

Policy and Procedures for Managing concerns about a Trustee

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Document history

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V1.0	Chris Wade	10/9/16	Approved by trustees
V1.1	Chris Wade	6/11/18	First draft of review sent to Chair, CEO and Chair of Engagement committee for initial comments. Converted policy to procedure.
V1.2	Chris Wade	14/11/18	Includes amendments following feedback from RC and JP. Changed to policy and procedure. Added table to show likely routes for various concerns.
V2.0	Chris Wade	17/12/18	Approved electronically by Engagement Committee.

Policy and Procedure for Managing Concerns about a Trustee

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1. Policy statement

The MND Association (the Association) expects a high standard of conduct and integrity from its trustees, who are its most senior representatives, in all their activities.

This document outlines the procedures to be followed if there are concerns that such standards have not been met by trustees or co-opted members of trustee sub-committees. It reflects the fact that conduct that calls the Association into disrepute or impairs its efficient running is taken seriously.

The procedures are based on the principle that concerns about trustee behaviour and competence should be addressed in a supportive and sensitive manner, but also swiftly, fairly and objectively.

In most cases, it is hoped that concerns about trustees can be addressed and resolved informally, without the need for formal escalation.

If the Chair of Trustees ('the Chair') judges that the informal process has not achieved satisfactory resolution, then the formal process outlined in this document must be followed. The formal process should also be used if the Chair considers the concern too serious to be addressed by the informal process, or at the request of the trustee about whom the concern has been raised.

Trustees about whom concerns have been raised will be given an opportunity to share their own views at each stage of the process.

2. Scope of these procedures

These procedures are designed to guide those involved in managing concerns about a trustee, or multiple trustees or a co-opted member of a trustee sub-committee. Prescribed procedures assist in the proper and successful functioning of the Association and exist to ensure that all individuals are treated fairly and sensitively.

The concern or concerns to be addressed may originally be raised with a member of staff, a director, a volunteer or a trustee, by someone associated with the Association or a member of the public.

While these procedures relate to trustees, if the issue also involves a complaint about an employee, the Director of Engagement must be informed and the timescales set out for managing the staff concern may require delay to allow the correct HR procedures also to be followed.

These procedures do not relate to the termination of membership of the Association, for which there is a separate procedure as stipulated in the Articles of Association.

Range of concerns

Some examples of the types of issues which may lead to formal action being taken according to the procedure are detailed in the table below. The table is intended as a guide to the appropriate action in each scenario. However, the Chair and investigation lead have discretion in deciding the appropriate action for each situation; considering severity, scope and scale of the concerns involved.

Normally start at stage 1.	Normally straight to stage 2.	Gross Misconduct – straight to stage 2.	Possible termination after investigation
Failure to abide by the Association's values	Refusal or repeated failures to follow Association policy and practice despite advice. Repeated failure to abide by our values.	Safeguarding concerns	Gross misconduct
Unsatisfactory performance of the duties of the role as set out in the Trustee role description and code of conduct.	Breach of safety procedures or policy / endangering safety/health of self or others	Bullying, harassment, threatening or violent behaviour, or verbal abuse in person, digitally, directly or indirectly.	All reasonable development opportunities have failed to change behaviour or performance
Minor unintentional breach of confidentiality or data protection	Serious breach of data protection or confidentiality	Actions likely to bring the Association into disrepute (including on social media)	The trustee refuses to amend behaviour or take action to address performance
Improper use of Association facilities		Financial irregularities or fraud	Continued wilful actions contrary to Association values and policies.

Normally start at stage 1.	Normally straight to stage 2.	Gross Misconduct – straight to stage 2.	Possible termination after investigation
		Discriminatory behaviour	The trustee's actions are consistently or wilfully contrary to Association's policy or procedure
		Wilful or serious breach of confidentiality or data protection	Criminal activity or breaches of law.
		Gross negligence	Repetitive breaches of executive accountability.
			Serious or repeated breaches of the code of conduct or Association values.

Use of external services

It is recognised that in addressing concerns, relationships between the trustee and the complainant/s may be damaged, leading to allegations and counter-allegations. In such cases the honorary officers may, at their discretion, consider appropriate sources of mediation and arbitration to resolve differences outside of the formal procedures outlined in this document.

Confidentiality

Confidentiality should be maintained on a strictly need to know basis throughout both the informal and formal processes. The decision on whether to inform other trustees of the outcome, and to what level of detail, lies with the Chair.

3. Procedures

Any concern that has been raised about a trustee should immediately be reported to the Chair, except in cases where the Chair may be implicated, in which case the concern should be reported to another honorary officer. The Chief Executive should be alerted to the concern at the same time and should inform the Director of Engagement. The Chair or honorary officer should then follow the informal process, unless they consider the matter to be of such severity that it is appropriate to move straight to the formal process.

