

The Council on Professional Conduct in Education
Case Handling Procedures
(effective 1 June 2018)

1. Introduction

The Council on Professional Conduct in Education (Council) was established in April 1994. One of its functions is to advise the Permanent Secretary for Education on cases of disputes or alleged professional misconduct involving educators. Cases of misconduct fall into two categories: complaints and case studies. For case studies, the facts and findings of a case will be published to promote professional conduct in education. For complaints lodged by complainants, the following Complaint Handling Procedures shall be observed:

The case will be decided by three Council Members whether it should be filed for inquiry after related information has been collected by the Council Secretariat. If the case is to be filed, the Case-filing Panel may decide whether or not the supporting mediation mechanism shall be initiated; or an inquiry shall be held by three Council Members to hear the facts of the case and determine whether it constitutes a breach of professional conduct, and to make appropriate recommendations. In the event of professional misconduct, recommendations may be made to the Permanent Secretary for Education to mete out sanctions. Any party aggrieved by the decision may appeal against it, and the appeal will be referred to the Appeal Panel for follow-up actions.

Procedures for lodging a complaint are detailed as follows: (1) A standard form shall be used. (2) Counter-claims may be lodged. (3) Complaints which fall outside the jurisdiction of the Council may not be accepted. (4) An accepted case may not necessarily be filed for inquiry if sufficient prima facie evidence cannot be established. (5) Request for a review/an appeal of the case may be made if the case is not accepted or filed, or if there is dissatisfaction with the conclusion made by the Inquiry Panel.

2. Categories of Cases

The Council handles two categories of cases:

Complaints lodged by complainants, for which sanctions may be recommended (see paragraphs 3 to 10); and Case studies, for which the recommendations made are for reference only (see paragraph 11).

3. Procedures for Lodging a Complaint

3.1 Ways of lodging a complaint

- (a) A complaint shall normally be lodged by the person(s) concerned. Others may lodge a complaint on behalf of the person(s) concerned only after written authorisation has been obtained. Complaints involving students (including minors and the intellectually disabled) may be lodged on their behalf by their parents/guardians or by anyone authorised by their parents/guardians. If the complaint is lodged on behalf of the person(s) concerned by more than one person, the Council may request the person(s) concerned to appoint a representative as the contact person.
- (b) The complainant and the person being complained of (the respondent) shall each be an “individual person”.

3.2 Procedures for lodging a complaint

- (a) The complaint shall be made in writing.
- (b) The complaint shall be made by way of the Complaint Form prescribed by the Council.
- (c) If the Council Secretary considers that there are appropriate reason(s), verbal complaints may be accepted. The Secretariat will then put down the complaint in writing and the written record has to be endorsed and signed by the complainant.

3.3 Submission of complaints

- (a) The complainant, on completing the Complaint Form, shall send the original copy to the Secretariat by post or in person.
- (b) By signing the Complaint Form, the complainant agrees to abide by these Case Handling Procedures and the Guidance Notes on Making a Complaint attached to the Complaint Form.
- (c) The Secretariat shall, upon receipt of the complaint, acknowledge in writing as soon as possible.

- 3.4 Written response and counter-claims
- (a) Save in exceptional circumstances, the Secretariat shall, within 14 days after acknowledging receipt of the complaint, inform the respondent in writing that a complaint has been lodged against him/her and that he/she has the right to make a counter-claim.
 - (b) Written response and/or counter-claims shall be submitted by the respondent within 30 days.
- 3.5 In the event of withdrawal of complaint by the complainant, the Council reserves the right to reject the withdrawal and proceed with the case.

