

## **Questions and Answers: Triratna's Panel process and Safeguarding**

From the Triratna Ethics Kula

We've had a lot of questions and requests for clarification in the Triratna Ethics Kula and we are keen to let people know more about our work, and to respond to some of the questions that have come our way. We hope then this FAQ document will be a helpful start and provide some reassurance and clarity – we see it as possibly the first in a series where we share some of our thinking and aspirations with the wider community. We won't always get things right so we ask that you bear with us and trust that we are doing our best, learning as we go along.

Saddhaloka - the College Chair

Jnanasiddhi - Restorative advisor

Munisha - Safeguarding Officer

Amaladipa - Safeguarding advisor

Aryajaya - International Order convenor

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Ratnadarini - College Deputy

### **1. Why does Triratna need a Panel Process?**

There will be situations where an allegation is made against an Order member which they don't accept. In such a situation both parties (the person/people making the allegation – the 'complainant/s' - and the Order member) need an opportunity to describe their experience and have their 'evidence' tested. This is because we cannot just decide to believe the Order member or a complainant. Neither can we decide to just do nothing, as that is tantamount to believing the Order member.

Other faith groups (the Catholic Church for example) have been heavily criticised for not taking allegations against priests seriously and not having rigorous processes in place to address allegations of serious misconduct. The Panel process was therefore designed to establish a mechanism for deciding, on a balance of probabilities, whether or not allegations against Order members in certain circumstances are to be accepted.

(Note: there is further explanation regarding the definition and meaning of a 'balance of probabilities' below at 2.)

The Panel process would be used only for cases of serious misconduct, which could place an Order member's standing in the Order in jeopardy and where there are conflicting accounts and no other means of establishing facts. It was based on existing legal processes used within secular professional misconduct hearings but adapted for Triratna in order to be less adversarial. It was designed by OMs with professional expertise in these matters with an external judge acting as a critical friend.

Some Order members may feel that the Panel process goes too far down a secular route, some Order members may feel it does not go far enough in terms of objectivity, and some Order members will be content with what has been developed. What was clear was that Triratna needed a process for dealing with

complex cases involving conflicting accounts; that the process needed to be as fair, just, transparent and kind as possible to all parties, whilst also being able to withstand external scrutiny from the Charity Commission and wider society; and all this while maintaining compatibility with our spiritual values and culture in Triratna.

Read the summary description of the Triratna Panel process:

<https://thebuddhistcentre.com/order-connection/introducing-triratna-panel-process>

## **2. Is the Panel process a legal process?**

The Panel process is legal in the sense that it is lawful. It is not however legally binding, nor is there an automatic right of appeal (see question 4 below) and nobody can be mandated to attend such a hearing as the entire process is voluntary for all parties.

There is nothing about the Panel process or the Adjudicating body that is illegal and two judges (one retired, one serving) both reviewed the process, and were happy to work with it as a legitimate internal means of addressing cases of serious misconduct in circumstances where other approaches were not possible.

It is informed by similar processes used in some public bodies in the UK (for example, the General Teaching Council) and it is designed to follow the principles of natural justice:

1. Absence of bias: the presumption of innocence requires minimising conflicts of interest to enable the decision-makers to be impartial.
2. The right to a fair hearing: procedural fairness, reasoned deliberation and the critical testing of evidence.

As is normal in similar Panel processes outside Triratna, the burden of proof used in the Triratna Panel process is 'on the balance of probabilities', which is the standard of proof used in civil proceedings in the UK. We used this for burden of proof because it supports a more inquisitorial and less adversarial approach than the burden of proof in for example, a criminal court, (which is 'beyond reasonable doubt'). Essentially, if an allegation is proven on 'a balance of probabilities' it means that the Panel (or Tribunal) found that that alleged event was more likely than not to have occurred on anything over a 49%-51% ratio. It's impossible ultimately to ever find out the 'truth' in certain circumstances (especially in conflicting accounts between individual parties where there may have been no witnesses), so this test is used to arrive at the most equitable and objective conclusion and determine if something was more likely than not to have taken place. It is important to note that the decision making will be arrived at via consensus to reflect our culture in Triratna, so we would never have a situation where the decision from the Panel was split.

