

**BRITISH ACUPUNCTURE COUNCIL**

**CODE**

**OF**

**DISCIPLINARY PROCEDURES**

**Updated March 2008**

## **ABOUT THIS CODE**

This Code of Disciplinary Procedures is published by the British Acupuncture Council in order to set out the procedures by which the British Acupuncture Council implements and enforces the Rules set out in the Code of Professional Conduct and Code of Safe Practice. The purpose of these Rules and procedures is to ensure that complaints against Members of the British Acupuncture Council are examined and dealt with in a clear and impartial manner.

These procedures are intended to clarify what happens once the formal process of complaint has been initiated. It is particularly important that the British Acupuncture Council acts both to further the interests of its Members but also as far as possible to ensure that, whilst a complainant is a witness for and not a party to any disciplinary proceedings, the interests of the complainant and public in general are protected in any dealings with the professional membership of the British Acupuncture Council.

The British Acupuncture Council also encourages both potential complainants and practitioner Members to do whatever is possible through informal mediation to resolve differences and difficulties before initiating formal procedures. It recognises, however, that it would be unreasonable to ask this of either party in circumstances where the seriousness of the alleged offence or the breakdown in mutual trust makes mediation unlikely to achieve a satisfactory resolution. Accordingly, the route of mediation is not compulsory but is strongly recommended.

In framing these Rules and procedures, therefore, the British Acupuncture Council has tried to ensure that the interests of both practitioner and the public are properly and adequately represented and that its processes are straightforward and transparent.

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### **IMPORTANT NOTICE**

**This Code has been written and published in the English language. The British Acupuncture Council is aware that some of its Members use English as a second language, as will some patients. In order to ensure that the provisions of this Code are understood and complied with by all of its Members and that its requirements can be understood by all members of the general public, the British Acupuncture Council has adopted the following two principles:**

- 1) It is the responsibility of every Member of the British Acupuncture Council to read and familiarise themselves with the English language version of this Code, employing at their own expense translation services where necessary, and to be able to explain satisfactorily to their patients, if asked, the main requirements of the Code**
- 2) The British Acupuncture Council undertakes to identify a pool of practitioner Members or independent translators, where necessary, as a resource to enable members of the public for whom English is not a first language to be given explanations of the main requirements of the Code in their native tongue.**

*Throughout this document the masculine shall include the feminine.*

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# **1. THE CODES OF PROFESSIONAL CONDUCT AND SAFE PRACTICE**

- 1.1 The Code of Professional Conduct and the Code of Safe Practice are published by the British Acupuncture Council:
  - a. to lay down the standards of conduct and practice expected of a registered Member;
  - b. to give advice in relation to the practice of acupuncture.
- 1.2 The Executive Committee of the British Acupuncture Council has a duty to keep the Codes under review and to vary their provisions whenever it considers this appropriate, consulting representatives of the membership or specialist advisors as it deems necessary.
- 1.3 Anyone who asks the British Acupuncture Council for copies of the Codes is entitled to receive them without charge.

## 2. DISCIPLINARY INVESTIGATION

2.1 If the Executive Committee of the British Acupuncture Council, or any of its Sub-committees (other than the Investigating Committee), or the Professional Conduct Officer or the Ethics Secretary is made aware through:

- a. a report or allegation made by a member of the general public, patient, fellow practitioner, or a Member of any committee or employee of the British Acupuncture Council to whom any information may have been provided by any of the classes of person above within this Sub-section; or
- b. a statement made, whether intentionally or otherwise, by the Member concerned; or
- c. a report made by a Technical, Medical or Legal Assessor in the course of undertaking their duties as described in this Code;

that

- i. a registered Member's conduct has, or may have, fallen short of the standard required of an acupuncture practitioner; or
- ii. a registered Member has, or may have been professionally incompetent; or
- iii. a registered Member has been convicted (at any time) in the United Kingdom of a criminal offence;

the Committee or the Professional Conduct Officer or the Ethics Secretary has a duty to refer the matter to the Investigating Committee.

2.2 In the case of an allegation or report of a criminal offence referred to in Sub-section 2.1 iii, the Investigating Committee may conclude that there is no case to answer if it considers that the criminal offence in question has neither material relevance to the fitness of the Member concerned to practise nor reflects badly on the reputation of the acupuncture profession.

2.3 After considering the allegation, the Investigating Committee may decide that:

- a. **the allegation or alleged behaviour relates to specific Sections of the Code of Professional Conduct or Code of Safe Practice and warrants further investigation**

The Committee shall carry out its investigation according to the Rules and procedures set out in Appendix A.

**b. the allegation or alleged behaviour does not or could not constitute a breach of the Codes**

The Committee may rule without investigation that there is no case to answer, and inform the person making the allegation of this fact.

**c. it is unable to determine whether the allegation relates to a specific Rule in either Code or whether the alleged behaviour or conduct could be construed as misconduct or incompetence**

The Committee may seek specialist advice or arrange for a Technical Assessor to make a Preliminary Screening Assessment as described in Section 3. If the matter cannot be resolved with an action plan agreed with the Technical Assessor, the Committee may either proceed with the formal investigation or conclude that there is no case to answer.

**d. the allegation of behaviour is such that it is better dealt with by the Health Committee in the interests of the Complainant and the Practitioner**

The Committee may refer the complaint directly to the Health Committee for consideration and appropriate action.

**e. the allegation or complaint is such that the parties would be better advised to deal with the issue by way of mediation rather than disciplinary proceedings**

The Committee may recommend to the parties that mediation is to be considered and may recommend mediation be organised through the British Acupuncture Council mediation scheme or through other mediation processes.

