

# The Complaints Process for Complainants

NB: this guide does not relate to complaints made about Members of NZICA

## What is CA ANZ's professional conduct role and purpose in relation to complaints?

- CA ANZ's purpose is to act in the public interest and ensure that Members uphold the highest ethical and technical standards.
- CA ANZ's role is to investigate complaints under the By-Laws, and if necessary, take appropriate disciplinary action.
- Complaints can be made against:
  - Members of CA ANZ; and
  - Former or suspended CA ANZ members.
- CA ANZ cannot require Members to:
  - take a particular course of action; or
  - make restitution for any financial loss allegedly caused by Members.
- CA ANZ does not have a fidelity fund and cannot compensate you if your complaint is upheld. Any claims that Members have caused financial loss may need to be pursued through the court system.

## How CA ANZ investigates complaints

- For full details of the rules that govern the CA ANZ professional conduct process, see section 5 of the By Laws on our website (particularly By-Laws 39 and 40.1 to 40.40).
- The Professional Conduct Committee (PCC) is responsible for investigating your complaint.
- The PCC is comprised of two Members of CA ANZ and one lay member and is an independent body within CA ANZ. This means the PCC does not act on your behalf or on behalf of the member.
- The PCC is assisted by CA ANZ's Conduct & Discipline staff (Staff). The Staff are your principal point of contact during the investigation of your complaint.
- If CA ANZ receives a complaint about firms or Practice Entities that are not Practice Entity Members of CA ANZ, these will not be progressed as a complaint. However, CA ANZ will review the information provided and it may be used for an investigation. Because of the confidentiality of complaint investigations, CA ANZ will not be able to share details of any such investigation(s) with you.

## What happens when CA ANZ receives a complaint?

### Registration

- Every complaint received is registered on our system.
- The Staff will acknowledge receipt of your complaint and provide you with this information sheet.

## Initial Review

- The Staff will check that:
  - you have fully completed and signed the complaint form;
  - any additional complainants or representatives that you authorise to act on your behalf have signed the complaint form.
- Your complaint will not be investigated until these steps have been completed.
- Each complaint is examined to ensure that it is a matter that the PCC can investigate. If the PCC cannot investigate the complaint, you will be notified in writing.
- If there are any issues subject to legal/regulatory proceedings, the investigation may be adjourned until those proceedings have concluded.
- Your complaint will be provided to the Member the subject of the complaint, whether or not it is investigated.

## Investigation

- If the PCC is investigating your complaint, it is provided to the member for response.
- The member generally has 14 days to respond to the complaint. If additional time to respond is required, an extension may be granted if the PCC considers this is appropriate.
- You will usually receive the member's response for comment unless the PCC considers this is not appropriate. If the response satisfies your concerns, you may choose to withdraw your complaint.
- Further information may be requested from either party until there is sufficient information for a decision to be made.
- After the Staff have gathered all relevant information, the PCC will consider this at its initial meeting. The decision is made by the PCC and is not made by the Staff.
- The PCC may wish to meet with the parties to discuss the complaint or to obtain further information at a case conference.

## Decision

- The PCC can make the following decisions about a complaint:
  - take no further action
  - issue the member a professional reminder that the member's conduct has fallen short of best practice
  - issue a caution to the member
  - require the member or the member's practice entity to submit to a review or reviews
  - require the member to carry out professional development
  - seek the member's consent to enter into a consent order agreement
  - convene a case conference
  - refer the complaint to the Disciplinary Tribunal for hearing.

## When will you be informed of the outcome?

- The Staff will inform you of the PCC's decision and reasons within 21 days of the decision.
- If the PCC has decided to take no further action, to issue the member with a professional reminder, to caution the member, if the member has entered into a consent order agreement with the PCC or has been ordered to submit

to a review or carry out professional development, this concludes the complaint process and the complaint will be closed.

- If a case conference has been convened, the investigation moves to the next stage (see further details below).
- If the member is referred to the Disciplinary Tribunal for hearing, you will be informed of the outcome following the hearing.

