

The Institute of Trichologists

Independent Ethics Council Guidance

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Guidance

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Introduction

This Guidance document sets out the duties and regulatory function of the Independent Ethics Council (IEC). The IEC's role is performed in private. The guidance has been designed to ensure that the IEC decision making is more fully understood by all parties involved in an investigation, which in turn will enhance the transparency of our procedures.

The IOT's overarching objective is the protection of the public, which involves the pursuit of the following:

- a) To protect, promote and maintain the health, safety and well-being of the public;
- b) To promote and maintain public confidence in the profession of trichology;
- c) To promote and maintain proper professional standards and conduct for registrants.

This Guidance has been produced to facilitate both the quality and consistency of the IEC decision making when determining whether there is a case for the trichologist (Registrant) to answer. In achieving these objectives, the Guidance has been designed to provide a framework for decision-making by the IEC but does not impact on the IEC's independence as a decision maker

Equality and Diversity Statement

The IOT promotes the recommendations of the Equality Act 2010, and so has due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Trichologists with disabilities

The IOT is under a duty to make reasonable adjustments for Trichologists with disabilities.

IEC Constitution

The quorum for an IEC meeting is at least two members, Trichology advice and procedure may be sought from an IEC member who is also a Trichologist/registrant.

A Legal Representative may be sought to attend the IEC meeting to advise the IEC panel on matters of law, but otherwise plays no role in the IEC's decision making (legal representation is seldom necessary at this stage).

Overview of the function of the IEC Council Investigation

The IEC is not a fact finding committee and must only decide whether, in its opinion, there is a case to answer based on an assessment of the evidence and information placed before it.

The IEC meets in private and its discussions are confidential. The registrant and complainant do not attend the IEC meeting nor are they represented at the meeting.

Following the consideration of a case the IEC can issue one of the outcomes below:

- Adjourn consideration of the allegation, either for further enquiries to be undertaken, or for another reason;
- Decide that there is a case to answer before the Registration Council (RC)
- Decide that there is no case to answer and close the case.

Conflict of Interest and Bias

The concept of natural justice applies to IEC meetings, and the Council must therefore be mindful of ensuring fairness in its decision making at all times. Proceedings may be considered unfair where there is either actual bias, or a real potential for bias or where there is the appearance or perception of bias. The test for whether apparent bias is present relies on an evaluation of whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Council was biased.

Examples of potential conflicts include:

- Close personal or professional relationship with any of the parties connected with the case, where this relationship may affect the member's ability to consider the allegation fairly and impartially;
- Financial or personal interest in the outcome of a matter;
- Previous acrimonious personal dealings with one of the parties ;
- Being active (for example, by making statements, writing articles or being a representative) in an organisation, which has declared a particular stance on an issue under consideration by the Council.

IEC members are provided in advance of IEC meetings with a list of registrants and complainants in order to be able to declare any actual or potential conflicts of interest. Where an IEC member has previously considered other allegations against the registrant (or is otherwise aware of previous fitness to practise history in respect of the registrant), this does not, in itself, create a potential conflict of interest. However, potential conflicts of interests may, on occasion, arise in these situations, depending on the individual circumstances of the case.

Registrant's Observations

The registrant will be given an opportunity to comment on the material to be considered by the IEC, and prior to considering a matter, the IEC will ensure that the registrant has had such an opportunity to comment.

The IEC must consider any evidence provided by the registrant before determining whether there is a case to answer. If the registrant has not provided evidence by the deadline but the information is received – the day before, or on the morning of the meeting before the IEC considers the case – it is at the discretion of the IEC whether to include this information or not. Either way, this should be specifically referenced in the IEC's written decision.

For reasons of fairness the IEC should not consider any evidence which has not been disclosed to the registrant prior to the IEC meeting. If necessary, the IEC may adjourn to allow time for the Registrant to comment on any new material.

IEC Decisions

The IEC investigates all complaints made against IOT registered Trichologists in the UK, in order to either help resolve a dispute or determine whether there is a 'case to answer'; in which case the matter will be referred to the registration Council (RC).

Unacceptable Professional Conduct (UPC)

UPC is conduct which falls short of the standard of a registered Trichologist. The standards of conduct and practice expected of an IOT registered Trichologist are contained in the Code of Professional Practice and Ethics. The Code contains the standards that Trichologists must meet if they wish to join and remain on our register, and call themselves an IOT registered Trichologist in the UK and it will be used as a guide when determining UPC.

Case law has established the following principles regarding the concept of UPC:

- A breach of the Code shall not be taken of itself to constitute UPC. A breach of the Code is a starting point and is relevant, but it is not determinative of UPC and does not create a presumption of UPC. A breach of the Code may be significant without making it UPC.
- Not every minor error or isolated lapse will result in a case to answer.
- In determining UPC the critical term is 'conduct'. 'Conduct' is behaviour or the manner of conducting oneself.
- UPC is not a lower threshold than 'misconduct' in other health professions. To reach the threshold of UPC, the unacceptable conduct must be serious.
- A single negligent act or omission is less likely to cross the threshold of UPC than multiple acts or omissions. Nevertheless, and depending on the circumstances, a single negligent act or omission, if particularly grave, could be characterised as UPC.