2.4 Where the Investigating Committee concludes that there is a case to answer pursuant to in Sub-sections 2.3 a. and c. above, (which case may be over and above or in addition to the original allegation as a result of investigations) it may refer the allegation (and such further case) to the Professional Conduct Committee and notify both the Member concerned and the person making the allegation of its conclusions.

2.5 The Investigating Committee may, if it is satisfied that it is in the interests of protection of members of the public, report serious allegations immediately to the Professional Conduct Committee with a recommendation that the Member be immediately suspended under the provisions of Section 6 of this Code. The report will be made in summary form and will not override the duties of both Committees to complete the investigation and Hearings in accordance with the provisions of this Code.

2.6 The Investigating Committee shall at every stage either directly or through the Technical Assessor make the Member aware of the Practitioner Support Services available within the British Acupuncture Council, and provide the Member with contact details of these services.

### 3. PRELIMINARY SCREENING

3.1 If the Investigating Committee is unable to determine whether a Member's alleged behaviour is in breach of the Codes it may arrange for a Technical Assessor to make a preliminary screening assessment as referred to in Sub-section 2.3 c.

3.2 The Committee shall contact the practitioner Member with details of the allegation, and may ask the Technical Assessor to arrange interviews and practice visits as necessary, and to report his findings to the Committee.

3.3 After conducting his preliminary screening the Technical Assessor may decide that:

**a. the allegation relates to a specific Rule in the Code or the alleged behaviour can be construed as misconduct or incompetence**

The Technical Assessor shall inform the Investigating Committee, which will proceed with its formal investigation.

**b. the allegation does not relate to a specific Rule, or the alleged behaviour does not constitute misconduct or incompetence**

The Technical Assessor shall report this finding to the Investigating Committee which after further consideration may deem the matter to be closed.

**c. although the allegation does not relate to a specific Rule or the alleged behaviour does not constitute misconduct or incompetence, it highlights aspects of the Member's practice and practice management which fall short of the standards required by the Codes.**

The Technical Assessor may take steps to resolve the problems by drawing up an action plan with the participation and consent of the Member, and shall report in writing to the Investigating Committee to this effect, containing a copy of the agreed action plan. On satisfactory completion of any tasks, tests or amendments to working practices specified in the action plan within the time agreed for their completion, the Technical Assessor shall make a final report to the Investigating Committee and the matter will be closed.

3.4 If the Technical Assessor decides under Sub-section 3.3 c. that an action plan would be an appropriate means of resolving the problem but:

a. he cannot agree an action plan with the Member; or

b. the Member fails to complete an agreed action plan; or

- c. the Member concerned refuses to co-operate with him in seeking a resolution to the problem;

he shall report this finding to the Investigating Committee.

- 3.5 In the case of the Member refusing to co-operate with the Technical Assessor under Sub-section 3.4 c., the Investigating Committee shall report this directly to the Professional Conduct Committee.
- 3.6 In the case of the Member not agreeing to or failing to complete an agreed action plan, the Technical Assessor shall report this directly to the Investigating Committee for further consideration.

#### **4. CONSIDERATION OF ALLEGATIONS BY THE PROFESSIONAL CONDUCT COMMITTEE**

- 4.1 Where a matter has been referred to the Professional Conduct Committee under the appropriate Sub-section of Section 2 above, the Committee has a duty to consider the allegations.
- 4.2 Formal Hearings before the Professional Conduct Committee are without prejudice to the Committee's administrative functions and the Committee shall meet at such times as it shall see fit.
- 4.3 The Committee shall first consider, having regard to the nature of the allegation and any observations or admissions given by the Member to the Investigating Committee, whether it is desirable to hold a Formal Hearing to deal with the allegation.
- 4.4 The Committee may, if necessary, suggest to the Investigating Committee that further investigations should be carried out and such reports or advice as it deems appropriate should be obtained.
- 4.5 If the Committee considers that a Formal Hearing may be unnecessary, it shall offer the Member the opportunity to accept that the allegation be taken as proven without a Hearing, to enter any plea of mitigation or further relevant evidence, and to accept the decision of the Committee without making a formal appearance before it.
- 4.6 If the Member is offered and refuses the offer in Sub-section 4.5, or if the Committee considers that a Formal Hearing is desirable, it shall give the Member concerned an opportunity to appear before it and to argue his case, for which he shall be entitled to be legally represented. The Rules of procedure for such meetings are laid out in Appendix B.
- 4.7 If the allegation is well founded, the Committee may take any one or more of the following steps in relation to each allegation:
  - a. admonish the Member; and/or
  - b. fine the Member; and/or
  - c. make an Order imposing conditions with which the Member must comply while practising as an acupuncturist (a Conditions of Practice Order); and/or
  - d. order the Registrar to suspend the Member's registration for the period specified in the Order (a Suspension Order); or
  - e. order the Registrar to terminate the Member's registration for a minimum of two years (a Termination Order);
  - f. and/or make a Costs Order.

## **The Conditions of Practice Order**

- 4.7 At any time while a Conditions of Practice Order is in force the Committee may:
- a. extend, or further extend, the period for which the Order has effect;
  - b. revoke or vary any of its conditions;
  - c. require the Member concerned to undertake training and/or pass a test of competence specified by the Committee;
  - d. reduce the period for which the Order has effect; or
  - e. revoke the Order.
- 4.8 A Conditions of Practice Order shall cease to have effect:
- a. if a period is specified in the Order, when that period ends;
  - b. if a test of competence is specified or training ordered, when the Member concerned passes the test or completes the training satisfactorily; or
  - c. if a period and a test are specified, when the period ends or when the Member concerned passes the test, whichever is the later.
- 4.9 The Committee shall ensure that the conditions imposed on the Member concerned are the minimum, which it considers necessary for the protection of the public. The period specified in a Conditions of Practice Order, including any extension, shall not exceed three years.
- 4.10 Failure to comply with a Conditions of Practice Order imposed under this Section shall be automatically referred back to the Professional Conduct Committee for further action.

