

# PROFESSIONAL CONDUCT GRIEVANCE INTERVENTION GUIDELINES

## Professional Conduct Grievance Intervention Guidelines

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## 1. About these Guidelines

### 1.1. Object

These Guidelines have been developed by RCSA's Board to assist in the handling of Professional Conduct Grievances and to support RCSA Members' commitments to develop values of personal professionalism and to embed them in the conduct of their employment services dealings, by measures appropriate to their size and circumstances, so as to assure the operational integrity of their organisations.

### 1.2. Revocation of Previous Procedures

These Guidelines supersede any previous Disciplinary and Dispute Resolution Procedure.

### 1.3. Jurisdiction to Intervene

**See Also:** [Discretion to Intervene \(Intervention\)](#)

RCSA has a jurisdiction to intervene in Grievances arising from the conduct of its Members. The jurisdiction is sourced in clause 2.8 of RCSA's Constitution, which provides that Members who are guilty of any conduct, which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Association, are liable to discipline in accordance with RCSA's Disciplinary and Dispute Resolution Procedures - including these Guidelines.

### 1.4. Discretion Not to Intervene

**See Also:** [Statement of Strategic Priorities and Intent \(Strategic Content\)](#)

Although RCSA has jurisdiction to intervene in Grievances arising from the Professional Conduct of its Members, it is not obliged to do so.

**Examples:**

- Some grievances may be more appropriately dealt with through statutory or civil enforcement and remedy procedures.
- Principles of comity may warrant RCSA, as a voluntary domestic body, declining to handle a Grievance in deference to a superior investigative process or tribunal - e.g. a Police or FWO investigation or a court proceeding.

- Some Grievances may not be suitable for determination having regard to the fact that RCSA, as a voluntary domestic body, has no statutory powers to compel the production of evidence.
- Other Grievances may involve matters that fall outside current strategic priorities and statements of intent for RCSA.

These Guidelines attempt to strike a balance of interests in RCSA's exercising its disciplinary jurisdiction and supporting its Members in developing their capacity for effective self-regulation.

### 1.5. Externally Sourced Professional Obligation

RCSA recognises that its Members' professional responsibilities may extend to externally sourced professional obligations.

**Examples:**

- Obligations of corporate members of the World Employment Confederation;
- Obligations arising because of the multi-disciplinary or multi-domain nature of Members' practices - e.g. obligations arising under the AHRI or the MARA Codes of Conduct.

So far as is practicable and consistent with its Constitution and the RCSA Code, RCSA pays due regard to the externally sourced professional obligations of its Members.

### 1.6. Key Roles & Responsibilities

#### 1.6.1. Members

Members commit to develop personal values of professionalism, and to embed those values in the conduct of their employment services dealings, by measures necessary and appropriate to their size and circumstances, to assure the operational integrity of their organisations.

#### 1.6.2. The Board

The Board:

- a. is responsible for the governance of RCSA;
- b. develops and maintains the Code;

- c. directs the development of the governance framework within which the Code operates including the development and publication of Grievance Intervention Protocols and Regulator Liaison Guidelines;
- d. publishes statements of strategic priorities for the promotion and advancement of Members' Professional Conduct;
- e. may direct the development and publication of interpretative guidance materials, including Consensus Statements for use in interpreting the requirements of the Code or when determining if conduct is unbecoming of a Member or prejudicial to the interests of RCSA;
- f. may endorse Professional Conduct Recommendations to guide standards of Member conduct in particular cases;
- g. appoints a panel of persons for appointment to RCSA's Professional Conduct Review Committees;
- h. delegates such of its powers to Professional Conduct Review Committees as may be necessary for their proper functioning;
- i. appoints a panel of persons for appointment as Professional Conduct Advocates (PCAs);
- j. may appoint qualified persons as Code Advisors to assist RCSA in its Professional Conduct Grievance Interventions;
- k. may resolve to censure, suspend or expel a Member or impose other sanctions;
- l. may refer a Professional Conduct Grievance to any method of grievance intervention provided for in these Guidelines, and may appoint a person to have carriage of the Professional Conduct Grievance on behalf of RCSA;
- m. may approve RCSA's initiating an investigation into the professional conduct of a Member.

### 1.6.3. The CEO

The CEO:

- a. obtains Members' commitments to abide by the standard of professional conduct required by the RCSA Code;
- b. ensures that RCSA is resourced to handle Professional Conduct Grievance Interventions;
- c. ensures that there are suitable training and support opportunities to assist Members to meet their commitments to the standard of professional conduct required by the RCSA Code PROVIDED that this does not require RCSA to provide legal or other professional assistance or the cost thereof to any party to a Grievance;
- d. ensures that the Code and these Guidelines are well-publicised, and that information about how to notify and conduct a PCG is readily available.