### What happens at a case conference?

- A case conference is convened for complaints where the PCC wishes to meet with the parties and obtain further information.
- The PCC may invite the complainant to attend if it considers it appropriate to do so. This may not occur, and it is up to the PCC.
- The case conference is not open to the public.
- If you would like to bring a support person to the case conference, please ensure your support person completes a confidentiality form and submit this no less than 7 days prior to the case conference. The PCC will consider the request.

### What you need to provide

- We suggest that you try to resolve the matter directly with the member to discuss your concerns, before lodging a complaint with CA ANZ.
- You need to provide enough information for your complaint to be investigated, including
  - a detailed timeline / chronology of events
  - copies of communications (letters, emails and texts)
  - any agreement/s between you and the Member (terms of engagement)
  - any additional information you consider relevant to support your complaint.

### Complaints the PCC can investigate

- The PCC can only investigate complaints about conduct which may amount to an Offence under the By-Laws (see By-Law 40.9)

### Complaints the PCC cannot investigate

- The PCC may dismiss your complaint without investigation if it considers that it:
  - relates to conduct that does not amount to an Offence
  - is trivial, frivolous, vexatious or made in bad faith
  - is lacking in substance, vague, imprecise or unsupported by evidence
  - is, may or could be, an abuse of process
  - relates to matters of historical issues which would no longer be practical to investigate
  - is of an insufficient nature to warrant investigation
  - falls within the jurisdiction of another body or agency or is the subject of a separate PCC investigation and it is reasonable to be dismissed.
- If the PCC cannot investigate your complaint, we'll provide you with reasons as to why. The PCC will not exercise its discretion to dismiss a complaint lightly.

## Withdrawing a complaint

- You may at any stage inform us that you no longer wish to pursue your complaint. However, the PCC may decide to continue to investigate the complaint.

## How often will CA ANZ update you?

- You will be contacted by the Staff if the PCC needs further information.
- The Staff will let you know when a decision has been made by the PCC.
- If you wish to receive any more updates during the investigation of your complaint, please contact the Staff.

## What if you are dissatisfied with the PCC's decision?

- If you are dissatisfied with the PCC's decision, you have 21 days after notification of that decision to request a review of the decision (this period may be extended in exceptional circumstances).
- You must request this review by using the proper form, signing the costs agreement and paying the application fee. Further details and copies of these documents are on our website.
- The review will be conducted by an independent reviewer (Reviewer of Complaints). The Reviewer of Complaints will consider whether the PCC's procedure and decision were appropriate.
- The Reviewer of Complaints will not review a decision if it considers that the application is trivial, frivolous, vexatious, made in bad faith or not made in accordance with the By-Laws and Regulations.
- The Reviewer of Complaints will also consider whether you or the PCC should pay the costs and expenses of the review.
- The Reviewer of Complaints will report to you, the member, the PCC and, if it considers it appropriate to do so, the Professional Conduct Oversight Committee and may direct the PCC to reconsider the decision made in relation to the complaint.
- The member you have complained about is also able to request a review in certain circumstances.

## Procedural Fairness

- In dealing with a complaint the PCC and the Staff will observe procedural fairness to ensure that the PCC's decision-making is fair and impartial. This means that both sides get to tell their story.
- The Staff will generally give any information or documents it receives from one party to the complaint to all other parties. The Staff need not do so if the information or documents are irrelevant, are already in the possession of the parties or in circumstances where the PCC is unable to investigate the complaint.
- The Staff will ensure that:
  - the parties are informed about the issues being considered, so that they can respond to those issues properly
  - information received from the complainant and member is exchanged between the parties where appropriate and
  - all information is received and considered before a decision is made.

## How long will the investigation take?

- Investigations will usually be completed within 4 - 9 months if all relevant information is provided. This may take longer if the complaint is complex, if relevant information is not provided or workloads are high.
- If your complaint is referred to the Disciplinary Tribunal then it may take approximately 12 months to complete.

## Confidentiality

- Please remember that all information, correspondence and other documentation sent and/or received by CA ANZ, the PCC or other disciplinary bodies in connection with a complaint, its investigation, outcome and associated processes is confidential.
- Any breach of your confidentiality obligations may prejudice the investigation of the complaint and any disciplinary proceedings.
- In the event of a suspected or actual breach of this requirement, investigation of your complaint may cease.
- Please refer to the confidentiality section contained in the complaint form you submitted to us, for further information.

