



The Hospitaller Order of
St John of God
Oceania Province

COMPLAINT HANDLING POLICY

JUNE 2021



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1. Introduction

The Hospitaller Brothers of St John of God (the Brothers of St John of God) are committed to effective complaint handling. We value the feedback that complaints can provide to improve our organisation's services and supports to the community.

We aim to empower people to communicate their concerns and complaints without fear of retribution or discrimination and provide a transparent process for this to occur. All complaints will be dealt with in a way that observes the principles of honesty, transparency and fairness. Complaints that involve disclosures of abuse or harm will be dealt with in a compassionate, trauma-informed manner that prioritises the safety and wellbeing of children and adults at risk.¹

We will try to resolve concerns and complaints as efficiently and effectively as possible, having regard to the seriousness of the complaint and any statutory obligations we may have to cooperate with other organisations, including police, child protection authorities and oversight and regulatory bodies.

This Complaint Handling Policy establishes the overall framework by which the Brothers of St John of God will welcome and respond to complaints. It outlines the key principles and processes that inform our handling of complaints but does not provide detailed procedural guidance about the investigation of complaints. Further sources of this guidance are signposted throughout the policy and in section 11.

2. Scope

This Complaint Handling Policy has been approved by the Provincial and applies to all personnel engaged by the Brothers of St John of God.

It provides a process for personnel and members of the wider community to raise a complaint related to any practice or policy of the Brothers of St John of God. However it is not intended to be a set of rigid procedures that must be followed whenever a complaint is raised, as the process for dealing with a particular concern will vary depending on the nature, circumstances and seriousness of the complaint.

3. Definitions

"Personnel" includes religious brothers, sisters and clergy, employees, volunteers, contractors and others engaged by the Brothers of St John of God.

"Complaint" is a term that can be interpreted broadly. It can include expressions of dissatisfaction about an organisation related to: its services or dealings with individuals or organisations; allegations about the conduct of its staff, volunteers or other individuals engaged by the organisation; or the handling of a prior concern. For the purposes of this policy, a complaint encompasses any concern, report, allegation or disclosure about the Brothers of St John of God, including any behaviour by current or former Brothers of St John of God personnel, that is brought to the attention of the Brothers of St John of God.

"Complainant" means the person who has expressed the concern or made the report or disclosure on behalf of another affected person.

4. Key Principles

The Brothers of St John of God will:

- act with integrity and without bias
- have clear lines of accountability for handling complaints

¹ See the Brothers of St John of God Safeguarding Policy for definition of 'adults at risk'.



- uphold the right of individuals to complain and ensure that our complaint handling process is well promoted and accessible
- apply the principles of procedural fairness to facilitate a just and impartial complaint handling process
- promptly acknowledge complaints and address them according to urgency, keeping complainants and other involved parties informed throughout the process
- offer and provide a just and compassionate response to complainants which safeguards the safety and wellbeing of involved parties throughout the process, recognising that some complainants may be highly vulnerable and need additional pastoral and other support
- maintain privacy and confidentiality, subject to relevant statutory requirements
- provide fair and proportionate remedies to complainants that are consistently applied
- comply with any relevant statutory and policy requirements, including meeting any criminal and/or civil reporting and other obligations (e.g. mandatory reporting and reportable conduct), and the requirement to cooperate fully with all relevant external authorities
- be observant of relevant canonical processes that may apply
- use the data, insights and learnings from complaints to improve professional behaviour and practice within the Brothers of St John of God and ongoing delivery of supports and services.

5. Making a Complaint

A person wishing to report a concern or make a complaint about the Brothers of St John of God may do so by contacting:

- The Province Professional Standards Manager
- A complaint can be made by phone, email or in writing. Contact details are provided on the Brothers of St John of God website: <https://www.oh.org.au/>

5.1 Anonymous complaints

Complaints may be made anonymously. However, the Brothers of St John of God recognise the difficulty with anonymous complaints in verifying relevant facts and being satisfied as to the legitimacy of the complaint, as well as the challenges that may arise in affording fairness to the person the subject of complaint in circumstances where the identity of the complainant is a central issue.