## **3. Can parties involved in a Panel process be legally represented?**

The Panel process is designed to address allegations of serious misconduct against Order members where the evidence in conflicting accounts needs to be tested. Both parties give their evidence in private to a Panel made up of an Order member with relevant professional expertise, the College Chair or a Deputy and an external legal expert (a judge or other lawyer), who weigh the evidence and decide on a balance of probabilities which account is more likely than not to have happened.

Since the Panel hearing is not a court there is no place for legal representation but there is a strong emphasis on support for all parties and they are encouraged to bring a friend for support if they wish.

Such a process provides a secular way of weighing conflicting evidence expertly in complex cases involving conflicting accounts without resorting to something like a court hearing - public and adversarial, with legal representatives engaged in cross examination. The Triratna process provides an opportunity for a private hearing, each party separately giving evidence just to the Panel of three people. To ensure transparency and fairness written statements are given to the Panel and made available to all parties before the hearing. The process is conducted ethically and kindly.

#### **4. Is there a right of appeal?**

If further evidence comes to light after a hearing that would *materially change or overturn* a panel decision, that could prompt an appeal to the College Chair and Deputies (not involved in the original Panel). This could result in a further Panel being convened to test the weight of the fresh evidence against the original finding. However, there is no automatic right of appeal just because any of the parties does not agree with the outcome.

Ultimately if an individual feels that the process was unsound or flawed they can apply for a judicial review, which would, however, scrutinise the *process* but not the outcome.

#### **5. How are Panel members chosen?**

The summary of the process includes a description of the criteria for membership of a Panel.

Read the summary: <https://thebuddhistcentre.com/order-connection/introducing-triratna-panel-process>

The members of the Panel and Adjudicating Body are chosen by the Safeguarding Team and Ethics Kula with the College Chair and Deputies.

All the members of the Panel need, as far as possible, to have no conflict of interest. This means that they cannot be, or have been, for example, close friends, ordinands, preceptors, partners or fellow community members with the person accused or the complainant/s. Whilst this principle may seem to some Order members to be at odds with the spirit of kalyanamitrata, which we cherish, it is nonetheless a central pillar of natural justice. The principle of impartiality is critical to both perceived and actual fairness, in addition to which it is simply unkind to expect individuals with deep and close bonds to be objective enough to make weighty and potentially life changing decisions about their friends. We need to ensure there is enough distance for there to be sufficient impartiality in decision making.

The Panel needs always to include a judge or lawyer so that there is someone completely outside Triratna who also has professional skills in weighing evidence which gives the process additional objectivity, credibility and rigour and represents

the view of wider society as a lay (ie non-Triratna) member. The other two members should be a member of the College and another Order member with relevant experience, for example someone who has sat on other such Panels in other contexts or has expertise with regard to the nature of the particular allegation under consideration.

**6. Could an additional Panel member be picked at random from the Order in the same way jury members are picked in British courts? Could people with relevant experience nominate themselves?**

The criteria and skills required of Panel members are very specific and therefore a member cannot be picked at random. See question 5 and the summary description for more details:

<https://thebuddhistcentre.com/order-connection/introducing-triratna-panel-process>

Where confidentiality is a priority we can't let people nominate themselves because that would mean letting a lot of people know we were looking for Panel members. Likewise, the expertise required may be something we can be transparent about if it doesn't give away the nature of the accusation, but it may not if it means telling a lot of people a Panel process is underway.

**7. How are members of an Adjudicating Body chosen?**

The Adjudicating Body must be the Chair and two of the Deputy Chairs of the College, but where there is a conflict of interest they will appoint another College member to act on their behalf. By conflict of interest we mean that they cannot be, for example, close friends, ordinands, preceptors, ex partners or fellow community members with the person accused or the complainant/s (see above, question 5).

Neither the Panel or the Adjudicating Body can be single sex. Given Triratna's single sex emphasis we tend to have closest relationships with those of our own sex and we need to avoid bias, or accusations of bias, in any direction.

