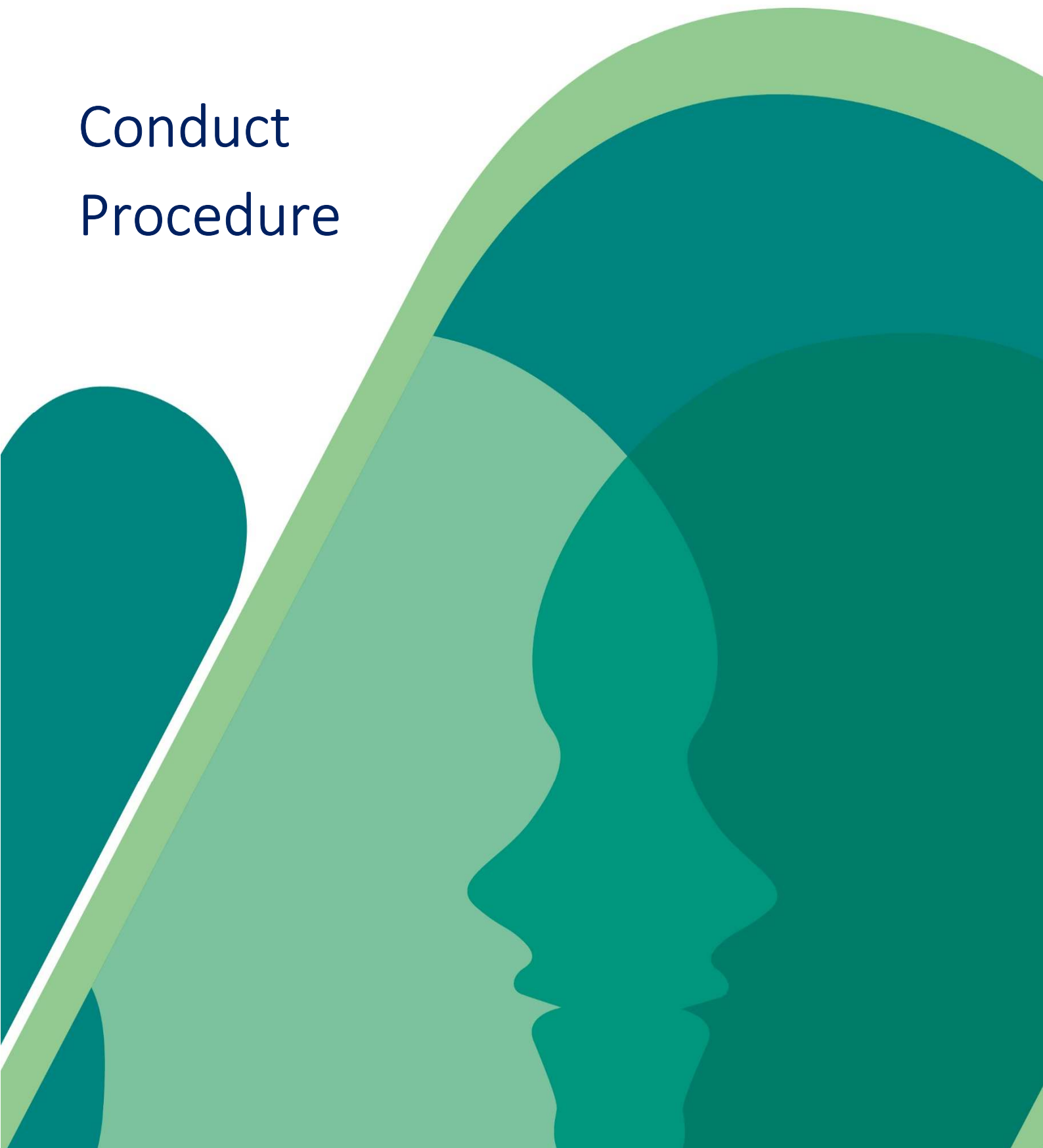




Conduct Procedure



COSRT Conduct Procedure

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Comes into effect 1st January 2020

This should be read in conjunction with Good Therapy – COSRT Code of Ethics and Practice, and Good Therapy – COSRT Code of Ethics and Practice for Supervisors

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Aims and objectives

- This Conduct Procedure (hereafter Procedure) provides a transparent route by which complaints against COSRT Members are made, managed and considered.
- Through the Procedure COSRT aims to protect members of the public and uphold standards of and confidence in psychosexual therapy, counselling, and psychotherapy.
- COSRT is committed to supporting professional excellence, and this Procedure contains provisions to allow complaints to be settled by agreement when possible, including providing Members the opportunity to develop and reflect where appropriate.
- COSRT is a charity registered under English law; this procedure will therefore be operated in accordance with English law.

Definitions

Adjudication Panel - The panel convened to consider and determine a complaint against a Member.

Case Manager - The person designated by the CEO who manages the complaint process in accordance with this procedure.

CEO – The COSRT Chief Executive Officer.

Complainant – The person raising a complaint against a Member.

Consensual Agreement Resolution (CAR) – The process that can be used to manage complaints that fall beneath set thresholds.

Consensual Agreement – An agreement made between the PCP and the Member to resolve a complaint managed through Consensual Agreement Resolution.

COSRT – The College of Sexual and Relationship Therapists.

Interim Suspension Order - Suspension from Membership pending the outcome of the complaint investigation that is not suitable for Consensual Agreement Disposal.

