

Professional Conduct Procedure

PR4 - Protocol for late or new evidence

This Protocol outlines the procedure for submitting late or new evidence at each stage of the complaints procedure.

In general, all evidence relevant to the case should be made available to all parties as directed by the Panel. This should only be deviated from in exceptional circumstances.

The Hearing

The Panel will give directions about how evidence should be presented, and all parties have a duty to submit evidence in line with such directions. Any evidence submitted after the due time will be considered late evidence.

Where late evidence is submitted, the party seeking to rely on that evidence must provide the Panel and the other party with a written statement explaining:

- why the evidence was not submitted within the due time and
- why the evidence was not obtained earlier and
- how the evidence is relevant to an issue to be determined

The other party may make written or oral representations if the application is shortly before the hearing, in opposition to the application. These should include any submissions about any prejudice, or unfairness, that could result from a decision to admit late evidence.

The Panel will consider:

- whether it would be in the interests of justice to admit the evidence and
- if the evidence is admitted, what directions are necessary to manage or mitigate any potential prejudice to the other party

The Clerk will notify the parties of the Panel's decision which will be recorded at the hearing.

Evidence submitted at or shortly before the hearing

An application to admit late evidence at, or shortly before, the hearing is more likely to cause prejudice and unfairness to the other party and therefore should be supported by a statement explaining why the application could not have been made within reasonable time before the hearing date.

Because of the additional risk of unfairness and disruption to the proceedings, the Panel will need strong and sufficient reasons to admit late evidence at or shortly before the hearing. This is particularly the case if the admission would require the hearing to be adjourned in the interests of fairness.

Independent Reviewer

When new evidence is submitted for the Independent Reviewer to consider, the Complainant must provide a written explanation as to why the evidence was not previously available when the complaint was first submitted.

The Independent Reviewer must consider the following:

- when the new evidence becomes available
- whether it is relevant
- whether it could reasonably have been submitted at the time the original complaint was submitted
- whether it is reasonable and in the interests of justice to allow the new evidence to be submitted

Appeal Hearing

Evidence that was not available at the time of the hearing must be submitted by the deadline ordered by the Appeal Panel.

The Appeal Panel will apply the same criteria in deciding whether to admit late evidence.