#### 1.6.4. The Professional Conduct Registrar

The Professional Conduct Registrar:

- a. receives Professional Conduct Grievances, and decides if they are to be accepted or rejected for intervention;
- b. facilitates the handling of Professional Conduct Grievances;
- c. collects data about Professional Conduct Grievances and their outcomes;
- d. co-ordinates the availability of panel members to sit on Professional Conduct Review Committees, and schedules sitting dates;
- e. makes available information about the Code, these Guidelines, methods and availability of dispute resolution - e.g. mediation, and resources to assist participants involved in Grievances - e.g. conflict coaching and sources of representation.

#### 1.6.5. The Professional Conduct Review Committee (PCRC)

The Professional Conduct Review Committee:

- a. may make or endorse a professional conduct recommendation;
- b. directs investigations of Professional Conduct Grievances that are referred to it;
- c. makes findings about whether Members have met the standard of professional conduct required by the RCSA Code;
- d. upon conclusion of an investigation, may make a sanctions recommendation to the Board;
- e. at the request of the Board, develops Interpretative & Operational Guidance Materials in accordance with these Guidelines.

#### 1.6.6. The Professional Conduct Council (PCC)

The Professional Conduct Council:

- a. reviews periodically the Code, these Guidelines, significant governance advice and protocols, performance reports, training resources and their usage, and Code determinations, and makes recommendations to the Board for the further development of RCSA's Professional Conduct Framework;
- b. reviews and provides recommendations regarding Code Guidelines

#### 1.6.7. Professional Conduct Advocates (PCA)

Professional Conduct Advocates:

- a. help Members to understand and accept their commitments to the standard of professional conduct required by the RCSA Code and their responsibilities arising from it;
- b. support and guide Members, whom they may accompany through the grievance intervention process.

#### 1.6.8. Arbitrator

An Arbitrator may:

- a. conduct arbitration, as provided for by the RCSA Constitution;



- b. conduct arbitrations of disputes referred to the arbitrator under the provisions of applicable legislation, these Guidelines, or rules for commercial or international arbitration;

An Arbitrator does not recommend or impose sanctions or make any award in the nature of sanctions.

#### 1.6.9. Code Advisors

Code Advisors engaged by RCSA:

- a. provide early evaluation, pathway and procedural advice about Professional Conduct Grievances to RCSA;
- b. at RCSA's request collaborate with any party to a Professional Conduct Grievance, or their representatives, to assist in achieving the objects of the Code and these Guidelines.

## 2. Interpretive & Operational Guidance Materials

The RCSA Board may direct the development of Interpretive & Operational Guidance Materials for use in:

- a. interpreting the requirements of the Code;
- b. determining if conduct is unbecoming of a Member, or prejudicial to the interests of RCSA; or
- c. allocating Professional Conduct Grievances to suitable pathways for resolution.

Interpretive Guidance Materials may serve a broader purpose of offering a framework for addressing concerns of a systemic nature within the employment services industry.

### 2.1. Statement of Strategic Priorities and Intent

**See Also:** [Discretion Not to Intervene \(Strategic Content\)](#)

The Board is to develop and publish periodic statements of strategic priority and intent concerning the exercise of its disciplinary jurisdiction and supporting its Members in developing the capacity for effective self-regulation.

## 2.2. Code Guidelines

Code Guidelines:

- a. inform RDSA Members and the public about how the Code is likely to be interpreted and applied in specific situations involving Members;

### **Examples**

- Workforce transitions, fee disputes, or candidate replacement guarantee transactions.
- b. assist Members to manage those situations consistently with their commitments to develop values of personal professionalism and to embed those values in the conduct of their employment services dealings, by measures appropriate to their size and circumstances;
  - c. may be developed on instruction from RDSA's CEO whenever RDSA perceives a need to do so;
  - d. may be developed by a committee or task group of RDSA Members - including by a Professional Conduct Review Committee acting as a Code Guideline Development Sub-Committee;
  - e. must be reviewed by RDSA's lawyers for assessment of any competition, privacy or other regulatory impacts and also by the Professional Conduct Council (together, *Review Advice*) before being approved by the Board. All review advice must be provided to the Board.

## 2.3. Consensus Statements

Consensus Statements

- a. are public statements made by the Board of RDSA, from time to time, for:
  - promoting excellence, enterprise and integrity in the businesses of all Members and of individuals engaged by those businesses; and

- improving knowledge and skill concerning their responsibilities, duties and rights in the Employment Services Industry.

(See clause 1.3(a) or 1.3(b) of RCSA's Constitution);

- b. provide means by which RCSA may address topical, systemic issues within the employment services industry.

**Examples:**

- barriers to mature age worker participation,
  - worker classification and engagement (whether as an employee or independent contractor; casual or non-casual),
  - recognition of new work categories and methods,
  - professional handling of rights of conversion or flexibility requests;
  - conduct of small business collective bargaining under the *Competition & Consumer Act*;
- c. may be supported by specific reference and interpretative material and disciplinary and dispute resolution procedures that are designed to support Member compliance.
  - d. may only be published after development in consultation with regulatory and industry stakeholders as provided for in these Guidelines.