**8. What is the relationship between the Panel and the Adjudicating Body?**

The Panel is a secular process designed solely to test the evidence on a balance of probabilities. The Adjudicating Body looks at the Panel's secular finding of fact in the light of our ten precepts and the person's ongoing membership of the Order. Some behaviours place one outside of the Order and it is the role of the Adjudicating Body to weigh the seriousness of the Panel's finding and decide whether a person can remain in the Order or needs to be expelled or suspended.

We'll address criteria for probation, suspension and expulsion in a later document.

**9. Why don't you name those who sit on a Panel or Adjudicating Body?**

It's common practice that members of such bodies are not named. This is because there is a risk of their being lobbied or criticised, or worse, by those unhappy with the outcome of their deliberations. Having offered a service most of us would not

want it is not fair they should have to fear such publicity, and such fear would make it harder to find Panel members for future cases.

## **10. What other processes could be used?**

The Ethics Kula decides on a case by case basis the best possible route for dealing with any particular case, in the kindest possible way, where possible in collaboration with the Order member concerned.

Some cases are referred to the police, some cases can be dealt with using Restorative process if both parties agree, and some cases may go straight to probation, suspension or expulsion - if the Order member accepts responsibility for what has been alleged.

Some matters are simply dealt with by an Order convenor or a person's preceptor or kalyanamitra; where it's possible someone is at risk of serious harm or causing serious harm to others it's a matter for the Safeguarding team. If the matter has implications for a person's membership of the Order it is referred by the Ethics Kula to the College.

Where the matter may be criminal the Safeguarding team always liaises with the police, but it is important to note that there are many reasons why the police cannot always pursue a criminal allegation. Two examples might be lack of evidence or witnesses, or the time elapsed since the alleged offence, meaning that there would be little or no possibility of securing a conviction.

## **11. Can Triratna's process be adapted from existing UK ethical processes such as those used by the General Medical Council?**

The Triratna Panel Process is adapted from existing processes used by bodies such as the General Teaching Council and in employee misconduct hearings.

We chose not to replicate a process such as the General Medical Council's oral hearings because they are a form of tribunal designed to address serious allegations against doctors and others who are bound by professional codes of conduct. Unlike in the Triratna process attendance by the parties is mandatory, the sanctions are legally binding and the hearings are conducted in public in such a way as to command significant legal resources in the form of barrister representation.

As we have explained above, we wished to use a model more in tune with Triratna's culture and values.

## **12. How much transparency is possible or desirable, especially in cases where suspension or expulsion are being considered; and how do we balance transparency with protecting sensitive information, privacy and the protection of individuals?**

Transparency may be ethical, where it serves the public interest and helps with building and maintaining trust; or unethical, where it would cause suffering – and in which case it is outweighed by the obligation to protect privacy. This is enshrined in article 12 of the Universal Declaration on Human Rights (1948) and reflected in the law in many jurisdictions worldwide, including the European Convention on Human

Rights and the UK's 1998 Human Rights Act. The UK's Data Protection Act 2018 requires that people be told only what they need to know. Clearly the Order needs to know when one of its members is not in good standing, but beyond that there is a legal and ethical duty to protect people's privacy especially when they are suffering.

We could all ask ourselves:

- If I were accused of a very serious ethical breach would I want the hearing conducted in public?
- Would I want or expect the entire Order to know about it?
- Would that kind of publicity and attention be genuinely helpful to me, even if I did want it?
- Would I think all other Order members had a right to know?
- How would any victim of my misconduct experience this?
- What would fear of such publicity do to the likelihood of others being willing to report allegations in future?

Discretion and confidentiality are motivated by kindness and a wish to protect from harm. Secrecy is unskillful because it is a deliberate attempt to conceal information in order to exclude others or to avoid negative consequences of honesty.

It's notable that when someone is thought to be ready for ordination the entire Order is not told or consulted, and that wouldn't be expected or generally thought practical. Instead small groups of Public preceptors are trusted to make the decision in open dialogue with local Order members, private Preceptors and friends of the person in the ordination process. Suspension and expulsion are a reversal of this process and are decided upon in a similar manner.

