

The Disciplinary Proceedings Guidance for Complainants and BACP Members

Introduction

Although this guidance isn't part of the Professional Conduct Procedure, it will help you understand what happens at a Disciplinary Proceedings Hearing. The Professional Conduct Panel who hear the complaint will decide on a case-by-case basis the appropriate format and timetable for hearing the complaint using the Professional Conduct Procedure as a guide.

One of our Case Managers will take you through the process and answer any specific questions you might have.

Meanings

Member is the BACP counsellor/psychotherapist who the complaint has been made about

Case Manager is a member of our staff who deals with the complaint and communicates with the Complainant and the Member throughout the process

Professional Conduct Panel (the Panel) is made up of three people, selected from a pool of independent Panel Members, who'll listen to the case and consider the evidence to decide whether the complaint(s) has been proved

Case Presenter is the person who'll present the complaint to the Panel on behalf of the Association.

Clerk is a person who sits in the hearing and may give legal and procedural advice to the Panel

Witness is someone who has been asked to attend the Hearing to give evidence in person to the Panel

Expert Witness is someone with an expertise in a specialist area who has been asked to attend the Hearing to give evidence to the Panel

Complainant is the person who has made the complaint to us

Parties refers to the Case Presenter and the Member

Sworn in/Oath this is a promise that you will make in the Hearing room that you will give evidence truthfully and respond truthfully to questions.

Aims and overview

The Disciplinary Proceedings Track is reserved for cases of professional misconduct. Hearings on this Track tend to be more serious than those dealt with through our Practice Review process and needs a formal approach to make sure we protect the public. To ensure fairness to Members they will be given an appropriate opportunity to defend the complaint and put their case to the Panel.

We present complaints to the Disciplinary Proceedings Track because of our role in protecting the public and maintaining trust in the profession.

The Case Presenter and Member will put forward their case to the Panel, however, it's the responsibility of the Case Presenter to prove the complaint.

Both parties can present evidence for the Panel to consider and can call on witnesses and cross-examine witnesses called by the other party. The Panel can also ask questions.

The Complainant can attend the hearing and can be called as a witness if either the Case Presenter, Member or Panel wants to question them.

Hearings will usually take place in private, with the Member having a right to a public hearing on any appeal.

Before the Hearing

The Case Manager will send the Panel and the Member copies of all relevant papers and evidence before the Hearing (including any witness statements). The Complainant can request copies of the papers.

If it's a public hearing, we'll publish the date and place of the hearing in advance on our website. We'll only provide details to hearing on request. Details and attendance information will be given on request.

The Hearing

The Chair will introduce the Panel and explain how the hearing will run.

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The Clerk will read out the allegations against the Member.

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The Case Presenter will make an opening statement.

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The Member will be given the opportunity to make an opening statement.

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The Case Presenter may call the Complainant.

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If the Complainant is asked to give evidence about their complaint, they will give an oath and the Case Presenter will ask them questions, followed by the Member. The Case Presenter can ask the Complainant further questions.

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The Panel can ask the Complainant questions.

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The Complainant can then either leave the room or stay in the room if they wish to and the Panel gives permission.

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The Case Presenter can call any other witnesses.

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These witnesses will be sworn in and the Case Presenter, followed by the Member will ask them questions. The Case Presenter can ask the witness being called further questions

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The Panel ask the witness questions.

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The witnesses will be released by the Panel and leave the room if it's a private hearing.

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The Member may call any witnesses.

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These witnesses will be sworn in and asked questions by the Member. The Case Presenter can then ask the witness(es) any questions. The Member may then ask further questions of the witness.

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The Panel may ask the witnesses questions.

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The witnesses will be released by the Panel and leave the room if the hearing is in private.

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The Panel can call any expert witnesses.

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These witnesses will be sworn in and asked questions by the Panel, the Case Presenter and then the Member.

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The witnesses will be dismissed.

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The Panel can recall the Complainant, Member or any of the witnesses to ask any final questions.

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The Case Presenter can make a closing statement.

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The Member can make a closing statement.

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The parties and any members of the public will then leave the room. The Panel will stay to deliberate and decide whether the complaint(s) should be upheld or dismissed.

After the Hearing

The Case Manager will write to the parties with the Panel's decision within 28 days of the hearing.

Where the Panel want to impose a sanction on the Member, the Member will be invited to make written submissions in relation to the appropriate sanction and/or any mitigation. If the Panel requires it may list a further hearing to deal with sanctions. The Panel will decide what (if any) sanction is appropriate.

Appeals

Right of Appeal

On the Disciplinary Proceedings Track, the Case Presenter and the Member both have a right of appeal.

The Complainant doesn't have a right of appeal as they are a witness for the purposes of the hearing. If the Complainant thinks that BACP should appeal the decision, they can make written representations to BACP as to why there should be an appeal. This should be done within 14 days of being told of the Panel's complete decision (including sanctions). In this situation, BACP will consider the Complainant's representations when deciding whether BACP should appeal.

An Independent Reviewer will then consider the grounds for appeal and decide whether an appeal can take place.

If the Independent Reviewer rejects the appeal, the Member can request that the grounds of appeal are reconsidered at an oral Hearing before the Independent Reviewer. The request must be made within 14 days of being notified of the decision.

Appeal Hearing

The Appeal Hearing will take place in public unless the Member requests a private Hearing or there is a justifiable reason for a private hearing.