6. Allocating Responsibility for Managing Complaints

6.1 The Complaint-handler

The Brothers of St John of God will ensure that a suitable person is appointed to manage the complaint. The role of complaint-handler can be performed by different people within the Brothers of St John of God depending on the nature of the complaint, and certain individuals may perform particular aspects of a complaint process, however, it is preferable that one individual should be responsible for managing the complaint (complaint-handler). The complaint-handler is required to:

- be a point of contact for the complainant and the person the subject of complaint (and other involved parties) including police or external agencies (if relevant)



- carefully listen to the complainant's concerns and their desired outcomes
- consider and request (if necessary) further information from the complainant and/or from third parties in order to make a preliminary assessment including risk
- seek advice from relevant external authorities (e.g., police, child protection authorities) when required and share relevant information
- provide the complainant with a copy of this document and complaint process flowcharts (available on the Brothers of St John of God website: <https://www.oh.org.au/>), explaining the complaint procedures and the support available
- keep appropriate, confidential records of the matter
- prior to meeting with the complainant/person the subject of complaint, or other involved parties, note the issues and questions that should be covered and be responsive to what unfolds during the discussion
- meet with the complainant and/or others involved in the complaint, fully informing them of their rights and support options (see section 7.6 Supporting complainants and persons the subject of complaint)
- meet with and listen to the person the subject of complaint, fully informing them of the allegations made against them, making them aware of their right to a support person at the meeting and providing them with an opportunity to respond (see section 7.6 Supporting complainants and persons the subject of complaint)
- review, respond to and resolve the complaint or, if it is not appropriate for the complaint-handler to resolve it, arrange for an appropriate person of authority to review, respond to and resolve the complaint
- keep those involved appropriately and regularly informed about the progress of the matter
- monitor the situation during and for the time soon after the resolution process, or longer as is deemed necessary.

6.2 The complaint decision-maker

For complaints that do not involve alleged conduct of a serious nature (e.g., allegations of abuse of children or adults at risk), the complaint-handler and the decision-maker can be the same person, particularly when informal resolution is adopted and disciplinary action regarding a member of personnel is an unlikely outcome of the complaint-handling process.

However, for complaints that are more serious, for example, complaints which have been the subject of an investigation process or where the outcome sought requires approval by a certain level within the Brothers of St John of God, such as issuing a formal written apology or financial redress, a "complaint decision-maker" should be appointed.

In more serious matters, the decision-maker should not be directly involved in the investigation or resolution process but may receive updates about progress and give guidance and direction to the investigator. The decision-maker's role is primarily to review the relevant issues, evidence and



recommendations arising from the complaint-handling/investigation process, and then make a final determination about the appropriate outcomes.

If the decision-maker decides to make a different finding or substitute a different outcome from what has been recommended by the complaint-handler/investigator, the rationale for this should be documented.

A decision-maker should not be involved in a decision where a conflict of interests exists, even if the decision-maker has the proper delegation or authority.

6.3 Positions responsible for handling complaints about particular roles

Complaints made about individuals occupying the positions listed below should be reported to and handled by the 'responsible person' indicated along with their contact details.

Position	Responsible Person who receives report and manages complaint
Provincial of The Brothers of St John of God	Province Professional Standards Manager
Provincial Counsellors	Province Professional Standards Manager
Province Finance Director	Province Professional Standards Manager
Province Professional Standards Manager	Provincial of The Brothers of St John of God

7. Responding to Complaints

Complainants will be treated with respect and compassion and protected from victimisation. The complainant will be informed about the complaint management process and be kept up to date on the status of the complaint and any recommendations that may result from it. Complainants will be advised that they have the option of a support person present at any meetings. Ideally, complainants should actively participate in the resolution process.

Individuals who are the subject of a complaint will be treated with respect and compassion. They will be provided with sufficient information about the complaint to be able to adequately respond to it. They should be given a reasonable opportunity to respond to the complaint. Subjects of complaint will be advised that they have the option to have a support person with them in any meetings. They will be given the opportunity to participate in relevant aspects of the resolution or investigation process and will be kept informed of the status of the complaint and any recommendations that may result from it. They should be made aware that they must not contact the person who raised the complaint about the complaint or victimise the person. Disciplinary action may be taken against personnel who victimise complainants.

See complaint process flowcharts for complainants (Appendix 1) and subjects of complaint (Appendix 2).