### 2.3.1. Eleven-Step Process

The development of a Consensus Statement should follow an eleven-step process to ensure transparency and stakeholder consultation as follows:

- a. Board resolves to develop a Consensus Statement addressing an identified area of concern;
- b. RCSA advises relevant regulators (including the ACCC and NZ Commerce Commission) of its intent to develop a Consensus Statement, offering to consult on any regulatory issues. RCSA may also advise selected stakeholders including Industrial

Organisations of Employers and Employees and Industry, business and professional associations;

- c. RDSA develops an exposure Consensus Statement taking into account feedback received during the regulatory consultation stage;
- d. The Board approves the exposure Consensus Statement for public release;
- e. RDSA invites public response during a period of not less than one month;
- f. RDSA prepares a consultation report for consideration by the Board;
- g. The Board decides whether to proceed with the further development of a Consensus Statement;
- h. If the Board decides to proceed, RDSA prepares a draft Consensus Statement for approval by the Board;
- i. The draft Consensus Statement is reviewed by RDSA's lawyers for assessment of any competition, privacy or other regulatory impacts;
- j. If approved by the Board (subject to any requirement for authorisation or notification under competition law) the draft Consensus Statement and its proposed commencement date is advised to the ACCC, the NZ Commerce Commission and other relevant regulatory authorities;
- k. The Consensus Statement is notified to the public and becomes effective on its commencement date.

### **3. Professional Conduct Grievance Interventions Generally**

1. A Professional Conduct Grievance Intervention is a proceeding conducted by RDSA in respect of the professional conduct of its Members. A Grievant is not a party to such a proceeding but may participate as provided for by these Guidelines.

2. A participant, who is not a Member and who fails to comply with a requirement of these Guidelines may be refused any further entitlement to participate.
3. Professional Conduct Grievance Interventions shall be conducted with due regard to parties' and participants' interests in:
  - a. securing a lawful outcome;
  - b. being heard - noting the parties' and participants' interests in emotional due process extending to the need for the parties and participants:
    - to feel they have been heard and listened to, acknowledged and understood by those involved;
    - to creatively shape solutions so that the resulting resolution meets all or most of their interests, goals and needs;

**NOTE:**

These may include an apology, acknowledgement, remediating or healing a culture or situation, to be understood, validation, respect.

- to be able to work at their own pace and within reasonable timeframes and constraints;
  - to preserve important relationships between parties and participants, avoiding more harm, and when possible, improving them;
  - to avoid the collateral damage of draining resources, funds, energies and emotions.
- c. being sufficiently informed of relevant responses of a party or participant;
  - d. knowing whether the standard of professional conduct required by the RCSA Code has been met;

- e. maintaining confidentiality consistently with the purpose for which information obtained in connection with the Professional Conduct Grievance Intervention may be used or disclosed - extending to the purpose of maintaining records for use and disclosure in assessing suitability for future membership;
  - f. having Professional Conduct Grievance Interventions completed with as little cost, formality, and delay as may be consistent with the requirements of fairness - the general intent of which is that investigations should proceed, so far as practicable, by interview, without legal representation, and by direct involvement of parties and participants with the Professional Conduct Review Committee when its jurisdiction is engaged;
  - g. being informed of the outcome of any Professional Conduct Grievance Intervention and reasons for that outcome.
4. Except as may be permitted by these Guidelines, parties and participants to a Professional Conduct Grievance Intervention must not attempt privately to approach or influence (directly or indirectly) the Directors, CEO, or any member of a Professional Conduct Review Committee regarding the Professional Conduct Grievance Intervention.

### 3.1. Costs

Except in so far as:

- a. a Member might be directed to make a payment in respect of another party's costs as becoming the Member or in the interests of the RCSA;
- b. an Arbitrator conducting an appeal under these Guidelines might otherwise award; or
- c. a court of competent jurisdiction might otherwise order

the parties and participants to a Professional Conduct Grievance Intervention will each bear their own costs of and incidental to the intervention.

### 3.2. Savings

1. Nothing in these Guidelines prevents the parties or participants to a Grievance from agreeing upon any other process for the resolution of any difference between them provided that:
  - a. their process satisfies the requirements of paragraph 3(3) of these Guidelines;
  - b. upon their difference being resolved, the parties or participants jointly notify the CEO that their difference has been resolved; and
  - c. their process (or any settlement or compromise reached in respect of their differences) does not oust the jurisdiction of RCSA with regard to its Members' professional conduct.
2. Nothing in these Procedures shall oust the jurisdiction of any court of competent jurisdiction.