## **The Suspension Order**

- 4.11 A Member against whom a Suspension Order has been made shall, for the duration of the Order, forego all rights and privileges of membership, shall not be liable to pay membership fees and shall receive a refund of any fees paid for the period to which the Suspension Order applies.
- 4.12 At any time while a Suspension Order is in force the Committee may:
- a. extend, or further extend, the period of suspension; and
  - b. make a Conditions of Practice Order with which the Member must comply if he resumes practice after the end of the period of suspension.
- 4.13 The Committee shall ensure that the suspension imposed on the Member concerned is the minimum, which it considers necessary for the

protection of the public. The period specified in a Suspension Order, including any extension, must not exceed two years. If, after two years, the Member has not satisfied the requirements of the Suspension Order, the Member will be subject to a Termination Order at the Committee's discretion.

- 4.14 The Committee shall review every Suspension Order at least once every six months in order to satisfy itself that the continued suspension of the Member remains in the public interest.
- 4.15 In the case of a Suspension Order the Committee shall publish details in professional journals and shall notify the Registrars of other regulatory bodies, where appropriate.

#### **The Termination Order**

- 4.16 In the case of a Termination Order the Committee shall publish details in professional journals and shall notify the Registrars of other regulatory bodies, where appropriate.
- 4.17 Following a Termination Order a Practitioner wishing to rejoin the British Acupuncture Council will have to undertake the British Acupuncture Council admissions procedure as if he had never been a Member.

#### **Publication of Decisions**

- 4.18 The Committee shall at least once every twelve months publish a report on the British Acupuncture Council website or in The Acupuncturist or other publication setting out:
  - a. the names of those Members in respect of whom it has investigated allegations under this Section and found the allegations to be well founded;
  - b. the Section of either the Code of Professional Conduct or Code of Safe Practice of which they were found to be in breach; and
  - c. the steps (if any) taken by the Committee in respect of the Member so named.

## **5. APPEALS AGAINST DECISIONS OF THE PROFESSIONAL CONDUCT COMMITTEE**

- 5.1 Any person with respect to whom a decision of the Professional Conduct Committee is made under Section 4 may, subject to that set out below, within **28 days** of the date on which notification of the decision is sent to him, appeal in writing against the decision setting out the grounds of the Appeal in accordance with the provisions of this Section.
- 5.2 Save for a Suspension Order no decision shall take effect:
- a. before the time limit for appealing against the decision has expired; or
  - b. where an Appeal has been made, before the Appeal is withdrawn or otherwise disposed of.
- 5.3 An Appeal under Sub-section 5.1 shall first be considered by the Appeals Committee. If in the Committee's view there are reasonable and legitimate grounds for an Appeal against the findings of the Professional Conduct Committee as to whether the allegations are proven or otherwise and/or the penalties imposed by the Professional Conduct Committee the Appeal shall be heard by the Appeals Committee, pursuant to Sub-section 5.8 below, consisting of a Chair and two other Members, established for the purposes of the Appeal in accordance with Rules made by the Executive Committee of the British Acupuncture Council for the purposes of this Section (see Appendix D).
- 5.4 The Chair of an Appeals Committee:
- a. shall be selected in accordance with Rules made by the Executive Committee of the British Acupuncture Council; and
  - b. shall be qualified as mentioned in Sub-section 8.4.
- 5.5 Each of the other two Members of an Appeals Committee shall be selected in accordance with Rules made by the Executive Committee of the British Acupuncture Council with:
- a. one being an Executive Committee Member who is also a registered acupuncturist; and
  - b. one being a non-acupuncturist (lay person).
- 5.6 The Executive Committee of the British Acupuncture Council shall make Rules of procedure to be followed by an Appeals Committee Hearing under this Section (see Appendix D).

- 5.7 As with the Professional Conduct Committee Hearing the Appeals Committee shall sit in private.
- 5.8 On any Appeal under Sub-section 5.1:
- a. where the Appeal relates to the findings of the Professional Conduct Committee on the allegations, the Appeal shall be by way of re-hearing the case or, at the discretion of the Appeals Committee, by consideration of written evidence, written or oral submissions, and the transcript of the Professional Conduct Committee's Hearing; and
  - b. where the Appeal relates solely to the penalties imposed the Appeal shall be by way of written submission, and oral submissions will only be allowed at the discretion of the Appeals Committee.
  - c. the Appeals Committee hearing the Appeal shall have power to make any decision which the Professional Conduct Committee had the power to make under Section 4 and penalties can be increased as well as decreased.
- 5.9 No person shall be required by any Rules made under this Section to give any evidence or produce any document or other material at a Hearing held by an Appeals Committee which he could not be compelled to give or produce in civil proceedings in any court in that part of the United Kingdom in which the Hearing takes place.
- 5.10 Any expenses reasonably incurred by the Members of a Committee, including any incurred in connection with the appointment of a Clerk, shall be met by the Executive Committee of the British Acupuncture Council.

