

Conducting Hearings in Private Practice Statement

Introduction

The default position set out in the Fitness to Teach Rules (the “Rules”) is that fitness to teach hearings are generally held in public. Panels have a discretion to exclude the public and press from all or part of a public hearing by exception where certain criteria are met. This practice statement provides guidance on key points to be considered in making any such decision.

The default position described above 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 above is partly in the interests of the Teacher because a public hearing provides a safeguard against judicial arbitrariness or idiosyncrasy. It is also in the public interest as it maintains public confidence in the administration of justice. This principle is mirrored in GTC Scotland's commitment to carrying out its functions openly and transparently and is fundamental to the maintenance of the public's confidence in GTC Scotland as a professional regulator.

Exceptions to the general rule

Given that the purpose of a public hearing is principally to serve the interests of justice, a private hearing may be justified by exception where it serves those interests better than a public hearing.

Although it is for the Panel to decide whether all or part of a hearing should be held in private, its 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 in special circumstances where publicity would prejudice the interests of justice.*

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

Consistent with all of the above, the Rules state that all or any part of a hearing may be conducted in private where the Panel is satisfied, having given parties an opportunity to make representations, 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. Teacher Any such decision (and the reasons for it) will be announced in public or made publicly available.

A Panel will need to make a decision by carefully and proportionately balancing all of the factors involved in the particular case with reference to the legal context set out above.

Making and considering a private hearing application

Where a party wishes to make an application for a private hearing, this should be indicated as early as possible in the case management process in order that it may be considered well in advance of that hearing.

On receipt of a private hearing application, the Panel should follow the procedure set out in the process flow detailed in the attached Appendix.

The Panel should make itself aware of GTC Scotland's Fitness to Teach Publication Policy for important contextual information as this will often be relevant to determining a private hearing application.

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

- Not disclosing the identities of specified parties, witnesses or others in the hearing and taking steps at the hearing to prevent those individuals from being identifiable (including asking the press and media to refrain from printing details that would or could lead to identification); and/or
- making special arrangements for child or vulnerable witnesses, such as the use of screens and the provision of evidence remotely by video link (or similar).

Panels should be aware that, unlike many courts, they do not have the option of excluding the media from (or imposing any enforceable reporting restrictions on) a hearing that is conducted in public. Equally, 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".

Examples

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

1 Protection of private life

The fact that the Teacher and his/her family will be distressed by the proceedings being held in public or that a private hearing would save him/her (and/or his family) from embarrassment are generally not sufficient reasons for a hearing to be held in private. Nor is the fact that a private hearing 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. Panels must be satisfied that there is a compelling reason for deciding that a hearing should be held in private 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 to protect the privacy of the individual concerned.

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.

Whether a Panel should grant a private hearing 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. In one case, where the witness was a pupil at the school at the time of the alleged conduct, the Panel decided that the evidence of that witness should be heard partly in private and that various identifying details relating to that witness should be anonymised. This was despite the fact that the pupil was over 18 at the time of the alleged conduct and at university at the time of the hearing. The Panel's decision was due to the sensitive and intimate nature of the allegations and the fact that the witness was the alleged victim. In that case, the witness decided not to make a vulnerable witness application.

3 Vulnerable witnesses

There is specific mention in the Rules of a hearing being held in private where there is a vulnerable witness, to allow that witness to give evidence. However, it is still a discretionary provision and is for the Panel to decide upon, again taking into account the other methods available to assist a witness in giving evidence and balancing it with Article 6(1) considerations.

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:-

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

Announcement/publication of decisions

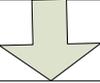
Where all or part of a hearing has been held in private, in announcing and/or publishing its decision at the end of that hearing, a Panel should ensure that it does not frustrate the purpose or reasons that underpinned the private hearing decision. Where there is such a concern, consideration should be

given to delivering the decision in an appropriately anonymised or redacted form. If even this would create issues, a Panel should, as a minimum, deliver a brief decision setting out: whether or not the complaint 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.

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



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:

- (i) publicity would prejudice the administration of justice; or
- (ii) there is a need to protect the privacy, confidentiality or other interests of a party, third party or witness concerned,

and that the interests of the Respondent and the public in the hearing being held in public are outweighed



NO

Refuse the application

YES

The Panel must decide whether to exercise its discretion to grant the request bearing in mind that a decision to uphold the application must only be to the extent that the Panel reasonably believes it to be necessary in order to serve the ends of justice



Announce the decision in public giving full reasons