## 4. Raising a Grievance

1. Any person who has a direct and substantial interest in the professional conduct of a Member and who is aggrieved by the conduct of the Member's employment services dealings (*a Grievant*) may raise a Professional Conduct Grievance in the form authorised by the Board from time to time.
2. A Grievant may raise a Professional Conduct Grievance through a representative (e.g. a legal representative, trade union, professional association, or community or social justice body) who has been given express permission to represent the Grievant and who undertakes to observe all reasonable requirements of these Guidelines – including requirements of privacy and confidentiality.

3. The Board may authorise forms and procedures for raising Professional Conduct Grievances in writing as well as orally to ensure the accessibility of the Code Framework.

## 5. Discretion to Intervene

**See Also:** [Mediation \(Deferral for Mediation\)](#), [Jurisdiction to Intervene \(Intervention\)](#)

1. RCSA reserves a discretion to intervene or to decline to intervene in a Professional Conduct Grievance.
2. The discretion may be exercised by the Board or by its duly appointed delegate - (e.g. the CEO or Professional Conduct Registrar).
3. RCSA may decline to intervene in a Professional Conduct Grievance (or the continuation thereof) for any reason it considers proper, including the reason that:
  - a. the grievance is, or has become, frivolous or vexatious;
  - b. the grievance does not disclose an important issue about a Member's Professional Conduct;
  - c. resources available to RCSA as a voluntary body are not suitable for the investigation of the grievance;
  - d. investigation of the grievance may prejudice proceedings in a court or statutory tribunal, a law enforcement investigation, or the investigation of a statutory authority;
  - e. delay in raising the grievance may prejudice its investigation
  - f. the grievance arises from previously closed intervention;
  - g. the Board has accepted a written undertaking from the Member in whole or partial satisfaction of RCSA's professional conduct interest in the conduct giving rise to the grievance;
4. Instead of declining a Professional Conduct Grievance for intervention, RCSA may defer it, or part of it, and direct that it not proceed until either:



- a. a relevant statutory or law enforcement body completes any investigation or prosecution that it may be conducting;
- b. other legal proceedings between the parties and participants are finalised or resolved;
- c. a Member or Members involved in the Grievance undergo counselling under these Guidelines; or
- d. persons involved in the Grievance participate in mediation or any other dispute resolution process directed or recognised under these Guidelines.

## 6. Pathways

1. If RCSA decides to intervene in a Professional Conduct Grievance, the intervention is to be placed on one or more of the Pathways provided for in this section.
2. Acceptance of a Professional Conduct Grievance for intervention does not imply, by that fact alone, that any Member has fallen short of the standard of professional conduct required by the RCSA Code.
3. If RCSA decides to intervene in a Professional Conduct Grievance, the Professional Conduct Registrar in consultation with the CEO may note a caution on the Register of Members against the Member in respect of whose conduct it intervenes.
4. A caution is a notation made on the Register of Members:
  - a. searchable by the public;
  - b. advising that a professional conduct issue has been raised in respect of the Member's [broadly particularised – e.g. candidate replacement] dealings;
  - c. advising that the matter is being dealt with by RCSA under confidential grievance intervention procedures;
  - d. emphasising that neither the notation of a caution nor the conduct of a Grievance Intervention implies that the Member has

not met the standard of professional conduct required by the RCSA Code;

- e. informing the public that if they wish to know more, the Member has indicated that they can contact *[AB – contact details to be provided]* who has been authorised to receive and respond to proper inquiries regarding the matter; and
  - f. Informing the public that no further comment will be forthcoming from RCSA pending completion of its grievance intervention.
5. The Board or CEO can review a Professional Conduct Grievance Intervention at any time and instruct that it be placed on a different or additional Pathway or that an intervention on a Pathway be discontinued.
  6. Discontinuance of an intervention which has been placed on a Diversion & Monitoring pathway means only that RCSA would stop monitoring the diversion. It does not affect the authority of any external body to which the conduct has been diverted.

#### 6.1. Neutral Evaluation

1. Neutral Evaluation is a process for assessing a Professional Conduct Grievance in which the evaluator seeks to identify and limit the issues that are in question.
2. Neutral Evaluation may be conducted at any time by a Code Advisor at the request of RCSA for the benefit of RCSA.
3. A Member who is involved in a Professional Conduct Grievance may request RCSA to conduct a Neutral Evaluation at the Member's cost. RCSA may accept or decline the request in its sole discretion.
4. Neutral Evaluation is conducted with regard to the material made available to the Code Advisor.
5. The evaluation must be in writing. RCSA may choose to share the evaluation with any Member who is involved in the Grievance or with a

Professional Conduct Advocate confidentially and to help the Member to understand and accept their commitments to the standard of professional conduct required by the RDSA Code and the responsibilities arising from it.