## **6. SUSPENSION POWERS OF THE PROFESSIONAL CONDUCT COMMITTEE**

- 6.1 This Section applies where:
- a. an allegation against a registered Member has been referred to the Professional Conduct Committee but the Committee has not yet reached a decision on the matter; or
  - b. the Professional Conduct Committee has reached a decision on an allegation but the decision has not yet taken effect because the time limit for an Appeal has not expired.
- 6.2 The Professional Conduct Committee may at any time order the Registrar to suspend the registration of the Member concerned with immediate effect (a Suspension Order) if it is satisfied that it must do so in order to protect members of the public.
- 6.3 An Order under Sub-section 6.2 shall cease to have effect:
- a. in a case falling within Sub-section 6.1 a. when the Committee reaches a decision in respect of the allegation in question and the decision does not include a Suspension Order; and
  - b. in a case falling within Sub-section 6.1 b:
    - i. if there is no Appeal against the decision, when the time limit for period for Appeal expires or any specific time limit ordered by the Professional Conduct Committee expires; or
    - ii. if there is a successful Appeal against the decision and the Appeals Committee finds that the Suspension Order should be lifted.
- 6.4 Where a Suspension Order has been made, the Member concerned may appeal against it in writing, setting out the grounds of the Appeal within 28 days to the Executive Committee of the British Acupuncture Council. Where a Suspension Order has been made under Sub-section 6.1 a. the Professional Conduct Committee must in any event expedite a Hearing of the allegation which gave rise to the Suspension Order. For the avoidance of doubt such a Hearing should take place if possible within 14 days of the Suspension Order.
- 6.5 On an Appeal under Sub-section 6.4 the decision of the Executive Committee of the British Acupuncture Council shall be final.
- 6.6 The Rules governing Appeals against Suspension Orders are attached to this Code as Appendix C.

## 7. THE APPEALS COMMITTEE

- 7.1 The Executive Committee of the British Acupuncture Council shall appoint an Appeals Committee in order to deal with Appeals lodged under Section 5 of this Code.
- 7.2 As stated in Sub-sections 5.4 and 5.5 above the Appeals Committee shall consist of three Members, of whom:
- a. one shall be qualified as mentioned in Sub-section 8.4 who will act as the Chair of the Committee;
  - b. one shall be an Executive Committee Member who is also a registered acupuncturist;
  - c. one shall be a lay person.
- 7.3 In the event of an Appeal being lodged against a decision of the Professional Conduct Committee, the Appeals Committee has a duty to meet **within 28 days of their appointment** in order to assess the validity of the Appeal by:
- a. examining all the procedures, written records and stages of the investigation;
  - b. interviewing, if necessary, the Chair of the Committee against the decision of which the Appeal is being made and also the Appellant;
  - c. seeking expert advice, if appropriate, on points of laws raised by the Appellant in making the Appeal.
- 7.4 Having considered the request for an Appeal under the terms of Sub-section 7.3, the Committee may decide that:
- a. the grounds for the Appeal are reasonable and legitimate and that the Appeal should be allowed to proceed;
  - b. the grounds for the Appeal are not reasonable or not legitimate, and the Appeal should not be allowed to proceed.
- 7.5 In the event of the request for an Appeal being approved under Sub-section 7.4 a. the Chair of the Appeals Committee shall inform both the Executive Committee of the British Acupuncture Council and the Appellant within **seven working days** of the Committee's decision and request that action be taken to expedite the Appeal.

- 7.6 In the event of the request for an Appeal being rejected under Sub-section 7.4 b. the Chair of the Appeals Committee shall inform both the Executive Committee of the British Acupuncture Council and the Appellant within **seven working days** of the Committee's decision, giving detailed reasons for the decision not to proceed.
- 7.7 The decision of the Appeals Committee shall be final.

## **8. LEGAL ASSESSORS**

- 8.1 The Executive Committee of the British Acupuncture Council may at its discretion appoint a person to be a Legal Assessor.
- 8.2 The Legal Assessor shall have the general function of giving advice to:
- a. the Investigating Committee; or
  - b. the Professional Conduct Committee;
  - c. the Appeals Committee
- on questions of law arising in connection with any matter the Committee is considering
- 8.3 He shall also have such other functions as may be conferred on him by Rules made by the Executive Committee of the British Acupuncture Council.
- 8.4 To be qualified for appointment as a Legal Assessor under this Section, a person must:
- a. have a ten year general qualification (within the meaning of Section 71 of the Courts and Legal Services Act 1990); or
  - b. be an advocate or solicitor in Scotland of at least ten years' standing; or
  - c. be a Member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least ten years' standing.
- 8.5 The Executive Committee of the British Acupuncture Council may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Legal Assessor.
- 8.6 In the case of a Legal Assessor who is also a Member of the Executive Committee of the British Acupuncture Council or of any of its committees, any such payment shall be made to him in his capacity as a Legal Assessor and not as a Member of the Executive Committee of the British Acupuncture Council.

## **9. MEDICAL ASSESSORS**

- 9.1 The Executive Committee of the British Acupuncture Council may appoint a registered medical practitioner to be the Medical Assessor.
- 9.2 He shall have the general function of giving advice to the Investigating Committee on matters within his professional competence arising in connection with any matter which the Committee is considering.
- 9.3 He shall also have such other functions as may be conferred on him by Rules made by the Executive Committee of the British Acupuncture Council.
- 9.4 To be qualified for appointment as a Medical Assessor under this Section a person must:
  - a. have been registered with the General Medical Council for at least ten years; or
  - b. hold a recognised qualification in psychiatry or psychiatric medicine or clinical psychology for at least ten years.
- 9.5 The Executive Committee of the British Acupuncture Council may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Medical Assessor.
- 9.6 In the case of a Medical Assessor who is also a Member of the Executive Committee of the British Acupuncture Council or of any of its committees, any such payment shall be made to him in this capacity as a Medical Assessor and not as a Member of the Executive Committee of the British Acupuncture Council.

