

EATA Procedures for Handling Ethical and Professional Practices Complaints Version 1.1.2

Introduction

The EATA (European Association for Transactional Analysis Association) Complaints Procedures and Processes provides a mechanism whereby those persons carrying out EATA functions and members of the public may be protected. They aim to facilitate flexibility and creativity in support of personal and professional development while at the same time describing a clear system for processing complaints concerning those persons carrying out EATA functions.

The EATA ethical code enables persons to evaluate the ethics and professional practices of a course of action undertaken by members in their role within EATA. The ethical framework of codes and procedures provides a structure for ethical professionalism which ensures that those carrying out EATA functions represent and conduct themselves professionally in ways consistent with their role within EATA.

COMPLAINTS PROCEDURE

General Structure

Confidentiality must be observed at all times from the outset by all parties. Both complainant and respondent will be advised of this. All parties involved are required to maintain confidentiality as to both the content and the process of an ethics, professional practices, or organisational complaint.. EATA and its representatives maintain the right to waive confidentiality where it has a duty of care to inform the public and its membership of the outcome of an investigated complaint. All parties will be informed of this should such a case arise. Complaints made anonymously will not be considered and all material relating to them will be destroyed.

EATA offers a **three** tier system for the managing of ethical and professional practices and organisational complaints concerning EATA members in their activities within EATA. The first tier is an informal dialogical process managed by members independently of any EATA structure. An individual having a concern that a members' ethical and/or professional behaviour is not consistent with their EATA role is expected to dialogue with the member involved directly and invite the desired change in behaviour. If this is perceived as not adequate for the task then the second system, which maintains an informal style, utilises an **Arbitrated** system that **may or may not be binding**. The third system is a formal process, using a Hearing Board (HB) approach. The Hearing Board has its own rules, procedures and sanctions that are outlined in this document.

EATA also offers an organisational complaint service where the Ethics Advisor or their representative will consider an arbitration service (binding or non-binding) to resolve an organisational complaint.

Limitation of Time

EATA operates a policy of no time limits on complaints being made.

Making a complaint

A complaint concerning the ethical or professional practices behaviour of a member of EATA must be made in writing to the EATA Ethical Advisor (EA) with substantiating evidence for the complaint. EATA's working language is English and in most circumstances complaints must be presented to EATA in English. Only in exceptional circumstances will a complaint written in another language be accepted. Individuals submitting complaints should be aware that in so doing they are acting to resolve difficulties, that they may be challenged, and that they may seek no reward. They are required to act at all times in a manner consistent with the ethical and professional practices of EATA.

If the received complaint is subject to a complaints procedure involving a recognized professional organisation then EATA will not act on the complaint until the existing organisations complaints procedures and protocols have been completed.

The EA's role is to consider whether or not the complaint is within the remit of EATA, whether or not there is a history of the complained about behaviour in the records of EATA and whether the complaint is an ethical, professional practices or organisational complaint. If the EA considers the complaint is within the remit of EATA then the EA or his/her representative oversee the management of the complaint. In the event of an ethical or professional practices complaint the EA will notify the respondent of the complaint and request a response to the complaint within, normally, 14 days. Any information provided by any party will be shared with both the subject of the complaint and the complainant. The EA will discuss with all parties the ADR/Hearing Board or Binding Arbitration approach and, where possible, ascertain agreement for ADR. ADR may not be considered where the EA considers a fitness to practice order or termination of membership could be a possible outcome of the complaint. In this case the complaint will be dealt with by the Hearing Board procedures.

In the event of the complaint being deemed an organisational complaint the EA will appoint an Arbitrator to arbitrate the dispute. **Whether or not the arbitration will be deemed binding is decided by the investigator in consultation with the Arbitrator.**

In considering the complaint the EA will be mindful of any legal or procedural implications of the complaint. In doing this s/he will take any appropriate legal or other professional advice where deemed necessary.

The resignation of a respondent to a complaint will not be accepted until EATA Ethics procedure has been completed.

An Organisational Complaint

A complaint is called an organisational complaint where the following three conditions exist.

- 1) the complaint relates to an individual or group acting within an established EATA role.
- 2) the action taken and complained about must relate explicitly to the role and duties of that Committee or individual
- 3) the Committee or individual has responded to the complainant within their EATA role but the complainant is dissatisfied with the response.

Once the complaint has been accepted by the EA he/she has the authority to either accept the complaint and take no further action, may appoint a mediator or an Arbitrator. In exceptional cases the EA or their representative may act as an arbitrator themselves and adjudicate the matter. This is usually in cases where there is no dispute on fact.