## **Safeguarding**

### **13. Does 'Safeguarding' have a specific meaning in UK law? Is there a danger that it is being used as a broad shorthand term for sexual misconduct?**

'Safeguarding' is the duty of UK bodies to protect adults and children from various significant kinds of harm including sexual harm. It should never be used as shorthand for sexual misconduct, although there may be cases where sexual misconduct may prompt a Safeguarding response. See question 14 for more detail.

You can read the Charity Commission's expectations of Triratna charities in England and Wales: <https://www.gov.uk/guidance/safeguarding-duties-for-charity-trustees>

It is important to emphasise that Safeguarding has both a legislative and regulatory basis. The law has evolved over the last 100 years to strengthen protection for children and adults at risk and invariably the law has changed and adapted in direct response to cases where children and adults were harmed. This background to Safeguarding is important to remember because it is iterative in that it seeks to learn from when things have gone wrong to prevent similar mistakes and harm happening in the future.

In the same way that health and safety law and regulation has developed as a result of appalling and life-threatening working conditions over the last 100 years, so

Safeguarding law and regulation has responded to notable and tragic cases; for example the tragic death of Victoria Climbié in 2003 and the subsequent Laming report led directly to the provisions in the 2004 Children Act.

It is important to remind ourselves that protecting people and Safeguarding responsibilities is a governance priority for all charities and Triratna charities in the UK are regulated by the Charity Commission who mandate that we take reasonable steps to protect people who come into contact with our charities from harm.

This includes:

- people who benefit from your charity's work
- Staff
- Volunteers

It may also include other people who come into contact with our charity through our work.

So, while we are *required* to have effective Safeguarding we also see Safeguarding as a natural expression of the first precept and not therefore alien to Triratna culture in any way when undertaken in a considered and compassionate manner. Naturally this is how we engage with what can be, at times, very challenging work.

#### **14. When is a case a Safeguarding process, a disciplinary process or just a question of ethics?**

It may be all three, or none.

Let's take for example, the case of an Order member who repeatedly attempts to start sexual relationships with adults on introductory courses: this is a breach of the first Ethical guideline.

Read more about Triratna's model Ethical guidelines:

<https://thebuddhistcentre.com/search/node/ethical%20guidelines>

However, if any of those propositioned is, for example, in recovery from addiction, or has mental health problems or is a refugee, they would be considered "vulnerable" or "at risk", and this would make it a formal Safeguarding matter. A case like this would be discussed by the Ethics Kula and could be dealt with in a variety of ways. (See question 10, 'What other processes can be used?')

The Triratna Safeguarding team (or a Centre's Safeguarding officer) are the people responsible for making sure such concerns are followed up in a manner which is both in accordance with our precepts and publicly accountable; ie that we in Triratna respond with wisdom and compassion when people tell us they have been harmed, and if called to account by external authorities we can demonstrate that we reacted in a way which would be considered "reasonable" and responsible in court.

#### **15. How can we trust such a process without greater transparency? Have we learnt lessons from previous controversial issues in the Order?**

As we've explained, transparency is not always possible, and that means transparency can't be the measure of how much Triratna has learned from the past. However, the fact that we went to the trouble of creating and implementing a Panel process, designed with external and internal professional expertise and chaired by a serving judge, should indicate a very clear commitment to learning from our past and being accountable. It shows that we are prepared to subject our processes to external scrutiny. (It's worth remembering that Safeguarding is supposed to be internally managed and *externally* accountable.)

In addition Triratna now has model Ethical Guidelines, Safeguarding policies, a Safeguarding team (Munisha and Amaladipa) and an Ethics kula, and every Triratna centre in the UK (and some other countries) has at least one Safeguarding officer.

Read more about Triratna's model Ethical guidelines:

<https://thebuddhistcentre.com/search/node/ethical%20guidelines>

Read more about Safeguarding in Triratna:

<https://thebuddhistcentre.com/search/node/safeguarding>

If this Q and A has prompted further questions for you please send them to us at:

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