

## Guidance

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#### The SRA's approach to hearings

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### Status

This guidance does not form part of the SRA's Standards and Regulations. However, we will have regard to it when exercising our regulatory functions.

### Who is this guidance for?

This guidance is for all SRA-regulated firms and individuals.

This guidance should be read in conjunction with our guidance notes on decision-making and 'Who can make decisions at the SRA?'

### Purpose of this guidance

This guidance sets out the procedures that we adopt when holding a hearing. In doing so, it aims to promote and support appropriate, transparent, and reasoned outcomes.

When we are able to do so, we refer all cases that require a hearing to the Solicitors Disciplinary Tribunal (SDT). However, in rare circumstances, such as for cases involving licensed bodies that cannot be referred to the SDT, it may be necessary for the SRA to hold a hearing.

### Why should a hearing be held?

There are a number of reasons why it may be important, in the interests of justice, to hold a hearing. This might be because:

- There is a material dispute of facts or issues around the credibility of an explanation that it are not possible to determine on the papers or by interview. A cross-examination of multiple parties is required to resolve this.
- There is a need to hear and test expert evidence.
- The case is of significance to the profession and/or to the public as a whole and/or involves important issues of law and principle.

This list is not intended to be exhaustive.

### Who can request a hearing?

The respondent or the case officer may request a hearing but an adjudicator will decide whether or not to accept this request. An adjudicator can also decide whether to hold a hearing without a request being made.

### How can a request for a hearing be made?

A hearing will be held by an adjudication panel. Any request should be sent in writing stating the reasons why a hearing should be held. This should include any representations on whether the hearing should be held in public. The request should be sent to the other party, before it is submitted to adjudication for a decision.

If the SRA case officer is requesting a hearing, this will be made clear in any notice we produce and disclosed to the respondent for representations. If the adjudicator decides that a hearing is needed without a request being made, their decision will be disclosed to both parties. The decision will usually include directions for the parties to consider and reply to so that a hearing can be scheduled.

When reaching a decision, the adjudicator will consider whether any of the criteria set out above in 'why a hearing might be needed' are relevant in addition to the evidence in the case papers.

### The case management meeting

Most cases don't need a case management meeting but if it is needed, such a meeting will usually take place by video conference or telephone unless it is necessary for an in-person meeting to be held.

An adjudication panel may decide to hold a case management meeting to ensure the case is ready for the hearing. It may be necessary to discuss queries on the format of the hearing, witness attendance, any

interpreter requirements or to explore any requests made to defer a hearing.

There will be an opportunity for either party to make representations on matters such as whether the hearing ought to be heard in public or private, the details of witnesses including questions of vulnerability and issues surrounding the timing of the hearing.

### **The hearing procedure**

At least 28 days' notice of the hearing will be given. This may be reduced by agreement between the parties.

The adjudication panel will decide whether the hearing can take place either by remote video conference or in person. Hearings will usually take place remotely, but it is also possible to hold a hybrid hearing, with some parties in person and others dialling in by remote video conference.

The adjudication panel is not bound by strict rules of evidence and can adopt any procedure which is just and fair. For example, the panel may decide to admit hearsay evidence or to make corrections or amendments to the wording of the allegation without further notice where the change is not material.

Neither party is permitted to call a witness or present evidence that wasn't within the bundle of documents served on the parties without the permission of the adjudication panel.

A submission of no case to answer can be made at several points. For example, at a case management hearing or as a preliminary issue on the day of the hearing.

### **Hearings in public**

A hearing will be held in private unless an adjudicator or adjudication panel decides that a hearing in public is needed, in the interests of justice.

There may be merit in holding the hearing in public if the case involves important issues of law or principle or if a public hearing promotes confidence and accountability. This may arise in cases where new or unusual issues are raised.

### **How are vulnerable witnesses supported?**

A person is a vulnerable witness if the quality of their evidence is likely to be adversely affected at a hearing or if attending a hearing would cause them distress. That may be because of the nature of the issues requiring determination or because of a mental or physical impairment.

Either side or their legal representatives may make representations as to any measures the adjudication panel should adopt in respect of such a witness. Relevant evidence, such as a medical report, should be provided in support of a request.

The adjudication panel may adopt such measures as it considers appropriate in respect of a vulnerable witness to enable them to give evidence.

Special measures may involve (this is not an exhaustive list):

- The use of a video link
- The use of pre-recorded evidence
- The use of an interpreter or translator
- The use of an intermediary
- The hearing of evidence in private
- Permitting the witness to give evidence from behind a screen
- The attendance of a witness supporter

If any allegation against the relevant person concerns conduct of a sexual nature and the alleged victim of the conduct gives evidence, the respondent will not be permitted to examine or cross-examine the witness although their legal representative may be permitted to do so. The adjudication panel may direct that examination or cross-examination be carried out by another appropriate person.

