



Fitness to Practise Rules

(Including Rules of Service and Proceeding in the absence of the Registrant)

BRITISH/ PSYCHOANALYTIC /COUNCIL

About Us

1. The British Psychoanalytic Council (BPC) is the UK's leading professional association and accredited public register for psychoanalytic psychotherapy. The BPC is a voluntary accredited register; registering psychoanalytic psychotherapists and psychodynamic psychotherapists and is accredited by the Professional Standards Authority (PSA).
2. The core functions of the BPC are to:
 - Set and maintain standards of practice and conduct;
 - Maintain a register of qualified psychoanalytic and psychodynamic psychotherapists ('Registrants');
 - Assure the quality of education and training provided to Registrants by their Member Institutions;
 - Require Registrants to keep their skills up to date through continuing professional development;
 - Consider and investigate complaints and concerns of a Fitness to Practise nature raised against Registrants and issue sanctions, where appropriate to protect the public, act in the public interest and uphold the standards of the profession and maintain public confidence in the profession.
3. The BPC's Council of Member Institutions ('MI') agreed to the introduction of a centralised Complaints Procedure in 2007 and conferred the responsibility for considering complaints raised against Registrants to the BPC.

About this document

4. This document sets out the rules for Hearings in front of the Fitness to Practise Committee ('the Committee) and the Health Committee. Collectively they will be referred to as the Committee. These Rules are marked **Appendix 7** in the Fitness to Practise Procedure, and they deal with stage 5 of the procedure. They are to be read in accordance with those procedures.

The Committee

5. The Committee consists of three members, one of whom is a lay member and one of whom is a Registrant or former Registrant member.

6. The Committee is assisted throughout the Hearing by a Legal Adviser; a Solicitor or Barrister, who provides independent legal advice to the Panel. The Hearing is also logged by a Transcriber (also known as Logger) should a transcript be required.
7. One of the Committee members is appointed the Hearing Chair and they will Chair the proceedings and lead the Committee's discussions.
8. In the case that a decision needs to be taken before a Hearing regarding the service of evidence, the Chair is empowered to make any decision. The Chair will do so on the basis of written submissions and advice from the Legal Adviser, if deemed necessary. The Chair may also make decisions on any special measures which can be provided to witnesses.

Overriding Objective

9. Throughout the proceedings, the Committee must always strive to make sure that the Hearing is fair and just to the Registrant, and also to the BPC as a whole. This means that when considering any decision, the Committee must consider what is most conducive to a fair hearing for the Registrant, and which allows the BPC to present its case in a fair and efficient manner.
10. The proceedings should also be conducted in the speediest, most efficient, and cost-effective manner. It is important that the BPC's resources are expended in as efficient manner possible. The BPC is a voluntary regulator rather than a statutory regulator. Therefore, it has more limited resources and its procedures are put in place to make sure that Hearings are fair, but that they are an efficient use of the resources.

Location of Hearings

11. Hearings can be either virtual or in person. They can take place in person or remotely via Microsoft Teams, subject to agreement by both the BPC and Registrant.
12. The decision regarding whether to hold Hearings remotely or in person will be taken on the basis of a combination of the following factors. Which option is the safest, most convenient for witnesses, and will allow the most efficient Hearing. This is not a definitive list. During the COVID-19 pandemic, the presumption will be that the Hearing takes place remotely.
13. If there is a disagreement as to the location of a Hearing, the matter should be raised with the Chair, within seven days of the disagreement. It will then be for the Chair to determine what location is the fairest and most efficient to all parties in the proceedings.

Status of the Hearings

14. Committee Hearings will always be held in private. The outcome of the proceedings will be published in line with the relevant BPC's Publication policy which is available here: www.bpc.org.uk/regulation/fitness-to-practise-hearings/

Rules of Service

15. Notice of the Hearing will be served on the last known address supplied by the Registrant or on their designated legal representatives address. It is the Registrant's duty to keep this address updated at all times with the BPC. Any Notice of Hearing should be served no later than 28 days before the Hearing date.
16. If the Registrant cannot for any reason attend the Hearing, and wishes to attend the Hearing, they should notify the BPC within 7 days of receiving the Notice of Hearing.
17. Any other application for an adjournment of the Hearing should only be granted if there is a just reason for doing so.

