



BPC Complaints Procedure Review

Consultation 2015

Commencement date: 30 March 2015

Date consultation closes: 30 June 2015

About this consultation

The BPC is seeking your views on proposed changes to its Complaints Procedure. Any individual or organisation with an interest in this matter is welcome to respond to this consultation. In particular, we invite comments on the proposed Hearing model outlined below. These will help us to adjust the detail of the procedures as required.

The BPC is not prescribing a format for responding to this consultation or setting any specific questions for you to answer. We invite responses by post or email by 30 June 2015 to:

British Psychoanalytic Council
Complaints Procedure Consultation
Suite 7, 19-23 Wedmore Street
London N19 4RU

or: **cp@bpc.org.uk**

If you have any questions about this consultation please contact Janice Cormie, BPC Head of Services, on 020 7561 9240 or email janice@bpc.org.uk

The current Complaints Procedure is available on the BPC website, at www.bpc.org.uk

Why we need to change the BPC's Complaints Procedure

The Ethics Committee and Executive of the BPC recently made the decision to carefully revise the present BPC Complaints Procedure. This decision follows substantial changes in the general climate of professional regulation, and recent legal action taken by registrants, who are subject to complaints, against the BPC.

The BPC Complaints Procedure was drawn up in 2007 in consultation with the Member Institutions and then revised in 2011. The Complaints Procedure was a collegial, professional, self-regulation procedure which did not permit legal representation in hearings and which served us well to date. Explicitly, it regarded the regulation of psychoanalytic psychotherapists as being the proper responsibility of psychotherapists themselves.

However, the regulators of all professional bodies have over the last few years become subject to substantial changes in regulatory case-law, in data protection and freedom of information legislation, and in Human Rights law, in particular the European Convention on Human Rights, Article 6 ('the right to a fair trial'). The main implication of this is the requirement to allow legal representation in hearings.

Currently the BPC is now the only senior regulatory body in the psychotherapy / counselling sector which does not allow legal representation in disciplinary hearings. The BPC is, in the opinion of our legal advisers, vulnerable to continuing legal challenge about these matters. In particular the BPC is subject to judicial review, which is extremely costly. Bodies that have a public facing role with responsibilities in civil society can be subject to judicial review; the BPC, as a confirmed regulator under the Professional Standards Authority's Accredited Registers Programme, can no longer claim exemption.

The new procedure aims to **introduce the provision for legal representation** in our hearings, particularly those which have the potential to result in a serious sanction. This will mean that we also allow cross-examination and testing of evidence in front of the Hearing Panel. In practice this will mean there will be legal representatives for both sides in the hearing, as well as a legal assessor to assist the Hearing Panel. A description of the proposed model can be found on page 4.

We are also planning an **alternative path for the resolution of complaints**, where both parties voluntarily agree to accept the findings as binding on them. This would be a new consensual disposal-style process, which would be more informal, faster, more collegial and would not involve legal representation. This process would be useful for less serious allegations, professional standards issues, professional interpersonal disputes and possibly fitness to practise matters, where appropriate.

Allowing legal representation and the other provisions we are proposing will serve to **enhance the protection of our registrants** who are subject to a complaint. The new procedure will bring additional safeguards to our registrants' ability to practise and to engage in professional life. It also affords **additional support for complainants**, who will no longer have to bear the anxiety and burden of speaking out on their own.

Areas of the Complaints Procedure that we need to change

1. A 'consensual disposal'-style pathway for complaints

We are proposing to introduce an alternative route for 'consensual disposal' of complaints. A separate section of the Complaints Procedure will set out the steps that aim to resolve complaints which the Screening Committee determines may involve a demonstrable failure to maintain good professional standards, but do not constitute a serious breach of the BPC Code of Ethics. This route would be used in those cases where it appears to the Screening Committee that a complaint would best be resolved by means of the alternative procedure, or where the complainant has requested it be dealt with in this way and the Committee agrees.

A hearing under this procedure would not be a disciplinary hearing, and the Panel would not be empowered to suspend or strike off a registrant, but it may issue admonishments and impose conditions.

2. Legal representation

The current Complaints Procedure does not permit legal representation at its hearings. When it was originally drafted, this was in line with reasonable regulatory practice for voluntary regulators. It allowed our hearings to function in a supportive manner for both parties to a complaint, and presented the BPC's procedures as less daunting to potential complainants.

However, given that there could, following a hearing, be a finding against a registrant that could have a profound significance for their ongoing professional practice and thus livelihood, the BPC has been advised that it must follow a fair process which at a minimum requires the registrant to have the right to challenge the evidence of the complainant by way of cross-examination, and for the registrants to have legal representation.