4. Complaint Handling Framework

After collection of information by the Secretariat, complaint cases are handled by the Case-filing Panel and the Inquiry Panel, the composition and functions of which are as follows:

- 4.1 Upon receipt of a complaint, the Secretariat shall contact the complainant and the respondent, collect and confirm the information submitted by both parties concerned, and then submit an investigation report to the Case-filing Panel for follow-up actions.
- 4.2 The Case-filing Panel, comprised of three Council members (appointed in rotation), will be formed within 14 days upon receipt of a complaint. Upon receipt of the investigation report, the Panel will decide whether or not the case shall be filed for inquiry. If the case is to be filed, the Panel may decide whether or not the supporting mediation mechanism shall be initiated; or the Inquiry Panel shall arrange for both parties to appear at the inquiry.
- 4.3 The Inquiry Panel is comprised of three Council members (appointed in rotation). It is responsible for conducting an inquiry and assisting both parties concerned in making representations and clarification in person as appropriate. Eventually, the Panel shall arrive at a conclusion and put forward recommendations to the Permanent Secretary for Education for final follow-up actions.
- 4.4 Both parties concerned shall fully co-operate with the Secretariat, the Case-filing Panel and the Inquiry Panel. If the Panels are of the opinion that the complainant is uncooperative, they may cease to proceed with the complaint. If the Case-filing Panel is of the opinion that the respondent is uncooperative, they may still file the case provided that the complainant has given sufficient evidence; the Inquiry Panel may make recommendations after having reached a conclusion.
- 4.5 The Council shall refer complaint cases that involve criminal offences to the relevant law enforcement agencies for follow-up actions and suspend the cases upon referral until the related procedures have been completed.
- 4.6 In the event of an appeal, an Appeal Panel shall be set up (see paragraph 10).

5. Duties of the Secretariat

- 5.1 Upon receipt of a complaint, the Secretariat shall decide whether or not the case shall be accepted or any information shall be collected. Its recommendations shall be submitted to the Case-filing Panel for follow-up actions.
- 5.2 The Secretariat shall decide whether or not the complaint shall be accepted on the basis of the following criteria –
- 5.2.1 Criteria of accepting a complaint:
- (a) The complaint is lodged in accordance with the procedures stated in paragraph 3 above;
 - (b) The complaint is related to the professional conduct of educators;
 - (c) The respondent is a teacher, school head, school manager, school supervisor or any other educational personnel governed by the provisions of the Education Ordinance; and
 - (d) If legal proceedings have been initiated in respect of a complaint case, the case shall be suspended until the related procedures have been completed (see paragraph 4.5).
- 5.2.2 Circumstances under which a complaint shall not be accepted:
- (a) It is an anonymous complaint or the complainant refuses to disclose his/her identity to the respondent;

- (b) Three years have lapsed from the date of occurrence to the date on which the complaint is lodged (If the Complaint Form is delivered by post, the chop date is taken as the date of complaint; if it is submitted in person, the date of receipt by the Secretariat is taken as the date of complaint);
- (c) The major facts of the complaint have already been lodged with and handled by the Council;
- (d) The incident being complained about falls within the jurisdiction of the universities; and
- (e) Any other circumstances under which the Case-filing Panel has decided not to accept the complaint.

5.3 Collection of information

- (a) The Secretariat may interview any persons concerned, examine documents and collect evidence as required.
- (b) If the Secretariat considers that there are appropriate reason(s), the complainant may be allowed to give supplementary information or make amendments to the complaint.
- (c) The Secretariat shall treat counter-claims as general complaints.

6. Case Filing

6.1 Upon receipt of the recommendations made by the Secretariat, the Case-filing Panel shall decide whether or not the complaint shall be accepted for inquiry according to the criteria stated in paragraph 5.2.

6.2 If the Case-filing Panel decides not to accept the complaint,

- (a) its report shall include brief facts of the complaint and reasons for not accepting the complaint;
- (b) both the complainant and the respondent shall be so informed as soon as possible;
- (c) if necessary, the complaint may be recommended as a subject for case study (see paragraph 11).

6.3 If the Case-filing Panel decides to accept the complaint,

6.3.1 it shall conduct an in-depth inquiry into the facts of the case;

6.3.2 it may accept the recommendations of the Secretariat or request further information;

6.3.3 it shall determine, on the basis of the investigation report, whether prima facie evidence is established to justify the filing of a case;

6.3.4 both parties concerned shall be informed as soon as possible if the case is not to be filed. The report of the Panel shall include findings and reasons for not filing the case. If necessary, the complaint may be referred to the Council as a subject for case study.