Investigator – An independent person external to COSRT tasked with investigating the complaint and producing an Investigator's report for consideration by the PCP.

Member – The COSRT Member who is the subject of a complaint and/or in relation to whom this procedure is being operated.

Organisational Statement of Concern - A statement formulated by COSRT, based on the complaint, which states the area of concern and details specific allegations.

Other Regulator – Non-health and social care regulators including the Information Commissioner's Office

Presenting Officer – The person designated by the CEO or Case Manager to present the case to an Adjudication Panel.

Professional Conduct Panel (PCP) – A panel that reviews and oversees all complaints, comprising the Chair of COSRT, two Members of the Professional Standards Board and one Trustee.

Professional Standards Authority (PSA) – National independent organisation that assesses the performance of Health and Social Care Regulators, conducts audits, scrutinises their decisions and reports to Parliament.

Professional Standards Board (PSB) – The COSRT committee that develops and monitors COSRT's professional standards.

Health and Social Care Regulator – Body that formally and legally regulates endeavours within the UK.

Withdrawal of Membership – The termination of COSRT Membership.

Scope of the Conduct Procedure

- 1.1 COSRT may consider a complaint against a COSRT Member that relates to:
 - 1.1.1 Misconduct in the exercise of professional practice.
 - 1.1.2 Misconduct occurring outside professional practice insofar as it is materially relevant to a Member's fitness to provide therapeutic services.
 - 1.1.3 Ill-health calling a Member's fitness to practice into question.
 - 1.1.4 A decision taken by a Health and Social Care Regulator, other Regulator, court or tribunal, third-party Professional Body, or an employer that calls into question the Members fitness to practice and/or suitability to be a COSRT Member.

When a complaint can be made

- 2.1 A complaint can be made against an individual who:
 - 2.1.1 Is a current COSRT Member; and
 - 2.1.2 Was a COSRT Member at the time of the alleged activity.
- 2.2 A complaint will be determined against the Procedure in force at the time of the complaint. However, the Member's conduct will be judged against the Code of Ethics which was in force at the time the relevant conduct occurred.
- 2.3 Complaints should be made within three years of the conduct that forms the substance of the complaint. Where a complaint is made outside this timescale a written explanation will be requested and the Chief Executive Officer (CEO) will determine if exception can be made due to public interest/protection or extenuating circumstances.
- 2.4 COSRT may extend the time limit for a complaint if:
 - 2.4.1 The seriousness of the allegation is such that it is in the public interest to do so and/or public protection requires it.
 - 2.4.2 Timescales for the conclusion of third-party investigations such as police or Health and Social Care Regulators mean the three-year limit will be reached before a COSRT investigation begins.
 - 2.4.3 The complainant has encountered circumstances since the alleged conduct that can be reasonably argued to have inhibited their ability to complain within the timescale.
- 2.5 A member's resignation from, or failure/refusal to renew membership whilst an allegation is being considered by COSRT will not normally invalidate the processing or hearing of a complaint by COSRT or terminate the procedure. The member will be considered to be in continuous membership for the purposes of dealing with a complaint, until such time as the matter has been resolved or the procedure terminated.

Who can raise a complaint?

3.1 A complaint can be made by any individual, including:

- 3.1.1 A person who has sought, received or is receiving services (including supervision) provided by a COSRT Member.
- 3.1.2 An individual acting on behalf of another person who has received or is receiving a service from a COSRT Member, where that person's written permission has been obtained and COSRT is satisfied it would be unreasonable to expect that person to bring the complaint on their own behalf.
- 3.1.3 A legal guardian or other appropriately authorised adult accepted by COSRT 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 a complaint which is being processed, their consent to continue with the complaint will be required by COSRT.
- 3.1.4 A person accepted by COSRT 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.

3.2 A complaint can also be made by an organisation, including:

- 3.2.1 An employer; the police; another therapist; another professional body; a Health and Social Care Regulator, any other organisation; the Disclosure and Barring Service or authority with a similar function; or a declaration from the member themselves.
- 3.2.2 COSRT if it is of the opinion that the conduct of a Member is such that the organisation is brought into disrepute or public interest and/or protection is served through a complaint.

3.3 Where a complaint relates to conduct affecting more than one person (for example, recipients of couple's therapy), the complaint will be submitted by one person.

The conduct of complaints

4.1 COSRT, as the Professional Body, will conduct cases against members.

4.2 The role of the complainant, beyond bringing the allegation, will be as a witness if called to any investigation and/or hearing to give evidence.

Complaints not covered by this procedure

5.1 COSRT retains discretion to not consider complaints, including if they are:

- 5.1.1 Frivolous or vexatious (including where screening or a PCP deems that the complaint is intended to harass, distress, annoy, tease, agitate, disturb or otherwise cause trouble for the Member).

- 5.1.2 Related to activity and alleged breach(es) of the Code of Ethics with insufficient nexus to professional practice or the profession.
- 5.1.3 Subject to current or planned criminal or relevant civil legal proceedings, or Health and Social Care Regulatory proceedings.
- 5.1.4 Against a Member who is also accountable to a Health and Social Care Regulator.
- 5.1.5 Complaints against training organisations (these should be referred to the Professional Standards Board who will manage these in line with the Course Approval Procedure).
- 5.1.6 A repetition of a complaint(s) previously considered by COSRT, unless there is substantial new evidence which was not available previously.

5.2 When a complaint is rejected the Complainant will be informed in writing of the reasons the complaint will not be heard. After a decision has been made, COSRT will not enter any further correspondence on the subject.