7.1 Complaints about child protection concerns or safety concerns for adults at risk

For detailed information about responding to child protection concerns and disclosures (including reportable conduct matters and historical allegations of child abuse) see:

- The Brothers of St John of God Safeguarding Policy
- The Brothers of St John of God Code of Conduct
- [Complaint Handling Guide: Upholding the rights of children and young people](#), National Office for Child Safety and NSW Ombudsman

For guidance about responding to safety concerns for adults at risk, see:

- The Brothers of St John of God Safeguarding Policy
- NDIS Quality & Safeguards website fact sheets

7.2 Recording the complaint

The Brothers of St John of God will make a record of the complaint, including:

- the name and contact details of the complainant
- the issues raised by the complaint
- the name of any person who is the subject of the complaint
- the outcome sought by the complainant
- information about any additional support required by the complainant
- any other relevant information, including the names and contact details of potential witnesses, existing or potential sources of evidence

The Province Professional Standards Manager has overall responsibility for ensuring complaints are appropriately handled.

Appendix G: Safety concern report template in the Brothers of St John of God Risk Management Strategy can be used as a guide for recording complaints. Guidance for initially responding to disclosures of *abuse or harm* is also contained in section 9 of the *Safeguarding Policy*.

7.3 Acknowledging the complaint

The Brothers of St John of God will acknowledge the complaint as soon as possible and within five days of receipt.

The acknowledgement will include:

- a contact point for the complainant
- timeframe in which action will be taken
- the likely next steps
- if applicable (and known at the time), whether the matter must be reported to any external authorities (e.g., police, child protection authorities, regulatory/oversight bodies)



- advice about support options

The Brothers of St John of God will consider, on a case-by-case basis, the most appropriate method (e.g., phone, email, letter) for acknowledging a complaint. The date and method of acknowledgement will be recorded.

When complaints or reports that are made verbally, a contemporaneous and detailed record of what was said will be documented. In most cases, it will be appropriate for this record to be sent to the complainant as part of an acknowledgement to confirm the completeness and accuracy of the information recorded.

The Province Professional Standards Manager is responsible for ensuring complaints are appropriately acknowledged.

7.4 Initial assessment and response

Complaints will be initially assessed by the Province Professional Standards Manager

Appendix H: Initial Risk Management Checklist in the Brothers of St John of God Risk Management Strategy may/will be used to guide the initial assessment.

The following factors will be considered as part of the assessment:

- did the issues raised occur within the person's role with the Brothers of St John of God?
- is there any immediate or ongoing risk to any person's safety or wellbeing?
- does the complaint need to be reported to another agency (e.g., police or child protection authorities)?
- are the issue/s raised within the Brothers of St John of God control to address?
- are the outcomes sought by the complainant viable?
- if more than one issue is raised, whether these will need to be separately addressed
- the seriousness of the complaint and whether it should be resolved urgently
- how the complainant is being affected by the issue/s raised and any additional support needs
- if there are any risks if resolution of the complaint is delayed
- if further information is needed to properly assess and resolve the complaint
- whether the complaint needs to be investigated or can be resolved informally via an alternative process without an investigation.

If the complaint needs to be reported to another agency, the Province Professional Standards Manager is responsible for ensuring that this occurs. *Reporting obligations to other agencies are detailed in section 9 of the Brothers of St John of God Safeguarding Policy.*

The Province Professional Standards Manager is responsible for ensuring complaints are appropriately assessed.



7.5 Options for resolving a complaint

After assessing the complaint, the complaint-handler will plan the actions required to manage and resolve it. Wherever possible, the Brothers of St John of God will try to resolve complaints as soon as possible after they are made.

In many cases, it will be appropriate to informally resolve a complaint using an outcomes-based process. At other times, an evidence-based investigation will be required. It may not always be clear at the outset of managing a complaint which is the best process and sometimes, it may be appropriate to move from an informal process to an investigation, or vice versa.

The nature and scope of any action taken will depend on a number of factors including:

- the circumstances of each case, including the risks involved
- any statutory requirements and whether other organisations (e.g. police/child protection authorities) are involved
- the issue(s) complained about
- the parties involved
- the likely outcome

7.5.1 Informal resolution

The complaint-handler will determine the best way of informally resolving the complaint. Relevant considerations will include:

- the nature of the person's concerns
- how the person raised their concerns
- the person's preferences and what outcomes they are seeking

Sometimes, the person making the complaint may be satisfied with the opportunity to express themselves and be heard. Other possible options include providing an explanation, apology and/or making a practical change that addresses the person's concerns. It may be appropriate to arrange a facilitated discussion between the relevant parties, for example a conciliation or mediation. This could be handled by the complaint-handler or another senior representative of the Brothers of St John of God, or it may be more appropriate to bring in an external, independent party.

The Province Professional Standards Manager is responsible for approving the proposed resolution method before it commences.

