

Title: Oral Hearings POLICY & PROCEDURE V01.03

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1 Introduction & Scope of Policy

- 1.1 This document sets out the policy and process that should be followed when a request is received for an oral hearing, or where at its own instance a Determination Committee considers that an oral hearing is appropriate in respect of a determination under section 9(1), including a decision to take steps that are fair and reasonable under section 10(2) of the Legal Profession and Legal Aid (Scotland) Act 2007 (“the Act”), or both.
- 1.2 The relevant rules (Rules of the Scottish Legal Complaints Commission) (“the Rules”) are those rules made under section 32 of the Act. The relevant rules for the purpose of any complaint will be the Rules in force at the date that the relevant complaint was received.
- 1.3 The decision as to whether an oral hearing should be held will rest with the Determination Committee appointed to determine the complaint. Normally a determination under section 9(1), including a decision to take steps that are fair and reasonable under section 10(2), or a direction under section 24(6) of the Act will be made or taken without an oral hearing being required. No party has an entitlement to an oral hearing and the Determination Committee shall only hold an oral hearing where in the Committee’s opinion one is required in the interests of fairness.
- 1.4 The Determination Committee is entitled to decide whether an oral hearing should be held and to fix an oral hearing accordingly at any time prior to the determination of the complaint by the Committee.

2 Request for an Oral Hearing and/or decision by Determination Committee to hold an Oral Hearing

- 2.1 An oral hearing may be allowed either:
 - (i) by a Determination Committee at its own instance; or
 - (ii) on the written request, supported by reasons, of any of the parties to a complaint.
- 2.2 Where the Commission/Determination Committee receives a written request for an oral hearing by a party to a complaint, the other party or parties must be notified of the request and all parties will be given three weeks to make written submissions on whether an oral hearing is necessary and on the scope of that hearing. The procedure to be followed to give effect to this is as set out in the Appendix to this document.
- 2.3 Where a written request for an oral hearing is received, the Determination Committee will consider the reasons given for the request and the submissions received in accordance with paragraph 2.5 below and decide whether a hearing will be allowed. The Determination Committee will issue written reasons for its decision and confirm the scope of the oral hearing.
- 2.4 Where the Determination Committee decides to hold an oral hearing at its own instance, it will issue written reasons for its decision and make clear the scope of the hearing to the parties to the complaint.
- 2.5 In deciding whether to allow a request for an oral hearing the following non-exhaustive list of considerations will be taken into account by the Determination Committee:
 - (i) the views of parties as to whether an oral hearing is necessary;
 - (ii) whether there are any issues or disputes of fact which require to be resolved before the complaint can be determined and which cannot be resolved by any other means;
 - (iii) whether issues of credibility arise which cannot be determined from the material available to the Committee;

- (iv) whether it would assist the Determination Committee to hear witness evidence in order to allow it to determine the complaint;
- (v) whether in the circumstances it would be proportionate to hold an oral hearing; and
- (vi) whether there are any exceptional circumstances which would justify the need for an oral hearing.

- 2.6 The Determination Committee in deciding whether to hold an oral hearing will always apply the principle of fairness.
- 2.7 The Determination Committee's decision whether to hold or not to hold an oral hearing will be final.
- 2.8 Where the Determination Committee refuses a party's request to hold an oral hearing it may proceed immediately thereafter to determine the complaint, or at its discretion, do so at a continued or adjourned meeting of the Committee.

3 Scope of the Oral Hearing

- 3.1 A Determination Committee which decides to hold an oral hearing will decide what matters are to be considered or heard at the oral hearing and the procedures to be followed at the oral hearing including, but without prejudice to that generality, any of the following matters:
- (i) any issues that the Committee considers will require to be explored;
 - (ii) any disputes of fact that the Committee considers will require to be resolved;
 - (iii) any witnesses that the Committee considers should give evidence;
 - (iv) the order in which parties may present their submissions and the time limits which will apply to them and to any witnesses giving evidence;
 - (v) the extent to which any oral evidence may be given by video conference; and
 - (vi) any other matter that the Committee considers should be addressed at the hearing.