Raising a complaint

6.1 Complaints must be made in writing and signed by the complainant identifying the Member they should be sent to complaints@cosrt.org.uk or:

COSRT - Complaints
PO BOX 13686
London
SW20 9ZH

6.2 Anonymous allegations will not be considered.

6.3 Complaints where the complainant does not wish their name to appear on the allegation will not be considered unless a compelling reason is given to the CEO. If a complaint is accepted on this basis, it should be noted that COSRT cannot guarantee the anonymity of complainants.

6.4 Complaints should clearly state which activities form the basis of the complaint, when they occurred, and what impact has been caused. Copies of any evidence should be provided.

6.5 Note that COSRT will not be responsible for travel or any other expenses incurred in connection with the operation of this procedure. However, COSRT will reimburse any reasonable travel expenses incurred by a witness requested to attend by COSRT, upon delivery of valid receipts and an expense claim form.

6.6 Complainants are required to keep materials as part of the investigation/complaints procedure confidential.

Screening the complaint

7.1 The CEO or a delegated individual will consider any complaint received and decide whether the threshold of acceptance is met. The threshold of acceptance is:

- 7.1.1 That there is an allegation which amounts to a potential breach of the Code of Ethics which, if proven, could lead to a finding of deficient conduct; and/or
 - 7.1.2 Information about a criminal investigation and/or prosecution; and
 - 7.1.3 The time limit detailed in clause 2.3 is respected; or
 - 7.1.4 Clause 2.4 is satisfied.
- 7.2 In all circumstances, taking the complaint at its highest, there must be a serious issue to be considered, and it must otherwise be in the public interest for the complaint to be investigated.
- 7.3 Where the allegation involves sexual misconduct, physical abuse or similar issues of significant public protection the CEO will:
 - 7.3.1 Request that the Complainant informs the relevant Police force and pause COSRT proceedings until it is made aware that the Police have been informed and what Police action is.
 - 7.3.2 Invoke section 9 of this Procedure if it is made aware that a report has been made to the Police and there is a criminal investigation, prosecution, or conviction.
 - 7.3.3 If the Complainant refuses to engage with Police, but the public protection requires it, the CEO will report the matter to the Police and inform the Complainant. In such circumstances section 9 of this Procedure will be invoked.
- 7.4 If the matter does not meet the threshold of acceptance, no further action will be taken. The Complainant will be duly notified of this decision and why in writing.
- 7.5 If the threshold of acceptance has been met the Complainant and Member will be duly notified in writing. The Member will be given a copy of the complaint and advised that the case will proceed to the Investigation Stage.
- 7.6 If at the point of complaint or subsequently the Member is already being investigated by the Police, Health and Social Care Regulator, Professional Body, or is subject to relevant civil proceedings section 9 of this Procedure will be invoked where applicable.

Dual Accountability of Members

- 8.1 Where screening identifies the Member to be subject to a Health and Social Care Health Regulator:
 - 8.1.1 COSRT will inform the Complainant and request that the complaint is referred to the relevant Health and Social Care Regulator.
 - 8.1.2 COSRT will request to be informed of the Health and Social Care Regulator's decision to open an investigation or not. COSRT's investigation will be held in abeyance until this is known.
 - 8.1.3 If the Health and Social Care Regulator dismisses the complaint, COSRT will not normally open an investigation on the same matter.

- 8.1.4 If the Health and Social Care Regulator chooses to open an investigation, then section 9 of this Procedure will be invoked.
- 8.1.5 COSRT will not proceed with the complaint if the Complainant does not choose to refer the matter to the relevant Health and Social Care Regulator.

8.2 Where screening identifies the Member to be member of another Professional Body:

- 8.1.1 COSRT will inform the third-party Professional Body of the complaint and its details.
- 8.1.2 If the third-party Professional Body begins an investigation into the complaint, COSRT reserves the right to instigate section 9 of this Procedure.

Complaints involving other organisations

9.1 Where COSRT is aware that a Member is currently under investigation by the Police, Health and Social Care Regulator, other Regulator, or Professional Body for an issue that would satisfy sections 1 and 2 of this Procedure, COSRT may:

- 9.1.1 Pause ongoing complaint(s) proceedings against the Member into allegations being investigated by the third-party until the findings of that investigation are available.
- 9.1.2 Convene a PCP to determine if public interest requires a suspension of COSRT Membership pending the outcome of the relevant investigation by another organisation or based on interim sanctions imposed by another organisation.
- 9.1.3 Inform the Member by writing within 24 hours of any decisions and actions made.

9.2 If COSRT is made aware that allegations have been upheld against a Member by a Health and Social Care regulator, other Regulator, Professional Body, or criminal court on issues satisfying sections 1 and 2 of this Procedure:

- 9.2.1 A PCP will be convened and informed of the allegation that has been upheld and how that translates to any breach of COSRT's Code of Ethics.
- 9.2.2 The PCP may choose a sanction based on the seriousness of the findings where such information is freely available in the public domain or is provided to COSRT by the other organisation.
- 9.2.3 Where the seriousness of the findings dictates it appropriate the PCP has the power to formally suspend or terminate the Member's COSRT Membership.
- 9.2.4 The CEO will inform the Member in writing of the PCP's decision and reasons.
- 9.2.5 Members will be required to fully engage with the PCP on any sanctions.
- 9.2.6 Any decision to suspend or terminate membership will be published in accordance with provisions laid out in relevant COSRT policy.