6. If a Neutral Evaluation is sought by a Professional Practice Review Committee, it must be shared with any Member whose conduct in relation to the Grievance is the subject of the evaluation.

## 6.2. Diversion & Monitoring

1. Diversion and Monitoring is a pathway that groups several procedures by which RDSA may divert a Grievance into one or more external channels, or into a channel for resolution of RDSA's Professional Conduct interest by a Member's undertaking given to the Board of RDSA.
2. If a Grievance is diverted as provided by these Guidelines, RDSA may defer making any further intervention pending the outcome of the diversion provided that it monitors the progress of the diversion and remains satisfied that its Member's co-operation with the diversion meets the standard of professional conduct required by the RDSA Code.

**NOTE:** The Code provides that RDSA Members deal with their regulators and certification bodies in an open, timely and co-operative manner.

### 6.2.1. Regulatory Referrals

1. A Regulatory Referral is a referral of a Member's professional conduct made by RDSA to a statutory regulator, commission or tribunal, such as the Fair Work Ombudsman (FWO), the Office of the Australian Information Commissioner (OAIC), the Australian Competition & Consumer Commission (ACCC); NZ Commerce Commission, Labour Hire Licensing Authority, or Human Rights Commission. It also includes referral to another authority such as AHRI that may exercise a concurrent jurisdiction in respect of the professional conduct of Members

2. Typically, a referral would be made where a grievance involves a workplace right (within the meaning of the *Fair Work Act*, a matter more appropriate to the making of a personal grievance to the Employment Relations Authority (NZ), a competition or consumer law contravention, or a privacy right.
3. A Regulatory Referral may only be made if RCSA has established a Memorandum of Understanding or liaison program with the statutory regulator, commission, tribunal or authority and a governance protocol for determining when conduct should be referred.

#### 6.2.2. Complaints Handling Diversion

1. A Complaints Handling Diversion channels a grievance into the Member's internal complaints handling processes and allows the Member to demonstrate its professionalism through its response to the grievance.
2. A Member may use an outsourced complaints handling service for reasons of independence and efficiency provided that the service reflects and supports the standard of professional conduct required by the RCSA Code.
3. A Complaints Handling Diversion may only be made if RCSA is reasonably satisfied that the Member has access to a competent and effective complaints handling process which substantially involves the Member's senior or other responsible management.

#### 6.2.3. Corrective Action Diversion

1. A Corrective Action Diversion channels a grievance into the Member's corrective action procedures that are established in connection with accreditations or certifications held by the Member - e.g. StaffSure certification.
2. A Corrective Action Diversion affords the Member the opportunity to assess the sufficiency of its controls and to take corrective action to address past non-conformances and prevent future non-

conformances in order to meet the standard of professional conduct required by the RCSA Code.

3. A Corrective Action Diversion may only be made if RCSA is reasonably satisfied that the Member holds an approved certification or accreditation that contains a corrective action procedure which reflects and supports the standard of professional conduct required by the RCSA Code.

#### 6.2.4. Undertakings

1. Undertaking Diversions provide an opportunity for Members to give the Board an undertaking in whole or partial satisfaction of RCSA's professional conduct interest in conduct giving rise to a Professional Conduct Grievance.
2. Subject to the Board's power to waive their requirements, an Undertaking Diversion may only be made in accordance with protocols or procedures that RCSA develops for the giving and acceptance of undertakings.
3. If an undertaking is offered confidentially and without prejudice, the conditions upon which it is offered shall operate, so far as the law allows, to prevent access to, or disclosure of, its terms if it is not accepted by the Board.
4. The Board may direct that an undertaking which it has accepted be published or notified as it considers appropriate.
5. A Member may withdraw or vary an undertaking at any time, but only with the consent of the Board.
6. If the Board considers that the Member who gave an undertaking has breached any of its terms, the Board may immediately impose such sanctions (including sanctions by way of a direction that the Member do, or refrain from doing, something, or make a payment) as the Board thinks fit.

#### 6.3. Registry Intervention

1. Registry Intervention is a pathway that groups several procedures for dealing with Professional Conduct Grievances through the intervention of RCSA's Professional Conduct Registrar (*the PCR*).
2. Typically, Registry Intervention is indicated when the conduct which gave rise to a Professional Conduct Grievance does not warrant RCSA's making a Regulatory Referral, and when the Board or PCR considers that Registry Intervention has reasonable prospects of bringing about a resolution either alone or in conjunction with other Pathways.
3. The PCR may conduct a Registry Intervention directly or may outsource the conduct of the intervention to approved and appropriately qualified contracted services providers.
4. Registry Interventions may only be made if indicated by a Neutral Evaluation.