6.3.5 If the Case-filing Panel decides to file the case, it

- (a) shall prepare documents for filing the case;
- (b) may decide whether or not the supporting mediation mechanism shall be initiated. If the Panel is of the opinion that the promotion of justice and enhancement of professional conduct as advocated by the Council will not be compromised, it may recommend mediation for the parties concerned (see paragraph 6.3.6);
- (c) shall submit the case-filing documents to the Inquiry Panel for follow-up actions and send a copy of such to the respondent before the holding of the inquiry;
- (d) shall prepare itself for presenting the case at the inquiry.

6.3.6 If the supporting mediation mechanism is to be initiated:

- (a) Both parties concerned shall first be consulted as to whether they accept mediation.
- (b) If both parties concerned accept mediation, the Council shall arrange professional mediators to follow up the case; mediation shall be completed within 42 days after both parties concerned have given their consent;
- (c) The case will be closed if it is successfully mediated. Both parties concerned shall sign a settlement agreement which shall specify that no review may be sought and no complaint may be lodged for the same incident by either parties. The Case-filing Panel shall prepare a mediation report which shall include the brief facts of the case and the decision of both parties concerned to settle. If necessary, the case may be referred to the Council as a subject for case study.

- (d) If either party concerned does not accept mediation or in the event of an unsuccessful mediation, an inquiry shall be arranged.
- (e) Mediation is one of the ways to settle disputes. The establishment of a supporting mechanism is to encourage the persons concerned to resolve their differences through mediation wherever appropriate. At the case-filing stage, if the persons concerned reject the Case-filing Panel's proposal to initiate the supporting mediation mechanism, the Council will generally not make the same recommendation during the later stages of case processing unless the persons concerned can prove the emergence of new evidence or circumstance that is conducive to the mediation process and request the Council's assistance.

7. Case-filing Review

7.1 Application for review

- (a) If the Case-filing Panel decides not to accept the complaint or file the case for inquiry, the complainant may apply for a review of the decision. The complainant shall use the standard form for review application and submit application within 14 days from the date on which the notice was served by the Case-filing Panel. Late submission will not be considered.
- (b) The Secretariat shall, upon receipt of the review application, inform the respondent of the review as soon as possible.

7.2 Procedures of review

- (a) The review shall be conducted by the three members of the original Case-filing Panel.
- (b) The Case-filing Panel may decide whether it is necessary to further examine the documents or collect evidence.

7.3 Accepting or rejecting the review application

- 7.3.1 The Case-filing Panel shall accept the review application if the complainant is able to provide reasonable new evidence.
- 7.3.2 If the Case-filing Panel accepts the review application, it may decide whether or not to initiate the supporting mediation mechanism (see paragraph 6.3.6); or to refer the case to the Inquiry Panel for follow-up actions.
- 7.3.3 If the Case-filing Panel does not accept the review application, the case shall be closed.
- 7.3.4 Both parties concerned shall be informed of the result of the review application.

8. Inquiry

8.1 Persons to appear at the inquiry shall include:

- (a) Members of the Inquiry Panel (see paragraph 4.3)
- (b) Members of the Case-filing Panel (see paragraph 4.2)
- (c) The complainant (to serve as prosecution witness)
- (d) The respondent
- (e) The Secretariat (to provide information and assistance)
- (f) Other witness(es) (if necessary)

8.2 Inquiry procedures

- 8.2.1 All inquiries shall be held in camera.
- 8.2.2 The Inquiry Panel shall arrange for both parties concerned to appear in the inquiry and conduct the inquiry. The Case-filing Panel shall be responsible for presenting the case. Both parties concerned shall be given adequate opportunities to make representations.
- 8.2.3 Absence from inquiry
 - (a) If the complainant is absent at the inquiry, the Inquiry Panel may cease to proceed with the case. If the respondent is absent, the Inquiry Panel may make a decision and give recommendations based on the available evidence.

- (b) Both parties concerned may apply in writing to the Inquiry Panel for exemption from attending the inquiry. If the Inquiry Panel considers that there are appropriate reason(s), exemption may be granted.