9.3 If COSRT is made aware that Health and Social Care Regulator, other Regulator, Professional Body, or criminal court charges/investigation against a Member have been dropped, or a not guilty verdict/decision absolving the Member has been reached after investigation into or prosecution on allegations contained in a complaint made to COSRT:

- 9.3.1 Subject to section 9.4 any live COSRT complaint will be closed and no further action taken.
- 9.3.2 If applicable the Complainant and Member will both be informed of the termination of proceedings.
- 9.3.3 No future complaint will be accepted on the same issue.

9.4 Where a complaint against a Member contained allegations going beyond the scope of relevant third-party proceedings that have been concluded, COSRT may decide to consider that part of the complaint in accordance with this Procedure.

Complaint Process – Case Manager

- 10.1 A Case Manager will be appointed by the CEO to manage any COSRT complaint investigation that progresses past screening to investigation.
- 10.2 The Case Manager will be an impartial COSRT staff member or contractor to whom the CEO delegates procedural oversight to. The Case Manager is responsible for overseeing all procedural aspects of the complaint, drawing on COSRT administrative capacity when necessary. They will have no prior knowledge of the case or conflict of interest.
- 10.3 When Clause 9.2 of this procedure is instigated, the Case Manager will gather evidence on the outcomes of third-party investigations and provide it directly to the PCP.

Complaint Process – Independent Investigator

- 11.1 An independent Investigator (not COSRT staff member or Trustee) will be appointed by the Case Manager except when clause 9.2 of this Procedure is instigated. They will have no prior knowledge of the complaint.
- 11.2 The Investigator must agree to a confidentiality agreement and has a duty to declare any conflict of interest in either the case before them, or with any of the parties involved. The test for what might amount to an insuperable conflict of interest is whether a fair-minded and informed bystander, having considered the facts, would conclude that there is a real possibility of bias (either actual bias or the appearance of bias).
- 11.3 An Investigator must recuse him or herself if there is a conflict of interest.
- 11.4 The Independent Investigator will lead the investigation into the complaint.
- 11.5 The focus of the Investigator's task is to consider the complaint and identify specific allegations that may breach the Code of Ethics for General and Accredited Members.
- 11.6 The Investigator will evaluate evidence gathered to determine whether the allegations are more likely than not to be true. This is decided using the 'realistic prospect' test.

- 11.7 In undertaking this 'test' the Investigator needs to determine whether there is a realistic prospect of a finding of impairment; that is, that at a later stage in the complaints process it would be possible to establish misconduct or impaired fitness to practice.
- 11.8 The Investigator needs to be satisfied that there is a real or genuine possibility (as opposed to a remote or fanciful one) that COSRT will be able to establish its case.
- 11.9 The Final Report produced will be considered by a separate Professional Conduct Panel who will evaluate the findings to determine the next steps.

Complaint Process – Investigation

- 12.1 After appointment the Investigator will:
 - 12.1.1 Request an initial response to the allegation from the Member.
 - 12.1.2 Request any voluntary submissions to the investigation from Complainant and Member.
 - 12.1.3 Collect relevant information and if necessary, arrange to interview the Complainant, Member, and any witnesses, either in person or by other means, to establish the facts of the case.
 - 12.1.4 Write an Interim Report of their findings within 28 days of appointment. The Interim Report will:
 - a. Review the complaint and any initial response from the Member to the complaint.
 - b. Identify any Code of Ethics clauses that evidence shows may have been broken.
 - c. Detail all domains of investigation, questions asked, and evidence gathered.
 - d. Clearly state whether the realistic prospect Test has been met for any alleged breach of Code of Ethics, explaining how evidence supports the findings.
 - 12.1.5 Submit the Interim Report to the Case Manager for comment and review.
 - 12.1.6 Receive comments from the Case Manager and produce a subsequent Draft Final Report for dissemination to Complainant and Member within 42 days of appointment.
 - 12.1.7 Receive factual corrections on the Draft Final Report and produce a subsequent Final Report for submission to the Case Manager for sign off within 70 days of appointment.

Complaint Process – Professional Conduct Panel (PCP)

- 13.1 A PCP will be convened after the conclusion of the investigation to consider the Final Report and next steps.

- 13.2 A PCP can also be convened without a preceding COSRT investigation in line with clause 9 of this Procedure.
- 13.3 The PCP will comprise as a minimum one member of COSRT's Professional Standards Board and two other individuals appointed by the Case Manager with knowledge and experience of professional conduct processes.
- 13.4 When all PCP members are recruited, the Final Report will be circulated to its members by the Case Manager.
- 13.5 After receiving the report, the PCP will have 28 days to meet in person or remotely to consider the evidence and next steps.
- 13.6 When the PCP meets it will decide if the evidence warrants a continuation of the case or not, with possible outcomes being:
- 13.6.1 **Process termination.** When it is deemed there is no case to answer or there is no likelihood of available evidence leading to a fair hearing or decisive outcome, the process will be terminated, and the Case Manager will be informed. The Case Manager will then notify the Complainant and Member within 7 days of the PCP decision. Notification will include PCP findings and explanatory notes.
- 13.6.2 **Process continuation.** When it is deemed there is a case to answer and there is a likelihood of available evidence leading to a fair and decisive outcome, the PCP will recommend that the complaint continues and proceed to the next steps within the same meeting.
- 13.7 Where a complaint is to continue the PCP will produce an Organisational Statement of Concern which states the area of concern and details specific allegations.
- 13.8 The PCP will then agree which of the following steps will be taken, with any decision being communicated to the Complainant and Member within fourteen (14) days via the Case Manager:
- 13.8.1 **Referral** to another organisation. If post-screening investigation determines there are issues of conduct which could amount to sexual or other criminal offences, the PCP will refer the matter to Police. If the Member is discovered during investigation to be subject to a Health and Social Care Regulator, then the matter will be referred to that body investigation. In both instances section 9 of this Procedure will be invoked.
- 13.8.2 **Consensual Agreement Resolution.** Where public protection concerns are at the lower end of the spectrum the PCP can propose:
- Advice
 - Warning
 - Undertakings
 - Mediation by consent.

