



# **Principles Applying to the Determination of Costs**

**NZAS Complaints Board 2018**

## Costs should 'follow the event':

The principle that 'costs follow the event' means that if a breach is found, costs can be awarded against the person found to be in breach.

However there are exceptions, for example costs can still be awarded when:

- Although a breach is not found, shortcomings have been identified
- The subject of the complaint has not abided by the rules of the Complaints Board
- There is a lack of co-operation by the subject of the complaint in the investigation

## Exceptions to the general principle that costs 'follow the event'

In some cases it is not appropriate to award costs, for example:

- There is reasonable co-operation with the investigation
- Remedial steps have been taken at a cost to the clinician who is the subject of the complaint
- Remorse is shown by the subject of the complaint
- Evidence in a change of behavior is seen
- The complainant acknowledges the steps that have been undertaken by the clinician who is the subject of the complaint

## Factors relevant to costs decisions - Complexity and Significance:

The following factors may see an increase in the costs awarded:

- Multiple breaches proven against the subject of a complaint
- The breaches have arisen over a long duration of time
- Keeping of poor records
- Complex factual situations
- Clinically complex issues
- When the outcomes for the patient have serious consequences
- There has been previous or repeated breaches

Costs are assessed objectively. This means the amount of costs that are awarded are based upon what the case involved and should reflect the complexity and significance of the case.

There are three tiers of costs awards:

- Band one: straightforward
- Band two: average complexity
- Band three: high complexity or significance

## Costs are a reasonable contribution to the actual costs

Costs should represent a reasonable contribution to the costs actually incurred

### How the Complaints Board has awarded costs:

The NZAS investigates roughly 3 complaints per year. In the last 10 years the Complaints Board has found breaches of the code in 13 cases. Between 2003 and 2017, costs were awarded in cases where a breach was found against members. These costs were awarded as follows:

- Band One (4 cases): \$800 - 1,499
- Band Two (4 cases ): \$1,500 - 3,500
- Band Three (1 case): \$3,501 - 8,000