7.5.2 Investigating a complaint

If a complaint is unable to be resolved informally (or it is not appropriate to do so), the Brothers of St John of God may decide to commence a formal investigation.

The appropriate investigative approach will depend on a range of factors including:

- the seriousness and/or complexity of the complaint
- the people affected by the complaint
- the possible outcomes including those sought by the complainant



- whether other authorities or agencies need to know about the complaint or be involved in responding to it.

The Province Professional Standards Manager is responsible for approving a complaint investigation before it commences.

Key Investigation Principles

All investigation handling will be guided by the following principles:

- Confidentiality: All parties involved in an investigation will maintain strict confidentiality.
- Procedural fairness: Investigations will be fair and principled.
- Consistency: the application of investigative procedures and approaches will be consistent.
- Timeliness: investigations will be conducted as swiftly as practicable without compromising quality.
- Support: will be provided to all investigation participants when requested or required.

The overarching aim for any investigation is to resolve the relevant issue or concern in a fair, transparent and timely manner, using the least intrusive approach possible. Importantly, the manner and extent of an investigation must be proportionate to the seriousness of the issue under examination, and the approach should be continually reviewed depending on how the evidence unfolds.

For further guidance on conducting investigations: *see Annexure 3: The investigative process.*

7.6 Supporting complainants and persons the subject of complaint

The Brothers of St John of God are committed to the wellbeing of all parties during the complaint handling process.

7.6.1 Support for the complainant

Appropriate steps will be taken to support and safeguard the welfare and dignity of complainants. We recognise that some complainants may be highly vulnerable. We strive to identify when this is the case and to provide a compassionate response that is tailored to their needs.

Support for the complainant may include, but is not necessarily limited to:

- the offer of an independent support person to assist the complainant through the process
- medical treatment and/or psychological support and counselling
- in appropriate cases, interim payments to assist the complainant with certain expenses (such as counselling) or to ameliorate financial hardship
- advising the complainant that he or she has a right to independent legal advice
- an explanation of the range of options available to the complainant to pursue the matter or obtain redress, e.g., criminal charges, civil claim for damages, application to the National Redress Scheme, or request for ex gratia compensation; and
- ongoing communication about the progress of the complaint process.



In some cases, it may be appropriate to offer support to other people involved in or affected by the complaint, such as family-members of the complainant or staff or volunteers affected by the disclosure.

It is the responsibility of the Province Professional Standards Manager to communicate with the complainant (or other involved parties) in relation to offers of support and, where necessary, put measures in place to make the support available.

When a complaint is finalised, the Province Professional Standards Manager will consider whether any form of ongoing support should be offered to the complainant or other people involved in or affected by the complaint.

See section 9 of the Brothers of St John of God Safeguarding Policy for further information about supporting complainants.

7.6.2 Support for the person who is the subject of a complaint

The Brothers of St John of God will take appropriate steps to support and safeguard the welfare of any person who is the subject of a complaint, recognising that this can be a stressful experience.

Support for the person who is the subject of a complaint may include, but is not necessarily limited to:

- an offer to develop a support plan
- medical treatment and/or psychological support and counselling
- arrangements for a trusted friend or colleague to assist the person through the process
- advising the person that he or she has a right to independent legal advice
- an explanation of the process for managing the complaint, including the likely timeframe for resolution and what will be required of the person in the process; and
- ongoing communication about the progress of the complaint process.

It is the responsibility of the Province Professional Standards Manager to communicate with the person who is the subject of a complaint in relation to their welfare and support needs.

7.7 Conclusion of the Complaint

At the conclusion of the complaint resolution/investigation process, the complainant (and their parent/carer if the complainant is under 18, and it is safe and appropriate to do so) will be informed of the outcome, reasons for the decision, remedies available and options for review. The person who is the subject of the complaint will also be advised of the outcome, reasons for decision, and review options.

The Brothers of St John of God will determine what action should be taken in respect of the complaint.

Action resulting from a complaint may include:

- an acknowledgement



- explanation
- an agreement between the parties
- a verbal or written apology
- criminal action or child protection action
- disciplinary action
- management action (e.g. providing/referring the person the subject of the complaint with counselling, professional training)
- offering ongoing support to the complainant (e.g. counselling)
- offering financial redress to the complainant
- improved policies or processes

The Province Professional Standards Manager is responsible for ensuring that complaints are satisfactorily finalised.