Proceeding in Absence

18. If the Registrant does not attend the Hearing, the Committee should proceed in the Registrant's absence unless there is a real risk of injustice in doing so. The Committee will bear in mind that the Registrant is under a duty to attend any regulatory proceedings.

The Hearing - Overview

19. The Committee will take the Hearing in three stages:
 - a. Facts;
 - b. Impairment; and
 - c. Sanction
20. These stages will have to be considered in turn by the Committee and the Committee will make findings, in writing on these issues. If the facts are admitted, the Committee will make a finding on these facts as agreed by the parties. If that is the case, the BPC's Case Presenter will set out the facts as agreed.
21. If the substantial facts relating to the misconduct are agreed, but some further facts are in issue which could affect aggravating or mitigating factors, it will be a matter for the Committee if they need to decide those further facts, after hearing evidence from the parties.
22. As set out at stage four of the Fitness to Practise Procedure, the BPC will serve their case first. They will do that before the matter is listed. The Registrant will supply their evidence relating to the allegations not less than 4 weeks before the Hearing date.
23. The Registrant will have provided the names of any witness(es) they seek to rely upon at the time of listing, and an estimate of how much time the witness(es) will take. If any evidence is served after these deadlines, it will be considered by the Committee. As a general rule, the evidence will be admissible unless it is unfair or prejudicial to do so.
24. This deadline does not include any character evidence the Registrant wishes to rely on in the Impairment or Sanction stage. This evidence can be served as soon as is reasonably practicable. This evidence should first be served on the BPC/Case Presenter and then served on the Committee. If there is an issue with the admissibility, it will be a matter for the Committee to determine.

25. Before commencing a Hearing, the BPC, the Committee, and the Registrant will need to consider whether any of the witnesses, including the Complainant, are vulnerable. If they are vulnerable, then special measures can be put in place at the discretion of the Committee where it is necessary and appropriate. Special Measures applications will only be considered on the application of the BPC or the Registrant. A special measures direction will not be made by the Committee of their own volition, but on submissions from one or both of the parties.
26. Ordinarily, these decisions will be made by the Chair of the Committee sitting alone. Ideally, the application should be made 28 days before the Hearing and should be made on the papers. Any response should be made 7 days after the application is made.
27. These special measures can include, a witness giving evidence on a link, by recorded interview, or by any other appropriate means. This can also include pre-written questions. The appropriate measures will be put in place by the Committee on the basis of what is just, and what will get the best evidence from the witness. The Chair will notify the parties of their decision in writing.
28. The burden of proof to be applied at the factual stage in Misconduct cases is the civil standard of proof e.g. on the balance of probabilities. The question to be asked is whether it is more likely than not that the alleged facts took place.
29. In cases where a Registrant has been convicted of a Criminal Offence, been Cautioned, or found guilty of an offence by another regulator, there is no need to consider Misconduct. The facts found by another regulator will only be overturned if there is an exceptional reason to do so.
30. The Committee will consider impairment on the basis of their professional Judgement. The Committee will implement the sanction they believe to be proportional in all the circumstances.
31. The civil rules of evidence will apply. All evidence will be admissible unless it is not relevant, highly prejudicial, or unfair to admit. This will mean that, in general, hearsay evidence and evidence of character are admissible unless one of the reasons for exclusion are met. It is for the Committee to decide on the admissibility of evidence.
32. As a general rule, where there are any dispute of facts or law by the parties, those making the application will set out their position. The other side will have a chance to respond. Those making the application will have the final word. When it comes to the charges against the Registrant, they or their representative will have the final word when it comes to one of the three stages of the Hearing.
33. At each stage of the Hearing, and when there is any dispute between the parties, the Committee will receive legal advice from the Legal Adviser. After any legal advice has been given, the Chair of the Committee will invite comments or submission from the parties. If there is a dispute, the Legal Adviser will have the opportunity to comment on the submissions. The Committee will then decide on the advice. No legal advice should be given to the Committee without the presence of the parties.