8.2.4 During the course of inquiry, either party concerned may invite a person to accompany him/her at the inquiry if necessary, and shall notify the Secretariat not less than 14 days before the inquiry.

8.3 Principles of inquiry

The Inquiry Panel shall make decision and/or recommend sanctions (see paragraph 9) in accordance with the evidence available and the representations made by both parties concerned during the inquiry. The decision shall be based on the principle of balance of probabilities.

9. **Decision and Conclusion of Inquiry**

9.1 The decision and recommendations on sanctions shall be based on the majority views of the Inquiry Panel.

9.2 The case closing report and recommendations on sanctions shall be made in writing, covering at least the following:

- (a) Basic facts of the case;
- (b) Findings of the Case-filing Panel;
- (c) A brief account on the procedure of the inquiry;
- (d) Result of the inquiry;
- (e) Suggested sanctions or other recommendations.

9.3 The aforesaid case closing report and recommendations on sanctions shall be forwarded to both parties concerned and the Permanent Secretary for Education.

10. **Appeal against the Result of Inquiry**

10.1 Initiating the appeal procedures

10.1.1 Both parties concerned may lodge an appeal against the result (e.g. decision, suggested sanctions or other recommendations) of the inquiry.

10.1.2 The appellant shall make the application with the standard form within 14 days upon the issue of the case report by the Inquiry Panel. Late submission will not be considered.

10.1.3 In processing the appeal application, the Secretariat shall inform the other party concerned.

10.1.4 The Appeal Panel shall consist of three Council Members (appointed in rotation). Members who have previously handled the case will be exempted.

10.2 Handling appeal application

10.2.1 The appeal application shall be handled independently by the Appeal Panel.

10.2.2 The Appeal Panel must provide reasonable opportunities for both parties concerned to make representations.

10.2.3 The appeal inquiry (if applicable) shall be held in camera. During the course of inquiry, either party concerned may invite one person to accompany him/her at the inquiry if necessary, and shall notify the Secretariat not less than 14 days before the holding of the inquiry.

10.2.4 The Appeal Panel may decide the procedures for handling the appeal, which include:

- (a) Examination of relevant documents and approval of amendments to such documents;
- (b) Interviews with relevant parties (including both parties concerned or witness(es));
- (c) Investigation;
- (d) Inquiry/inquiry in absence of a party/parties (date, time, venue and language).

10.2.5 The Appeal Panel may consider whether or not to accept the appeal application on account of the following:

- (a) Whether wrongful inferences have been made by the Inquiry Panel based on known evidence; or

- (b) Whether the original inquiry proceedings involve any irregularity that may materially affect the decision made by the Inquiry Panel; or
 - (c) Whether the appellant is able to provide new evidence acceptable by the Appeal Panel.
- 10.3 Principles of admitting new evidence
- When handling appeal applications, the Appeal Panel shall decide whether or not the new evidence provided by the appellant is acceptable or admissible on the following principles:
- (a) Whether or not the new evidence could have reasonably been obtained by the previous Inquiry Panel at the original inquiry; and
 - (b) Whether the new evidence could have an important influence (but not necessarily having a decisive influence on) the decision made by the Inquiry Panel.
- 10.4 Decision
- The decision made by the Appeal Panel is based on the majority views of its members. This final decision shall include:
- (a) The final result on the case;
 - (b) A brief account of the procedure of the appeal; and
 - (c) Reasons for the final decision.
- 10.5 Notification of decision
- Both parties concerned and the Permanent Secretary for Education shall be notified of the Appeal Panel's decision within a reasonable period of time.

