



Privacy and Anonymity Practice Statement

Purpose

This document provides guidance to support the rational and consistent determination of applications regarding privacy and/or anonymity within the GTC Scotland Fitness to Teach process. It is also issued to help those involved understand how decisions will be made in this context as part of GTC Scotland's commitment to ensuring its fitness to teach functions are carried out openly and transparently.

GTC Scotland's Fitness to Teach process does not operate under the principle that a decision made in one case then means that all similar subsequent cases must follow that decision. As such, any written decisions in other cases which have been lodged for consideration by a Panel should be considered with extreme caution. The Panel will not have had the benefit of considering all of the evidence put before a Panel in a different case, of hearing from witnesses or hearing submissions. Each and every case is considered individually on its particular facts and circumstances and a decision is ultimately made as is seen fit in light of those particular facts and circumstances.

This guidance does not prescribe decision making outcomes but, instead, seeks to ensure that the decision making process is rational and consistent by laying down frameworks and guidance that must be consulted when such decisions are being made.

Default Position

The default position set out in the Fitness to Teach Rules (the "Rules") is that fitness to teach hearings are held in public. However, Panels have a discretion to make orders with a view to preventing or restricting the public disclosure of any aspect of proceedings where certain criteria are met, which is discussed further in the next section.

The default position is influenced by the Human Rights Act 1998. This Act states that it is unlawful for a public authority (including GTC Scotland) to act in a way which is incompatible with the European Convention on Human Rights (ECHR). Article 6(1) of the ECHR states:

...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 established by law.....

In addition, Article 10 of the ECHR states:

Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

In addition to the ECHR provisions highlighted, it is important to recognise that the principle of open justice has long been adopted in the UK. It means that:

- proceedings should be held in public;
- evidence should be communicated publicly; and
- fair, accurate and contemporaneous media reporting of proceedings should not be prevented unless strictly necessary.

The general legal position that hearings should be held in public exists for the following reasons:

- to protect those whom the hearing is about by providing a safeguard against judicial arbitrariness or idiosyncrasy; and

- It is in the public interest as it maintains public confidence in the administration of justice.

In addition to the legal position, there are many reasons why GTC Scotland fitness to teach hearings specifically are held in public and are publically reported upon, including that:-

- It mirrors GTC Scotland's commitment to carrying out its functions openly and transparently;
- It is fundamental to the maintenance of the public's confidence in GTC Scotland as a professional regulator;
- It protects the public by ensuring that the public is aware of allegations in advance of a hearing and of the teacher's identity at the hearing, which may result in further disclosures from members of the public regarding that teacher. This is particularly the case where the allegations are serious. In addition, the public is made aware of findings made about registered teachers.
- There can be a reputational risk to GTC Scotland if hearings are held in private due to the fact that the public cannot hear evidence being led and submissions made; the public interest in GTC Scotland proceedings is a very important factor in public hearings.

Exceptions to the General Rule

Given the purposes of a public hearing as outlined above, there is a high bar to overcome in persuading a Panel to make an order otherwise. In other words, orders relating to hearings being held in private or anonymity being conferred should only be made by exception.

The Panel's decision must be consistent with Article 6(1) of the ECHR, which provides the following limited circumstances when the press and public may be excluded:-

- (a) *in the interests of morals, public order or national security in a democratic society;*
- (b) *where the interests of juveniles so require;*
- (c) *where the protection of the private life of the parties so require;*
- (d) *to the extent strictly necessary in the opinion of the court [the Panel] in special circumstances where publicity would prejudice the interests of justice.*

Accordingly, if a hearing (or part of it) is held in private, or anonymity is conferred, but the circumstances do not fall within one of the above exceptions, then the decision will be in violation of the ECHR.

In relation to (c) above, Article 8 of the ECHR is also relevant:-

- 1 *Everyone has the right to respect for his private and family life, his home and his correspondence; and*
- 2 *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

In line with this general legal position, the Rules state that Panels have a discretion to make orders with a view to preventing or restricting the public disclosure of any aspect of proceedings. The Rules state that a Panel may do this:-

- So far as it considers necessary;
- Where it is satisfied (having given the relevant parties an opportunity to make representations and in compliance with all relevant Convention rights) that it is in the interests of justice to do so; and
- The particular circumstances of the case outweigh the interests of the Teacher and the public in the hearing being held in public.