The EA or their representative will consider whether such an arbitration is appropriate. If it is considered appropriate then the EA (or their representative), after consultation with the parties involved, will appoint an Arbitrator who will be asked to provide a report to the EA on the dispute. The findings of the arbitration may or may not be binding but all parties entering such an Arbitration agree to the possibility of bindings being made on them by such findings. This is made available to EC in the form of a report. EC decides whether or not to accept the Arbitrator's findings.

The Arbitrator may recommend the following

- a) No action.
- b) A specific action/s that any party involved in the complaint must implement in relation to the complaint. **This may or may not be binding.**
- c) A recommendation that any parties involved in the complaint may consider developing their practice in a particular way. This may or may not be binding on those involved in the complaint.

The finding of the Adjudicator will be final in this matter and, further to EC accepting the findings, no further appeal is possible.

An Ethical or Professional Practice's Complain

1. Mediation and Arbitration Service

Engaging in informal discussion with both parties the EA will pursue, with agreement from all parties, either mediation or arbitration. Mediation is a non-judgmental process in which the Mediator seeks to resolve difficulties by facilitating a meaningful resolving dialogue between complainant and respondent. Arbitration is an evaluative process in which the Arbitrator evaluates the complained about behaviours. Courses of action may or may not be recommended by the Arbitrator. At any stage in an ADR process (Mediation or Arbitration) either party can decide to withdraw from it. In exceptional situations the EA may suspend an ADR process. If there is a suspension of ADR then the EA will either put the formal Hearing Board procedure or Binding Arbitration into place, or drop all proceedings. Both a formal Hearing Board and Binding Arbitration can impose sanctions on the respondent.

A. Mediation

If mediation is agreed upon then a Mediator will be appointed by the EA. All parties must agree to the appointment of a particular Mediator. All parties will be given a realistic time frame to pursue mediation. The process is completed once all parties have signed a Conclusion Agreement. If the mediation is not concluded within a reasonable time then the case may be referred to a Hearing Board. The Mediator will report the outcome of the mediation to the EA.

B. Arbitration

If arbitration is agreed upon the EA will appoint an Arbitrator. **In conjunction with the Arbitrator the EA and the Arbitrator determine whether the Arbitration is to be binding or non-binding. The Arbitrator will investigate the complaint involving all parties involved.**

The Arbitrator has the power to recommend the following sanctions related to the arbitrated issues:

- **written apologies**
- **removal from committees and other EATA duties**
- **a written report from a party or parties involved outlining the learning arrived at through the process,**
- **further training, supervision or personal therapy**
- **a condition/s on practice recommendation**
- **the reimbursement of fees or a proportion of fees paid for a Transactional Analysis service**

With the agreement of all parties the Arbitrator will set a reasonable time to conduct the arbitration.

The arbitration process will be deemed completed once all parties have signed a Conclusion Agreement and a report has been submitted by the Arbitrator to the EA. This can be signed prior to any sanctions being completed. If any sanctions are required it is the responsibility of the person undertaking the sanctions to provide a report to the Ethics Advisor of their completion. In the event of a failure to undertake the agreed sanctions then the EA may suspend the conclusion agreement and commence the Hearing Board Procedures.

2. Hearing Board Procedures

Where a complaint is appropriate to EATA, and either one or more of the parties involved have declined the offer of arbitration, or failed to comply with a binding arbitration or, in the view of the EA a fitness to practice order, limitation on practice and/or termination of membership may be considered the EA shall put the Hearing Board procedures into place.

a) Appointment of the Case Manager

The EA will appoint a Case Manager (CM) who will be responsible for contacting both parties to notify them of his/her involvement. Both complainant and respondent shall have the right to advise the Ethics Advisor if they have concerns regarding the capacity of the Case Manager to be impartial.

The CM shall inform the complainant and respondent that a complaint has been received which will be adjudicated by a Hearing Board informing them that a Hearing Board has the power to impose sanctions, including recommending suspension of membership or expulsion from EATA.

The CM shall include a copy of the complaint submissions to the respondent, together with a letter requiring the respondent to make a written response to the allegations within twenty-eight days of receiving notification of the complaint. This reply can be sent by electronic transmission (email attachment) as well as other conventional means. The case manager will inform all parties that it is their responsibility to ensure all their communications are delivered to their intended recipients.

The CM shall inform the respondent that failure to make a response, without sufficient reasons, to the CM may be assumed by EATA to indicate that the complaint is valid. In this case a Hearing Board may be convened without further reference to the member.