A Consensual Agreement (Appendix 1) will contain the Organisational Statement of Concern, and any PCP advice, guidance, or activities required of the Member to achieve remediation.

At this point of notification, the Member will be requested to engage with the PCP in a clearly defined manner and timescale. For a Consensual Agreement Resolution to be used the Member must accept deficiency of practice and/or the alleged activity.

A draft Consensual Agreement will be sent to the Member within 28 days of the PCP decision being communicated by the Case Manager.

The Member will then have 28 days to engage and agree to all terms of the Consensual Agreement.

If the Member does not engage, does not accept their failings or rejects the Organisational Statement of Concern, or fails to co-operate with the PCP's recommendations set out in the Consensual Agreement, the PCP may refer the case to an adjudication hearing.

Advice decisions will not be published. Warnings, Undertakings and the outcome of Mediation will be published in line with the agreed format (Appendix 2).

- 13.8.3 **Adjudication hearing.** If the decision is that public protection/public interest concerns are significant then the case will progress to an adjudicated hearing.

The Hearing will take place no more than 140 days/20 weeks after the PCP's decision has been communicated.

The Member will have until 21 days before the Hearing to formally respond to allegations and provide submissions to be considered.

- 13.8.4 **Interim Suspension Order.** If the decision is that public protection/public interest requires it then the PCP can suspend a Membership in line with clause 14.

Membership suspension

- 14.1 COSRT reserves the right to impose an Interim Suspension Order (of membership) when:

- 14.1.1 Initial screening of a complaint indicates that it may be in the public interest or necessary for public protection to impose an Interim Suspension Order, a PCP will be convened to rule on the matter.
- 14.1.2 A PCP deems it necessary to suspend Membership pending the conclusion of an investigation and/or disciplinary proceedings where it considers this is necessary for the protection of the public or otherwise in the public interest.
- 14.1.3 A PCP deems it necessary in line with clause 9 of this Procedure.

- 14.2 The duration of an Interim Suspension cannot exceed 18 months.

- 14.3 The Member will be notified of any decision to impose an Interim Suspension.
- 14.4 The Member may request a review of the decision to impose an Interim Suspension by written notice to the Case Manager within 28 days of being notified of the decision.
- 14.5 Any review will be considered by an Independent Investigator.
- 14.6 If the Interim Suspension Order is maintained following a review, or if a request for a review is not received, notice of the suspension will be publicised in line with COSRT policy.
- 14.7 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.

Adjudication Hearing - Format

- 15.1 Hearings will be held in private at a suitable venue normally more within 84 days (12 weeks) of the Member being notified of the decision to call a hearing. The parties must allow at least a full day for a hearing, unless informed otherwise.
- 15.2 The format that will be followed will be made available to all parties no less than 28 days before the hearing. The format will make provision for the Adjudication Panel to make directions and to hear applications (for example, to introduce new evidence or to adjourn a hearing).
- 15.3 The case against the member will be put by a Presenting Officer acting on COSRT's behalf, appointed by the CEO. The Officer may be a COSRT staff member or contractor and will be bound by a confidentiality agreement.

Adjudication Hearing – Panel and Support

- 16.1 Adjudication hearings will be heard by an Adjudication Panel of no less than three people, appointed by the Case Manager.
- 16.2 An Adjudication Panel will ordinarily consist of one lay person and two counsellors/psychotherapists. No Adjudication Panel member will have any prior involvement in the case, or the parties involved.
- 16.3 The Case Manager will appoint a Clerk to the Panel, who may be an officer of COSRT (but who has had no prior involvement in the case or with the parties), or someone external to COSRT who is specifically engaged for this purpose. The Clerk will be an administrative role with no input into or influence on decision making.

Adjudication Hearing - Declaration of Interest

- 17.1 Adjudication Panel members have a duty to declare any conflict of interest in either the case before them, or any of the parties involved.
- 17.2 The test for what might amount to an insuperable conflict of interest is whether a fair-minded and informed observer, having considered the facts, would consider there to be a real possibility of bias (either actual bias or the appearance of bias).
- 17.3 Declarations of a possible conflict of interest must be made to the Case Manager who will seek the views of the Complainant and Member and decide if the test has been satisfied. This decision will be final.
- 17.4 A member of an Adjudication Panel must recuse him or herself if there is a conflict of interest.

Adjudication Hearing - Representation

- 18.1 The Member is expected to attend and may choose to be formally represented. If the Member does not attend, the Adjudication Panel may decide to proceed in their absence where it is fair and in the public interest to do so.
- 18.2 Details of any representative must be given in writing to the Case Manager not less than 14 days prior to the date set for the Hearing.
- 18.3 COSRT reserves the right to be formally represented by legal professionals or other third parties at the hearing. The Member and any representative acting for them will be informed of this and all relevant details no less than 14 days before the hearing.
- 18.4 If a Complainant is requested to attend to provide evidence, they have the right to have formal representation.

