

By-laws for the Investigation of Complaints about Members of the Association

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Draft

1. Introduction

- 1.1 These Bylaws enable the British Association of Art Therapists (the Association) to address allegations of concern about the actions or behaviour of its members, including Directors of the Association.
- 1.2 The Association promotes the interest of its members and the profession. It operates in a culture of respect and valuing the diversity of the whole membership. In the rare situation where concern is expressed about a member's actions or behaviour the Association may consider it necessary to request that the Board of Directors (the Board) considers the detail. This will be considered only if the complaint is in writing. Anonymous complaints will not be considered.
- 1.3 The processes aim to be transparent, fair and consistent in addressing any concerns about a member found acting unprofessionally or contrary to the interests of the Association or the profession.
- 1.4 The Board will avoid overlapping investigations with those of other regulators (such as the HCPC), the Police, or employing authorities, etc. Other investigations or pending actions will take precedence and the Association will consider complaints only when any actions have been completed elsewhere, unless urgent action is required to ensure the reputation and standing of the Association is maintained or protected.
- 1.5 Complaints can be made about any category of members: including office holders of the Association, such as Directors.
- 1.6 Nothing in these By-laws shall replace or override the requirements of any relevant legislation such as the Companies Act, or the Articles of Association. If there is any conflict between these By-laws and any relevant legislation or the Articles of Association, the legislation or the Articles of Association shall take precedence.

Options Available to anyone wishing to make a complaint

- 1.7 It may be appropriate to discuss the matter of concern with the member direct, to see if the matter of concern can be resolved amicably. This can be done by another member or by the CEO, for example. If this is not possible or practicable then the matter may be discussed informally with the CEO or the Chair of the Board.
- 1.8 If the complainant decides to make a complaint, they should prepare the evidence they have in written form. They should provide dates, factual evidence, who said or did what, and when. This must be sent to the Chair of the Board or the CEO. The complaint must be in writing or via email and they may be asked further questions about it.

2. Investigation Process

- 2.1 The Chair of the Board will appoint an investigatory Panel to consider the complaint (as outlined in the Terms of Reference in the Appendix). The Panel may appoint a member of Association staff or a suitable third party to act as Clerk and provide administration, carry out investigations or take administrative actions on behalf of the Panel.
- 2.2 The Chair of the Board or CEO shall issue a copy of the complaint to the Chair of the appointed Panel, normally within 5 working days of its receipt.
- 2.3 The Panel Chair will normally notify the Clerk within 5 working days if an investigation is required based upon:
 - Whether it is in the interests of the Association, its members or the profession, and
 - Whether there is a reasonable prospect of an investigation reaching a conclusion
- 2.4 If the Panel Chair concludes neither element of 2.3 are supported the complaint will be dismissed.
- 2.5 If the Panel Chair's decision has been made to proceed with the investigation, then the investigation may proceed even without the co-operation of the complainant and/ or the member complained about.
- 2.6 Once the Panel Chair's decision has been made to proceed to investigation, the member who is the subject of the allegation shall be informed in writing, within 10 working days, by the Clerk of the matters to be brought to the Panel's attention and will be issued with a copy of the complaint documentation.
- 2.7 The member who is the subject of the allegation will be invited to respond in writing to the complaint. That response should be received within 15 working days of receipt of the letter informing the member of the complaint and will be taken into account when the Panel considers the complaint.
- 2.8 If a member wishes to resign their membership of the Association after an allegation has been made, that resignation may or may not be accepted by the Chair of the Board of Directors. If the resignation is accepted, the investigation shall be ended immediately and all parties informed. If the resignation is not accepted it shall proceed with the investigation, whether or not the member responds to the complaints made about them.