## **10. TECHNICAL ASSESSORS**

- 10.1 The Executive Committee of the British Acupuncture Council may appoint a registered acupuncture practitioner or other specialist consultant of at least ten years professional standing to be a Technical Assessor.
- 10.2 He shall have the general function of giving advice to:
- a. the Investigating Committee;
  - b. the Professional Conduct Committee; or
  - c. the Appeals Committee;
- on matters within his professional competence arising in connection with any matter which he or the Committee is considering.
- 10.3 He shall also have such other functions as may be conferred on him by Rules made by the Executive Committee of the British Acupuncture Council.
- 10.4 The Executive Committee of the British Acupuncture Council may pay whatever fees, allowances and expenses it considers appropriate to a person appointed as a Technical Assessor.
- 10.5 In the case of a Technical Assessor who is also a Member of the Executive Committee of the British Acupuncture Council or of any of its committees, any such payment shall be made to him in this capacity as Technical Assessor and not as a Member of the Executive Committee of the British Acupuncture Council.

## 11. THE DISCIPLINARY COMMITTEES

These are:

- the Investigating Committee
- the Professional Conduct Committee
- the Appeals Committee

### 11.1 General Background

a. appointment of Committee Members:

- i. Members of the Disciplinary Committees shall be appointed by the Executive Committee of the British Acupuncture Council;
- ii. the Executive Committee of the British Acupuncture Council shall make provision by Rules as to the procedure for such appointments.

b. a person shall not be prevented from being a Member of a Committee because he has previously been a Member of that Committee;

c. any Member of a Committee shall hold office for the period specified in the Rules mentioned in Sub-section 11.1 a. ii.;

d. the Executive Committee of the British Acupuncture Council may by Rules make provision with respect to any Sub-committee of a Committee including, in particular, provision as to the functions and powers to be conferred on the Sub-committee, its composition and its relationship with the Committee.

e. powers of the Executive Committee:

- i. the Executive Committee of the British Acupuncture Council shall make Rules regulating the procedure of the Committees and their Sub-committees (if any) including, in particular, provision as to Rules of evidence to be observed in proceedings before any such Committee or Sub-committee;

- ii. where the Executive Committee of the British Acupuncture Council, having given a direction under Sub-section 11.1 e. i., is satisfied that the Committee has failed to comply with the direction, it can exercise any power of that Committee or do any act or other thing authorised to be done by that Committee.

f. powers of the Committees:

- i. the powers of any Committee can be exercised even though there is a vacancy among its Members;

- ii. no proceedings of a Committee shall be invalidated by any defect in the appointment of a Member.
- g. membership of more than one Committee:
  - i. a person cannot be a Member of more than one Disciplinary Committee;
  - ii. no Member of the Professional Conduct Committee shall take part in dealing with an allegation referred to the Committee by another Committee if he is also a Member of the Committee which referred the allegation.

## 11.2 The Investigating Committee

- a. the Investigating Committee shall consist of at least three but not more than seven Members, one of whom may be a Member of the Executive Committee of the British Acupuncture Council and one of whom may be a non-acupuncturist (lay person). It shall be responsible for the investigation of an allegation and, if necessary, pass it to the Professional Conduct Committee, at the same time advising the person making the allegation and the Member concerned of this action;
- b. the Chair of the Committee:
  - i. Members of the Committee shall elect a Chair from among themselves;
  - ii. the Chair shall not be the Chair of the Executive Committee of the British Acupuncture Council;
  - iii. in the event of a tie in any voting, the Chair of the Committee shall have an additional casting vote.
- c. the quorum of the Committee shall be three.

## 11.3 The Professional Conduct Committee

- a. the Professional Conduct Committee shall consist of at least three but not more than seven Members, one of whom may be a Member of the Executive Committee of the British Acupuncture Council and one of whom may be a non-acupuncturist (lay person);
- b. the Chair of the Committee:
  - i. Members shall elect a Chair from among themselves;
  - ii. the Chair shall not be the Chair of the Executive Committee of the British Acupuncture Council;
  - iii. in the event of a tie in any voting, the Chair of the Committee shall have an additional casting vote;

- iv. In the event of a tie in voting in respect of a decision under Section 4 or Section 6 the Chair shall have the deciding vote.
- c. the quorum of the Committee shall be three.

#### 11.4 The Appeals Committee

- a. the Appeals Committee shall consist of three Members, one of whom is to be a Member of the Executive Committee of the British Acupuncture Council and one of whom is to be a non-acupuncturist (lay person);
- b. the Chair of the Committee:
  - i. Members shall elect a Chair from among themselves;
  - ii. the Chair shall not be the Chair of the Executive Committee of the British Acupuncture Council;
  - iii. in the event of a tie in any voting, the Chair of the Committee shall have an additional casting vote.
- c. the quorum of the Committee shall be three.