Adjudication Hearing - Evidence

- 19.1 Case papers will be circulated by the Case Manager to the Adjudication Panel and Member (and their representative if applicable) not less than 14 days prior to the date set for the Hearing.
- 19.2 These papers must be treated as confidential, treated by all parties according to relevant data protection law, and securely disposed of when the complaint process is complete.

- 19.3 The Chair of the Adjudication Panel may call for additional written evidence, or additional witnesses if necessary. Additional written evidence must be delivered to the Case Manager no later than 7 days before the Hearing.
- 19.4 COSRT has no powers to require witnesses to produce evidence or attend any hearing.
- 19.5 The Complainant will not be called upon to present their complaint.
- 19.6 The Complainant may be requested to attend and give evidence.
- 19.7 The Complainant may be cross-examined by the Member or the Member's representative. Any request to cross examine a Complainant must be made to the Case Manager no less than 14 days before the Adjudicated Hearing.
- 19.8 The Adjudication Panel may consider the fact that it has not been able to consider evidence because it has not been made available to the Panel.
- 19.9 Where the Adjudication Panel considers that it does not have access to the full range of evidence, it will consider the impact of this on the fairness of the proceedings.
- 19.10 If the Adjudication Panel considers that the fairness of the proceedings is likely to be impaired through an absence of evidence, it has the right to halt proceedings until the point at which such evidence is made available. In such circumstances COSRT will endeavour to secure the evidence from the appropriate sources.
- 19.11 Evidence submitted late, or on the day of the Hearing, must be accompanied by a written or oral explanation as to why it was not available earlier. For it to be admitted, there must be a good and enough reason as to why it was not previously available.
- 19.12 The submission of late evidence must not be used as a way of disrupting the proceedings.
- 19.13 The Chair of the Adjudication panel will decide whether the reason for late submission is acceptable and whether the evidence will be accepted late or on the day of the Hearing.
- 19.14 The Chair may take advice on these and any other matters from fellow panel members or any other appropriate person (excluding the Clerk).

Adjudication Hearing - Witnesses

- 20.1 Witnesses may normally only be called if they have previously supplied a written statement. In exceptional circumstances a witness may be called without a previous written statement by the Adjudication Panel chair if it is deemed that failure to do so would affect the fair and proper adjudication.
- 20.2 The Member will be requested to attend throughout the Hearing and will be expected to personally answer allegations. If a Member chooses not to attend and all usual tests are met

including service, adequate notice, and the right to representation and it is deemed in the public interest then COSRT reserves the right to hold the hearing in their absence.

- 20.3 The complainant may be called as a witness and if so, will be available to be questioned by the Member or their representative, COSRT's Presenting Officer, any formal representative acting for COSRT, and the Adjudication Panel. Any other witnesses called to the Hearing, may be similarly questioned.
- 20.4 Where the Member has been unable to test evidence, for example, due to the unavailability of witnesses for cross-examination, the Panel will take this into account in according weight to any evidence, reaching their decision and consider any impact on the fairness of the proceedings.

Adjudication Hearing - Recording

- 21.1 All hearings will be digitally recorded for the purpose of keeping an accurate record of proceedings.
- 21.2 These recordings will be stored securely and confidentially by COSRT in accordance with its data protection policy.
- 21.3 A recording may be made available to any appeal assessor or appeal panel and may be transcribed if necessary.
- 21.4 If the Member requests a transcript be provided, they must meet all the associated costs.
- 21.5 The Member will be required to treat any copy of the recording and/or transcript as confidential and must not make any use of it outside the complaint procedure.

Safeguarding

- 22.1 The Adjudication Panel may exclude from the proceedings any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings.
- 22.2 In proceedings before the Adjudication Panel the following people may, where the quality of their evidence is likely to be adversely affected, be treated as vulnerable witnesses:
 - a. Any witness under the age of 17 at the time of the hearing.
 - b. Any witness with a mental disorder within the meaning of the Mental Health Act 1983.
 - c. Any witness who is significantly impaired in relation to intelligence and social functioning.
 - d. Any witness with physical disabilities who requires assistance to give evidence.
 - e. Any witness where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim.
 - f. Any witness who complains of intimidation including the Member.

22.3 Subject to any representations from the parties or on legal advice, the Adjudication Panel may adopt such measures as it considers helpful to enable it to receive evidence from vulnerable witnesses. Measures adopted may include:

- a. Use of video links.
- b. Use of pre-recorded evidence of a witness, provided that the witness is available at the hearing for examination.
- c. Use of interpreters, signers, translators or intermediaries.
- d. Screens or similar provisions.

Notification of Findings and Decision

23.1 The member will normally be notified in writing of the findings and decision, the right of appeal and the procedure to be followed thereafter within 28 days of the Hearing.

Sanctions

24.1 The Adjudication Panel may impose a sanction, as detailed in the Sanctions Protocol. The same Panel will later consider whether the requirements of any sanction have been complied with and whether the sanction should be lifted or not.

24.2 When a Member has their COSRT membership revoked they cannot re-apply for COSRT Membership for seven years. COSRT can at its discretion refuse an application to re-join membership.

24.3 When a Member is removed from the COSRT Register or Supervisor Register they cannot re-apply for registration for seven years.

