

This open letter follows recent commentary about the NRCPD 2015 Complaints Procedure.

NRCPD wants to see statutory regulation of language service professionals. This was restated in our Strategic Foundations strategy last year and is an area for work under the BSL Act 2022. Strategic Foundations is about putting in place what NRCPD needs to achieve that. A revised complaints procedure, fit for the future, is one of them. The current version, which we must follow, was introduced in 2015 and it was right for those times. But it needs more in it, and so we are working on a revised version.

After considerable input from organisations, lessons from cases, and legal advice, we will make the proposals for a revised procedure later in June. There will be a consultation period where everyone can send us their views on it and we will invite professional associations and Deaf organisations to contribute again. We will then finalise the new procedure and take the steps to implement it.

Our complaints procedure is founded on the same principles of justice as other legal proceedings in the UK. Both sides get to put their case with the outcomes decided independently. NRCPD staff do not decide the outcomes of a case: our independent case examiners and/or the complaints committee do. As with other regulators, the staff team assess all reports of misconduct, investigate further, and put the evidence available to case examiners.

We have heard the concerns raised about better enabling Deaf people to access the complaints procedure. The new procedure will be in British Sign Language and we will include a more accessible process for Deaf people to submit their reports of misconduct.

The only threshold for including evidence is relevance. The evidence we receive is compiled for case examiners and for committees who weigh up its consistency and credibility. The current procedure doesn't give guidance on this, and we will be including proposals in our revised procedure.

Our complaints procedure, as for other similar regulators, is not there to punish people. It is forward-looking to assess whether there is future risk to the public from the professional's practice. If it is judged that the Code of Conduct has been breached and there is a future risk, then the professional's practice is said to be 'impaired' and warrants a sanction. Saying that practice is 'impaired' rarely means someone is completely unfit to practise, but that an element of their practice is not as good as it should be and needs to be addressed. The 2015 procedure does not explain this well so we will do this better in the revised version.

The purpose of sanctions is to minimise the risk to the public by addressing the shortcomings in a professional's conduct. Case examiners may recommend these sanctions: a warning, training, supervision or just give advice. In such cases a complaint does not need to be referred to a full complaints committee, but the professional's practice is still 'impaired' and they will receive a sanction.

The more severe sanctions are practice restriction, suspension and register removal. These can only be given by a complaints committee and if case examiners believe that one of these sanctions is appropriate then they must refer the matter to a complaints committee. The law requires the sanction to be proportionate and the least restrictive necessary to remove the risk to the public. Therefore, it is unlawful to require that 'impaired' practice must always go to a complaints committee and get a more severe sanction. However, our current procedure does not include sanctions guidance; we think it should and will propose this in our revised procedure.

If case examiners decide it is likely that practice is impaired, they will look at whether the case should go to a complaints committee by the public interest test. The public interest is applied widely in law and varies according to the context. The public interest test for NRCPD is mainly about 'complexity' and 'severity'.

For example, it may be in the public interest for a complex complaint to be referred to the complaints committee if case examiners are not able to pick through the legal aspects sufficiently to come to a fair conclusion. Another example: if case examiners decide that a sanction they can give is proportionate for the case, then it would not be in the public interest to put everyone through a full complaints committee just to come to the same conclusion. The 2015 procedure does not detail the public interest test to be applied and we will include a proposal for this in our revised procedure.

Regarding our pool of case examiners and complaints committee members, this pool includes a mix of Deaf and hearing people, and experienced registrants. We always ensure that complaints committees have a Deaf person on the panel, but we regretfully cannot guarantee this for case examiners due to a lack of guaranteed availability. This, and the increase in complaints we receive, means we will expand and diversify our pool of case examiners.

We appreciate you giving us feedback and we do take it on board. The changes to the Complaints Procedure will take time to finalise and implement, but with your input we want to get it right. There are more revisions than those set out above and we look forward to getting on with the work. We will share the proposals for the revised procedure in June and look forward to constructive contributions especially during the consultation process.

Marcus Hawthorn, NRCPD CEO.