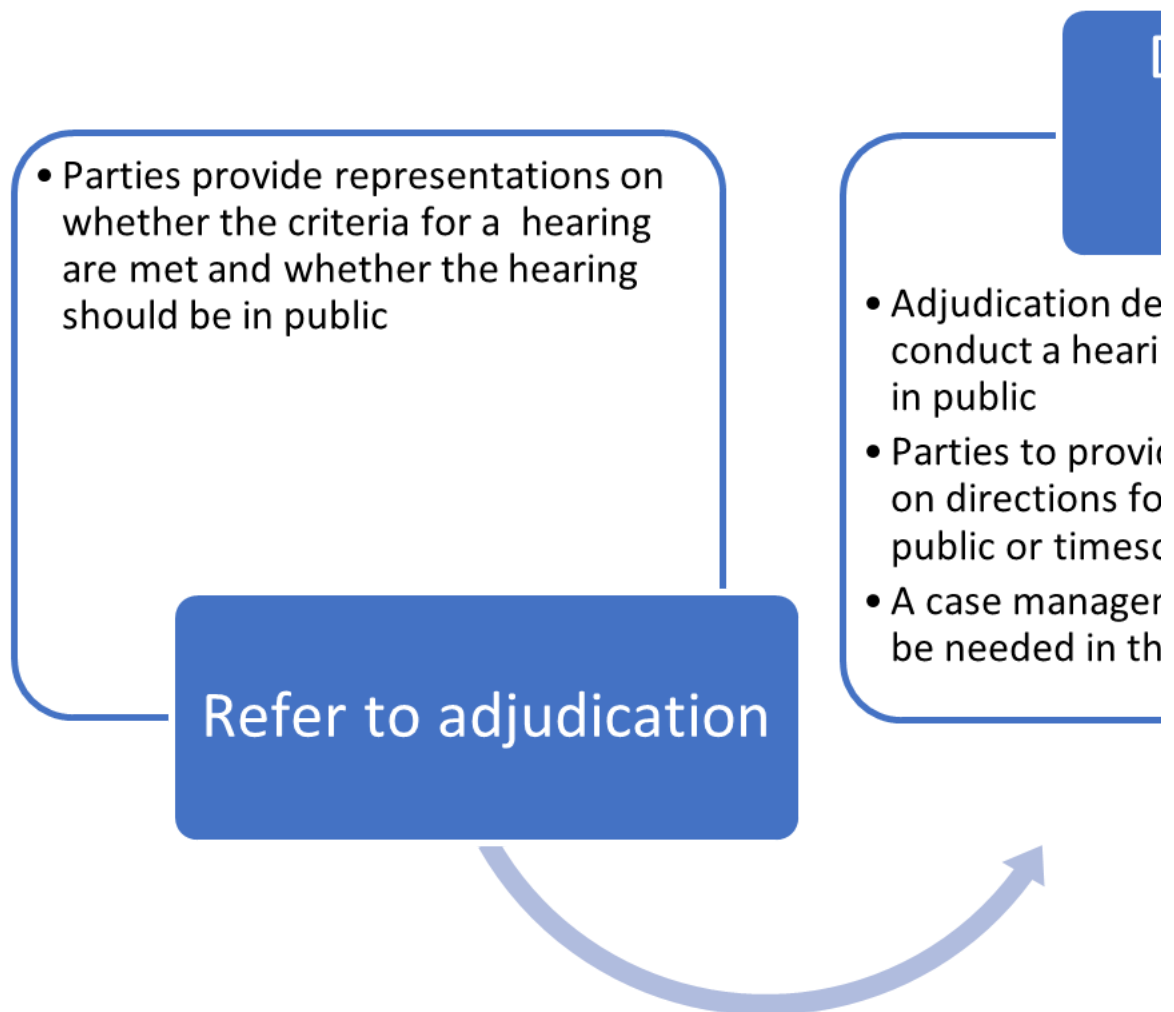


Image showing the procedure for deciding on whether to take a case to hearing

## **Overview of the hearing procedure**

### **The format of a hearing**

A hearing will usually be made up of the following stages:

1. At the beginning of the hearing the chair will introduce the members of the adjudication panel and the panel adviser.
2. The chair will set out the reasons for the hearing and the matters that need to be decided on.
3. If the respondent or a witness has submitted a statement this is referred to as 'evidence in chief.'

4. The respondent will be asked by the panel adviser whether they admit any or all of the facts that are alleged in the papers.
5. The SRA and respondent will make opening statements should they wish to. These are generally a brief summary of the case and the evidence to be presented.
6. The SRA's case is presented. The SRA may call witnesses to give relevant evidence to determine the matters in question. The respondent or their representative will be entitled to ask the SRA's witnesses any questions which are relevant.
7. The respondent's case is presented. The respondent and their representative may call witnesses to give evidence. The SRA's representative may ask any witness called, as well as the respondent, any questions which are relevant to determining the matters in issue.
8. The adjudication panel will be entitled to ask questions of any witness called, including the respondent.
9. The SRA followed by the respondent may make closing representations to the panel.

The respondent or their representative may make a submission of no case to answer during the hearing. This would usually be after stage 4 or stage 6.

#### **What happens if the respondent doesn't attend the hearing?**

If the respondent or their legal representative fail to attend a hearing, the adjudication panel may hear the case in their absence. The adjudication panel must be satisfied that the respondent was given notice of the hearing and has not provided sufficient reason for their non-attendance. The adjudication panel may be able to draw adverse inferences from the respondent's failure to attend as set out in case law. See *Iqbal v Solicitors Regulation Authority [2012] EWHC 3251* and *Kearsey v Nursing and Midwifery Council [2016] EWHC 1603 (Admin)*

If the respondent was not given adequate opportunity to attend, the hearing will need to be rearranged in the interests of justice.

#### **What happens if new evidence comes to light?**

New evidence or information will not usually be accepted during the hearing if it could reasonably have been supplied earlier. If the SRA or respondent wish to provide additional information or evidence, a request should be made in advance of the hearing, providing this documentation together with reasons why the evidence is relevant to the issues requiring determination at the hearing. The request should be sent to the other party for their response.

The case officer shall prepare an updated index and bundle containing the request and any response for consideration by the adjudication panel.

If the additional information impacts on the allegations being considered, the hearing can be adjourned, and the matter may be referred to the case officer for further consideration or investigation.

#### **Recording**

A hearing will be recorded and a copy of it or transcript will be provided to the respondent on request.

#### **Decision**

The adjudication panel will provide its written decision within 10 working days of the conclusion of the hearing.

The case officer shall send a written copy of the decision to the respondent and any legal representative including information about any rights they may have to request a review.