Professional Incompetence(PI)

PI indicates a standard of professional performance which is unacceptably low. A single incident of negligent treatment would be unlikely to constitute PI, unless it was very serious.

PI connotes a standard of professional performance which is unacceptably low and which (save in exceptional circumstances) has been demonstrated by reference to a fair sample of the Trichologist's work. A number of factors should be taken into consideration when determining whether the facts would amount to PI, including:

- The length of the period of the alleged PI;
- The number of patients concerned;
- A number of failings/shortcomings which may not be serious individually, but together might give rise to a pattern of incompetence;
- The seriousness of the alleged clinical failings.

Health

A registrant's ability to practise as a Trichologist may be seriously impaired if they are suffering from a physical or mental health condition. The IOT may become aware of a registrant whose fitness to practise may be seriously impaired by ill-health through a variety of sources, including:

- The registrant themselves may report an ill-health problem affecting their fitness to practise.
- Another Trichologist, healthcare professional or a patient may report concerns that a registrant's ill-health is seriously impacting on their fitness to practise.

Conviction cases

When a Trichologist is convicted of a criminal offence in the United Kingdom, the IEC is required to consider whether the criminal offence has material relevance to the Trichologist's fitness to practise. The IEC should bear in mind the Code which requires registrants to maintain public trust and confidence in the profession. The IEC may conclude that there is no case to answer if it considers that the criminal offence in question has no material relevance to the fitness of the registrant concerned to practise chiropractic. While each case is considered on its own merits, there are certain categories of cases that would engage the public interest and it is expected will be referred to a hearing before the RC:

- Murder, manslaughter or offences against the person

- Sexual offences
- Offences involving children or vulnerable adults
- Fraud/dishonesty
- Criminal damage, theft, burglary etc

Matters which are highly likely to be found to constitute a “case to answer”

The IEC should bear in mind that the following factors may be present in matters which are highly likely to constitute “a case to answer”:

- Conduct that would pose a risk to patients if repeated;
- Conduct which is likely to undermine public confidence in the profession;
- Conduct which, if left unmarked, would undermine professional standards.

The following are matters which are viewed by the IOT as being particularly serious. As a result, if the IEC is satisfied that there is a case to answer in respect of the factual allegations, it is highly likely to refer the matter to the RC:

- The serious abuse of a clinical relationship, including the breach of boundaries with a patient;
- A conviction for certain categories of cases referred to above;
- Undertaking treatment or procedures beyond competence;
- Serious abuse of the privileged position enjoyed by registered professionals;
- Lack of appropriate indemnity cover/lack of evidence of appropriate indemnity cover;
- Risk of patient harm due to the registrant's alcohol or drug use;
- Failing to co-operate with an investigation of a concern;
- Misleading behaviour, deliberate or otherwise and dishonesty; all of which can include deliberate acts and/or omissions; and/or
- Failure of safeguarding or duty of candour - failing to raise concerns about matters which may (or may have) posed a risk to patient or public safety; and/or by inhibiting others from raising concerns which may (or may have) posed a risk to patient or public safety; and or failing to be open and honest with patients when things go wrong.

This list is not exhaustive and is not intended to be inflexible. Each allegation must be considered on its own merits, and there may be circumstances associated with allegations falling within these categories which mean that, nonetheless, it is appropriate for an IEC panel to decide that there is no case to answer.

No case to answer - Closure of an allegation

An allegation should be closed when the IEC considers that there is no case to answer on:

- The facts alleged;
- And/or the allegation as a whole; or
- In the case of a conviction, if the IC concludes that the criminal offence in question has no material relevance to the registrant's fitness to practise Trichology.

The IEC may offer advice to a registrant in connection with his or her future conduct, performance or practice, where it is appropriate. If the IEC decides advice is appropriate and proportionate, it should clearly set out that advice. It should form part of the IEC reasons for its decision, and be included in the outcome letter sent to the registrant. The IEC should be mindful of the impact closing a case can have on the complainant and should ensure that there is sufficient reasoning to justify their decision-making.

Providing Written Reasons

The IEC is required to notify both the registrant and the complainant of its decision as to whether or not there is a case to answer. Clear and adequate reasons should be given for every decision and reasons should be clear and intelligible but do not need to be lengthy or identify each individual piece of information taken into account.

The IEC should aim to provide reasons that are adequate and sufficient to allow readers to understand in broad terms why a particular decision has been reached. The reasons must be appropriate in the circumstances of the case and leave the reader with a clear understanding of:

- The decision made;

- Why the decision was made; and
- How the decision was reached.

The reasons may include the following:

- The evidence/information the IEC took into consideration;
- The decision made;
- Which areas of concern have been referred and which have not;
- Why the decision was made, including consideration of the public interest;
- How the decision was reached (including the case to answer test);
- Why any advice or material (including any expert evidence) was accepted or rejected, if this happened;
- Any advice the IEC received from the legal assessor (if appointed);
- Why the IEC chose not to follow any guidance and/or the advice of the legal assessor;
- If the IC panel has departed from any presumption within this guidance, an explanation.

Referral to the RC

Where an allegation against an IOT registered trichologist is being investigated which raises immediate concerns about the protection of the public, the matter will be referred to the RC as a preliminary matter in order for consideration.