Once the respondent's response to the original complaint has been received. The CM shall forward the response to the complainant. The CM shall ask all parties to submit any additional evidence to the CM within a further twenty eight days. Any additional submissions will be automatically sent to all parties involved

Once an EATA member is aware that, as a result of the complaint, their current or potential course of action may not conform to EATA Code of Ethics or EATA Professional Practice Guidelines, she or he shall cease immediately from those actions until the appropriate EATA procedure has been followed and a resolution obtained. Failure to observe this course of action may be taken as evidence of a conscious desire to not respond ethically or professionally to the complaint.

b) Adjudication Procedures – Appointment of Hearing Board

The adjudication procedure by a Hearing Board exists to examine complaints in a formal manner and to determine the validity of such complaints and, if the complaint is found to be valid, to impose sanctions as appropriate. Where there is more than one complaint against a member by a single complainant they shall be determined at the same hearing. Should there be more than one complaint against a member from different complainants they may be heard separately or together at the discretion of the EA.

The EA will appoint a Hearing Board of three people none of whom shall be the CM. The board must be comprised of members EATA and must include at least one TSTA. Members appointed to the Hearing Board have a duty to declare any interest which may threaten their impartiality. The CM shall send a copy of the procedures for the process of the immanent Hearing Board to the complainant, respondent and members of the hearing board at least ten days before the hearing.

Procedures Prior to the Hearing Board Meeting

Notification of the formation of a Hearing Board, including details of its members will be sent to all parties by the CM. This notification of a Hearing Board must include notice that it will take place within sixty (60) days of the appointment of the Hearing Panel members.

The date of the Hearing will, whenever possible, be agreed by all parties before being confirmed in writing. In the event that the parties to the complaint are unable to agree a date, then the Hearing Board shall have the final decision in setting the date and place of hearing. In exceptional circumstances and at the Board's absolute discretion, the date may be set outside the sixty day limit but, in any event, will usually be held within ninety (90) days of the Board's appointment. The decision of the Board on the date and place of the hearing is binding on all parties.

The Hearing Board is recommended to hold a preliminary meeting in which a chair is appointed and the case is reviewed.

The Hearing Board may invite witnesses or advisors to attend the Hearing to answer questions about their written submissions.

Both parties will attend the hearing, usually at the same time. In certain circumstances it may be considered desirable that the complainant and the respondent have no direct communication. This is at the discretion of the Hearing Board. Each party may be accompanied by a supporter who may represent them. Both parties must notify the CM ten days prior to the meeting of the Board if it is their intention to bring a representative, and/or if they wish their representative to speak on their behalf.

All written evidence and submissions must be submitted to the CM not less than twenty-one days (21 days) before the hearing date. Such papers are circulated to the Hearing Board members, the complainant and the respondent not less than ten days before the hearing date.

New evidence may only be admitted on the day of the Hearing at the discretion of the Board and will be in the form of short oral or short written submissions. Either side may be granted a brief adjournment in order to consider their response to any such new evidence.

The Hearing Board Procedures

Hearing protocols require that both parties and their supporters be present. And that the Chair of the Hearing Board ensures a record of the hearing is kept using a recorder. This is the property of the Hearing Board and is not made available to any other party apart from being used in any recognised appeal.

A summary of the complainant's case is given by the complainant and any witnesses. The respondent or their representative may put questions to the complainant regarding their case. Questions will at all times be directed through the Chair of the Board.

A summary of the case of the respondent is presented by either themselves or their representative.

The complainant or their representative puts questions, through the Chair, to the respondent and/or witnesses.

When the Chair is satisfied that the Hearing Board has gained all the clarification required or possible, all parties but the Board are asked to withdraw.

The Hearing Board then determines whether or not the complaint will be upheld. A majority vote is required for dismissal of the complaint, or for a finding that the complaint has been upheld.

Both parties are recalled to the Hearing and the finding is pronounced. The Board then asks the complainant to leave and may if they so wish discuss issues with the respondent. These may include a discussion of the complaint, and of the respondent's understanding and practice. There is opportunity for the respondent to offer mitigation. The Board will then ask the respondent to leave, notifying them that they will receive a decision regarding sanctions, through the EA.

A Hearing Board may impose the following sanctions:

- To write a written apology to the complainant
- To make a formal written statement to not repeat certain problematic behaviours to the Hearing Board
- To be removed from committees or other EATA duties
- To write a report on their learning following the complaint
- To undergo further training and/or supervision and/or personal therapy
- To fulfil a conditions of practice order
- To be issued a suspension from practice order for up to two years
- To have their membership of EATA suspended for a set period
- To have their membership of EATA terminated

A majority is required for sanctions to be imposed and a unanimous decision in the case of either a conditions of practice order, a suspension of practice order or a termination of membership.