Such orders may include:-

- An order that a hearing be conducted (in whole or in part) in private;
- An order that the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed at such proceedings to the public (by the use of anonymisation of otherwise) and whether before, during or after those proceedings; and
- An order for measures seeking to prevent witnesses at a public hearing being identified by members of the public.

Making and Considering a Private Hearing or Anonymity Application

Where a party wishes to make an application for a private hearing or anonymity, this should be indicated as early as possible in the case management process.

On receipt of a private hearing/anonymity application, the Panel should follow the procedure set out in the process flow detailed in the attached Appendix. The Panel will, with reference to the legal context set out above, need to make its decision by carefully and proportionately balancing all of the factors involved in the particular case.

The Panel and parties should make themselves aware of GTC Scotland's Fitness to Teach Publication Policy for important contextual information as this will often be relevant. GTC Scotland publishes notices of scheduled public hearings on the website one week before the hearing is due to take place. However, the Teacher's name will not be published within that notice. Instead the allegation(s) or application(s) to be considered by the Panel will be disclosed. However, at the start of any public hearing, the Teacher's name will be announced and so any member of the public/press present will have that information at that point. The default position for witnesses is that their names will be used during hearings but will not be published within the written decision.

In relation to a private hearing application, the Panel should always give consideration to conducting **only part** of the hearing in private. The Panel should also carefully consider other steps which could be taken to achieve (or help to achieve) the purpose of holding all or part of the hearing in private, such as:-

- Not disclosing the identities of witnesses in the hearing and taking steps at the hearing to prevent those individuals from being identifiable; and/or
- making special arrangements for vulnerable witnesses, such as the provision of evidence remotely by video link (or similar) or the use of pre-recorded evidence.

Where a hearing is conducted in private, Panels should note that the Rules provide that this means "in the absence of the wider public but in the presence of all those involved in hearing proceedings".

As indicated above, Panels may order that the names of witnesses will be anonymised as a lesser measure than hearing part or all of a hearing in private. Indeed, there is specific provision in the Rules for witnesses who are being treated as vulnerable to be subject to such an order by default. However, the bar for granting an application for anonymity of the Teacher is high since it is an interference with the Article 10 rights of the public. It is a more serious step to take than holding a hearing in private and so a Panel will require to be satisfied that cogent reasons have been put forward for such an order to be granted and that no other steps can be taken short of anonymity to achieve the same result.

Examples of When a Private Hearing/Anonymity Might Be Appropriate

The following outlines circumstances when it may be appropriate for a hearing or part of a hearing to be held in private or for anonymity to be conferred. Please note that this is not an exhaustive list.

1 Protection of Private Life/Health

The fact that the Teacher and his/her family will be distressed by the proceedings being held in public or that a private hearing/anonymity would save him/her (and/or his family) from embarrassment are not sufficient reasons for such an application to be granted. Nor is the fact that a private hearing/anonymity could prevent damage to the Teacher's reputation, unless his/her reputation would suffer disproportionate damage as a result of the hearing being held in public/his or her name being made public. Panels must be satisfied that there is a compelling reason for granting such an application in order to protect an individual's private life.

Where intimate or sensitive details of the physical or mental health of a Teacher or witness are to be raised as part of a case, this may justify holding part or all of a hearing in private/granting anonymity in order to protect the privacy of the individual concerned, as might the impact of a public hearing on the

Teacher's health and ability to participate. Reference should be made to the detailed guidance provided on this point in the GTC Scotland Health Matters and Medical Evidence Practice Statement.

2 Children (Generally Considered to be Any Person Under the Age of 18 Years)

As noted above, Article 6(1) of the ECHR states that the press and public can be excluded from a hearing "*...where the interests of juveniles.....so require*". Whilst there remains a discretionary element of this provision, it will rarely be appropriate to require a child to be identified or to insist that a child participate in hearing proceedings in public. However, the participation of children in proceedings does not mean that those parts of proceedings should always be in private. Only in circumstances where the only practicable way to ensure that the interests of those children are protected is to hold all or part of the proceedings in private should the Panel make such a direction, bearing in mind that evidence can be given by video-link or behind screens, for example.

A Panel may treat a child as a vulnerable witness (see below).

Whether a Panel should grant such an application on the grounds that a witness was a child at the time of the alleged conduct, but is now an adult, will very much depend on the circumstances.

