face of it) case to answer. It does this by considering whether there is sufficient corroborating evidence (preferably first hand evidence) to support the complaint for it to be processed to the Complaints Panel stage for investigation. The Ethics Committee will not process complaints to the Complaints Panel stage that it deems to be malicious or vexatious.
- 3.5 The Chief Executive will produce a written report describing the outcome of the meeting of the Ethics Committee regarding the complaint.
- 3.6 The complainant and the member complained against will normally be notified of the Ethic Committee’s decision within 28 days of its meeting.
- 3.7 In the event of the Ethics Committee deciding that there is a case to be answered, it can recommend that a resolution should be sought between the parties involved. It can offer information at this stage about access to alternative dispute resolution/mediation services, the cost of which would be met by the parties involved.
- 3.7.1 The aim of alternative dispute resolution/mediation is to highlight any mis-understandings or mis-construings with a view to agreement being reached.
- 3.7.2 The alternative dispute resolution/mediation process will begin with the intention of facilitating the resolution of the complaint without prejudice to either party.
- 3.7.3 Notification of the resolution or lack of agreement will be passed to the Chair of the Ethics Committee.
- 3.7.4 If the parties choose not to enter into alternative dispute resolution/mediation or if there is no resolution following it, the complaint is taken to the Complaints Panel stage.

4. Complaints Panel Process

- 4.1 In the event of the complaint proceeding to the Complaints Panel Stage, the Chief Executive will invite the Chair of the Ethics Committee to appoint a

Complaints Panel consisting of three panellists, including at least one lay person. The Complaints Panel will examine a complaint, establish the facts of the allegations, determine any resultant harm/impairment, and, if appropriate, apply sanctions.

The Complaints Panel will elect a Chair from its members, with the Chair having the casting vote regarding decisions made by the Complaints Panel. Panel members will be impartial and independent of the complainant and the member complained against and may or may not be COSCA members, and may include the Chair of the Ethics Committee. COSCA reserves the right to appoint lay and non-members with appropriate expertise to the Complaints Panel.

- 4.2 All Panel members, whether members of COSCA or not, will be obliged to adhere to the principle of confidentiality in COSCA's Statement of Ethics and Code of Practice.
- 4.3 The Chair of the Complaints Panel will set the date of the Complaints Panel. The Chief Executive will notify both parties that they have the right to attend the Complaints Panel meeting to submit their own evidence on the date designated by the Chair of the Complaints Panel for the meeting to be held. The Complaints Panel will hear separately and not together the evidence from either party. The complainant and the party or parties complained against and/or their representatives will not attend the Complaints Panel meeting at the same time.
- 4.4 The Chief Executive will notify both parties that the Complaints Panel has the right to request the attendance at the Complaints Panel meeting of all parties involved in the complaint. If any of the parties requested by the Complaints Panel to attend the above meeting are unable to do so, they can nominate someone else to represent them. If a party cannot attend the above meeting, decides not to attend, and/or does not nominate someone else to represent them, then the Complaints Panel will proceed in their absence. In this event, any written evidence that has been previously submitted by this party will be used at the Complaints Panel hearing.
- 4.5 In all cases, parties who are requested to attend need to notify the Chief Executive of their attendance within two weeks of the date on the letter requesting their attendance. When attending a Complaints Panel all parties invited to attend have a right to be accompanied and/or represented by a supportive person of their choice at this meeting, information on whom require to be given to the Chief Executive within the two week period.
- 4.6 The Chief Executive will advise both parties to the complaint of the composition of the Complaints Panel. Any conflict of interest or other matter that may cast doubt on the impartiality of the Panel must be declared immediately to the Chief Executive. This information will be passed to the Chair of the Ethics Committee who will decide whether replacement Panel member(s) should be appointed.