8. Other factors to address during the complaint-handling process

8.1 Confidentiality and Privacy

All parties involved in a handling a complaint must maintain strict confidentiality throughout the process in accordance with the requirements set out in section 11 of the Safeguarding Policy. This does not prevent the Brothers of St John of God from requesting relevant information from external agencies, subject to legislative provisions to facilitate information sharing (for example to promote the safety and wellbeing of children) and the Commonwealth Privacy Principles.

During any complaint resolution or investigation process, it should be impressed upon all witnesses that they have an obligation to keep details of the investigation confidential. Confidentiality applies to all stages of a complaint process including after an outcome is provided and actions taken.

Specific Considerations

- Information and records relating to complaints will be treated as strictly confidential. Where the complainant is under the age of 18, information will be shared with the complainant's parents or guardian where it is safe and appropriate to do so.
- Information may be shared if it is necessary to address an immediate risk to the safety or wellbeing of any person, but only to the minimum extent necessary to address the risk.
- If the complaint involves conduct that is serious and/or potentially criminal, any legal obligations to report relevant information to bodies such as the police or child protection services, or to other prescribed bodies, for example, [insert relevant information child protection information sharing legislation in jurisdiction] will over-ride confidentiality.
- In certain circumstances, the obligation to be fair to the subject of a complaint may completely or partially override confidentiality. The Brothers of St John of God will seek to balance fairness and confidentiality requirements and, as far as possible, safeguard the interests of all parties.



- On a strictly limited basis, information may be disclosed to a person who has a legitimate need to know the outcome of the matter, e.g., for ongoing risk management or for the purposes of managing or providing support to the person who is the subject of the complaint.
- If a complaint is investigated and the findings of the investigation indicate that another organisation/s may have a legitimate need to know about the complaint or concern, information may be disclosed to those other organisations, but only to the minimum extent necessary to address the legitimate need to know.

8.2 Complaint Review Options

If an individual is not satisfied with the outcome of a complaint, they may request an internal review be conducted by the Brothers of St John of God. The request for review must be made within 14 working days from the date the finding is made known to the individual. Reasons outlining why the review is being requested are to be included in the request.

The Province Professional Standards Manager has responsibility for making the final decision on a complaint, including whether to conduct the review, based on the information provided to them.

If an individual remains dissatisfied with how their complaint was handled, they may be able to take their complaint to an external agency such as a Court or Tribunal, the NSW Anti-Discrimination Board or the Australian Human Rights Commission.

8.3 Maintaining Documentation

Documentation relating to complaints should be maintained and kept confidential. The level of detail required will depend on the type of complaint that is raised. At a minimum, those who are responsible for managing a complaint should retain file notes on any discussions about the complaint. Where the complaint is more complex, it may be necessary to maintain more comprehensive notes and/or create a specific file. Documentation should include sufficient information about the complaint, any steps taken to manage the complaint and any approach taken to resolve it.

The Province Professional Standards Manager is responsible for ensuring compliance with the periodic review process.

9. Continuous Improvement

The Brothers of St John of God will regularly review complaints to identify particular patterns or trends and opportunities for continuous improvement, having regard to:

- any underlying factors that may have contributed to the issue/s giving rise to the complaint
- what could have been done to prevent or reduce the issue/s giving rise to the complaint
- what safeguards, policies or procedures could be put in place to prevent or reduce the risk of a recurrence of the behaviour in the future by the same person or by other Brothers of St John of God workers.

The Province Professional Standards Manager is responsible for ensuring complaints are regularly reviewed by the Province Professional Standards Committee.



The Brothers of St John of God will take appropriate action in response to these reviews.

10. Review of Complaint Handling Policy and Related Documents

The Complaint Handling Policy will be updated as required and reviewed at least every three years. The Brothers of St John of God will consult stakeholders as part of reviewing the Complaint Handling Policy and related documents.

11. Further Guidance

National Catholic Safeguarding Standards (Second Edition)

Brothers of St John of God Safeguarding Policy

Brothers of St John of God Risk Management Strategy

Brothers of St John of God Code of Conduct

[Complaint Handling Guide: Upholding the rights of children and young people](#), National Office for Child Safety and NSW Ombudsman

NDIS Quality & Safeguards website fact sheets

12. Review of Complaint Handling Policy and Related Documents

The Complaint Handling Policy and related documents will be updated as required and reviewed at least every three years. The Brothers of St John of God will consult stakeholders as part of reviewing the Complaint Handling Policy and related documents.

