

Public Hearing Guidance for Complainants and BACP Members

When a complaint is referred to the Disciplinary Proceedings Track, Members have the right to a fair and public appeal hearing under the Professional Conduct Procedure. This is consistent with Article 6 of the European Convention on Human Rights. We aim to be transparent in our decision-making and our appeal hearings are open to public scrutiny.

Overview

Article 6 and open justice

Article 6 (1) of the European Convention on Human Rights (ECHR) provides a right to a fair trial to anyone whose civil rights are being determined. This includes the right to a fair and public Hearing.

Article 6(1) is consistent with the long-established principle of 'open justice': that justice should generally be administered in public.

Common law has long required that judicial proceedings should be held openly and in public on the basis that:

*"...publicity is the very soul of justice...and the surest of all guards against improbity. It keeps the judge..., while trying, under trial"*¹

Similarly, Article 6(1) ECHR is directed at preventing the administration of justice in secret. It guarantees the right to a public hearing, for the purpose of protecting the parties from secret justice without public scrutiny and to maintain confidence in the integrity of the procedure.

The Panel can suspend or withdraw BACP membership as a result of a complaint involving alleged professional misconduct. Because of this, the member has a right to a public hearing of their appeal resulting from a Disciplinary Proceedings Hearing.

¹ Jeremy Bentham, quoted with approval in *Scott v Scott* [1913] AC 417 and *Harman v Secretary of State for the Home Department* [1983] 1 AC 280

Disciplinary Proceeding Hearings

Under the Professional Conduct Procedure, first instance hearings will usually be heard in private, unless the Panel decide that it would be contrary to the public interest to hold a Disciplinary Proceedings Hearing in private.

An appeal from a Disciplinary Proceedings Hearing will usually be heard in public unless (i) the Member expressly and unequivocally waives their right to a public hearing; and (ii) the Appeal Panel doesn't consider that a private hearing would be contrary to the public interest.

If, after considering the papers, the Independent Reviewer rejects the appeal, the member has 14 days to ask that appeal grounds are reconsidered at an oral hearing. An oral reconsideration hearing will usually be held in public, unless the Member expressly and unequivocally waives their right to a public hearing; and (ii) the Appeal Panel doesn't consider that a private hearing would be contrary to the public interest.

Guidance

What is meant by a private hearing?

A private hearing means only certain people can attend the hearing. These are the Member and Case Presenter, their representatives/supporters, the Panel, the Clerk, the Case Manager, witnesses who may have been called and the Complainant.

Even though the hearing is held in private, the outcome of the hearing, including details of the allegations and findings, will be published in line with our publication policy.

What is meant by a public hearing?

A public hearing means that anyone, including the media, can attend the hearing. The media could publish information from the hearing online or in print. If the hearing contains particularly sensitive or private subject matter, some parts might be held in private, or anonymised, so the information isn't disclosed.

Guidance for Members

Can I waive my right to a public hearing?

You can waive your right to a public hearing and ask for an Appeal Hearing to be held in private. The Panel will decide based on what is in the public interest.

When will I need to decide if I want a public hearing?

If the Independent Reviewer agrees with your request for an appeal, we'll ask if you want to waive your right to a public hearing.

Guidance for Complainants

Can I request a private Appeal Hearing if the Member wants a public hearing?

Although you don't have the right to ask for the appeal to be heard in private, you can ask the Panel if you think there's good reason for doing so. The Panel will consider if there's good reason to protect your personal information from being heard by others and take appropriate steps to either anonymise your information or hold some of the hearing in private. Email your Case Manager at professional_conduct@bacp.co.uk for more information.