24.4 When Membership category is changed the Member cannot re-apply to re-join their previous category for one year.

24.5 A failure or refusal to comply with a sanction may result in membership being withdrawn for non-compliance. Any such decision will be published on COSRT's website and elsewhere as is considered appropriate in line with COSRT policy.

Publication of Findings and Decision

25.1 Where a complaint is upheld, COSRT will publish findings and decisions on its website in a standard format.

25.2 These will remain on the website for a period of twelve months or until any time-barred sanction is complied with, whichever is longest.

- 25.3 Where a complaint is upheld against a Member within a Registered category but they retain Registration, details of the sanction will be included in the Member's Register listing. These details will remain in place for a period of twelve months or until any time-barred sanction is complied with, whichever is longest.
- 25.4 In addition, COSRT reserves the right to share information about a complaint and any outcomes with other organisations including professional bodies, employers and Regulators if appropriate.
- 25.5 Where membership has been withdrawn under these procedures, a statement to this effect will remain on the COSRT website until such time as the Member has successfully re-applied for membership or for a minimum period of normally seven years.

Appeals

- 26.1 The member will have 28 days from the date of notification of the Adjudication Panel's findings to lodge an appeal. An appeal must be made in writing and accompanied by evidence to support the ground(s) upon which the appeal is being made.
- 26.2 Whilst an appeal is being considered, subject to any Interim Suspension Order, the findings and sanction will be held in abeyance and will not be published until a decision has been made by the appeal assessor or appeal panel.

Appeals – Grounds for appeal

- 27.1 An appeal can be made on the following grounds only:
- a. There was a procedural impropriety which had a material impact on the fairness of the findings and decision of the Adjudication Panel.
 - b. The findings and decision of the Adjudication Panel were irrational and beyond what any adjudication panel, acting reasonably, could have concluded.
 - c. The sanction is wholly disproportionate to the findings.

Appeal - Assessment

- 28.1 The appeal documentation, together with the Adjudication Panel's findings and decision, the recording of the hearing, and any transcript, will be considered within 14 days by a PCP comprising the original chair plus new appointees unaware of case details or parties involved.
- 28.2 The PCP will decide, on the aforementioned information only, whether there is a case to be considered by an appeal panel. The PCP decision will be final.

- 28.3 If the PCP decides there is no evidence to support the ground(s) for appeal, the case will not proceed to an appeal hearing. The member will be formally notified of this decision and given the reasons why. The original decision of the Adjudication Panel will stand. This decision will be published, and the member will be required to comply with any sanction. This decision will be final and brings this part of the procedure to a close.
- 28.4 If the PCP decides that there is a realistic prospect that an appeal would succeed (on the basis that there are relevant grounds put forward along with evidence in support), the case will proceed to an appeal hearing and the member and complainant will be formally notified of this decision. An independently constituted appeal panel will be convened.

Appeal - Hearing

- 29.1 The appeal will be formally considered by an Appeal Panel appointed by the Case Manager, comprising not less than three people. A panel will usually consist of one lay person and two counsellors/psychotherapists. No panel member will have any prior involvement in, or knowledge of, the case. The hearing will normally take place within 28 days of the formal acceptance of the appeal.
- 29.2 The Case Manager will appoint a Clerk to the Panel, who may be an officer of COSRT (but who has had no prior involvement in the case or with the parties), or someone external to COSRT who is specifically engaged for this purpose.
- 29.3 Members of panels have a duty to declare any conflict of interest in either the case before them, or any of the parties involved. The test for what might amount to an insuperable conflict of interest is whether a fair-minded and informed bystander, having considered the facts, would conclude that there is a real possibility of bias (either actual bias or the appearance of bias). A member of a panel must recuse him or herself if there is a conflict of interest.
- 29.4 Declarations of a possible conflict of interest must be made to the Case Manager who will seek the views of the parties and having considered their views, decide if the test has been satisfied. This decision will be final.
- 29.5 The Appeal Panel will have before it all the evidence considered by the Adjudication Panel, together with a transcript of the Adjudication Hearing, if necessary, and any evidence put forward by the member to support the ground(s) of appeal.
- 29.6 The Appeal Panel will meet in private to consider the written evidence only.
- 29.7 Evidence submitted late, or on the day of the Hearing, must be accompanied by a written or oral explanation as to why it was not available earlier. In order for it to be admitted, there must be a good and sufficient reason as to why it was not previously available.
- 29.8 The submission of late evidence must not be used as a way of disrupting the proceedings.

- 29.9 The Chair of the panel will decide whether the reason for late submission is acceptable and whether or not the evidence will be accepted late or on the day of the Hearing.
- 29.10 The Appeal Panel will consider whether to uphold or dismiss the appeal and may modify or impose any sanction as considered appropriate.
- 29.11 Where an appeal is upheld on procedural grounds, but the complaint raised significant and valid concerns relating to breach of Code of Ethics, the matter may be remitted to a new Adjudication Panel on the recommendation of the Appeal Panel.
- 29.12 The complainant will normally be notified of the Appeal Panel's decision in writing within 14 days of the Appeal Hearing. The decision will be final.