- 4.7 The Chair of the Complaints Panel may request the attendance of witnesses at the Complaints Panel for the purpose of clarifying their written submissions or specialists relevant to the examination of the complaint.
- 4.8 Where there are several complaints against the same member they may be heard at the same Complaints Panel. However, the Panel will go ahead regardless of the attendance of the above parties or their representatives. The Chief Executive will provide all parties concerned with written confirmation of the arrangements for the Panel.
- 4.9 In setting the date for the Complaints Panel, the Chair of the Complaints Panel will ensure that all parties have a minimum of 5 weeks notice concerning the date of the Complaints Panel. Any further evidence, to be signed and dated, needs to be submitted to the Complaints Panel 21 days in advance of the date of its meeting. This allows all parties to have at least 2 weeks to submit further evidence. This further evidence should be sent direct to the Chief Executive. Late submissions will not be accepted unless pre-arranged with the Chief Executive. The Chief Executive may take legal and/or other specialist advice on these papers.
- 4.10 All parties must submit written notification to the Chief Executive of their attendance and/or that of their representative at the Complaints Panel meeting, whether this is requested or not by the Complaints Panel, within two weeks of the date of the letter informing them of the date of the Complaints Panel meeting. If any party does not notify the Chief Executive of their attendance and/or that of their representative within two weeks of the date of the above letter, they will not be allowed to attend the Complaints Panel meeting and it will proceed based on any written evidence previously submitted.
- 4.11 Because of time constraints and the requirement that evidence be submitted and distributed to panellists in advance of the Complaints Panel, the only new evidence to be admitted at the Meeting will be short oral or written submissions at the discretion of the Chair of the Complaints Panel.
- 4.12 Chief Executive or his/her nominee will attend to ensure that a report of the decision(s) made at the meeting is produced. Such reports will be kept confidential to the Complaints Panel and the Chair of the Ethics Committee. The reports will be kept in the COSCA office in accord with Data Protection legislation for a period of five years after completion of the case, or for a longer period as may be deemed necessary by the Chair of the Ethics Committee.
- 4.13 Meetings of the Complaints Panel will not be open to the public to attend.
- 4.14 The Complaints Panel will:
- examine a complaint, establish the facts of the allegations, determine any resultant harm/impairment, and apply sanctions as appropriate.
 - decide whether to take legal and/or other specialist advice on any complaint submitted to COSCA.

- consider all relevant issues raised by each party to ensure an accurate understanding of each party's viewpoint
 - decide on any mitigating circumstances or defence raised by the member complained against for each of the alleged breaches in the COSCA Statement of Ethics and Code of Practice
 - determine whether any legal action on the matter of the complaint is under way, pending or intended
 - in the event of an alleged breach of the law (civil or criminal), decide whether to pass information regarding the complaint to the appropriate legal authorities.
- 4.15 The complainant and the member complained against will normally be notified of the Complaints Panel's decision within 28 days of its meeting. Third parties, including those who submitted written evidence, will be notified of the Complaints Panel decision, following the period of appeal.
- 4.16 At the discretion of the Chair of the Complaints Panel, with due regard to time constraints and confidentiality, the Complaints Panel may be adjourned or put in recess. The process will be re-started at the point at which it was stopped, within a reasonable time.
- 4.17 The following protocols will be observed at the Complaints Panel:
- 4.17.1 the Chair reads a summary of the case of the complainant;
 - 4.17.2 the Chair reads a summary of the case of the member complained against;
 - 4.17.3 the complainant and/or their representative puts questions, through the Chair, to the member complained against;
 - 4.17.4 the member complained against and/or their representative puts questions, through the Chair, to the complainant;
 - 4.17.5 members of the Complaints Panel may then seek clarification from the complainant, the member complained against, and any witnesses called by the Panel;
 - 4.17.6 the Chair summarises the case and asks all parties to leave.
- 4.18 The Complaints Panel will then decide:
- 4.18.1 for each of the alleged breaches in the Statement of Ethics and Code of Practice, whether there is sufficient evidence to conclude that the alleged breach took place;
 - 4.18.2 if breaches have taken place, whether the breaches amount to serious professional misconduct. (Serious professional misconduct includes professional practice that falls seriously below the standard expected of a member of COSCA; or serious violation of ethical conduct; or conduct that brings the profession of counselling into disrepute.)