## **APPENDIX A: RULES OF INVESTIGATION FOR THE INVESTIGATING COMMITTEE**

The Investigating Committee considers allegations or reports about practising Members' conduct according to the following procedures which are subject to revision or amendment from time to time:

- A.1.1 If the investigation arises from a complaint, the Complainant shall be sent an information sheet and copies of the Code of Professional Conduct, Code of Safe Practice and Code of Disciplinary Procedures, free of charge, if these are requested.
- A.1.2 The Complainant (who is a witness for but not a party to any Hearing) is asked to provide a full written statement of the Complaint and to sign and return a form which includes full contact details.
- A.1.3 When the official Complaint has been received, a copy of the full statement together with an information sheet is sent to the Member about whom the Complaint has been made. When the investigation is not initiated by a complaint, a summary detailing the reasons for the investigation shall be sent to the Member concerned.
- A.1.4 The Member is asked to provide a written response within 21 days. The Member is also instructed to have no further contact with the Complainant, and cautioned that any further attempts by them to resolve the Complaint, especially the offering of financial inducements or other benefits in kind, may be construed as unethical behaviour and may of itself lead to disciplinary action. If the Member does not respond, the case will be heard without their response and without any additional delay.
- A.1.5 The Investigating Committee shall discuss the case at its next scheduled meeting, usually within one month.
- A.1.6 The Investigating Committee can request or gather further information in several ways:
  - a. the Member's response to the Complaint may be copied to the Complainant whose comments may then in turn be copied to the practitioner for a further and final response;
  - b. the Member can be asked to supply copies of their original notes and practice diaries;
  - c. the Member and/or his premises may be visited by a Technical Assessor in order to examine and assess details of his performance and compliance with the British Acupuncture Council's Codes of Professional Conduct and Safe Practice;

- d. the Complainant may be visited by a Technical Assessor to clarify details of the allegation;
- e. third party(ies) may be asked to provide relevant information or evidence;
- f. the Committee may seek the advice of a lawyer;
- g. the Committee may at its discretion provide copies of any documentation or report from whatever source to both the Complainant and the Member.

A.2.1 Once all enquiries are completed the Investigating Committee shall review all of the information.

A.2.2 The Investigating Committee may decide that:

- a. the case should be referred to the Professional Conduct Committee;
- b. the seriousness of the case warrants immediate referral of the case to the Professional Conduct Committee with a recommendation for the Professional Conduct Committee to use its powers of Suspension in order to protect the public;
- c. there is no case to answer.

A.3.1 The Complainant will be informed of the Investigating Committee's decision within 14 days of the meeting at which it was made.

A.4.1 The Member will be informed of the Investigating Committee's decision with full details of potential breaches if there be any within 14 days of the meeting at which it was made.

In the event of delays caused by gathering any information that has been requested the Ethics Secretary will regularly update the Complainant in writing on the progress of the case.

## **APPENDIX B: RULES OF PROCEDURE FOR HEARINGS OF THE PROFESSIONAL CONDUCT COMMITTEE**

### **B.1 Notice of Hearing**

- B.1.1 The British Acupuncture Council Ethics Secretary shall give written notice to the Member against whom the complaint has been made and to the Complainant of the date, time and place of the Hearing of the Professional Conduct Committee.
- B.1.2 Subject to the need for an expedited Hearing the notice of the Hearing shall be not less than four weeks from the date set for the meeting. In the case of an Expedited Hearing, as a result of a Suspension Order being made with immediate effect, the notice period will be curtailed and the Hearing will be arranged as soon as is practicable subject to the availability of the necessary parties.
- B.1.3 The notice to the Complainant will confirm that the Complainant is a witness for the Hearing but is not a party to the Hearing and does not have the right to be present at the Hearing save to give evidence, and that disciplinary Hearings are held in private.
- B.1.4 The Committee recognises that the British Acupuncture Council may for the purposes of the Hearing instruct a solicitor or barrister to present the case against the Member, or to carry out such other functions as it deems necessary.

### **B.2 Postponement of Hearing**

- B.2.1 The Chair of the Committee may, of his own motion or on the application of a party to the proceedings, postpone a Hearing of which notice has been given under Rule B.1 before the meeting begins.
- B.2.2 If a Hearing has been postponed the Ethics Secretary shall as soon as practicable inform the parties concerned of the postponement and give notice of the date, time and place of the next meeting in accordance with the conditions in Rule B.1.

### **B3. Order of Procedure at the Hearing**

- B.3.1 If the Member does not appear and the Committee is satisfied that notice had been properly given under Rule B.1 or B.2, it may dismiss the case, or adjourn to give the Member a further opportunity to appear, or determine that the proceedings should continue and be determined in the Member's absence.

B.3.2 The Ethics Secretary will read out the allegation and briefly state the measures taken by the Investigating Committee to investigate the allegations and on the basis of which the allegation has been referred on to the Professional Conduct Committee.

B.3.3 The order of proceedings is that:

- a. the Chair shall ask the Member whether he admits any or all of the allegations and, in respect of any such allegations so admitted, the Committee shall record a finding that those allegations have been proved;
- b. where all the allegations are admitted the Member or his representative may submit that, in respect of any allegation so proved, the Committee should not make an Order against the Member;
- c. if none or some only of the allegations are admitted the Committee shall proceed as follows:
  - i. the Committee shall take evidence, either written or oral, of the alleged breach by the Member of the Code of Professional Conduct or Code of Safe Practice;
  - ii. the mere fact of non attendance by a Complainant shall not restrict the Committee's discretion to consider any documentary evidence before it;
  - iii. the Member or his Legal Representative will present his case and can call or produce evidence in support of his defence;
  - iv. the Committee will hear such submissions and admit such evidence as it may consider relevant;
  - v. the Committee may reasonably take into account any previous findings against the Member in considering the current allegation.

B.3.4 Any witness called to give oral evidence can be cross-examined and re-examined, and can be questioned by the Committee.

B.3.5 At the discretion of the Committee the Complainant can exercise the right not to give evidence in person and to refuse direct cross-examination by the Member.

B.3.6 The Committee regulates its own procedure and nothing in the procedure herein restricts the Committee's discretion to vary the procedure in such manner as it may in its discretion determine from time to time.