#### 6.3.1. Structured Listening

1. Structured Listening is a process that facilitates the exchange of information about a Professional Conduct Grievance between those involved in the grievance. Its purpose is to assist those involved to understand the nature of the grievance and any response made by a person who is involved in it.
2. In a suitable case, Structured Listening may be useful in addressing the parties' and participants' interests in obtaining emotional due process.
3. Structured Listening may continue for as long as the PCR considers it to be worthwhile - noting the propensity for unduly protracted processes to delay recourse to other processes of resolution and to entrench parties and participants in positions that may make resolution more difficult to achieve.
4. If the PCR obtains approval from a Grievant which, in the opinion of the PCR, is sufficient to allow a Structured Listening process to go ahead, the PCR notifies each Member, whose conduct gave rise to the grievance, in writing that a grievance has been raised and in so doing, provides to the Member:

- a. information about the substance of the Grievance in accordance with the approval given by the Grievant;
  - b. an opportunity for prompt action and response.
5. A Member who has been given notice of a grievance has two weeks in which to provide a substantive response. The PCR may extend the period for a response if reasonably satisfied that it would be worthwhile to do so. The PCR must notify the Grievant of any extension that is granted.
6. When the PCR receives the response:
- a. If the Grievant and the Member have agreed to resolve the Grievance between themselves:
    - i. a timeline for resolution must be agreed with the PCR;
    - ii. the PCR is to contact the participants, in writing, to confirm the timeline so agreed;
    - iii. the PCR is not required to take any further step by way of Professional Conduct Grievance Intervention other than to confirm with the participants whether their Grievance is proceeding in accordance with the timetable they have established; and
    - iv. the participants must advise the PCR of:
      - any change in their timetable;
      - any breakdown in their steps towards resolving the Grievance between themselves; and
      - their having reached any resolution they may have reached.
  - b. If the Grievant and the Member have NOT agreed to resolve the Grievance between themselves, the PCR:
    - i. seeks approval from the Member for information about the response to be forwarded to the Grievant;

- ii. provides to the Grievant information about the substance of the response in accordance with the approval obtained from the Member;
  - iii. gives the Grievant two weeks in which to provide a reply (including in the case of a Grievant who is a Member, a substantive reply to any counter-Grievance or allegation made by the Member) and notifies the Member accordingly. The PCR may extend the period for a reply if the PCR is reasonably satisfied that it would be worthwhile to do so. The PCR must notify the Member of any extension to the period for a reply that is granted.
7. The PCR may facilitate further exchanges of information between the participants, and within such timeframes as the PCR may set, if the PCR considers it would be worthwhile to do so in the interests of resolving the Grievance.
8. If at any time during the Structured Listening Process the PCR forms the opinion that it is not practicable to continue the intervention, or that resolution of the Grievance via Structured Listening is unlikely to be reached, the PCR may terminate the process by notice in writing, effective immediately on its being given.
9. In terminating the Structured Listening Process, the Ethics Registrar is to inform the participants of any other Grievance Intervention Pathway to which the Grievance has been allocated.

### 6.3.2. Counselling

1. A Member or Members involved in a Grievance may be directed to participate in a process of counselling, to which end a Professional Conduct Advocate may be appointed at any time by the PCR in consultation with the CEO.
2. A Member's failure to comply with a direction to participate in counselling is reportable to the Board and may result in the Member's being called upon forthwith to show cause to the Board or to a PCRC in



the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not immediately to be imposed.

3. Counselling is to be conducted as expeditiously as practicable.
4. Professional Conduct Advocates (if appointed) are to assist the Member or Members involved in a Grievance to explore options to them to conform their conduct to the standard of professional conduct required by the RCSA Code.
5. A Professional Conduct Advocate may state in writing a non-binding opinion to the Member or Members involved in a Grievance regarding the requirements of the standard of professional conduct required by the RCSA Code. A copy of any opinion so stated must be provided to the PCR.

#### 6.3.2.1 Professional Conduct Recommendations

1. The PCA may make a Professional Conduct Recommendation to a Member or Members involved in a Grievance, which the PCA considers becoming of the Member and not prejudicial to the interests of RCSA.
2. A Professional Conduct Recommendation may be submitted by the PCA to the PCRC for endorsement, together with such information gathered in the course of counselling as may assist the PCRC to decide whether it will endorse the recommendation.
3. The PCRC may authorise for release to the parties and participants in a Grievance Intervention, on such terms as to confidentiality or otherwise as the Board may think fit, any Professional Conduct Recommendation endorsed by the PCRC.
4. The Board may revoke or vary a Professional Conduct Recommendation or its endorsement on such terms as it thinks fit.

5. A Professional Conduct Recommendation endorsed by the PCRC (and any variation or revocation by the Board) is to be notified promptly to all participants in a Grievance, who are affected by it.
6. If a Member fails to comply with a Professional Conduct Recommendation, the Member may be called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not immediately be imposed for its failure to comply.