- 4.18.3 if breaches have taken place, the level of seriousness, and what actions and sanctions against the member are appropriate.
- 4.18.4 the Chair of the Complaints Panel will communicate these decisions in writing to the Chair of the Ethics Committee for the purpose of recording, reporting to COSCA's Board, and implementation.
- 4.19 The final decision of the Complaints Panel on the complaint, its reasoning, and details of any actions or sanctions will be communicated in writing by the Chair of the Complaints Panel to the complainant and the member complained against normally within 28 days of the meeting of the Complaints Panel. Both parties will also be reminded of their right to appeal. Third parties, including those who submitted written evidence, where appropriate will be notified of the Complaints Panel decision, following the period of appeal.
- 4.20 The Chair of the Ethics Committee will ensure the implementation of any actions and sanctions arising from the decision on the complaint at this time or subsequent to an appeal by a process of review with timescales appropriate to the action required or the sanctions laid down.
- 4.21 The Chair of the Ethics Committee will inform COSCA's Board concerning the number and nature of complaints being handled. Information on those complained against will be kept confidential to the Ethics Committee, the Complaints Panel, and the Chief Executive.

5. General Points

- 5.1 The time limits stated in this Complaints Procedure would normally only be modified by mutual agreement of the parties concerned at the relevant stage of the Procedure i.e. the complainant, party complained against and COSCA officials. The ultimate decision rests with the Chair of the Ethics Committee or his/her delegate.
- 5.2 If the complainant or the COSCA member complained against is an organisation, the organisation is required to formally authorise a named person to represent it throughout the complaint procedure.
- 5.3 In the event of the absence or unavailability of the Chair of the Ethics Committee, its Vice-Chair or another authorised member of the Ethics Committee will be substituted.
- 5.4 Those persons taking part in the Complaints Procedure are required to observe confidentiality and act in such a way that will neither prejudice nor influence the outcome of the complaint procedure. Any indication of a breach of these conditions may result in the procedure being halted by the Chair of the Ethics Committee.
- 5.5 Should it emerge at any stage in the complaint procedure that legal action on the matter of the complaint is under way, pending or intended, the Chair of

the Ethics Committee has the right to halt the procedure until legal process is completed.

5.6 All members of COSCA are required to adhere to the procedures and decisions of the Ethics Committee of COSCA. The refusal or failure of a member to participate in the Complaints Procedure without good reason or due notice, will result in an immediate recommendation to the Board that membership and other standing within COSCA is reviewed. In the event of termination of membership, no membership or other fees paid will be refunded.

5.7 The refusal or failure of the complainant to participate at any stage of the complaint procedure, without good reason or due notice, or if the complainant formally withdraws the complaint, will mean that the complaint is regarded as withdrawn. In this event, COSCA reserves the right to consider the complaint under its system for dealing with information about members that is known to COSCA – see COSCA’s website under complaints. www.cosca.org.uk

The Chair of the Ethics Committee will inform both parties in writing regarding whether the complaint has been dismissed or that it will be dealt with under the above system. In the event of a dismissal of a complaint, all documentation filed with COSCA on the complaint shall be destroyed after 3 years from the dismissal order. The member complained against will be informed that COSCA has no grounds to believe that the member has acted unethically.

5.8 When the member complained against resigns or does not renew their COSCA membership before the complaint procedure is completed, without good reason or due notice, the Chair of the Ethics Committee will inform the Chair of COSCA’s Board. The Complaints Panel, however, can still meet and apply sanctions. Any re-application for membership will then require the approval of both the Board and the Ethics Committee following an investigation into the membership application.

5.9 Where written communication with either the complainant or the member complained against is impractical, the Chair of the Ethics Committee will, at his/her discretion, authorise the use of appropriate alternative means of communication at any stage(s) in the complaint procedure.

5.10 COSCA will not be responsible for travel or any other expenses incurred either by the complainant or the member complained against in connection with any stage of the complaint.

5.11 If there is a complaint submitted to COSCA in which a member of the Ethics Committee is cited, that member must not be associated in any way with the work of the Ethics Committee until after the complaint has been fully dealt with. After the Complaints Procedure is completed in respect of the above complaint, the Ethics Committee can recommend to the Board that the member be offered re-instatement.

