



## Conduct at Hearings Practice Statement

### Introduction

This practice statement provides guidance to GTCS Fitness to Teach panel members (“panel members”) in respect of conduct at hearings (which is also sometimes known as “judicial conduct”). A number of sections of this guidance are also relevant to Legal Assessors and Servicing Officers, who provide legal and procedural advice to panel members (e.g. on conflict of interest, data protection/confidentiality and professionalism).

Due to the importance of the position held and the level of responsibility attached to it, many jurisdictions covering different types of legal proceedings have developed guides for judicial conduct. Although it is not possible to answer every situation which may arise, this guidance seeks to provide a useful backdrop to what is expected of panel members by way of conduct at a GTCS hearing.

### Bias/Equality

Article 6(1) of the European Convention on Human Rights (“ECHR”) states that:

*“in the determination of his civil rights and obligations.....everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal.....”*

In determining whether a body is **independent**, the following criteria are relevant (Langborger v Sweden; Kleyn and Others v the Netherlands):

- the manner of appointment of its members and the duration of their term of office;
- the existence of guarantees against outside pressures; and
- whether the body presents an appearance of independence

Panel members are appointed by an independent Appointments Committee following a comprehensive and independent appointments process. They are appointed for a period of four years. They may be removed from office prior to the end of their term of office in accordance with the mechanisms set out in the Code of Conduct and Membership Committee. Although panel members receive advice from a GTCS Servicing Officer with respect to the procedural rules and policies which govern GTCS fitness to teach proceedings, they, and they alone, make decisions about fitness to teach proceedings and have the benefit of legal advice from an independent Legal Assessor.

**Impartiality** normally means the absence of prejudice or bias. Panel members must bear in mind that *“justice must not only be done, it must also be seen to be done”*. By way of guidance, panel members:

- must not appear hostile to or belittle witnesses or parties
- must not offer an opinion during the hearing
- must not interact with parties or witnesses outwith the hearing room
- must not carry out their own research into any element of a case e.g. by carrying out internet searches regarding the Teacher
- must ascertain how participants wish to be addressed during the hearing (to take account of different cultural backgrounds)
- must avoid situations where they are seen to be in conflict with either party or favouring one against the other
- should never make any comment of a personal nature to or about a party or a witness
- should be careful in taking account of the demeanour of a witness, giving various cultural differences in this respect e.g. the avoidance of direct eye contact

Panel members must be very careful when questioning witnesses: this should be in order to amplify or clarify any aspects of what the Panel has heard. Any Panel questions should:

- be relevant to the matters at issue i.e. questions should relate to determining the facts as alleged in the complaint: they should not look to open up new fields of enquiry or relate to anything else
- have a clear purpose and be concise: the witness should be in a position to easily understand the question asked, which should be short and simple, addressing one point at a time only
- be open and not leading
- maintain and support the Panel's role as an independent decision-maker; not an advocate for either party
- avoid value judgments, any suggestion of bias and any opinion

Where a party is unrepresented or is absent, panel members can ask witnesses questions relating to obvious points of cross-examination.

Matters regarding conflict of interest are important here and are discussed in a separate section below. Panel members should also have regard to the GTCS Equality and Diversity Policy, which can be found at <http://www.gtcs.org.uk/about-gtcs/equality-diversity.aspx>.

### **Avoidance of irrelevant influences**

Decisions made by panel members must be based solely on the evidence and submissions placed before them by the parties. Any sympathy that is felt for any participant must be put to one side; emotional considerations should not form part of the decision-making process. It is human nature for a panel member to think about the consequences of his/her decisions. However, panel members must not take these considerations into account, unless specifically directed to do so by way of the relevant fitness to teach rules, policies and procedures. This is particularly important when considering how people may be affected by such decisions, many of whom will not be present at the hearing.