#### 6.3.2.2 Conflict Coaching

1. Conflict Management Coaching is a process in which a trained coach supports and helps an individual to deal with specific conflict situations and to become competent in managing disputes. It is voluntary and confidential enabling people to gain insight in examining their own contribution to conflict and the choices available to them. It can be used to prepare people to engage more effectively in negotiation, mediation and relational conflict

Source: (Resolution Institute, 2018) <https://www.resolution.institute/training/cinergy-conflict-coaching-4-day> accessed 6 Nov 2018.

2. RCSA may recommend, but may not direct, that a Member engage in a process of Conflict Management Coaching.

#### 6.3.3. Mediation

**See Also:** [Discretion to Intervene \(Deferral for Mediation\)](#)

1. Mediation is an informal process for helping people who have a dispute to sort it out for themselves without going to court. A mediator is a neutral third person who encourages those in the dispute to talk to each other about the issues. The mediator is not an advice-giver or decision-maker. The parties examine the real problems, large or small. They then create and agree upon an outcome that meets their needs and addresses their concerns.

Source: (Resolution Institute, 2018) <https://www.resolution.institute/dispute-resolution/mediation> accessed 6 Nov 2018

2. Typically, mediation is indicated when a Grievance involves a civil dispute, the early resolution of which would be consistent with the Code standard of Conduct.

**NOTE:** The Code states:

*RCSA Members co-operate in the handling of grievances and disputes - using processes of counselling (as may be directed in accordance with the PC&GIG), negotiation, expert appraisal, mediation and arbitration in order to resolve disputes and must endeavour to do so wherever practicable.*

3. RCSA may direct a Member to participate in mediation but may not direct a non-Member to participate. Consequently, mediation would not be indicated if a non-Member were unwilling to participate.
4. RCSA may direct that a Member pay part or all the cost of mediation.
5. A Member's failure to comply with a direction to participate in mediation is reportable to the Board and may result in the Member being called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions (typically suspension or a reprimand) or a caution ought not to be imposed.

#### 6.4. Investigations

Investigations are conducted by the Professional Conduct Review Committee (*the PCRC*) on referral from the Professional Conduct Registrar at the direction of either the Board or the CEO.

##### 6.4.1. Referral for Investigation

1. When a Member's conduct is to be referred to the PCRC for investigation:
  - a. the CEO will provide the Member, whose conduct is referred for investigation, with a general description of the conduct to be investigated and a summary of the reasons why it has been referred;
  - b. the PCR will:

- collate all directly relevant material including any Neutral Evaluation that has been obtained in connection with any Grievance arising from the Member's conduct and provide it to the PCRC;
  - convene a PCRC; and
  - provide such administrative support to the PCRC as it may reasonably require.
2. Upon receiving a Professional Conduct Referral, the PCRC is to schedule an investigative interview with the Member whose conduct is the subject of the referral and with any other person from whom the PCRC wishes to seek information about the referred conduct.
  3. A Professional Conduct Investigation concludes when the PCRC delivers its report and findings.

#### 6.4.2. Summary Show Cause

1. The PCRC may require the CEO or PCR to serve a notice in writing to any Member, whose conduct is the subject of the referral, requiring the Member to show cause either in writing or at an investigative interview held by the PCRC why:
  - a. a caution should not be recorded against the Member; or
  - b. the Member should not be suspended pending the conduct of the intervention.
2. If the PCRC is satisfied that the Member has shown good cause, why a caution should not be recorded:
  - a. the PCRC must terminate its investigation of any part of the conduct in respect of which good cause has been shown;
  - b. the Professional Conduct Grievance Intervention to the extent that good cause has been shown, is to be either discontinued or allocated to an alternative pathway under these Guidelines; and

- c. any caution that has already been noted with regard to the conduct in respect of which good cause has been shown is to be removed from the Register.

#### 6.4.3. Directions

1. A Professional Conduct Investigation must proceed in accordance with any directions the PCRC considers appropriate including directions:
  - a. for the participation or representation of any person;
  - b. to preserve the anonymity of any natural person;
  - c. to clarify any issue in dispute;
  - d. to require the provision of information or documents;
  - e. for the giving or obtaining of any evidence - including by investigative hearing;
  - f. for the making of written submissions to ensure the validity of facts and to clarify information for the PCRC;
  - g. to preserve the confidentiality of any information communicated in the course of the matter;
  - h. for mediation;
  - i. for expedited determination, including determination on the basis of written submissions;
  - j. otherwise for the conduct of the investigation.
2. Directions may be made by a single member of a PCRC sitting alone.
3. Any failure on the part of a Member to comply with directions given under these Guidelines may be referred to the Board, whereupon the Member may be called upon forthwith to show cause to the Board or to a PCRC in the manner provided in section 6.4.2 (as the Board may determine) why sanctions should not be imposed under clause 2.8 of the Constitution.