11. Case Study

- 11.1 Under the following circumstances, a case may be treated by the Council as a case study:
- (a) The Council, on its own volition, looks into issues regarding professional conduct in education.
 - (b) Complaints which have not been accepted or filed by the Case-filing Panel but warrant studying from the perspective of a professional educator.
 - (c) Cases which have been successfully mediated through the supporting mediation mechanism and are recommended by the Case-filing Panel to be treated as a case study.
 - (d) Cases without a complainant referred to the Council by the Permanent Secretary for Education or other parties.
- 11.2 Formation of Case Study Panel
- The Case Study Panel shall comprise three Council Members (appointed in rotation). For complaints which are not accepted or filed by the Case-filing Panel, or cases which have been successfully mediated through the supporting mediation mechanism, the three members of the Case-filing Panel shall automatically become members of the Case Study Panel.
- 11.3 Mode of study
- (a) The Case Study Panel may, as it sees fit, interview any of the parties concerned, examine relevant documents, collect evidence or arrange for the parties concerned to attend an inquiry.
 - (b) The Case Study Panel shall compile a case study report, giving a detailed account and analysis of the case so that upon release, it may serve the purposes of educating, cautioning, deterring potential misconduct and improving the standard of conduct (see paragraph 11.5). However, the names of schools and identities of the parties concerned shall not be disclosed.
 - (c) The aforesaid report shall be submitted to the Council for discussion and endorsement.
- 11.4 Findings of case study
- (a) Findings of the case study shall focus on analysing the professional conduct in education, with remarks on moral implications if appropriate for the reference of educators, so as to guard against any possible misconduct.
 - (b) No decision shall be made against any person involved in the case. Decisions (e.g. appreciation, commendation, criticism, censure, etc.) shall only be made on specific types of behaviour and the extent to which they are in compliance with/violation of the professional conduct.

- (c) No recommendations arising from the findings of case study shall be made to the Permanent Secretary for Education for sanctions to be imposed upon any person. Nonetheless, recommendations in other aspects may be made.

11.5 Release of findings of case study

- (a) Case study reports shall be released to the education profession.
- (b) The Case Study Panel may recommend to the Council to extend the scope of release.

12. Declaration of Interests

- 12.1 Members of the Panels who are responsible for case handling shall conscientiously declare their interests at the outset. During the course of case handling, other Council Members and parties concerned may also be required to declare their interests as and when necessary.
- 12.2 If the Council Chairperson envisages serious conflict of interest involving any of the persons who have declared interests, withdrawal from the meeting shall be ordered.

13. Principles of Confidentiality

- 13.1 The Council shall keep all information in confidence once it has taken up the complaint. All Council Members and parties concerned shall strictly follow the principles of confidentiality. The Council may, however, make public the brief account of the misconduct involved in particular cases or publish such information in the CPC Newsletter regularly upon the conclusion of inquiry. However, all names of persons and schools involved shall be concealed. Should the Council find it fully justifiable to release the details of a case, legal advice shall be sought through the Permanent Secretary for Education before such details are made public.
- 13.2 The case study shall focus on individual events and misconduct, and shall by no means make decision on any person. Hence, case study reports shall be made public (see paragraph 11.5). Nevertheless, the names of schools and identities of the parties concerned shall not be mentioned.
- 13.3 Principles of confidentiality are not applicable to situations set out in paragraph 4.5.

14. Revision of Procedures

The Case Handling Procedures will be reviewed and revised by the Council from time to time. Members of the profession will be informed of the amendments through proper channels.

