

Tribunal Advisory Committee, 27 February 2019

Review of Practice Notes

Executive Summary

Practice Notes exist to provide clear guidance to all parties with an interest or involvement in Fitness to Practise proceedings. All Practice Notes undergo regular review.

Decision

The Tribunal Advisory Committee is asked to discuss and advise on any relevant changes to the Unrepresented Registrants Practice Note.

Appendices

Appendix one: Practice Note: Unrepresented Registrants

Date of paper

12 February 2019

Health and Care Professions Tribunal Service

PRACTICE NOTE

Unrepresented Registrants

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

1. Introduction

Although proceedings before Panels have been designed to enable registrants to represent themselves, for many registrants the prospect of having to appear before a Panel may nonetheless be a daunting experience.

An unrepresented registrant may be apprehensive or nervous about having to present a case before a Panel and this may manifest itself in apparently ~~difficult~~hostile, challenging belligerent or ~~defensive~~even rude behaviour. Panels and Legal Assessors need to be aware of this and should take all reasonable steps to put unrepresented registrants at ease, including:

- being patient at all times and making appropriate use of adjournments;
- explaining what will happen in straightforward terms, avoiding legal jargon or, where it cannot be avoided, explaining it;
- explaining what the registrant may or may not do, why and when;
- trying to get the registrant to identify the issues in dispute and ensuring that the registrant has said what he or she needs to say;
- giving clear reasons for any rulings or decisions that are made.

2. Maintaining a fair balance

Unrepresented registrants are unlikely to be familiar with law or procedure and should be allowed some ~~freedom latitude~~ in the presentation of their case, in order to ensure that they receive a fair hearing. However, this does not mean that they should be allowed to exploit or abuse their lack of representation or to frustrate proceedings.-

In particular, unrepresented registrants tend to find the following two aspects of the hearing process challenging:

- that as each party is heard in turn, matters which are in dispute must be addressed when it is the registrant's turn to speak rather than by interjection; and

- that evidence is presented by the examination and cross-examination of witnesses.

Panels should ensure that an unrepresented registrant has every reasonable opportunity to make his or her case. The Legal Assessor will also play a key role in assisting the registrant, for example, For example, it may be necessary for the Panel to helping the registrant to put a point to a witness in the form of a question. However, Panels must be careful not to interfere in matters which must be decided by the registrant alone, such as whether or not to give evidence.

Panels and Legal Assessors are expected to give clear procedural guidance in every case before them, but it is especially important to do so in cases where a registrant is unrepresented. As a minimum the following should be explained:

- who the members of the Panel are and how they should be addressed;
- who the other people present are and their respective rolesfunctions;
- the procedure which the Panel will follow, including:
 - that the HCPC will open and then call witnesses to give evidence;
 - an explanation of the normal order of examining witnesses (examination in chief, cross-examination and re-examination);
 - that the registrant may raise objections to the admission of evidence;
 - that, once the HCPC has put its case, the registrant may give evidence personally (and may be cross-examined) and may call and question witnesses; and
 - that when all the evidence has been heard and after closing submissions by the HCPC, the registrant may address the Panel and thus will have the 'last word';
- that the registrant may make notes, and may have a friend or colleague sitting alongside to make notes or help to present the case;
- that everyone will have the opportunity to present their case, and that the registrant should not interrupt when someone else is speaking, but should make a note of the point and raise it when it is their turn to speak;
- that, if the registrant would like a short break in the proceedings at any time, that is likely to be granted;
- that, if the registrant has any special requirements or reasonable adjustments which have not already been notified in advance of the hearing, they will need to raise this at the start of proceedings;
- that, if the registrant does not understand something or has a problem about the case, the Panel should be told so that it can be addressed by the Panel Chair.-

Commented [ZM1]: From GA feedback

3. The role of the Legal Assessor

Consider whether a new paragraph is required, setting out the role (including any limitations) of the Legal Assessor in relation to cases where the registrant is unrepresented.

4. Protecting witnesses

A person who is unfamiliar with the presentation of evidence by means of examination and cross-examination is likely to make statements to, rather than asking questions of, witnesses and may adopt an aggressive, offensive or unnecessarily confrontational approach to the questioning of witnesses.

Although such behaviour is likely to arise inadvertently, Panels should protect witnesses from questioning by an unrepresented registrant which goes beyond the acceptable limits of testing or challenging their evidence by means of cross-examination. Striking the right balance on this issue will often be difficult, but Panels must intervene as necessary in order to protect both the interests of witness and the registrant's right to a fair hearing.

Panels should have due regard to the Cross Examination (Sexual Cases) Practice Note which sets out the procedure to be followed in cases involving allegations of a sexual nature, which prevents a registrant acting in person from cross examining a witness in person in such cases.

22nd March 2017