

PRACTICE NOTE

Unrepresented Parties

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

Introduction

Although the procedures adopted by the HPC Practice Committees have been deliberately designed to enable registrants to represent themselves, for many registrants the prospect of having to appear before a Panel will nonetheless be a daunting experience.

The unrepresented registrant may be apprehensive or nervous about having to present a case before a Panel and this may manifest itself in apparently hostile, belligerent or even rude behaviour. Panels 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 is necessary, 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.

Maintaining a fair balance

Unrepresented registrants are unlikely to be familiar with law or procedure and, in particular, the presentation of evidence by the examination and cross-examination of witnesses. They should be allowed some latitude in the presentation of their case, in order to ensure that they receive a fair hearing, but this does not mean that they should be allowed to exploit or abuse the lack of representation.

Panels should ensure that an unrepresented registrant has every reasonable opportunity to make his or her case and, for example, it may be necessary for the Panel to help 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 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 functions;
- the procedure which the Panel will follow, including:
 - that the HPC 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 be able to object to the admission of evidence; and
 - that, once the HPC has put its case, the registrant may give evidence personally (and may be cross-examined) and may call and question witnesses;
 - that when all the evidence has been heard, the registrant may address the Panel and thus will have the 'last word';
- that everyone will have the opportunity to present their case, and that the registrant should not interrupt when someone else is speaking;
- 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, if the registrant would like a short break in the proceedings at any time, that is likely to be granted;
- 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.

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.

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