3 Vulnerable Witnesses

A Panel may treat as a vulnerable witness any witness under the age of 18 or any witness whose quality of evidence is likely to be diminished for specific reasons. The Rules states that any vulnerable witness will be subject to both an order that his/her identity should not be disclosed to the public at such proceedings and an order for measures seeking to prevent him/her being identifiable by members of the public. It may be that the only practical measure of doing so is to hear all or part of the hearing in private. However, the Panel will have to carefully balance this against the reasons why the hearing should be held in public.

4 In Special Circumstances Where Publicity Would Prejudice the Interests of Justice

The "special circumstances" referred to are very narrow in scope and it is for the Panel to determine whether they apply. Generally speaking, the press and public should only be excluded on "interests of justice" grounds where doing otherwise would frustrate the administration of justice, such as in a case involving:-

- national security issues
- a risk of public disorder; or
- a genuine need to protect the identity of witnesses.

Communicating and Enforcing Privacy/Anonymity Orders

Where an order has been made regarding privacy/anonymity, Panels should ensure that the terms of such an order are communicated to those attending the hearing, including witnesses and the press/public. It should be made clear what is covered by the order and, accordingly, what should not be placed into the public domain. This is particularly relevant where an individual has been anonymised but whose name is inadvertently used during the hearing. It is also relevant in informing witnesses if a hearing is being held in private and that, accordingly, the information that they are aware of in relation to the hearing should not be placed into the public domain by them at any stage.

Panels should be aware that, unlike many courts, they do not have any enforceable reporting restrictions on the press and so the Panel has no power to prevent information being published by the media. In addition, GTC Scotland has no equivalent contempt of court rule and so Panels have no enforcement powers in relation to witnesses or other individuals reporting information that is not to be disclosed out with the hearing.

However, GTC Scotland takes the breach of any order made by a Fitness to Teach Panel very seriously as doing so frustrates the purpose of making such orders. Accordingly, Panels may decide to exercise their discretion under rule 1.7.10 (exclusion of a person whose presence is disruptive or otherwise detrimental to proceedings) where such an order has been communicated to an individual who has then breached it. In addition, any registered teacher who has been made aware of such an order and thereafter breaches it may find themselves subject to fitness to teach proceedings.

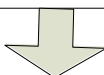
Announcement/Publication of Decisions

In line with the Publication Policy, whether or not a hearing has been held in private, a document outlining the findings and decisions made by a Panel during a hearing, along with the reasons for those decisions, will be published on the GTC Scotland website. Any decisions regarding procedural/preliminary issues will be published at the same time as the decision of the Full Hearing. The Publication Policy sets out information that will not be published, including, as outlined above, the names of witnesses.

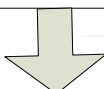
Where all or part of a hearing has been held in private, or where anonymity has been conferred on an individual, in announcing and/or publishing its decision at the end of that hearing, a Panel should ensure that it does not frustrate the purpose or reasons that underpinned that order. Where there is such a concern, consideration should be given to delivering the decision in an appropriately anonymised/redacted form. If even this would create issues, a Panel should, as a minimum, deliver a brief decision setting out: whether or not the allegation(s) was found proved; what it concluded on fitness to teach; and what the disposal was. The decision should also record that the full version of it will be provided to the Registrar who may make it available (in an appropriately anonymised or redacted form) to any person who has legitimate grounds for accessing the information contained in it.

Approved 26 September 2018

Consider the relevant sections of the Fitness to Teach Rules and this Practice Statement



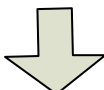
If an application is made at a hearing, give both parties an opportunity to make representations on the matter and consider whether it is appropriate in the circumstances to invite any press present to make representations with reference to ECHR Article 10



Retire to private session to consider the representations that have been made and decide whether to prevent or restrict the public disclosure of any aspect of proceedings, only where satisfied that:

- (i) it is in the interests of justice to do so; and
- (ii) the particular circumstances of the case outweigh the interests of the Teacher and the public in the hearing being held in public

The Panel must decide whether to exercise its discretion to grant the request bearing in mind that a decision to uphold the application must be only to the extent that the Panel considers it necessary.



Announce the decision in public (or make it publically available) giving full reasons and ensuring that the terms of any order granted are communicated to the press/public/witnesses.