The Hearing – Facts (Non-Conviction Cases)

34. The following sequence will normally be observed unless the Committee decide to vary the normal procedure in the interests of justice, fairness and to ensure just and timely

disposal of a case. After introductions and any housekeeping matters, the following will normally be observed:

- i. The Legal Adviser will read out the allegations (only) against the Registrant for the purpose of the recording. If the Registrant accepts all of the allegations, and all of the breaches, or enough which materially affects the time estimate of the case, the Committee will order that proceedings continue in a way that complies with the overriding objectives, with a particular emphasis on fairness and using the time which has been allocated to the case.
- ii. The BPC's Case Presenter will be invited to set out the factual background and open the case by calling witnesses (including the Complainant). If the Complainant is not in attendance, and the facts are disputed, the Committee will have to consider whether it is fair for the matter to proceed.
- iii. Each witness in turn will be required to take an oath before being asked questions. The BPC's Case Presenter will usually call the Complainant first. The Registrant (or their representative) may then cross-examine the Complainant and any other witnesses called on behalf of the BPC. If necessary, to clarify any issues, the Committee can ask questions of any witnesses called to give evidence. During the course of the Hearing, the Committee may take a recess to address any questions they may wish to ask of any of the witnesses including the Complainant and the Registrant. The BPC's Case Presenter can ask the witness any further questions in re-examination.
- iv. At the conclusion of the Complainant's evidence, the Complainant will then be released from the Hearing.
- v. The Case Presenter can call any other witnesses the BPC seeks to rely on, and these witnesses will be sworn in and asked questions in the same order as above. At the conclusion of all the questioning, the witness must leave the Hearing room.
- vi. The Registrant may give evidence and can be cross examined by the BPC's Case Presenter. If the Registrant decides not to give evidence, an inference can be drawn in accordance with **R (Kuzmin) v General Medical Council [2019] EWHC 2129 (Admin)**. The Committee may also ask questions of the Registrant. The Registrant can call their witnesses in turn. All witnesses will take an oath before giving evidence. The BPC's Case Presenter may cross examine any witness called on behalf of the Registrant. The Registrant may ask further questions of the witness in re-examination. If the Committee need further clarification, they may ask any witness questions. Once the Committee feel they have sufficient information, they will release the witness from the Hearing.
- vii. Any expert witnesses will be called, sworn in and asked questions. Depending on which party called the Expert, will dictate the order of questioning. Once the Committee feel they have sufficient information, they will release the Expert from the Hearing.
- viii. If necessary, the Committee may recall the Complainant, Registrant, or any of the witnesses to ask any final questions if further clarification is needed.
- ix. Where any witness remains under oath, as their evidence before the Committee has not yet concluded, the witness must not talk to any other party (Complainant, Registrant, or any other witnesses) until they are released by the Committee.

- x. The BPC's Case Presenter, followed by the Registrant, can make a closing statement and there is no set timing for this, however a reasonable time which is proportionate to the case should be observed.
35. After the conclusion of the submissions, the Committee will retire to decide the issues. If the decision is that either the facts are not found on any of the allegations or that no breaches are found, the matter is completed. If there are found to be breaches, then the matter will progress to the next stage of the Hearing - considering Misconduct (*not in conviction/caution or decision of another regulator cases however*) and impairment.