#### 6.4.4. Investigation Report

1. The PCRC, upon completion of its investigation, is to provide a written report (*an Investigation Report*) setting out:
  - a. its determination (if any) on the question of whether the conduct referred to it for investigation meets the standard of professional conduct required by the RDSA Code;
  - b. its reasons including its findings of material fact on the basis of which its determination is based.
2. The Investigation Report may include a recommendation:
  - a. for the imposition of sanctions of the type described at clause 2.8 (c) of the Constitution;
  - b. a recommendation that the Board direct a Member to do or refrain from doing an act or make a payment as may be considered just in the circumstances and becoming of the Member or otherwise in the interests of the RDSA.
3. The Professional Conduct Registrar is to forward a copy of the Investigation Report to:
  - a. the Member, whose conduct is the subject of the investigation - stating that the Investigation Report has been forwarded to the Board for its consideration under these Guidelines;
  - b. the CEO; and
  - c. any participant directed by the PCRC to receive a copy of its Investigation Report – subject to such conditions of confidentiality as the PCRC may impose.
4. The CEO, upon receipt of the Investigation Report, is to notify the Board of any recommendation made by the PCRC and forward a copy of the report to the Board.

#### 6.4.5. Resolution and Enforcement

1. The Board may by resolution:
  - a. adopt the findings and recommendations of the PCRC;

- b. adopt the findings of the PCRC, but make a different order for the imposition of sanctions or that a Member do or refrain from doing an act or make a payment as may be considered just in the circumstances; becoming of the Member or otherwise in the interests of the RDSA; and consistent with the findings of the PCRC.
        - c. decline to adopt the findings and recommendations of the PCRC because:
          - i. the PCRC's investigation was not conducted as required by these Guidelines;
          - ii. the findings were induced or affected by fraud or bad faith; or
          - iii. the findings were otherwise contrary to law.
2. If the Board resolves to impose sanctions or to direct that a Member do or refrain from doing anything or make any payment, the CEO must, within 14 days after the resolution is made, cause written notice to be given to the Member of:
  - the resolution,
  - the reasons given or adopted by the Board for having made that resolution; and
  - the Member's right of appeal under these Guidelines.
3. The Board's resolution does not take effect;
  - a. until the expiration of the period within which the Member is entitled to appeal, or
  - b. if, within the period in which the Member is entitled to appeal, the Member exercises the right of appeal, unless and until the Board makes a resolution under subsection 6.4.7, whichever is the later.
4. If a Member fails to comply with a resolution of the Board that;
  - a. adopts a recommendation of the PCRC; or

- b. adopts the findings of the PCRC, or an Arbitrator, but makes a different order for the imposition of sanctions, or a direction that a Member do or refrain from doing an act or make a payment

and has not instituted any appeal as provided for in these Guidelines, the Member may immediately be called upon to show cause to the Board why the Member should not be liable to censure, suspension or expulsion under clause 2.8 of the Constitution upon evidence of such failure being presented to the Board.

#### 6.4.6. Appeal

A Member who wishes to dispute the resolution of the Board in respect of the determination of a Complaint, other than a resolution that adopts the Award of an Arbitrator or that gives effect to the order of a court of competent jurisdiction, may appeal by giving to the CEO, within 14 days of being notified of the resolution, written notice requiring the dispute to be referred to arbitration under clause 15 of the Constitution and these Guidelines.

#### 6.4.7. Arbitration

1. Arbitration under these Guidelines is to be conducted in accordance with:
  - a. the laws governing the conduct of commercial arbitrations in the Country, State or Territory in which the conduct giving rise to the Complaint occurred;
  - b. these Procedures; and
  - c. such rules as may be determined by agreement between parties and, failing agreement, by the President for the time being of the Institute of Arbitrators and Mediators Australia.
2. Arbitration of a dispute under these Guidelines proceeds as an investigative re-hearing of the Grievance from the beginning.
3. An arbitrator may join, as a party to the arbitration, any Member who ought to have been joined as a party or whose presence may be



necessary to determine and settle all questions involved in the proceeding.

4. An Arbitrator's findings of fact are to be binding on the parties for the purposes of these Guidelines.
5. An Arbitrator may not recommend or impose sanctions or make any award in the nature of sanctions. For the avoidance of doubt, an award of costs is not taken to be an award in the nature of sanctions.
6. The Board may, by resolution, adopt the findings made by an Arbitrator and impose sanctions of the type described at clause 2.8(c) of the Constitution or may impose any other sanctions it thinks fit.
7. The Board must decline to pass a resolution under the preceding paragraph pending the outcome of any proceedings taken before a court of competent jurisdiction for review of the Arbitrator's award.

#### 6.4.8. Publication

The Board may direct the publication of such details of investigations and sanctions imposed on a Member as it thinks reasonably necessary or desirable to achieve the objects set out in the Constitution - including the fact that a person whose conduct is the subject of the investigation is or was a Member of RDSA.