4 Format of the Oral Hearing

- 4.1 Oral hearings will be held in private except in exceptional circumstances. Exceptional circumstances are determined at the discretion of the Determination Committee appointed to determine the complaint, with regard to the circumstances of the case and the interests of fairness.
- 4.2 The Determination Committee shall decide whether an oral hearing shall take place in person or by means of a video conference.
- 4.3 Where a Determination Committee decides that an oral hearing is to be held in public and is to take place by video conference, the Determination Committee will provide means of accessing the oral hearing to any person who makes a request in writing for access to it to be provided.
- 4.4 As well as the Determination Committee members and the clerk of the Committee, the SLCC's legal adviser or Clerking Manager may also be present at an oral hearing if the Committee considers this to be appropriate. In addition, observers authorised by the Committee may also attend the oral hearing if the parties agree.
- 4.5 Although this Oral Hearing Policy and Procedure provides for witnesses to give evidence and submissions to be made by or on behalf of the parties, the procedure to be adopted at the oral hearing will be inquisitorial and not adversarial.

5 Administration of the Oral Hearing and Procedure

- 5.1 The administration for the oral hearing and the procedure to be followed at it will be as set out in the Appendix applicable to this Policy and Procedure to the extent applicable and as directed by the Committee, either in advance of the hearing or during the hearing

6 Attendance and Representation

- 6.1 A party making the complaint and/or the practitioner may be represented by another person at the oral hearing. If a party wishes to be represented at a hearing they must complete and sign a form (to be provided by the SLCC) confirming this, unless the representative is a solicitor, solicitor advocate or advocate acting for them in such a capacity. Where a party is represented only that party's representative will be permitted to make submissions at the hearing.
- 6.2 Any person who is to give evidence at an oral hearing may be accompanied to the oral hearing by a supporter. That supporter will not be permitted to take part in the hearing.
- 6.3 If any of the parties declines to attend or fails to be present at the place, date and time fixed for an oral hearing, including to attend the oral hearing by video conference where the oral hearing is to proceed by those means, the Commission may proceed with the hearing in the absence of the party or parties not in attendance and thereafter proceed to make a determination under section 9(1), including a decision to take steps that are fair and reasonable under section 10(2), or a direction under section 24(6) of the Act..

7 Venue

- 7.1 Oral hearings will either be held at the SLCC's offices at Capital Building, 12-13 St Andrew Square, Edinburgh, EH2 2AF or at such other place as the Commission decides. Oral hearings will ordinarily take place between 10am and 4pm, subject to the right of the Commission to begin an oral hearing earlier and continue with an oral hearing after those hours.

8 Expenses

- 8.1 Parties will be expected to bear their own costs of preparing for and attending an oral hearing. If parties wish to instruct someone to represent them at an oral hearing the cost of that will be borne by the party who has instructed the representation.

The SLCC may provide witnesses, whose attendance at the oral hearing has been sanctioned by the Determination Committee, with reasonable reimbursement for travelling to the hearing if they are based outside of Edinburgh

9 Decision

- 9.1 Once the oral hearing is brought to a close, parties will be informed that the Determination Committee will consider the evidence and submissions made in the course of the oral hearing and will issue its decision in due course.
- 9.2 The relevant Determination Committee will arrange to meet after the oral hearing to discuss the submissions made and evidence placed before them in the course of the

hearing and to reach a decision and such meeting may take place immediately following the conclusion of the oral hearing or at an adjourned meeting or meetings.

- 9.3 If the Determination Committee is not satisfied that all of the issues have been addressed at the oral hearing, it may reconvene the oral hearing or it may order a further oral hearing if considered necessary, in either case with appropriate notification being given to the parties in terms of this Policy and Procedure. The provision in paragraph 9.2 above shall also apply to any reconvened or further oral hearing.

APPENDIX to Oral Hearings Policy and Procedure

Scottish Legal Complaints Commission

PART I - Administration and Procedure for arranging an Oral Hearing where the Determination Committee has decided to hold an Oral Hearing at its own instance