6. Sanctions

- 6.1 The Complaints Panel is empowered to make decisions of sanction against a member of COSCA. The following sanctions, and any combinations thereof, can be applied permanently or for a specified period of time:
- 6.1.1 suspension or termination of membership of COSCA;
 - 6.1.2 suspension or termination of recognition within COSCA (for example: accreditation, organisational recognition or involvement with validated training);
 - 6.1.3 suspension or termination of advertising by a member associated with COSCA;
 - 6.1.4 suspension or termination of any roles in COSCA's Governance/Management structure;
 - 6.1.5 suspension or termination of advertising, publicity or promotion in COSCA publications and website;
 - 6.1.6 making continuation of any of the privileges or facilities listed above subject to probation;
 - 6.1.7 publication of all sanctions following complaints panel meetings in accord with paragraphs 7.2 and 7.3 below.
- 6.2 In addition, or as an alternative, to these sanctions, the Complaints Panel may make recommendations to the member regarding, for example: ceasing to practise, either temporarily or permanently; changing working structures and management systems; undertaking further training or personal therapy; increasing and/or changing supervision arrangements.
- 6.3 In addition, or as an alternative, to these sanctions the Complaints Panel may make recommendations to the organisational member regarding, for example: revising the organisation's complaints procedure; changing working structures and management systems; and increasing and/or changing supervision arrangements.
- 6.4 The Complaints Panel will state the commencement date and duration of any sanctions to be applied.
- 6.5 Sanctions will not be applied until the possibility of an appeal being upheld expires.
- 6.6 In the event of termination of membership or other standing, fees paid will not be refunded.
- 6.7 The Chair of the Ethics Committee will decide if the requirements of the sanction(s) have been fulfilled and whether the sanction(s) should be lifted. Depending on any cited mitigating circumstances, the Ethics Committee has the right to give an extension to the member to fulfill the requirements of the sanction(s). Failure or refusal to comply with a sanction may result in membership being withdrawn immediately. The Chief Executive will notify in writing the member complained against of any decision made in respect of the fulfillment or otherwise of the requirements of the sanction(s).

7. Publishing Complaints Panel's Decisions and Recommendations

7.1 COSCA does not publish information about on-going complaints.

7.2 Registrants on the COSCA Register of Counsellors and Psychotherapists

7.2.1 COSCA publishes all sanctions following complaints panel meetings and after the possibility of an appeal being upheld expires. In the event that an appeal is not upheld, sanctions will be published on the entry of the relevant registrant on the COSCA Register of Counsellors and Psychotherapists. In the event that the sanction applied to a registrant is to terminate membership of COSCA, the name of that person will be published in the Sanction Notice of the Register depending on the outcome of any appeal submitted against the sanction. If the appeal is not upheld, COSCA will then publish the name of the registrant whose membership has been terminated in the COSCA Journal under the following heading: Removal of Registrant Due to Ethical Breach. This heading will also be entered under the name of the above individual on COSCA's internal membership database and on the Sanctions Notice on the COSCA's Register of Counsellors and Psychotherapists.

7.2.2 In order to protect the public, when COSCA registrants, who are also registered with a statutory professional regulatory body in health and social care or another professional body, is removed from the COSCA Register on fitness to practise grounds, COSCA will notify the holder of the statutory professional register or other professional body of the removal of the registrant from the Register.

7.3 COSCA Individual Members (Non Registrants) and Organisational Members

COSCA reserves the right to publish decision(s)/recommendation(s) of the Complaints Panel against COSCA Individual Members (Non Registrants) and Organisational Members, after the possibility of an appeal being upheld expires. This is subject to the approval of the Chair of the Ethics Committee or, if there is a conflict of interest, then a member of Complaints Panel who made the decision(s)/recommendation(s).

8. Appeals

8.1 The COSCA Appeals Procedure (see Appendix 3) may be invoked to appeal against the following decisions of the Complaints Panel or the Chair of the Ethics Committee:

8.1.1 the decision to terminate the complaints procedure;

8.1.2 the decision to uphold or reject the complaint by the Complaints Panel;

8.1.3 the decision to apply sanctions and/or the nature of the sanctions applied.

8.2 An appeal must be made by submitting within 14 days of the date of the notification of the relevant decision a written statement of the grounds of appeal and must include the information referred to in paragraph 4 (4.1 – 4.7) of the Appeals Procedure.