Complaint Handling Policy approved	Timothy Graham oh Provincial	June 2021
Complaint Handling Policy reviewed		



Appendix 1: Complaint Process Flowchart for Subject of Complaint

Notification and Assessment

You will be advised within x days that you are the subject of a complaint. You will be given details about: the broad nature of the complaint; an explanation of the complaints process; a contact officer; and referral details to receive support. We will identify and make available to you any policies, procedures, codes of conduct, that are relevant to the complaint.

After an assessment is made, you will be advised whether the complaint is to be formally investigated or if an informal resolution has been recommended. You will be informed about how the complaint will be dealt with, including who it will be handled by and the likely timeframe.

At an appropriate stage in the process (and before your interview), you will be provided with further detail about the allegations made if necessary. You are welcome to provide any documentary or other evidence during the process.

Investigation

Investigation process starts – the overall timeframe is usually 90 days but can be longer if matter is more complex.

Evidence gathering takes place. This usually involves interviewing the complainant first and other witnesses; and identifying and analysing documents/records.

You will be invited to participate in an interview and given an opportunity to comment on the issues of complaint and related evidence.

After all available evidence is assessed, you will be notified of the investigation outcome, and any potential action that is proposed. If an adverse outcome is proposed, you will usually be given 14 days to make further submissions.

A final decision will be made and provided to you in writing.

Assisted Resolution/Mediation

Informal resolution process starts – the overall timeframe is usually 30 days but can be longer if more complex.

Your advice will be sought about the form the resolution process will take and your direct involvement will be determined. An initial meeting with you is a common starting point.

Facilitated meeting/conciliation; or separate meetings between parties and complaint handler take place where agreed outcomes are reached and undertakings made.

Final written advice about the outcomes and any other undertakings made will be provided.

Regular Progress Updates

Regular Progress Updates

Complaint Closure

If necessary, remedial action will be taken regarding subject of complaint or to systems and processes; ongoing monitoring and support will be provided to complainant; and complaint outcomes will be recorded.



Appendix 2: Complaint Process Flowchart for Complainant

Registration and Assessment

Complaints can be made via [insert web address and phone no]. You will also be asked to give your contact details.

Your complaint will be acknowledged in writing within XX days. You will be given a copy of the complaint handling policy and an explanation of the complaint process. You may be asked to provide further information. For example details about your issues of complaint; relevant evidence; and the outcomes sought.

An appropriate supervisor/manager will undertake a preliminary assessment of your complaint. This process can take between x to x days, depending on the amount of information and complexity.

Your complaint will be allocated to an internal or external complaint handler/investigator as appropriate. A decision will be made about whether an investigation or informal resolution is the best approach.

You will be advised about the next steps in the complaint process, including who will be undertaking the investigation and/or resolution of your complaint within x days after the assessment has been completed.

Investigation

Investigation process starts – the overall timeframe is usually 90 days but can be longer if more complex.

Your direct involvement will be determined e.g. participating in a meeting/interview.

Evidence gathering takes place (including interviewing subject of complaint, witnesses and identifying and analysing documents/records).

A final determination will be made after all evidence is reviewed. You will be advised of the outcome, reasons, any remedial or other action to be taken, and internal/external review options.

Assisted Resolution/Mediation

Informal resolution process starts – the overall timeframe is usually 30 days but can be longer if more complex.

Your direct involvement will be determined e.g. participating in a meeting/conciliation.

Resolution meeting/conciliation held and agreed outcomes reached.

Final written advice about the outcomes and any other undertakings made will be provided.

Regular Progress Updates

Regular Progress Updates

Complaint Closure

If necessary, remedial action will be taken regarding the subject of complaint; ongoing monitoring and support to the complainant will be provided; and complaint outcomes will be recorded.



Appendix 3: The Investigation Process

1. Investigator Selection

There are two key tasks for the investigator:

- ascertain all relevant facts pertaining to the issue being investigated; and
- at the conclusion of the fact-finding exercise, report findings; the reasons for the findings, referring to the material on which they are based; and, if appropriate, make relevant recommendations.

Suitability of the investigator is generally determined by the nature and the complexity of the issues under investigation, and whether there is any perceived or actual conflict of interest in a particular person being appointed as investigator. The person appointed to investigate should be an individual with appropriate experience in conducting investigations.