Procedure prior to the Oral Hearing

1. The Committee shall authorise the sending of a Notice of the Committee's decision to hold an oral hearing ("the Decision Notice") to the parties with which shall be enclosed the Commission's Oral Hearings Policy and Procedure.
2. The Decision Notice shall set out, give, or enclose:-
 - (i) the Committee's reasons for deciding to hold an oral hearing;
 - (ii) the scope of the hearing as determined by the Committee;
 - (iii) whether the hearing will be held in private or in public;
 - (iv) whether and if so the extent to which the oral hearing and any oral hearing evidence will be given in person or by video conference;
 - (v) a list of any documents which the Committee wishes to be considered at the hearing relative to the scope, including for the purposes of putting copies of such documents to the parties and to witnesses and asking them questions about such scope and documents; such documents shall be copied to the parties, subject always to compliance by the Commission with any statutory and other legal requirements regarding confidentiality and personal information and data;
 - (vi) intimation that if a party wishes any other documents not appearing on the foregoing list of documents to be considered at the hearing relative to the scope of the hearing they should provide details and copies of such other documents (the "additional documents") to the Commission for the foregoing purposes giving reasons why they should be admitted under the scope of the hearing.
 - (vii) a list of witnesses who the Committee wishes to attend and to give evidence at the Hearing.
 - (viii) Intimation that if a party wishes any additional witnesses (the "additional witnesses") whose names do not appear on the foregoing list to attend the hearing to give evidence relative to the scope of the hearing, that they should provide details of such witnesses giving reasons why such additional witnesses should be permitted to attend the hearing to give evidence.
 - (ix) Details and copies of such "additional documents" and details of such "additional witnesses" shall be provided to the Commission by the party making such a request on the matter within two weeks of the issue of the Decision Notice.

PART II - Administration and Procedure for arranging an Oral Hearing where a party requests an Oral Hearing

1. On receipt by the Commission of a request from one of the parties that an oral hearing be held in respect of a determination under section 9(1) and/or section 10(2) of the Act, the Commission shall:-
 - (i) Promptly notify the other party of the request, at the same time sending both parties a copy of this Oral Hearings Policy and Procedure;
 - (ii) Give all parties three weeks' notice to make written submissions on:-
 - (a) whether an oral hearing is necessary or not;
 - (b) the scope of the hearing contended for as described in paragraph 3 of the foregoing Policy;
 - (c) details of witnesses which parties wish to attend to give evidence at the hearing, relative to the scope of the hearing;
 - (d) details of any documents which parties wish to be considered at the hearing relative to the scope of the hearing;
 - (e) the necessity to provide reasons in their submissions justifying either the need to hold an oral hearing or not to hold an oral hearing, the scope of the hearing requested, the necessity for the witnesses desired by a party to attend to give evidence, and for any documents which a party desires to be considered at the hearing to be so considered.
 - (f) whether any oral hearing or the extent to which part of the oral hearing should be held in person or by video conference.
 - (g) The Commission will include in the notice it gives under paragraph 1(ii) above specific reference to paragraphs 2.5 and 3 of the foregoing Policy.
2. Following the expiry of the period of three weeks specified in paragraph 1(ii) above the Clerk shall arrange for a meeting of the Determination Committee at which the request and submissions of the parties in relation to it shall be considered by the Committee.
3. At that meeting or at any adjourned or continued meeting held in relation to the request, the Committee shall (a) consider the request and the submissions of the parties on it; and (b) make a decision on the request for an oral hearing.
4. The Clerk shall record the decision of the Committee on the request, the reasons for the decision and, if the Committee decides to hold an oral hearing, the scope of the hearing in terms of paragraph 3 of the Policy and prepare a Notice ("the Decision Notice") which shall include the decision, the reasons and, if applicable, the scope, for approval by the Committee.
5. Where the Committee refuses a request to hold an oral hearing and proceeds immediately to determine the complaint, then the reasons for the refusal may be incorporated in the Determination Report instead of within a separate Decision Notice of the Committee's decision on the request.
6. Where the Committee decides to hold an oral hearing in relation to a request for such a hearing to be held, the Decision Notice shall set out:-
 - (i) the Committee's reasons for deciding to hold an oral hearing;
 - (ii) the scope of the hearing as determined by the Committee;