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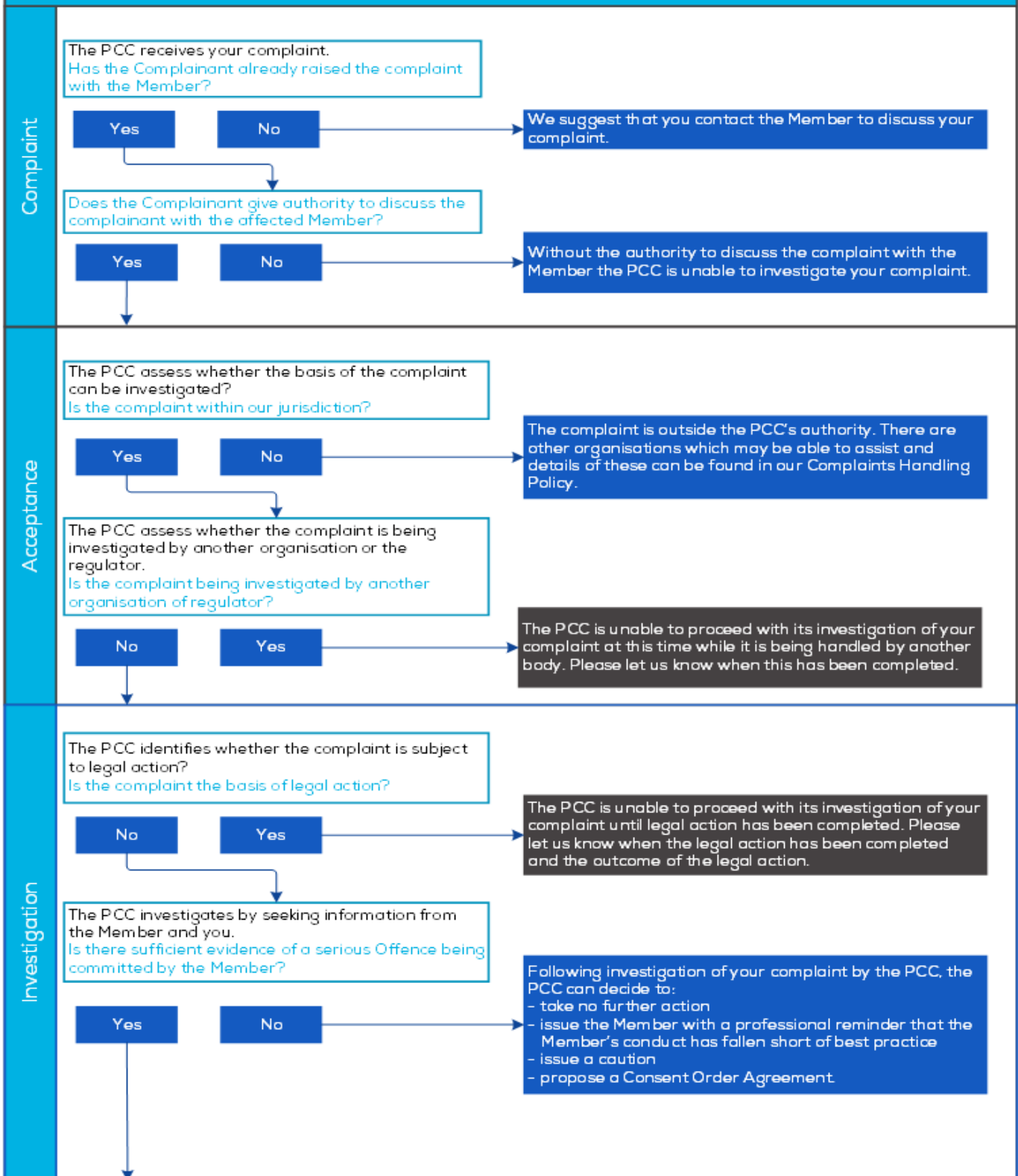
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# Complaints Process

## Our Complaint Process

Member is used in this chart to refer to current, former or suspended members.

After we receive a written complaint, the Professional Conduct Committee (PCC) investigates it using the following process:



# Our Complaint process