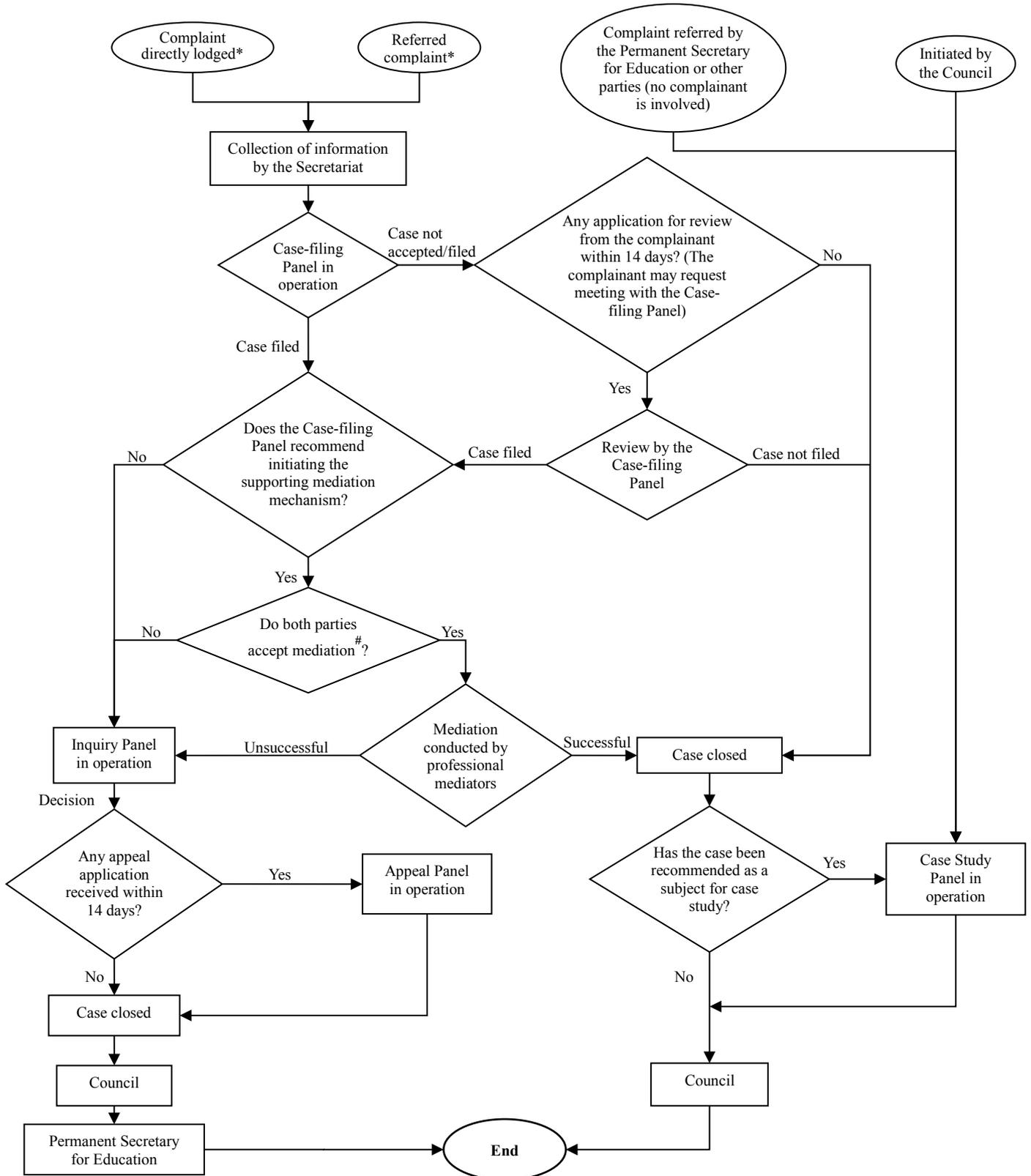
15. Remarks

- 15.1 The Council is a non-statutory advisory body to the Permanent Secretary for Education. Therefore, the voluntary co-operation of the parties concerned to provide relevant information is essential to its function of case handling.
- 15.2 At different stages of case handling, the Council may, in light of the actual circumstances (such as the change of its term), make arrangements for other Council Members to take over a case under the replacement mechanism.
- 15.3 During the change of its term, the Council might need a longer time to handle a case.

Note: If there is any inconsistency or ambiguity between the English version and the Chinese version, the Chinese version shall prevail.

Council on Professional Conduct in Education

Flow Chart on Case Handling



* Complaint cases that involve criminal offences shall be referred to the relevant law enforcement agencies for follow-up actions and be suspended upon referral until the related procedures have been completed.

Mediation is one of the ways to settle disputes. The establishment of a supporting mechanism seeks to encourage the persons concerned to resolve their differences through mediation wherever appropriate. At the case-filing stage, if the persons concerned reject the Case-filing Panel’s proposal to initiate the supporting mediation mechanism, the Council will generally not make the same recommendation during the later stages of case processing unless the persons concerned can prove the emergence of new evidence or circumstance that is conducive to the mediation process and request the Council’s assistance.