- 2.9 Following the receipt of the response from the member concerned, the Clerk will issue all members of the Panel with all relevant documentation. The Committee shall consider the complaint as quickly as possible, normally within 20 working days of having been informed of the complaint. If the member concerned has not responded then this shall not delay the Panel convening. However, the Panel may grant additional time to any party to respond to its inquiries.
- 2.10 The Panel supported by the Clerk may make whatever additional enquiries it considers appropriate before reaching a decision on the complaint. The Panel shall consider the complaint in confidence using remote working, email, teleconference or face to face meeting, etc.
- 2.11 The Panel may seek professional advice, expertise or opinion from others, as it sees fit. At the request of the Panel Chair one additional member of the Association with special expertise in the matters under investigation may be co-opted as an adviser. Advisers may give advice to the Panel at its request. The advisers shall have no personal connection with the complainant, the member or otherwise have any potential conflict of interest. They shall not be involved in deciding the outcome of the complaint.
- 2.12 The Panel shall have regard to any rules, professional codes or guidance issued by the Association or by others. However it need not rely on any specific codes or guidance and shall be entitled to reach its own judgement based on what it considers reasonable actions or behaviour to be.
- 2.13 If the Panel finds insufficient evidence of matters for concern, relating to the member's actions or behaviour, it shall end the investigation.
- 2.14 If the Panel finds evidence to support the complaint, the following outcomes will be considered:
- a) Uphold the complaint without taking disciplinary action if, for example, the breach of any code or rules and the ensuing investigation was of insufficient severity to warrant any penalty
 - b) Uphold the complaint and recommend the issue of one or a combination of the following sanctions:
 - A formal written warning indicating ways in which similar breaches may be viewed by the Association
 - Issue conditions on remaining in membership.
 - Removal from any elected/appointed position in the Association
 - A suspension from Association membership for a period to be determined by the Board of up to 12 months

- Removal from Association membership

- 2.15 The burden of proof for the Panel shall be the civil burden of proof in the United Kingdom: that on the balance of probabilities, the complaint is supported by the evidence.
- 2.16 At any stage the Panel may suggest to the complainant and the member that the matter may be resolved amicably by referral to mediation. If so, all parties must agree to such a process. The Panel shall, if it feels it appropriate, identify suitable mediation services which it shall commission in an attempt to resolve the complainant.
- 2.17 If the referral to mediation is unsuccessful and the complainant wishes to pursue the complaint, the Panel shall continue with the complaints process from the point where mediation was started.
- 2.18 The Panel may advise the Board on the issues arising from a complaint, anonymised where appropriate, if the complaint has wider implications for the membership which require guidance or advice to be issued more generally.
- 2.19 The Panel shall seek to conclude investigations into all complaints within a reasonable period of time, normally within 3 calendar months of receiving the complaint.
- 2.20 The Board Chair shall be informed of the Panel's decision within 5 working days of the decision.
- 2.21 The Board Chair shall convene a meeting of the Board at the first possible convenient time to consider the recommendation of the Panel. The Board will:
- Consider whether to fully accept and implement the Panel's recommendations,
 - Consider whether to reject all of the Panel's recommendations,
 - Consider whether to refer the outcome back to the Panel for clarification, or
 - Consider whether to amend the recommendations and implement its own decision.
- 2.22 The decision of the Board shall be final.
- 2.23 Decisions of the Board will not be published unless there are general learning issues or advisory points which the Board wishes to convey to the wider membership.

3. Returning to membership

- 3.1 If a member has been suspended by the Board their membership shall be reinstated automatically at the end of the period of suspension. They shall be liable to pay any membership subscription due at the date they are reinstated. They shall not be liable for any membership subscriptions due during the period of their suspension.
- 3.2 Should they decide to apply to be re-instated before the end of the period of suspension they should do so in writing to the Board Chair. The Board Chair may:
- a) Approve the application;
 - b) Refer the application to the Board for a decision; or
 - c) Reject the application
- 3.3 The Board Chair may consult anyone they consider appropriate before deciding on any course of action.
- 3.4 The decision of the Board Chair (or the Board if it considers the application) shall be final.
- 3.5 If a person has been removed from membership by the Board they may apply to re-join the Association but not within 12 months of the date of the decision to remove them from membership.
- 3.6 They shall write to the Board Chair applying to re-join the Association. The Board Chair may:
- a) Approve the application;
 - b) Refer the application to the Board for a decision; or
 - c) Reject the application.
- 3.7 The Board Chair may consult with anyone they consider appropriate before deciding on any course of action.
- 3.8 The decision of the Board Chair (or the Board if it considers the application) shall be final.