9. Restoration of Registrants' Names to Register

9.1 If a Registrant's name has been removed from the COSCA Register of Counsellors and Psychotherapists, the Registrant can apply for restoration (to be put back on the Register) after five years following removal of the Registrant's name. For more information on the restoration of registrants names to the Register, please see **Appendix 4: Restoration of Registrants' Names to the Register.**

Appendix 1: COSCA Statement of Ethics and Code of Practice

The COSCA Statement of Ethics and Code of Practice may be downloaded from COSCA's website www.cosca.org.uk or obtained from the COSCA office.

Appendix 2: Interim Suspension Order

An interim suspension order is an order to annotate the name of a Registrant on the COSCA Register of Counsellors and Psychotherapists with the information that an interim suspension order has been imposed for a specific period of time. When such an order is imposed on a Registrant, they cannot practise counselling or psychotherapy under their membership of COSCA for the above specified period.

Where a complaint is submitted under the Complaints Procedure or information is made known to COSCA under the Whistleblowing Procedure, and the Chair of the Ethics Committee decides that it raises the possibility of the need to impose an interim suspension order, a meeting of COSCA's Ethics Committee will be called to decide whether it is necessary for the protection of the public, or is otherwise in the public interest and/or is in the interests of the Registrant to consider whether the Registrant should be suspended from the Register as an interim measure until the original allegation(s) or information are investigated.

An interim suspension order is a precautionary measure and should not be seen as prejudicial to the Registrant.

Considerations

When deciding whether or not to impose an interim suspension order, the Ethics Committee must consider the following points:

- the seriousness and/or risk of the allegations or information
- the time the alleged conduct took place
- whether public confidence in counselling is likely to be seriously damaged if the Registrant continues to hold unrestricted registration during the relevant period
- the impact of an interim suspension order on the Registrant and their capacity to earn a living, and on their clients
- the impact on public safety should the allegations be found proved.

Interim Suspension Decisions

The Ethics Committee does not make findings of fact or determine the allegations or information against the Registrant concerned.

The following factors are likely to indicate, balanced alongside other factors that a case is likely to raise significant public confidence issues if no interim action is taken, and ought to be taken into consideration:

- information that a Registrant is under investigation by the police in connection to serious offences such as rape, sexual assault, or sexual abuse of children

- allegations that a Registrant exhibited predatory behaviour in seeking and establishing an inappropriate sexual or emotional relationship with a vulnerable client
- serious concerns about a Registrant's sexualised behaviour toward a client
- allegations of a pattern of sexually motivated behaviour toward clients
- serious concerns about coercive or abusive control, grievous assault, murder, fraud and embezzlement, breach of confidentiality or ethical boundaries.

Scope of Interim Suspension Orders

An interim suspension order directs the COSCA Registrar to suspend the Registrant's membership for a period of up to twelve months. A Registrant who is suspended under an interim suspension order cannot practise counselling or psychotherapy under the auspices of COSCA

Interim Suspension from the Register is a deterrent and may be used to send out a signal to the Registrant, the public, and the counselling field about what is regarded as behaviour unbecoming a member of COSCA and the wider counselling field.

However, COSCA acknowledges that an interim suspension from the Register has a punitive effect in that it may prevent a Registrant from earning a living as a counsellor or psychotherapist during the period of suspension and therefore the Ethics Committee must carefully balance the interests of the Registrant with its duty to protect the public.

The length of the interim suspension may be for a period of up to twelve months and is a matter for the Ethics Committee's discretion. The period of the suspension can be extended at the discretion of the Ethics Committee. The Ethics Committee must explain clearly why a specified period of time is deemed appropriate, including the factors that led it to consider that particular period of interim suspension appropriate.

When implementing an interim suspension the Ethics Committee must consider the current clients of the Registrant. The registrant is required to implement their arrangements for an appropriate transition to another counsellor or psychotherapist e.g. their living will., and inform COSCA when they have done so.

When making the above decision, the Ethics Committee must consider the summary of the evidence received and any submissions made by relevant parties before making and announcing its decision. An immediate interim suspension directly affects the Registrant's current clients and therefore must be done only in exceptional circumstances in which the Ethics Committee is concerned about the safety of the Registrant, their clients, or the public.

Removal of Interim Suspension Order

The Ethics Committee can decide to remove the interim suspension order if it deems that the above conditions for imposing it are no longer met, or if the Registrant's name has been withdrawn from the Register. In this case, the Registrar will delete the annotation against the Registrant's name. The Registrant will be informed if the event that the above decision is made.