Ending a live complaint procedure

- 30.1 COSRT reserves the right to unilaterally terminate any ongoing complaint procedure at any point if it is deemed in the organisation's or public's best interest to do so. Circumstances where a termination may occur include but are not limited to:
- a. Where the complaint and/or investigation forms a risk to the organisation, including because it may bring reputational or financial damage to COSRT.
 - b. Ongoing review determining that the complaint is out of COSRT's scope.
 - c. Ongoing review determining that the complaint would best be heard by another body or before the courts.
- 30.2 The CEO will initially receive any and all concerns over ongoing investigations and will be responsible for determining an organisational view as to whether termination of a complaint is suitable. If so a written proposal for termination as well as justification will be sent to the Chair of COSRT's Board for ratification.
- 30.3 Upon ratification the CEO will within 7 days notify the Member and Complainant of the decision and summary reasons for this decision and ensure any interim sanction such as membership suspension are removed.

APPENDIX 1

Consensual Agreement Resolution

Embedded within the Conduct Procedure, COSRT sets out an early resolution pathway for complaints where practice deficiency or a conduct issue is accepted by the Member, is at the lower end of the public protection spectrum and removal from membership would be disproportionate: Consensual Agreement Resolution (CAR).

This is proposed and mediated by the Professional Conduct Panel and is designed to resolve a complaint at the earliest stage of the Conduct Procedure using Advice, Warnings, Undertakings and Mediation. There is a focus on working with the Member in the process of remediation through engagement and alliance to achieve an early resolution of the failure in practice.

The Consensual Agreement is drawn up by the PCP and sets out the terms of this engagement. Both complainant and Member will be notified of the decision to propose a CAR. The Member will be required to accept the terms of the PCP and subsequently engage with any required actions. If the Member does not engage with the PCP; does not accept their failings; rejects the Organisational Concern or fails to comply with the PCP's recommendations in the Consensual Agreement; the PCP may refer the case to an Adjudication Hearing. Interventions at this stage that will not be published are Advice. Warnings, Undertakings and Mediation agreements will be published in line with relevant guidelines.

Advice

- Advice does not mean a finding of misconduct. It is given **privately** to the member to help them to avoid future incidents which could call into question their clinical practice, or actions that could bring disrepute outside clinical practice.
- The complaints panel will give advice to the member to remind them of their obligations under the Code of Ethics. They may also signpost to relevant guidance or standards that may help the member keep clinical practice safe in the future.
- These findings are not published.

Warning

- To mark a Members conduct was unacceptable and must not happen again and without the need to hold a hearing, subject to the Member's acceptance.

- Available where the Member has insight into the deficiency and has provided evidence of insight and remediation and there is little chance of repetition.
- These findings are published for a period of twelve months.

Undertakings

- Available where the Member accepts the Organisational concern.
- Undertakings are measures for the members action and may restrict certain activities until they are completed i.e. must not work as a supervisor until further training has been completed.
- Undertakings are intended to assist the member to remedy their accepted failings and to be able to return to safe practice.
- These findings are published on the website in line with appendix 2 until they have been completed.

Mediation by consent

- Where the member accepts the organisational concern and agrees to voluntarily enter mediation with a recognised mediator
- Mediation is in the first instance funded by Member, with COSRT providing a national list of approved Mediators.
- If mediation cannot resolve the dispute and the parties remain in contention, then then progress to adjudicated hearing.
- These findings are published on the website in line with appendix 2 until they have been completed.

EXAMPLE Contract for Consensual Agreement Resolution

1. Organisational concern and allegations

Full details including references to Code of Ethics and evidence.

2. Member's acceptance of failings in practice

I accept that my practice fell short of what was expected of me and I accept the statement of Organisational Concern.

Members signature:

Date:

3. Proposed resolution pathway

- ☐ Advice
- ☐ Warning
- ☐ Undertakings
- ☐ Mediation by consent

4. PCP Advice

5. PCP Warning

6. Proposed undertakings

1.

2.

3.

7. Terms and objectives of proposed mediation

1.

2.

3.

8. Member agreement to abide by PCP outcome

I accept the advice, warning or actions required of me and agree to undertake them by the agreed date. I understand that failing to complete these activities will result in my case being taken to a full hearing.

Date for completed actions:

Members signature:

Date:

Chair of PCP signature:

Date:

APPENDIX 2

Complaint publication

When an Interim Suspension Order has been set, a complaint upheld in whole or in part, or a complaint disposed of by Consensual Resolution (except where the outcome is Advice) COSRT will publish on its website:

- The decision of the PCP, Adjudication Panel (or Appeal Panel) or details of the Consensual Disposal.
- Details of any sanction.

COSRT may publish the details of any breach of any sanction or a Consensual Disposal Agreement.

COSRT may publish any decision to suspend or withdraw a Member's membership or decision where had the Member's membership not lapsed, or they had not resigned, the Panel would have withdrawn or suspended the Member's membership.

Any notification published on the website may also be published elsewhere according to COSRT's discretion.

COSRT may notify third parties of a complaint including but not limited to other professional bodies and organisations.

Notifications will include the following information as a minimum but COSRT may include additional details where it is deemed appropriate:

Complaint

Date of complaint

Date complaint considered and by whom (PCP or Adjudicated Hearing)

Organisational concern and specific allegations

Breaches of the Code and key supporting evidence

Sanctions and/or undertakings

Review date

Termination/Suspension of Membership Notice:

COSRT have terminated/Suspended the membership of XXXX on the XXXX due to:

[no information given for suspension/non-compliance with remediable activities/the seriousness of the complaint after full hearing] and have removed the individuals name from the COSRT list of therapists.

Where Membership is removed this will stay on the website for 7 years.