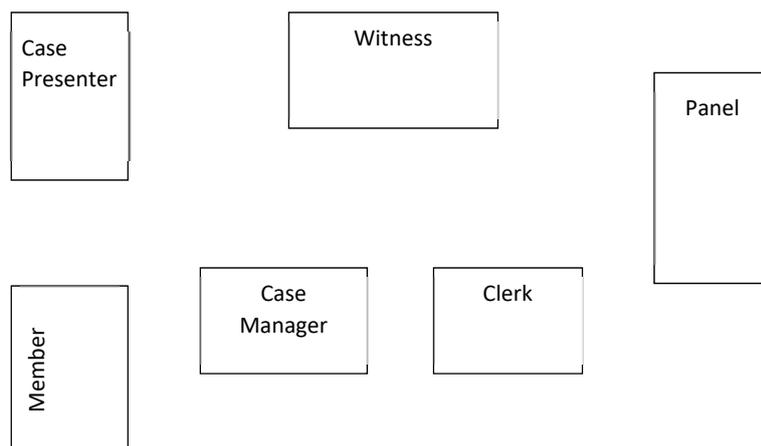
The Panel can make the decision to hold the appeal hearing in public if it's in the public interest.

Guidance for Complainants

On the Disciplinary Proceedings Track, you'll usually be a witness. You won't need to attend the full hearing unless you want to, only the section where the Case Presenter, Member and Panel have an opportunity to ask you questions. This might seem stressful but knowing what to expect in advance of the hearing can help you to prepare and calm your nerves.

We understand that some witnesses are vulnerable, and the Panel can make special arrangements to support you to give evidence. For example, you might be assessed as a vulnerable witness if you're under 18, if you have a disability, if you feel intimidated by the Member or if the complaint concerns allegations of a sexual nature and you're the alleged victim. If you're a vulnerable witness you can ask the Panel for special arrangements, such as the use of video links or pre-recorded evidence. If you're concerned about giving evidence and believe you may meet the definition of a vulnerable witness, contact the Case Manager as soon as possible before the hearing.

1. When you enter the Hearing room, you'll be asked to take a seat adjacent to the Panel and the Member. See the diagram below for a visual picture of the room and where you'll be sitting.



2. You'll be asked to take an oath. This is a promise that you'll respond truthfully to the questions you're asked.
3. The Case Presenter may then ask you questions, followed by the Member and then the Panel. Questions should be related to the information you gave in your witness statement. You may wish to read through your witness

statement on the morning of the hearing to refresh your memory of the information you'll be asked about.

4. Once you've finished answering the questions, you'll be able to leave the hearing room if you wish and your role within the proceedings will be over, unless the Panel call you back for any final questions.

How should I answer questions?

Answer all questions honestly, as clearly and calmly as you can. Speak in your own words and try to answer the question directly, being concise in your answers.

What if I don't understand the question?

You must say if you don't understand the question and you can ask for the question to be repeated.

Can I refuse to answer a question?

If a question makes you feel uncomfortable you don't have to answer. However, we encourage you to be as open and transparent as you can. If you don't know the answer to a question, you can simply state that you don't know.

What is cross-examination?

This means that the Member may ask you questions as well as the Case Presenter and the Panel. The Member may want to test your evidence, for example by challenging your recollection of events which are relevant to the complaint.

If the allegations are sexual in nature and you're the alleged victim, the Member won't be allowed to ask you questions directly. You may be asked questions by the Member's legal representative or the Panel (or someone nominated by them) may ask you questions at the request of the Member.

How many questions will I be asked?

There is no limit on the amount of questions the Case Presenter, Member or Panel can ask. But each party usually has only 30 minutes to ask their questions and can't exceed this time limit unless the Panel makes an allowance.

If you need a break during the hearing, you can ask the Chair of the Panel for some time.

Also remember that the Case Manager will be there if you have any questions on the day, or if you're worried about giving your evidence or answering questions.

Guidance for Members

You'll have two opportunities to put your side of the case to the Panel during the hearing. You can also ask any witnesses attending, including the Complainant, questions. There are some answers to questions you might have about the process below.

What should I say during my statements?

You're free to say whatever you want during your statements as this is your opportunity to be heard. If you bring a legal representative, they can speak on your behalf. You might wish to focus your statement around the written allegations as the Panel can only make decisions in relation to the allegations.

In your closing statement, you can make any comments you like, in relation to the complaint.

What types of questions can I ask?

When you ask the witness questions, you should make sure the questions are appropriate and relevant to the witness statement. Try to ask questions that are related to the allegations and keep them short and simple.

Before the hearing, you should think about the questions you'd like to ask. You can use the following table to help you draft your questions.

Should I refer to the documents when asking questions?

If your questions relate to the hearing paper evidence, you should say the page number of the document you're referring to. The table below gives a simple example.

Allegation	Question	Folio Page (where relevant)
In relation to allegation 3...	... can the witness explain the context behind sending the letter...	...which is referred to on page 2 of his statement?
In relation to allegation 5...	...does the witness accept that there is no written evidence to support...	... the second bullet point on page 3 of her statement?

Will I be cross-examined by the Case Presenter?

Yes, you may be cross-examined by the Case Presenter.

Can I bring someone with me for support?

Yes, you can bring a support person or legal representative with you to the Hearing. They can sit next to you during the proceedings and if you prefer, speak for you during the opening and closing statements. However, if you're asked any questions by the Case Presenter or the Panel relating to the complaint, your support person can't give evidence on your behalf and you must answer the questions.

If you need support or advice during the hearing, you can ask the Chair for a break.

How will the Panel make its decision?

The Panel will make a decision based on the paper evidence and from what you and any witnesses said at the Hearing. Remember that the case against you must be proved by the Case Presenter.

Will members of the public be allowed to attend the Hearing?

Generally, the Hearing will be in private unless the Panel have directed a public hearing. Members of the public, including the media can attend a public hearing, however the number will be limited by the size of the room.