## **Conflict of interest**

Panel members should always bear in mind the possibility of a conflict of interest. They should check the names of the parties, representatives, witnesses (whether attending the hearing or not) for any potential conflicts of interest. The following provides guidance in this respect:

- if a panel member knows a witness, that panel member must consider whether he/she has a conflict of interest (which would preclude him/her from participating in the case) or whether he/she will require to make a declaration of interest on the day of the hearing.
- conflict of interest is an objective test. This means that you have to determine whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest that you have as so significant that it is likely to prejudice your role in discussion and decision-making. A Panel member should ask him/herself: "would an outsider consider that my knowledge of this person would prevent me from coming to a fair decision?" If the answer is "yes" then that panel member may have a conflict of interest. If the answer is "no", then that panel member should consider whether a declaration of interest should be made on the day of the hearing setting out his/her knowledge of (or relationship to) the person concerned. When such a declaration is made, both parties will be given the opportunity to comment on it. If either party objects to that panel member continuing, the panel will decide whether or not to proceed after receiving the advice of the Legal Assessor/Service Officer as appropriate. The declaration (and any comments made by either party) would then be recorded in the written decision.
- It is the responsibility of a panel member to judge whether an interest requires declaration with reference to the test described above: panel members are advised to err on the side of caution, seeking advice as required.
- Any interest should be declared, in clear terms, as soon as reasonably practicable following its identification.

## **Confidentiality and data protection**

Due to the fact that panel members receive, process and create information which is confidential, personal or sensitive in nature, they have a responsibility to ensure that they adhere to the principles of the Data Protection Act 1998. In particular, panel members:

- must not disclose, either during their term of office or after its termination, confidential, sensitive or personal information received in their role as a GTCS appointee, except in the line of authorised GTCS business
- must not disclose to any other person any passwords or login details allocated to them in order to enable access GTCS information electronically
- must keep any paper copies of confidential information safe and effectively protected against improper disclosure
- must destroy, or return to GTCS, all correspondence, records and other papers or software storage media in their possession or control which they have received as a result of their role as a panel member, upon termination of their term of office
- must report to GTCS immediately any loss or theft of any confidential information (including information stored electronically)

## **Professionalism/Formality v informality**

Panel members must ensure that all individuals who appear before them are treated with courtesy and respect. The general objective of the GTCS Fitness to Teach Rules is of enabling Conveners and Panels to deal with cases fairly and justly. This includes seeking informality and flexibility in proceedings and ensuring that parties are able to fully participate. Accordingly, although panel members are dealing with matters which can have serious implications for the parties (meaning that a certain degree of formality is required), part of the role of Panel members, and, in particular, Conveners, is to put parties at ease in order to best facilitate participation. All individuals that appear before a Panel should be satisfied that they have been carefully listened to and fairly treated by the Panel.

It is accepted that individuals process information in different ways and that practices that may make a panel member seem disinterested by e.g. closing their eyes or looking away in the distance, may, in fact, be assisting that person in digesting the information being provided. However, panel members should be aware of how their behaviour during a hearing may appear to the participants.

Panel members must take their responsibility as finders of fact and decision makers with the utmost seriousness. Hearing papers should be read in advance of any hearing and thorough notes taken both in advance of and during the hearing. This requires panel members to be actively listening to the oral evidence and submissions made during the hearing in order to ascertain whether evidence has been led to substantiate what is being alleged. Although notes will be taken by the Legal Assessor and the Servicing Officer, it is essential that panel members make their own notes because it is their recollection of the evidence that is important.

Although most hearing days will finish around 5:00 pm, there is no set finishing time and, even with careful advance planning, the nature of hearings means that delays can happen. Therefore, panel members may need to sit later at times in order to conclude the evidence of a witness or to edit a draft decision; it is expected that members will wish to do so in the interests of ensuring the expediency of the process (subject to any other urgent commitments for which alternative arrangements cannot be made). For similar reasons, unless in exceptional circumstances, panel members will not be permitted to leave early from hearings: if they require to do so, this must be discussed with the Servicing Officer as soon as possible in order that the running order for the hearing day may be managed and the parties informed accordingly.

As a general rule, Panel members should dress for a hearing as they would for a professional interview. In addition, they should avoid wearing ties, lapel badges etc which might carry some association with which a party may take exception.

## **Raising a concern about a panel member**

If a participant wishes to raise a formal complaint about the conduct of a panel member at a hearing, he/she should refer to the GTCS Code of Conduct and Membership Scheme for Council, Panel and Committee Members. This is available on the GTCS' website at <http://www.gtcs.org.uk/web/FILES/the-council/code-conduct-membership-scheme.pdf> . This document explains how complaints received about panel members will be dealt with and sets out the Code of Conduct that must be adhered to by panel members at all times in carrying out the role.

If a participant has a concern about a panel member due to serve on a particular panel, such concerns must be relayed, in writing, to the Servicing Officer assigned to the case, as soon as possible.