## **B.4 Documentation**

- B.4.1 The Committee may consider the case on the basis of any or all reports, written statements and documents prepared during the procedures and any other reports, written statements and documents which the Complainant or Member may choose to submit.
- B.4.2 Both the Complainant and the Member shall provide the Ethics Secretary, for circulation to each other, with **both** lists of all documents to be produced at the meeting **and** copies of all documents therein listed at least 14 days before the date of the meeting.
- B.4.3 Both the Complainant and the Member shall provide the Ethics Secretary, for circulation to each other, with a list of any authors of documents supplied by each to the other in Rule B.4.2 whom they require to be in attendance at the meeting.
- B.4.4 Where an author of a report is required to attend, his documentary evidence shall not be admissible without the author's presence to give oral evidence save where the content of the report is agreed or otherwise at the discretion of the Committee.
- B.4.5 The Committee has the power to require further witnesses both of its own motion and of that of either party without due notice to the other as in the Rules above, and may also require a person to attend before it to produce documents.

## **B.5 Attendance at Hearings**

- B.5.1 The Hearings will take place in private. For the avoidance of doubt the Complainant is not a party to the proceedings but is a witness to the allegations being considered by the Committee and is not entitled to be present throughout the Hearing save at the discretion of the Committee.
- B.5.2 All Hearings are confidential and privileged and nothing that is discussed, disclosed, exchanged etc can be used in subsequent civil or criminal proceedings and the Committee Members, assessors etc cannot be called to give evidence about that which has occurred at a Hearing.
- B.5.3 The Committee may deliberate together in the absence of the parties, their representatives and the public at any time.
- B.5.4 Nothing in this procedure shall restrict the Committee's freedom to meet to carry out a preliminary assessment of cases referred to it by the Investigating Committee from time to time, whether or not such meetings shall include Members of the Committee who may sit as Members of the Committee at any Formal Hearing.

## **B.6 Adjournment**

- B.6.1 The Committee may adjourn any Hearing or meeting from time to time as it thinks fit.
- B.6.2 The Committee may in particular adjourn any meeting or Hearing where it considers that an allegation is well founded in order to deliberate on the terms of any Conditions of Practice Order or Suspension Order that it is minded to make.
- B.6.3 If any meeting or Hearing is adjourned, the Committee shall announce the date, time and place to which the proceedings are adjourned or instruct the Ethics Secretary to give adequate written notice within these Rules of any reconvened meeting.
- B.6.4 The Committee may proceed with a meeting or Hearing resumed after an adjournment in the absence of parties present at the first meeting if it is satisfied that adequate notice was given of the reconvened meeting.

## **B.7. Notification of Decisions**

- B.7.1 The Committee shall close the meeting in order to consider its decision, and as soon as practicable after that the Ethics Secretary shall notify in writing:
- a. the Member of the Committee's decision and its reasons for reaching it, and of the Member's right of Appeal under Section 5 of the Code of Disciplinary Procedures;
  - b. the Complainant of the Committee's decision.
- B.7.2 If the Committee dismisses a case under Rule B.3.1 above, as soon as practicable after the Hearing the Ethics Secretary shall notify the Member and the Complainant of that fact.

## **APPENDIX C: RULES OF PROCEDURE FOR APPEALS UNDER SECTION 6 AGAINST SUSPENSION ORDERS**

C.1.1 An Appeal under this Section may be made where:

- a. the Member against whom the Suspension Order has been made asserts that the Suspension under the terms of Sub-section 6.2 of the Code of Disciplinary Procedures is not warranted by the nature of the allegation under consideration by the Professional Conduct Committee; or
- b. there have been procedural errors in the making of the Suspension Order.

C.1.2 The Executive Committee shall convene a Sub-committee within 14 days of the receipt of the Appeal for the express purpose of Hearing the Appeal.

C.1.3 The Sub-committee shall consist of three Members of the Executive Committee, none of whom may also belong to the Investigating Committee or the Professional Conduct Committee.

C.1.4 In order to make its judgement the Sub-committee may:

- a. require the attendance of the Member against whom the Suspension Order has been made;
- b. require all documentation received by the relevant Committee relating to the circumstances of the suspension.

C.1.5 In the event that the Member against whom the Suspension Order has been made is required to attend under Rule C.1.4 a. above, he shall be entitled to be legally represented.

C.1.6 After consideration of the case the Sub-committee may:

- a. confirm the Suspension Order for the reasons specified;
- b. in the case of procedural error under Rule C.1.1 b. reinstate the Member, give instruction to the Committee making the Suspension Order on correct procedure and refer the matter back to the Committee for further consideration;
- c. terminate the Suspension Order.

C.1.7 In the event of a Member being reinstated under Rule C.1.6 b. above, nothing in these Rules shall prevent the Committee from re-imposing the suspension by following correct procedure.

- C.1.8 The Sub-committee shall notify the Member concerned and the Professional Conduct Committee of its decision **within seven days** of the meeting at which the Appeal is heard.
- C.1.9 There is no further provision within the Code of Disciplinary Procedures or these Rules for further Appeal against a Suspension Order.
- C.1.10 The Hearing shall take place in private. All Hearings are confidential and privileged and nothing that is discussed, disclosed, exchanged etc can be used in subsequent civil or criminal proceedings and the Committee Members, assessors etc cannot be called to give evidence about that which has occurred at a Hearing.

## **APPENDIX D: RULES OF PROCEDURE FOR APPEALS AGAINST DECISIONS OF THE PROFESSIONAL CONDUCT COMMITTEE**

### **D.1 Establishment of the Appeals Committee**

D.1.1 The Executive Committee of the British Acupuncture Council shall appoint an Appeals Committee in order to deal with Appeals lodged under Section 5 of this Code.