- (iii) Whether the hearing will be held in private or in public;
 - (iv) Whether and the extent to which the oral hearing and oral evidence will be given in person or by video conference;
 - (v) a list of any documents which the Committee wishes to be considered at the hearing relative to the scope, including for the purposes of putting copies of such documents to the parties and to witnesses and asking them questions about such scope and documents; such documents shall be copied to the parties, subject always to compliance by the Commission with any statutory and other legal requirements concerning confidentiality, personal information and data.
 - (vi) a list of witnesses who the Committee wishes to attend and to give evidence at the Hearing.
7. Notice of the Committee's decision on the request shall be sent to the parties within 14 working days of the Committee's decision, or as soon thereafter as is practicable, except where the Committee refuses the request and paragraph 5 above is to apply.
8. Where a party wishes additional documents to be considered or additional witnesses to give evidence at the oral hearing, it may submit to the Commission a written request to allow those additional documents and/or witnesses. The party must make the request within two weeks of the Notice issued under paragraph 7 of this Part. In its request the party must justify the need for the proposed additional documents and/ or proposed additional witnesses.
9. The Clerk will arrange for the Committee to meet to consider any request received in terms of paragraph 8 of this Part and the Committee shall then make a decision on that request. A Decision Notice or subsequent Notice will then be issued by the Commission under paragraph 10 of Part III in relation to the request.

PART III - Administration and Procedure for the Oral Hearing

10. The following information shall either be recorded in the Decision Notice or in a subsequent Notice to be issued by the Commission to the parties.
- (i) Details of the venue, date and time for the hearing and if the hearing or part of the hearing is to be by video conference, details on that matter;
 - (ii) In relation to Part I or Part II above , at the discretion of the Committee, authorisation for any "additional documents" to be considered at the oral hearing or refusal for any "additional documents" to be considered at the oral hearing;
 - (iii) In relation to Part I or Part II above , at the discretion of the Committee, authorisation for any "additional witnesses" to give evidence at the oral hearing, or refusal for any "additional witnesses" to give evidence at the oral hearing;
 - (iv) The reasons for the Committee's decision on additional documents and/or additional witnesses in relation to paragraph 10(ii) and (iii) of this Part;
 - (v) That the evidence given at an oral hearing shall be recorded by means determined by the Committee.
 - (vi) Any other matters which the Committee decides should be intimated to the parties.

11. (i) The Clerk will write to invite all witnesses who the Committee agrees should give evidence at the hearing, to request their attendance and shall inform the parties of any issues relevant to this matter.
- (ii) The Clerk will cross copy additional documents as authorised by the Committee to be used at the hearing to the other party or parties, subject always to compliance by the Commission with any statutory and other legal requirements concerning confidentiality and personal information and data.
- (iii) The Clerk will prepare copies of documents which the Committee wishes to be considered at the hearing for use of the Committee and witnesses, but parties should bring to the hearing their own copies of documents the Commission have sent or copied to them to the hearing.

Procedure at the Oral Hearing

10. At the start of the oral hearing the Chair of the Committee will begin by setting out:
 - (i) The focus of the hearing including what issues and/or disputes of fact are to be addressed at the hearing;
 - (ii) That as stated in paragraph 4.3 of the foregoing Policy and Procedure that the oral hearing will be inquisitorial and not adversarial;
 - (iii) The Chair's view on any preliminary matter on which, after giving parties the opportunity to be heard, the Chair may rule.
 - (iv) Whether there are any witnesses who will give evidence at the hearing and the order in which those witnesses will be invited to give their evidence;
 - (v) Whether the Committee will take the lead in the examination of any witnesses, and if so details of the procedure to be followed by the parties in questioning witnesses;
 - (vi) That the parties, or where represented their respective representatives, will be permitted to ask witnesses questions, subject to the discretion and direction of the Chair
 - (vii) Subject to sub-paragraphs (iv) to (vi) above the order in which the parties may present their case and evidence and the time limit for making their submissions.
 - (viii) Whether parties will be permitted a right of reply at the end of the hearing;
 - (ix) That the Committee may interrupt the parties' submissions at any point to ask questions; and
 - (x) Any other matter relevant to the conduct of and procedure at the Hearing not specified above.
11. The Chair may rule on any objection or disputed point or on any other matter that may arise during the conduct of the hearing.
12. At the discretion of the Chair, the Committee may adjourn the hearing at any time to a later time or to another day, either for the purpose of ensuring the good conduct of the hearing or for the better fulfilment of the purpose of the hearing.
13. At the conclusion of the hearing, the Committee shall adjourn to consider in private the evidence it has heard, either immediately following the Hearing or on another date or dates, with a view to determination of the relevant issue or issues of the Complaint.