Within fourteen (14) days of the Hearing, the Hearing Board advises the EA of its conclusion in writing, together with its recommendations as to sanctions that are to be applied. The EA will then inform the complainant and respondent of the outcome, including sanctions where applicable. The timing of the notifications will be within seven (7) days of the EA receiving of the Board's findings. Notification will include notice of the right to appeal and the time limit for either party to notify their intent to appeal. In the event that sanctions concerning suspension of practice or termination of EATA membership, the EA will notify the President of EATA so that the Executive of EATA can formally put these sanctions into place after the appeal period.

The existing rules on confidentiality will apply except where a conditions of practice order, a suspension of practice order, a suspension of EATA membership or a termination of membership is imposed. If this is the case then the membership of EATA will be informed.

APPEALS PROCEDURE

The complainant or respondent may make an appeal. If an appeal is made all parties involved will be informed. Any appeal shall be limited to a review of the procedures. This evidence can only relate to failure of EATA to follow its own procedures. No new evidence will be accepted in the consideration of an appeal. To initiate an appeal, the intent should be notified in writing to the EA within thirty days (30) of receiving the findings of the Hearing Board.

The appellant shall be directed by the EA to an External Moderator (EM) who will review the case. The EM must be external to EATA. The EA will forward to the EM all papers relating to the complaint, the investigation and the hearing, within fourteen (14) days of being notified that the appellant has formally appealed.

The result of the appeal will be communicated by the EM to the EA, giving reasons for the decision. The EA will then notify all parties of these findings. The EA will be responsible for implementing any actions or procedures resulting from the outcome of the appeal.

3. ADDITIONAL PROTOCOLS GOVERNING COMPLAINTS PROCEDURE

The disposition of any complaint investigated by the EA including, Arbitration or a Hearing Board and all records of the investigation will be archived for all time from the date of the formal complaint. The papers will be placed in a coded sealed file to be held by the current EA. The EA will maintain, separately from this record and in a secure place, a record of the file codes, listed against member's names. The EA is required to maintain separately with confidential access to this list in the event of the non-availability of the EA through illness or other impediment. A file will only be retrieved and accessed by the EA in the event of a further complaint against the member. Where a new EA is appointed, all files and codes are to be passed on to the incoming EA.

Failure of the complainant to attend investigatory meetings and/or the Hearing Panel or to respond to requests for information, without good reason or due notice, means the complaint shall be regarded as withdrawn and the respondent is automatically exonerated with regard to that complaint. The complainant's right to appeal is also lost.

EATA will be financially responsible for all parties representing EATA and undertaking EATA duties including travel. Any expenses incurred either by the complainant or the respondent or any witnesses in connection with any stage of the complaint shall not be the responsibility of EATA.

A complainant can withdraw their complaint at any time. A withdrawn complaint cannot be resubmitted at a later date. EATA reserves the right to investigate a complaint even though it has been withdrawn.

All EATA communications regarding complaints will be made to the EA. Communications not so channelled will not be recognised by EATA.

The delivery of all correspondence regarding the setting of schedules or which contains points of fact relevant to the complaint must be ensured by the sender. Correspondence which is claimed to be lost will be assumed not to have been sent unless evidence of dispatch and delivery can be produced.

The complainant and the respondent must act and appear in person. Powers of attorney will not be accepted except under extraordinary circumstances which must have the prior approval of the EA.

Complaints or correspondence concerning EATA Ethics and Professional Practices are to be sent to:

The Ethics Advisor

EATA

**info@sabine-
blumenstein.de**

Wielandstrasse 49

10625 Berlin

Germany

Glossary

EATA – European Association for Transactional Analysis

HB – Hearing Board – a quasi-judicial structure for resolving disputes in which adjudication occurs

EA – EATA Ethics Advisor appointed by EATA

Mediator – appointed by EATA to facilitate conflict resolution through dialogue

Arbitrator – appointed by EATA to enable conflict resolution through evaluation and can recommend sanctions

Conclusion Agreement – a freely entered into agreement by all parties to either a mediation or arbitration – it signifies an end to an arbitrated complaints resolution

CM – Case Manager – appointed by the EA to manage a HB implementation to resolve an ethical or professional practices complaint

EM – External Moderator appointed by EATA but separate from EATA to consider any appeal on procedures made following an HB adjudication.