

Health and Care Professions Tribunal Service

PRACTICE NOTE

Conduct of Representatives

This Practice Note has been issued by for the guidance of Panels and to assist those appearing before them.

Introduction

1. This Practice Note provides guidance on the responsibilities and behaviours expected of representatives. Issues regarding the conduct of representatives are likely to be rare and in the majority of cases, representatives will contribute effectively to the smooth running of hearings.
2. This Practice Note sets out the standards of conduct expected and the ways in which all those involved in hearings can ensure that those standards are maintained.
3. Panels are entitled to expect that anyone representing either the HCPC, or the registrant in proceedings before a Panel will conduct themselves appropriately. In exceptional circumstances where these standards are not met and where the conduct of representatives has an adverse effect on the proper presentation of the case, the Panel may need to act to preserve the integrity of the proceedings. This Practice Note provides guidance to panels, legal assessors and representatives when considering the conduct of representatives and its impact on proceedings.

Standards of conduct

4. Panels are entitled to expect all representatives appearing before a Panel to comply with the following minimum standards of conduct:
 - a. to comply with the standard and any bespoke directions made by a panel regarding case management so that, to the benefit of the registrant and all those involved in the hearing, it runs smoothly --
 - b. not to seek to influence the proceedings by improper means, such as advising a witness not to attend or dissuading a witness from giving evidence;

- c. not to send abusive or offensive correspondence to, or otherwise communicate in a similar manner with, any person in connection with the proceedings;
- d. to be punctual and adequately prepared;
- e. to be courteous and fair to everyone involved;
- f. to focus on the evidence, ensuring that any challenge to that evidence is on the basis of fact;
- g. to avoid unprofessional, improper, disorderly or disruptive behaviour and to discourage such behaviour by others;
- h. not to waste time on irrelevant matters or make frivolous or vexatious objections;
- i. not to knowingly assist or condone any unlawful conduct, including the giving of perjured evidence;
- j. not to engage in attacks which appear to the Panel to be purely personal or in acrimonious, sarcastic, or intimidatory exchanges with anyone involved in the proceedings;
- k. to test or challenge evidence by proper means and not to be abusive, offensive or unnecessarily confrontational when cross-examining witnesses;
- l. to comply with and respect the Panel's decision, and not to attempt to re-open a matter which has been ruled upon

Registrants' representatives

5. The Panel rules enable registrants to be represented by any person¹ they choose, who may be, but does not need to be, legally qualified. Registrants' representatives play a key role in ensuring that registrants are supported to put their case in the most clear and coherent manner and to ensure that any evidence which is not admitted is subject to proper challenge and scrutiny. They act in the best interests of the registrant.
6. Registrants are often represented by someone who is not a qualified lawyer (a "lay representative"). These lay representatives may be friends or colleagues who have never undertaken the task before, others will be union or professional body representatives with greater experience. To ensure the overall fairness of the proceedings, the Panel Chair, panel members, legal assessor and the HCPC's presenting officer should act at all times to promote effective participation by the registrant and any lay representatives. This may include explaining the Panel's procedures and assisting a lay representative to put questions in a manner which is appropriate to the proceedings.

¹ other than a member of the Council or one of its committees, or a Council employee.

7. Whether legally qualified or not, all representatives of registrants share the same responsibilities; to ensure that the rights of the registrant concerned as well as any witnesses are respected. Representatives have a key role in representing the interests of the registrant in the best manner possible by all proper and lawful means.

Misconduct of Representatives

8. All representatives must conduct themselves appropriately. Lawyers authorised² to act in a UK jurisdiction must act in accordance with the professional conduct rules which apply to them.
9. Whilst lay representatives are not subject to the same professional conduct rules which apply to qualified lawyers, Panels will expect lay representatives to conform to the standards of conduct set out in this Practice Note.
10. Panels will not tolerate unlawful, disruptive or other improper behaviour by any representative. They expect all representatives to treat the registrant, witnesses, the Panel, the legal assessor and other representatives with courtesy and respect. Panel Chairs should deal promptly and firmly with unlawful, disruptive or other improper behaviour³ by warning the representative that such behaviour will not be tolerated and that the representative should desist from such conduct.
11. Legal Assessors should also intervene when representatives behave contrary to their professional conduct rules or in the case of lay representatives, the standards of conduct set out in this Practice Note or in any way which the Panel regards as disruptive and contrary to the fairness of the proceedings, which includes fairness to the registrant and to witnesses.
12. If any representative disregards the Panel's warnings or rulings or persists in any inappropriate behaviour then, as a last resort, the Panel may need to consider excluding that person from the proceedings. The Panel rules⁴ enable a Panel to "*exclude from the hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings.*" A Panel should take legal advice before taking this action and must consider the impact it would have on the registrant who would then be unrepresented. Panels would need to consider whether an adjournment might be necessary to enable a registrant to obtain alternative representation.

² Solicitors, barristers, advocates, chartered legal executives and other lawyers authorised to practise as such in a UK jurisdiction.

³ Serious misconduct by qualified lawyers or barristers should be reported to the relevant regulatory body.

⁴ HCPC (Investigating Committee) (Procedure) Rules 2003, r.8(1)(g); HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r.10(1)(g); HCPC (Health Committee) (Procedure) Rules 2003, r.10(10)(g).