3.1 STAGE ONE – INFORMAL PROCESS

The Chair should inform the trustee of the concern that has been raised as soon as is practical and agree a time slot for an informal resolution meeting, which should ideally be conducted face-to-face and within a few weeks of the initial communication with the trustee. If the trustee is unwilling to meet within a realistic timescale, the Chair at his/her discretion may decide to consider information in the trustee's absence. The Chair can lead the process or delegate this role to another honorary officer. At this stage, the person leading the process ('the lead') should consider whether they will require staff support and discuss with the Director of Engagement, as appropriate.

At the informal resolution meeting, the lead must explore with the trustee the behaviour or performance that caused concern. He or she must give the trustee the opportunity to dispute, correct or inform their understanding of the situation.

Following this initial discussion, the lead may need to gather more evidence. If this is required, a date for a further meeting should be agreed and the lead should consider whether he or she needs support in gathering this evidence. However, as this is an informal process, the focus should be on resolution and future expectations, rather than investigating past behaviour. If the lead believes that past behaviour has been unacceptable, both parties should explore and agree means by which repeats of the concerns can be avoided in the future.

At the end of this informal process, the lead must give the trustee a full and clear written statement, covering:

- Any agreed changes to/improvement(s) of behaviour and/or performance expected of the trustee,
- Any agreed time frame within which such changes or improvement(s) are expected, which would normally be six to eight weeks.
- Any relevant support, training or guidance agreed.
- Any review milestones, objectives or meetings that are needed to track progress.

A copy of this will be given to the Director of Engagement for record keeping, and the Chief Executive informed as appropriate.

The informal process is designed to enable issues to be addressed positively, swiftly, and objectively. If, within the agreed time frame, the issue has not been resolved or the trustee's behaviour has not changed or improved as agreed, the Chair should consider moving to the formal process. The trustee has the right to request a formal process at any stage.

3.2 STAGE TWO – FORMAL PROCESS

If the informal process fails to generate appropriate actions to address the concerns within the agreed time frame, a formal process must be started by the Chair. The formal process should also be used if the Chair considers the concern to be too serious for the informal process, or at the request of the trustee about whom the concerns have been raised.

Once the decision has been made to move to the formal process, all information subsequently collected and actions taken should be fully documented and filed with the Director of Engagement.

The Chair will decide who will lead the formal process and, in consultation with the Chief Executive, who will investigate the issue. The lead person should normally be an honorary officer with sufficient impartiality, sensitivity and skill to lead the formal process. The investigator may be either a director or an honorary officer. The Chair may also at his / her absolute discretion decide to appoint external persons to lead or investigate the issues.

The role of the lead person in the formal process is to:

1. ensure the procedure is followed,
2. ensure the process and investigation are impartial and accessible,
3. ensure stakeholders are appropriately engaged,
4. reach conclusions at the end of the process.

The lead person may wish to involve an additional trustee to play a full role in questioning, consideration of evidence and in reaching conclusions. This should be agreed with the Chair.

The role of the investigator is to gather information and evidence in an impartial manner and present these to the lead person, for consideration. The lead person and investigator should agree whether further Association staff support is required.

Once the lead person and investigator have been appointed, the Chair should inform the trustee of the process and the reasons for it. The lead person should then:

1. establish the date and time of the formal meeting

2. decide whether the investigator will attend the meeting
3. inform the trustee of meeting details in writing, together with a copy of this formal process.

The trustee should be given every opportunity to attend and also to have a supporter present during the formal meeting. The supporter's role is to support the trustee. They should not answer questions or speak on behalf of the trustee. The lead should send the supporter a copy of this document.

If the trustee refuses to attend a meeting, then they should be informed that decisions based on current information may be made in their absence.

Witness statements will ordinarily be made available to the trustee ahead of the meeting, giving the trustee ample time to respond and challenge detail in writing or at the upcoming meeting. Where the lead feels it is necessary to protect individuals, some details from statements or individuals' identities may, at his/her discretion, be withheld.

During the meeting, the investigator will present his or her findings in person or in writing along with evidence of the behaviour. This will be discussed with the trustee. It may also be necessary for the lead person and additional trustee to meet with any witnesses involved.

If it has not been possible to reach a conclusion after the first meeting, the lead person and additional trustee will agree the next steps and inform the trustee of what is proposed. In complex cases, more than one meeting may be needed.

When a conclusion has been reached, the lead person will inform the Chair and, if appropriate, Chief Executive and Director of Engagement. Once the Chair has agreed the findings and any sanctions, the lead person will produce a letter outlining his or her judgment. In the case of finding against the trustee either fully or partially, the letter should include any action to be taken and the consequence of any further repeats of the behaviour or performance involved.