If someone has been subject to an interim suspension order and it has been removed, COSCA will publish a 'Removal of Interim Suspension Order notice'.

Appendix 3

APPEALS PROCEDURE

1 Introduction

- 1.1 This Appeals Procedure provides a means of appealing against decisions of COSCA (Counselling and Psychotherapy in Scotland), the professional body for counselling and psychotherapy in Scotland.
- 1.2 If the appellant is an organisation, the organisation is required to formally nominate a sole representative on behalf of the organisation throughout the processing of an appeal.
- 1.3 An appeal will not be heard if there is any on-going legal or impending action on the matter of the appeal.
- 1.4 It is a duty on the appellant involved in the appeal to make known to COSCA any on-going or impending legal action.

2 Grounds for Appeal

- 2.1 An appeal can be made on any of the following grounds:
 - 2.1.1 that the decision may have been affected by a failure to follow the relevant procedures and/or guidelines
 - 2.1.2 that there is new evidence and/or information that was not known to COSCA and the appellant that might have influenced the decision had it been available when the decision was made
 - 2.1.3 that the evidence did not warrant the decision made
 - 2.1.4 that the sanction is disproportionate to the evidence provided and that it is unjust in the circumstances.

3 Appeals Procedure

- 3.1 The appellant must make the appeal in writing within the time limit specified in the relevant procedure and/or guidelines that resulted in the decision. In exceptional circumstances this deadline may be extended.
- 3.2 Where written communication by and with the appellant is impractical, the Chief Executive will, at their discretion, authorise the use of appropriate

alternative means of communication at any stage(s) of the appeals procedure.

- 3.3 The time limits stated in this Appeals Procedure may be modified by mutual agreement of COSCA and the appellant.
- 3.4 Appeals must take the form outlined in the section 'Notes to appellants on submitting an appeal' and be addressed to the Chief Executive of COSCA at the current address of the COSCA Office. When it is not possible for the appellant to submit the appeal in writing, COSCA offers assistance for the appeal to be made.
- 3.5 On receipt of an appeal, COSCA will send a written acknowledgement to the appellant and the relevant body/individual that made the decision under appeal advising that the appeal has been received.
- 3.6 In the event of the absence, unavailability, conflict of interest or involvement in the prior decision of the Chief Executive, their nominated deputy will be substituted at this and/or subsequent stages. The subsequent points are ruled by this paragraph.
- 3.7 The Chief Executive will engage another person who has not been involved previously in the complaint to assist them in considering whether there are grounds to hold an appeal. If it is decided that there are grounds, the Chief Executive will appoint an Appeals Panel – see 310 below.
- 3.8 The appellant and the relevant body/individual that made the decision under appeal will be notified in writing normally within 6 weeks of the receipt of the appeal of the above decision on whether or not the appeal will be heard. If the Chief Executive and the above person appointed for this purpose, decide that there are no grounds of appeal, this decision is final.
- 3.9 If the appeal is to be heard, the Chief Executive will organise an Appeals Panel. The Appeals Panel must meet within 6 weeks of the date when the appellant was notified that an Appeals Hearing would be held.
- 3.10 The Appeals Hearing will consist of:
 - 3.10.1 three Panel members who have not previously been involved in the disputed decision. This Panel will normally be drawn from the COSCA membership. The Chair of the Appeals Panel will have the casting vote regarding decisions made by the Appeals Panel.
 - 3.10.2 the Chief Executive, who will service the procedure, subject to paragraph 3.6, but take no part in the decision-making of the Panel.
- 3.11 The Chief Executive will advise the appellant to the appeal and the relevant body/individual that made the decision under appeal of the composition of the Panel. Any conflict of interest or other matter that may cast doubt on the

impartiality of the Panel must be declared immediately to the Chief Executive who will decide whether any Panel members should be replaced.