Appendix

The Investigatory and Disciplinary Panel – Terms of Reference

- 1.1. The Board of Directors shall appoint people to a Panel. The purpose of the Panel shall be to consider concerns, complaints or allegations against Association members, brought under any of the Bylaws or Rules which set out the standards of behavior or conduct relating to Association members. The Panel will consist of at least 3 and no more than 5 people. The Panel will convene only for the period of time required to consider a complaint under these By-laws.
- 1.2. The Chair of the Board shall appoint someone to Chair the Panel. Normally this will be someone independent of the membership and the Association but with experience of chairing such proceedings and also of considering allegations of misconduct (e.g. someone familiar with investigatory proceedings outside the profession or a legal professional familiar with investigations).
- 1.3. Members of the Panel shall be appointed from both inside and outside the membership. On any appointed panel required under these Bylaws there shall be at least one Association member and one independent person.
- 1.4. Normally, the Association member will not be a Director of the Association.
- 1.5. Members of the Panel shall be appointed based on a) their standing and expertise within the membership, b) their standing and expertise within specific areas of activity complained about or c) their standing and expertise in the handling and investigation of complaints (either within or outside the profession).
- 1.6. The Panel members shall have no prior knowledge of the matters complained about.
- 1.7. The quorum for Panel meetings and conference calls shall be the entire number of appointees for the purpose of considering the specific complaint.
- 1.8. The Board shall appoint one or more people who may be members of the staff of the Association, to serve as Clerk to the Panel.
- 1.9. Meetings of the Panel shall normally be by teleconference or other 'virtual' means, unless the Panel considers that a face to face meeting will be necessary.
- 1.10. The Panel will investigate:
 - a) Any self-declaration by a member which is relevant;
 - b) Any written complaint that a member, has brought the Association or the profession into disrepute through a breach of any relevant Codes of Conduct, Rules, By-laws or of any

other professional misconduct or any action that is likely to reflect badly upon the Association or any of its members.

- 1.11. In the case of complaints considered by the Panel, the member shall be entitled to be accompanied by a legal professional or colleague. They may take legal or professional advice and may be accompanied, if they so wish, at their own expense. However only they shall be able to respond to questions or requests for information or comment.
- 1.12. The Panel must be mindful of malicious allegations and the need for thorough and fair procedures. A member making malicious accusations may be investigated by the Panel and may be subject to disciplinary action.
- 1.13. All members of the Panel shall declare any potential conflicts of interest as soon as they become apparent. The Chair of the Panel, having taken advice where necessary, shall advise them as to whether they can continue to consider the complaint or whether they should exclude themselves from considering the complaint further. If the latter, they shall be replaced by another person appointed by the Chair of the Board.
- 1.14. All complaints and allegations must be in writing. The individual making the complaint must be named as in no circumstances will anonymous complaints be considered for investigation.
- 1.15. The Chair of the Panel will return any complaint to the complainant should there be a need to report the member to Police or to a regulatory or employing authority as this is not within the remit of the Panel.
- 1.16. The Panel may appoint a legal advisor to provide independent legal advice. The legal advisor shall attend the Panel meetings where appropriate but will not take part in the decision making process.
- 1.17. The Panel shall convene a meeting where the allegations will be considered. The member complained of will be entitled to be present. The Panel may invite the complainant and any other parties to attend, as it sees fit.
- 1.18. The Panel shall conduct the hearing as it sees fit, having taken any relevant legal advice on due and fair process.
- 1.19. Normally the Panel will hear the allegations and consider all relevant evidence. Then it will hear from the member along with any relevant evidence. It may also take advice from its legal advisor. It can adjourn any meetings, if it feels appropriate to do so, to obtain any further evidence or to obtain expert advice. It will then consider its findings in private and will communicate them to the Chair of the Board in writing within 5 working days.
- 1.20. The Panel and any other professionals involved in the procedure may be paid for their services, at a rate to be agreed by the Board of Directors.

The Investigation process - flowchart