As appropriate, the letter should include:

1. a full and clear statement of the changes to/improvements of behaviour and/or performance that is expected of the trustee,
2. a clarification of the timeframe within which such changes or improvements are expected,
3. the consequences of the trustee not complying with the changes/improvements within the time frame, as appropriate.
4. relevant training or support to be offered to the trustee to help them meet the required standards.
5. Dates of any review milestones.

The content of this letter will be agreed by the Chair before posting by recorded delivery and will be filed in the trustee's records by the Director of Engagement..

A further letter will be sent to any complainant, to update them on necessary details and bring the issue to a close. Please refer to the Association's Complaints Policy. In judging the appropriate level of detail that may be shared, the Lead Person and Chair must weigh up the need for the person to know the facts with the need for appropriate confidentiality.

If the lead person believes that the issue warrants a trusteeship to be terminated, he/she should discuss this with the Chair, and subject to the Chair's agreement, the procedures in 3.4 below must then be followed. The trustee must be made aware of the process and that although s/he will have an opportunity to present his or her case as outlined in the process, there is no provision in the Articles of Association for an appeal against termination of trusteeship once this has been agreed.

3.3 APPEALS STAGE

Trustees have the right of appeal. To do so, the trustee should submit their appeal to the Chair in writing, setting out the grounds for appeal and submitting any additional information that they feel the appeal panel should consider. The appeal letter should be sent within 10 working days of the receipt of written communication of the formal process decision.

Grounds for appeal would normally be that the actions that the lead person took were disproportionate, the trustee is not satisfied that the process was fair, or that substantial evidence was not considered. The Chair will decide whether the grounds for appeal are appropriate.

Upon receipt of the appeal, the Chair will establish an appeals panel, comprising him/herself and two additional trustees. The appeals panel should, however, exclude the Chair or other trustees if they were actively involved in the formal stage hearings or investigation. The Chair may with discretion appoint external members to this panel to aid impartiality.

Within seven days of the receipt of the letter of appeal, the Chair will write to the trustee acknowledging the appeal, informing him/her of the date the panel will sit and its composition, and confirming a final cut-off date for the written submission of additional information to the appeal, which should normally be seven days before the date of the panel meeting.

The appeals panel may, at their discretion, seek further information in writing or in person from those involved in the issue, should they believe they are missing pertinent information required for them to make a judgement.

Should the panel decide they wish to invite the trustee to give evidence, the trustee should indicate whether or not they wish to address the panel in person; and if they plan to attend the meeting, whether they wish to bring a

supporter. The role of an accompanying supporter is the same as set out in the formal process.

The appeals panel will inform the trustee of their decision in writing, by recorded mail, within 10 working days of the panel meeting.

Only one appeal is permitted and the decision made following that appeal is final.

3.4 TERMINATION OF TRUSTEESHIP

Termination of Association trusteeship may sometimes, unfortunately, be a necessary outcome of the formal process. On such occasions, the Association has the power to revoke trusteeship in order to safeguard its reputation or to protect people affected by MND, employees, volunteers, or others.

It is important to note that individuals do not have the power to terminate a trusteeship. In such cases that a lead person feels that a trustee's trusteeship, or even Association membership, should be revoked, they must submit a recommendation to this effect to the Board of Trustees, via the Chair.

The process for removing a trustee are set out in the Articles of Association which state in clause 29.11 that *at a meeting of the trustees at which at least half of the trustees are present, a resolution that he or she be removed from office is passed and a majority of the total number of elected trustees vote in favour of the resolution. Such a resolution may not be passed unless the trustee has been given at least 14 clear days' notice that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been afforded a reasonable opportunity of either (in his or her option) being heard by or of making written representations to the Trustees.*

A letter should be sent, by recorded mail, to the trustee, normally within ten working days of the Board of Trustees' meeting explaining the reason for recommending the revoking of their position.

If a trustee has several roles, a decision will be needed to decide whether the action requires the termination of all volunteering roles or the revoking of specific roles. A record of the basis for this decision must be made.

The trustee's record should be updated accordingly.

3.5 GROSS MISCONDUCT

Cases of gross misconduct will follow the formal process outlined above in section 3.2.

In cases of gross misconduct, the trustee would sometimes be suspended from his/her role pending the formal process, to avoid any repeated risk. The trustee must be informed of the suspension in writing.

Following the formal process, gross misconduct may sometimes be considered so serious that the decision to recommend the termination of the trusteeship will be reached without further attempts to address the trustee's behaviour and actions.

4. Record Keeping

A copy of all evidence, letters, minutes and actions must be sent to the Director of Engagement, who will ensure a central record of matters investigated under this procedure is kept securely on the trustee's record.

All such information will remain confidential and be available only to the trustee and those involved in the processes outlined above.

Information should be kept until the end of the trustee's term of office or for 6 years (whichever is longest) following the final stage of the process, including any appeal, and then destroyed. If the complaint is with respect to financial issues the notes will be kept for seven years in line with financial records requirements.