D.1.2 The Appeals Committee shall consist of three Members, of whom one shall be qualified as mentioned in Sub-section 8.4 who will act as the Chair of the Committee; one shall be an Executive Committee Member who is also a registered acupuncturist and one shall be a lay person.

D.1.3 The Executive Committee Member of the Appeals Committee referred to in Sub-section 5.5 a. of the Code shall be a fully registered Member willing and able to act in the Appeal who is selected by the Chair of the Committee and appointed from a list maintained by the Ethics Secretary of fully registered Executive Committee Members who have agreed to sit on Appeals Committees established under Section 5 of this Code.

D.1.4 The Member of the Committee referred to in Sub-section 5.5 b. of the Code shall be a non-acupuncturist (lay person) willing and able to act in the Appeal who is selected by the Chair of the Committee appointed under Rule D.1.2 above from a list maintained by the Ethics Secretary of lay persons who have agreed to sit on Appeals Committee established under Section 5 of this Code.

### **D.2 Notice of Hearing**

D.2.1 As soon as is practicable after the Committee has been established and the Committee has decided there is to be a Hearing rather than consideration of written submissions, the British Acupuncture Council Ethics Secretary shall give notice to the Appellant of the date, time and place of the Hearing of the Appeals Committee to consider the Appeal.

D.2.2 The notice of the meeting shall be not less than four weeks from the date set for the Appeal Hearing.

### **D.3 Postponement of Hearing**

D.3.1 The Chair of the Committee may, of his own motion or on the application of a party to the proceedings, postpone a Hearing of which notice has been given under Rule D.2.2 before the Hearing begins.

D.3.2 If a Hearing has been postponed the Ethics Secretary shall as soon as practicable inform the parties concerned in writing of the postponement and give notice of the date, time and place of the next Hearing in accordance with the conditions in Rule D.2.2.

#### **D.4. Order of Procedure at an Appeals Hearing**

D.4.1 If the Appellant does not appear and the Committee is satisfied that notice had been properly given under Rule D.2.2. or D.3.1, it may dismiss the Appeal, or adjourn to give the Appellant a further opportunity to appear, or determine that the proceedings should continue and be determined in the Appellant's absence.

D.4.2 The Ethics Secretary will read out the allegation and briefly state the nature of the Order made by the Professional Conduct Committee, and will indicate whether the Appeal relates only to the Order made, or is against the finding that the allegation is well founded.

D.4.3 The order of proceedings is that:

- a. the Solicitor or person acting for the British Acupuncture Council will open the case for the British Acupuncture Council, and will call or produce evidence in support of the British Acupuncture Council's case;
- b. the Appellant or his Legal Representative will present his case and can call or produce evidence;
- c. the Committee will hear further submissions and evidence which it considers relevant.

Save that nothing in this Section shall prevent the Committee from regulating its own proceedings as it shall see fit including the order of proceedings referred to above.

D.4.4 Any witness called to give oral evidence may be cross-examined and re-examined, and may be questioned by the Committee.

#### **D.5 Documentation**

D.5.1 The Committee may consider the Appeal on the basis of any or all reports, written statements and documents prepared during the procedures outlined in the Code of Professional Conduct, and any other reports, written statements and documents which the Appellant may choose to submit.

D.5.2 Both the Solicitor and the Appellant shall provide the Ethics Secretary, for circulation to each other, with **both** lists of all documents to be produced at the Hearing **and** copies of all documents therein listed at least 14 days before the date of the Hearing.

D.5.3 Both the Solicitor and the Appellant shall provide the Ethics Secretary with a list, for circulation to each other, of any authors of documents supplied by each to the other in Rule D.5.2 above whom they require to be in attendance at the Hearing.

D.5.4 Where an author of a report is required to attend the documentary evidence will not be admissible without author's presence to give oral evidence save where the content of the report is agreed or otherwise at the discretion of the Committee.

D.5.5 The Committee has the power to require further witnesses both of its own motion and of that of either party without due notice to the other as in the Rules above, and may also require a person to attend before it to produce documents.

## **D.6 Hearings in Private**

D.6.1 The Hearing shall take place in private. All Hearings are confidential and privileged and nothing that is discussed, disclosed, exchanged etc can be used in subsequent civil or criminal proceedings and the Committee Members, Assessors etc cannot be called to give evidence about that which has occurred at a Hearing.

D.6.2 The Committee may deliberate together in the absence of the parties, their representatives and the public at any time.

## **D.7. Adjournment**

D.7.1 The Committee may adjourn the Hearing from time to time as it thinks fit.

D.7.2 The Committee may in particular adjourn any Hearing where it considers that an allegation is well founded in order to deliberate on the terms of any Conditions of Practice Order or Suspension Order that it is minded to make.

D.7.3 If the Hearing is adjourned, the Committee will announce the date, time and place to which the proceedings are adjourned or instruct the Ethics Secretary to give adequate notice within these Rules of any reconvened Hearing.

D.7.4 The Committee may proceed with a Hearing resumed after an adjournment in the absence of parties present at the first meeting if it is satisfied that adequate notice was given of the reconvened Hearing.

## **D.8. Notification of Decisions**

D.8.1 The Committee will close the Hearing in order to consider its judgement, and as soon as practicable after that the Ethics Secretary will notify in writing:

- a. the Appellant of the Appeals Committee's decision and its reasons for reaching it;
- b. the British Acupuncture Council and the person making the original allegation of the Appeals Committee's decision.

D.8.2 If the Committee dismisses an Appeal under Rule D.4.1 above, as soon as practicable after the Hearing the Ethics Secretary will notify the Appellant, the British Acupuncture Council and the person making the allegation of that fact.