In addition to the above matters, when deciding whether or not to appoint an external investigator, other practical considerations might include: the need for the investigator to be seen as being at 'arm's length'; the impact on resourcing and current commitments if the matter is handled in-house, even where a suitably qualified person is in place; and the costs associated with engaging an external investigator, which should be weighed against the level of risk to the affected individual.

2. Liaising with authorities

If an issue/allegation is of a criminal nature or other statutory reporting responsibility exists, and therefore must be reported to Police or other external authorities, The Brothers of St John of God will ensure that it liaises closely with the relevant authorities to ensure that its own investigative activity does not compromise the external investigation.

Depending on the nature of the issue, The Brothers of St John of God may be required to undertake concurrent inquiries, and will always be required to consider and take any necessary interim risk management action regarding involved personnel and/or other people (including children and vulnerable adults) at potential risk and provide the necessary supports to the subject of investigation (and where relevant, to any complainant).

3. Rights

All individuals involved in the investigative process have the rights detailed below:

- All involved in an investigation will be informed of their role within the investigation.
- The complainant/alleged victim will be provided with information about their rights and avenues for support, including the opportunity to participate in the investigation process and being offered a support person if needed or requested.
- The person subject of investigation has the right to procedural fairness, including the opportunity to respond to allegations and recommended findings, and the evidentiary basis on which these are made.
- The complainant and the person subject of investigation will be offered a support person as needed or requested.
 - The support person may not influence or answer on behalf of the person to the interviewer, or in any way interfere with the interview.
 - The support person may be a parent, a family representative, advocate, carer or guardian, friend or work colleague not involved in the investigation.



- The support person cannot also be a subject of the investigation and/or ideally not be a witness (however, there may be exceptions to this issue when a child is involved where the order of interview can remedy any risk of tainting evidence).
- All children or young people or adults at risk involved in an investigation must have a support person present during investigation interviews.
- All people involved in an investigation will be given the opportunity to ask questions about the process, including realistic timeframes for completion.

4. Avoiding conflict of interests

All investigations must be conducted without bias, in an impartial and objective manner. No-one with an actual or perceived conflict of interest should be appointed or remain the investigator. The more serious the complaint/issue, the more important it is that the investigator be someone as independent of the events being investigated as possible or external to the organisation. Any conflict of interests should be addressed at an early stage in the investigation process.

5. Providing procedural fairness

All investigations will be conducted in accordance with the principles of procedural fairness:

- Reasonable enquiries will be undertaken and decisions will be based on findings of fact using sound reasoning and relevant evidence.
- The investigator will be impartial, objective and properly trained.
- There will be no conflict of interest on the part of any of the people involved in conducting the investigation.
- The investigation will be completed without undue delay.
- At an appropriate time, a person who is the subject of the complaint under investigation will be given a full account of the allegations against him/her and have a proper opportunity to respond to these allegations. Any submissions will be considered before a final decision is made.

6. Not to be Victimised for Whistleblowing or Raising a Concern/Complaint

A person who has raised a concern about suspected wrongdoing or made a formal complaint, has the right to continue to work in a discreet, safe and collegiate environment without the threat of intimidation, judgement or victimisation.

7. Consent

Adults, children and young people involved in an investigation may provide verbal or written consent in order to acknowledge their willing participation in an investigation. Consent can be withdrawn at any time verbally or in writing.

Personnel who refuse involvement, including not answering specific questions during the investigation process will be notified that the investigation will proceed without their version of accounts and that findings will be based on the available evidence.



8. Working With The Parties Involved

8.1.1 The complainant

Manage the complainant's expectations to ensure they are based on a realistic understanding of what the complaint can achieve. Ensure their confidentiality and explain the importance of confidentiality generally. Provide them with support, information, and regular feedback. Inform them of the outcome of the complaint or other action, and the reasons.

The person who is the subject of the complaint/investigation

Before approaching the person who is the subject of the complaint/investigation, the investigator should be satisfied that the allegations have some substance. If they have no substance and the person is unaware, then little is gained from raising the matter with them. Where there is a case to answer, ensure you provide the person with procedural fairness.

8.1.2 Other witnesses

Be sensitive to the needs of other witnesses, for instance in supporting them through any trauma they may experience as a result of being involved in the investigation process. Impress on them the requirements of confidentiality. Only tell them as much about the investigation as is strictly necessary for the purpose of obtaining the required information.

9. Steps in the investigation process

Note: for investigations relating to reportable conduct or reportable incidents, refer to the guidance provided by the relevant oversight body, e.g., NDIS Quality & Safeguards Commission (all states and territories), NSW Office of the Children's Guardian.