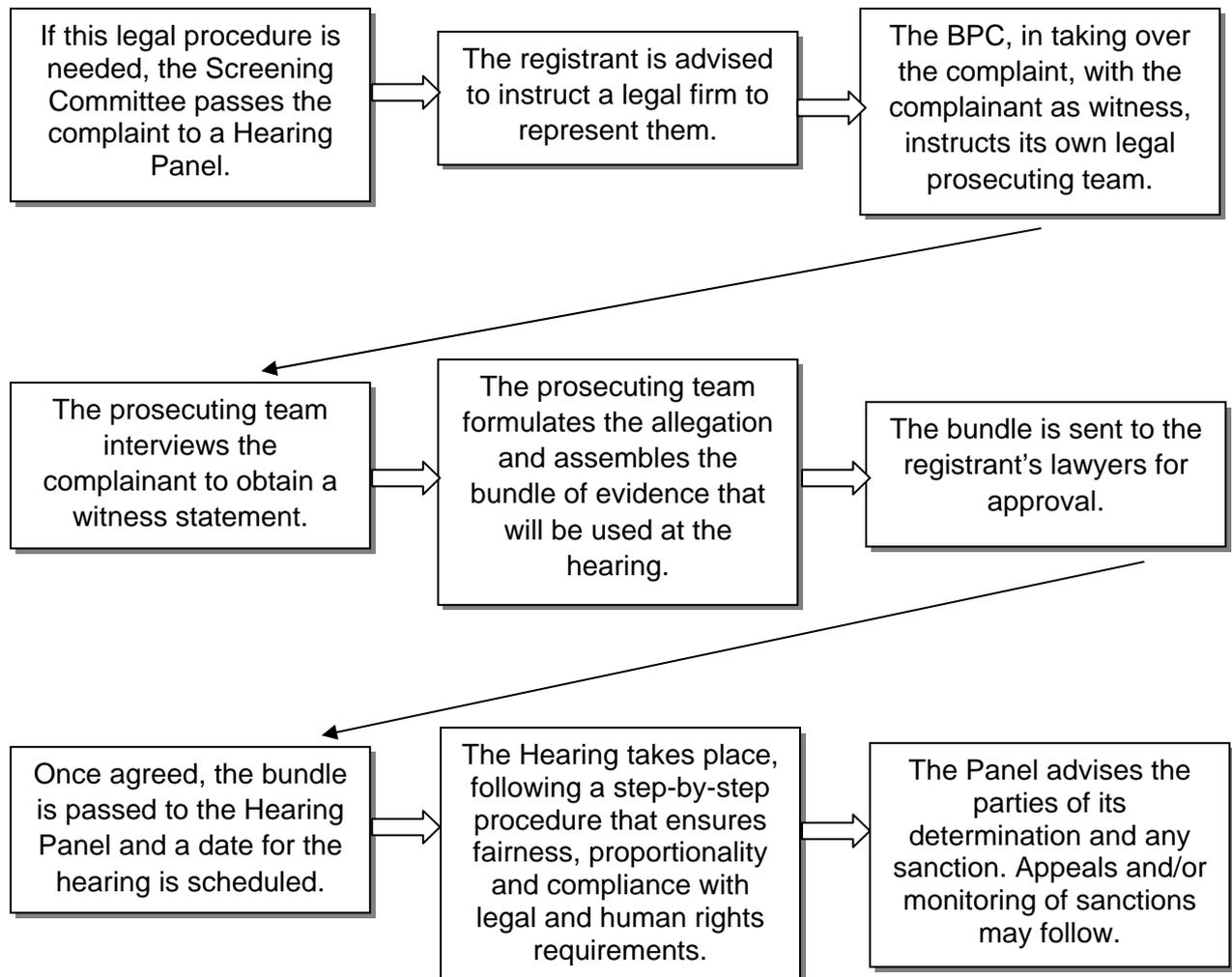
If either or both parties to the complaint do not agree to proceed or abide by the alternative procedure in (1) above, and it appears to the Screening Committee that there has been a potential breach of the Code of Ethics, then the complaint may be referred to a disciplinary hearing. It may also be required for instances where the allegation is of such a serious nature that it meets a threshold for a legal process hearing. In this case the registrant would be advised to seek legal advice, and the procedure similar to the one illustrated on the next page would be initiated.

It is not intended that the hearing proceeds in the manner of an adversarial courtroom. Our existing provisions for requesting separate presentation, such as the use of screens or audio/video links, will be retained.

A legal assessor acting for the Hearing Panel will offer legal advice as required. However, the Hearing Panel remains in charge of the process and will independently reach its determination.

After the hearing, the BPC's existing provisions for appeals will still apply, and any sanctions will continue to be overseen by the registrant's Member Institution.

It is likely that the model for Hearings with legal representation would incorporate the following steps:



The order of events during the hearing may be:

- presentation of allegations and admissions
- special measures for witnesses
- presentation of the prosecution case, with complainant called as a witness
- presentation of the registrant's case
- the Panel decides on the facts
- both parties make submissions on whether the facts prove misconduct, and on any sanction
- the Panel decides on misconduct and sanction.

3. Interim suspensions

The current Complaints Procedure allows the Screening Committee or a Hearing Panel to impose an immediate interim suspension on a registrant's practice, without requiring them to seek additional information before doing so. This had been intended to provide the maximum protection to the public, or to the registrant, in cases of highly serious allegations. However, our legal advice is that there should not be a consideration of interim suspension without the registrant being given the chance to argue against such a decision being made. There should also be room in the process for a periodic review of any interim suspension.

We propose to include in the Complaints Procedure an additional step which will allow a registrant to argue their case before an interim suspension is imposed, and to provide for periodic reviews of interim suspensions to be undertaken at specified intervals.

These are the main areas of the Complaints Procedure that we are seeking to update. We would be grateful if you would let us know your thoughts by 30 June 2015.

British Psychoanalytic Council
Complaints Procedure Consultation
Suite 7, 19-23 Wedmore Street
London N19 4RU

cp@bpc.org.uk