- 3.12 The Chair of the Appeals Panel may appoint a clerk to the Panel.
- 3.13 The Chair of the Appeals Panel will set the date of the Appeals Hearing and notify the appellant and the relevant body/individual that made the decision under appeal.
- 3.14 Neither the appellant nor those involved in the decision under appeal will be expected to attend the Appeals Hearing. However, the Panel has the right to invite witnesses and any other parties it considers to be helpful to the hearing of the appeal.
- 3.15 The Appeals Hearing will consider all evidence pertaining to the appeal, which COSCA must receive at least 10 working days prior to the date of the Appeals Hearing.
- 3.16 The conduct of the Appeals Hearing will be at the discretion of the Chair, guided by the requirements of these procedures and/or guidelines. The Appeals Panel will conduct its business with strict regard to the confidentiality of any information disclosed. The appeal will be considered solely on the merit of the circumstances evidenced as the grounds for the appeal.
- 3.17 Any parties invited to attend the Appeals Panel Hearing will withdraw at the Chair's request.
- 3.18 The Chair of the Appeals Panel has the power to adjourn the Appeals Hearing in order for further information or evidence to be gathered.
- 3.19 The Appeals Panel can decide to:
 - Assess that the ground(s) outlined above for the appeal are sufficient for the appeal to be considered
 - Review the previous decision(s) of COSCA (Counselling & Psychotherapy in Scotland) that are being appealed
 - Confirm or overturn the previous decision(s) made.

The decision made by the Appeals Panel will be communicated in writing to the appellant and the relevant body/individual that made the decision under appeal by the Chief Executive within normally 7 working days of the completion of the Appeals Hearing. The Panel can decide to: up-hold the previous decision; amend the previous decision; over-turn the previous decision; and alter the sanctions previously meted out.

- 3.20 Following notification of the Appeals Panel's decision, the relevant body/individual that made the decision under appeal will be required to take appropriate action.
- 3.21 The appellant has no further right of appeal to COSCA.

4. Notes to appellants on submitting an appeal

- 4.1 In first preparing an appeal, the appellant must be explicit in providing clear substantive evidence of the grounds for appeal, and this should be in writing except when this is impractical. In this case the Chief Executive will, at their discretion, authorise the use of appropriate alternative means of communication at any stage(s) of the appeals process. Unless such evidence is cited, the Chief Executive of COSCA, unless previously involved in the disputed decision, and the person appointed to assist, will not permit an Appeals Hearing.

At this first stage, the appellant should realise that the Chief Executive and the person appointed to assist them are not ruling on the content of the appeal, but that the appellant has made a case for an Appeals Hearing.

- 4.2 In preparing an appeal, an appellant must therefore include the following in writing:
- 4.2.1 a statement of the grounds under which the appeal is being made;
 - 4.2.2 the reasons why the appellant feels there are grounds for appeal;
 - 4.2.3 any supporting submissions/evidence and/or information that in the appellant's view support the appeal.
- 4.3 If the appeal is on the first ground (see paragraph 2.1.1 above), the appellant must detail those parts of the relevant procedures and/or guidelines which it is claimed were not properly followed and provide evidence that this failure affected the decision made.
- 4.4 If the appeal is on the second ground (see paragraph 2.1.2 above), the appellant must be able to demonstrate that there is further relevant evidence and/or information that was not available to COSCA and the appellant when the decision was carried out.
- 4.5 If the appeal is on the third ground (see paragraph 2.1.3 above), the appellant must be able to demonstrate how or why the evidence did not warrant the decision made.
- 4.6 If the appeal is on the fourth ground (see paragraph 2.1.4 above), the appellant must be able to demonstrate how or why the sanction was disproportionate to the evidence provided and that it was unjust in the circumstance.
- 4.7 Only if one or more of the above grounds are established will an Appeals Hearing be considered.

Appendix 4: Restoration of Registrants' Names to the Register

If a Registrant's name has been removed from the COSCA Register of Counsellors and Psychotherapists, the Registrant can apply for restoration (to be put back on the Register) after five years following removal of the Registrant's name.

Applications must be made in writing using the Restoration the Register Application Form. This should be sent to the Chief Executive who on receipt will invite the Ethics Committee to hold a meeting to consider the restoration application.

In addition, a person may not make more than one application for restoration in any period of twelve months. If a person makes two or more applications for restoration which are refused, the Ethics Committee refusing the second application may make a direction suspending the applicant's right to make further restoration applications. If such a direction is made, the applicant may apply to have it reviewed three years after it was made, and at three yearly intervals after this.