The Hearing – Impairment

36. At this stage, the Committee will consider three questions:
- i. Does this breach amount to Misconduct? This question is only applicable in Misconduct cases. It is not applicable where the Registrant has been convicted of a criminal offence or found guilty of misconduct by another regulator.
 - ii. Is the Member currently impaired, and therefore is there a need for a sanction?
37. The Committee needs to consider whether the allegations and breaches found proven amount to Misconduct. Professional Misconduct includes '*a failure to meet professional standards that is of sufficient seriousness*' and/or conduct which is '*morally culpable or otherwise of a disgraceful kind which may, and often will, occur outwith the course of professional practice itself but which brings disgrace on the individual and prejudices the reputation of the profession*' [**R (Remedy UK Ltd) v GMC**].
38. The Panel should consider *Roylance v GMC* and *Nandi v General Medical Council* when assessing whether the above definitions of Professional Misconduct are met. The Privy Council defined Misconduct as "*a word of general effect, involving some kind of act or omission which falls short of what would be proper in the circumstances*". The standard of what would be proper in the circumstances can very often be determined by reference to the rules and standards to be followed by Registrants.
39. If Professional Misconduct is found, the Committee will then need to go on to consider whether, in its professional judgement, the Registrant should be sanctioned. This process consists of considering (i) whether the Registrant is safe to practice without restriction, this is otherwise known as 'impairment', and then (ii) what sanction may be appropriate.
40. The Committee must look at impairment as of today's date; at the date of the Hearing looking forward, but must also look at past conduct. Impairment is defined as "*suitability to remain on the register without restriction*".
41. The Committee may take account of **CHRE v NMC & Grant** and the Judgement of Mrs Justice Cox where she stated:
- 'When considering whether the Registrant is impaired it is important not to lose sight of the fundamental considerations:*
- a. *Not only the need to protect the public;*

- b. *But also, the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession - wider public interest consideration'*

42. The Committee will also consider the test set out by Dame Janet Smith in her **5th Shipman report**:

Do our findings of fact in respect of misconduct show that Fitness to Practise is impaired in the sense that:

- *The Registrant has in the past acted and/or is liable in the future to act so as to put a patient at unwarranted risk of harm;*
- *The Registrant has in the past brought and/or is liable in the future to bring the profession into disrepute;*
- *The Registrant has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession;*
- *The Registrant has in the past acted dishonestly and/or is liable to act in the future dishonestly*

43. The Committee will also consider whether the wider public interest would be undermined if a finding of no impairment was made in the particular circumstances.

44. If the Committee find that the Registrant is impaired, they should move on to consider the appropriate Sanction.

The Hearing – Sanction

45. At the sanction stage, the BPC will have the opportunity to present any further evidence in relation to sanction. The Registrant will then be able to present any evidence they rely upon as regards the determination of the sanction.

46. After evidence has been set out, the Committee will hear submission from both parties. The BPC's Case Presenter will set out their brief submissions. The Registrant will then make submissions. The Registrant will have the last word.

47. The Committee will then retire to consider what sanction, if any, would be appropriate.

48. The Committee will consider the Indictive Sanction Guidance, as set out at appendix 8 of the Procedure while considering their decision.

The Outcome and Publication of the Hearing

Fitness to Practise Committee

49. The Fitness to Practise Committee will produce a written determination and a copy of this determination will be published on the BPC's website as soon as practicable post-Hearing, with the necessary redactions, in accordance with the BPC's Publication Policy.

50. The BPC will write to the Registrant post-Hearing, by Special Delivery, confirming the outcome and provide the Registrant with details regarding their right to appeal. Where the Registrant consents and/or the Registrant is legally represented, the BPC may send the decision by email alone. The BPC will also write to the Registrant's primary MI and confirm the Hearing outcome.

Health Committee

51. The Health Committee's determination will be published on the BPC's website; as detailed above, subject to the necessary redactions being applied.
52. The BPC will write to the Registrant post-Hearing, by Special Delivery, confirming the outcome and providing the Registrant with details of their right to appeal. Where the Registrant consents and/or the Registrant is legally represented, the BPC may send the decision by email alone. The BPC will also write to the Registrant's primary MI and confirm the Hearing outcome.