Step 1: Assess the complaint/issue

Not every complaint or concern arising needs to be the subject of a detailed or formal investigation. The majority of issues which arise will be able to be resolved informally. For example, many complaints involve communication problems or misunderstandings that can be resolved by discussion between the parties or with a supervisor. Relevant factors to take into account in assessing the complaint include:

- whether an alternative and satisfactory means of redress is available
- whether the complaint is trivial, frivolous or vexatious
- the time that has elapsed since the events the subject of the complaint took place
- how serious the complaint is and the significance it has for the complainant and the agency
- whether it indicates the existence of a systemic problem, or
- whether it is one of a series of complaints, indicating a pattern of conduct or a widespread problem.

Some investigations are subject to particular legislative requirements (e.g., reportable allegations or work, health and safety incidents) and these must be adhered to during any investigation process.

Step 2: Determine the nature of the investigation

This includes determining whether it is about:

- policies, procedures and practices, or
- conduct of individuals.



The nature of the investigation has a bearing on the expertise required, and the nature of the possible outcome. At this stage, a decision should be made as to whether the complaint needs to be investigated internally or should be referred to an external investigator.

Step 3: Develop the investigation framework

It is critical that one person be responsible for the conduct of the investigation, and for establishing the framework for the investigation. This framework should include:

- the appropriate authorisation to conduct the investigation
- terms of reference which establish a focus and set limits on the investigation, and
- an investigation plan.

Ensuring that this planning stage is well done will have a major influence on the ultimate success of the investigation.

Step 4: Gather evidence

The role of the investigator is to prove or disprove, if possible, any matters of fact raised by the complaint/incident. The investigator does this by gathering evidence. In an investigation, the main sources of evidence usually are:

- oral evidence (recollections)
- documentary evidence (records)
- expert evidence (technical advice), and
- site inspection.

Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration is desirable. If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence. A basic awareness of these rules is useful to ensure that the evidence obtained is the best available and, where applicable, will be admissible in any subsequent legal proceedings that may arise.

Where it is necessary to interview a child or adult at risk as part of the investigation, this will only be done with the consent of the parents/carer/guardian and in the presence of an independent third party.

Step 5: Apply the appropriate standard of proof

In disciplinary and administrative investigations, allegations must be proved “on the balance of probabilities.” A finding will be made in relation to each allegation. In reaching findings, the civil standard of proof applies. It must be applied to each separate fact that must be established to reach a finding.

In deciding whether the case has been proven on the balance of probabilities, the investigator may consider the nature of the allegations and any defence, and the gravity of the matters alleged. The investigator must consider whether the allegations relate to conduct that is in breach of established standards that apply to the subject member of personnel e.g., the Code of Conduct.

A proven finding must be based on material that logically tends to show that all the facts necessary to establish the incident are made out to the reasonable satisfaction of the decision-maker.



Step 6: Record and store information appropriately

Investigators must maintain a central investigation file, which is a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file must be stored securely to prevent unauthorised access or alteration, and to maintain confidentiality.

Step 7: Prepare the investigation report

The investigator will prepare a final investigation report which will include details about any final submissions and recommendations about final findings, and The St John of God Brother's response. The report will be for the records of The Brothers of St John of God concerned and may be subject to outside scrutiny. Ensure you have observed procedural fairness in preparing your final report.

Step 8: Take disciplinary, management or other action

An investigation may lead to one of a range of possible outcomes, including:

- the initiation of disciplinary proceedings up to and including dismissal (with or without notice) and possible criminal proceedings (in relation to religious brothers, sisters and clergy, this may lead to them being removed from ministry and dispensed from his or her vows or dismissed from the clerical state, as applicable)
- referral of a matter to an external agency for further investigation or prosecution
- introduction of policies, procedures or practices
- changes to administrative policies, procedures or practices
- training and development

Step 9: Close the investigation

Complete and file all paperwork. It is best practice to conduct a review of the investigation, preferably done by someone more experienced than the investigator and independent from them. This enables the investigation to be assessed and may highlight some improvements in investigative mechanisms for future reference.

For further guidance about conducting investigations, see:

- Complaint Handling Guide: Upholding the rights of children and young people, National Office for Child Safety and NSW Ombudsman – see Appendix J: Planning an investigation; Appendix K: Tips for interviewing children and young people; Appendix L: Checklist for responding to serious complaints involving conduct of staff members and volunteers.