The applicant has the burden of proof in a restoration application, and must present their case first. Burden of proof means that it is for the applicant to prove the facts they rely on and persuade the Ethics Committee that they should be restored to the Register, and not for the COSCA to prove the contrary.

Background information on the removal of the name will be provided by the Chief Executive to the Ethics Committee. The Ethics Committee will not grant an application for restoration unless it is satisfied on such evidence as it may require, that the applicant:

- meets the general requirements for registration
- is a fit and proper person to practise counselling or psychotherapy, having regard to the particular circumstances that led to the removal from the Register.

When considering if the applicant is a fit and proper person to practise counselling or psychotherapy, the Ethics Committee will consider if their fitness to practise is currently impaired. It must be satisfied, on the balance of probabilities, that the public will be protected and that public confidence in counselling and psychotherapy will be maintained, along with due observance to the registration/membership criteria being met including the requirements for returning to practise after restoration.

The reasons why the applicant was struck off the Register will invariably be considered by the Ethics Committee, and it is insufficient for an applicant merely to establish that they meet the requisite standard of proficiency and the other general requirements for registration/membership.

An application for restoration is not an appeal or review of the original decision. The Ethics Committee will avoid 'going behind' the findings of the original decision, or the sanction previously imposed. Attempts by the applicant to persuade the Ethics Committee to do so may be judged as indicators of a continuing lack of insight or denial.

In determining restoration applications, the issues which a Panel will consider include:

- the matters which led to striking off and the reasons given by the original decision to impose that sanction
- whether the applicant accepts and has insight into those matters
- whether the applicant has resolved those matters, has the willingness and ability to do so, or whether they are capable of being resolved by the applicant
- what other remedial or rehabilitative steps the applicant has taken
- what steps the applicant has taken to keep their professional knowledge and skills up to date.

If the Ethics Committee grants an application for restoration, it may do so unconditionally or subject to the applicant:

- meeting any applicable education and training requirements specified by COSCA, including the requirements for return to practice which may include having up to date knowledge and skills, or
- complying with a conditions of practice order imposed by the Ethics Committee.

Information about the requirements that everyone returning to practice must meet are set out in COSCA's Restoration to the Register Application Form. These require that everyone who has been out of practice for five years or more is required to complete 40 hours continuous professional development of updating their counselling skills and knowledge in the year prior to applying to be restored to the Register. Applicants who seek restoration after being removed from the Register will not be considered more favourably than someone with no concerns about their fitness to practise who seeks to return to the Register after a career break.

Where the Ethics Committee wishes to impose bespoke requirements on a Registrant who is being restored to the Register in addition to the return to practice requirements, it may also make a 'conditions of practice order'. Conditions of practice can be tailored to meet the specific needs of a particular case, will be reviewed and, if necessary, can be extended. Such an order also provides the added safeguard that swift action can be taken against the Registrant if there is any breach of those conditions. A conditions of practice order imposed in these circumstances will only become effective once the applicant has successfully completed the return to practice process, met the restoration requirements, and been restored to the Register.

Appeals

An applicant may use COSCA's Appeals Procedure to appeal the decision of the Ethics Committee if the decision made:

- refuses an application for restoration

- allows an application, but subject to the applicant satisfying education and training requirement, or
- makes a direction suspending indefinitely the applicant's right to make further restoration applications.

A restoration order template is set out below:

Restoration Order:

The Registrar is directed to restore the name of [name] (the Applicant) to the Register, but restoration is only to take effect once the Applicant has:

- (a) provided the Registrar with any information and declarations required for admission to the Register
- (b) paid the prescribed restoration fee
- (c) satisfied the Registrar that, in relation to the Applicant, there is in force appropriate insurance cover under an indemnity arrangement, and
- (d) provided evidence which satisfies the Registrar that the Applicant has successfully completed 40 hours of professional updating in accordance with the COSCA Standards for Return to Practice.

In the case of conditions of practice being imposed, the Registrar is further directed to annotate the Register to show that, for a period of time from the date that this Order takes effect (the Operative Date), the Applicant must comply with the following conditions of practice: [set out conditions].

If someone who has been subject to an adverse conduct decision successfully re-applies for membership, COSCA will publish a 'Restoration to membership notice'.

Brian Magee
COSCA Chief Executive
November 2024