

# Rough justice?

Open hearings are all very well, but spare a thought for the member, pleads Emile Woolf

**T**he ICAEW recently announced its decision to open its disciplinary and appeals hearings to the public and press. It is said that this accords with the practice of other professional bodies. Does this mean it is the right decision?

I question whether the interests of the member or firm subject to the complaint were adequately considered. My own view, based on experience of almost every aspect of the institute's disciplinary process over some 25 years, is that this seemingly progressive and liberal move is, in reality, the very opposite, and its effect will be inimical to natural justice.

The applause with which the institute's decision has been greeted by the professional press can be measured exactly, but inversely, against the condemnation heaped on the Scots institute for its decision to retain private hearings. However, the journalists who write this stuff have an interest to declare: although dressed up with comment about the virtues of openness and perceived fairness, the real agenda is a thirst for juicy copy.

It is argued that public hearings will ensure that (i) the institute is doing its job properly; and (ii) the accused member is seen to get a fair hearing. This argument is spurious. The institute's website habitually reports cases about which it sets out a mass of detailed information. No one has seriously argued that it is not doing its job just because its hearings are not public. Similarly, I am not aware of a single case over the past year of a member complaining on appeal that he did not get a fair hearing because the proceedings were not open to the public.

## Thoughtless modernisation

If not checked, the craze to 'modernise regulation' would sweep away traditional safeguards thoughtlessly, with scant regard for the reasoning that originally put those safeguards in place.

Say, for example, there are highly sensitive matters that need to be pleaded in mitigation. These could include terminal illness, disposal of practice, personal

bereavement, marriage break-up, and others of an equally intimate and personal nature.

If you were a member beset by such traumatic circumstances and knew that journalists were listening, would you be tempted to instruct your legal representative to skip the mitigation to avoid seeing it splashed all over next week's front page? Would that be in the interests of justice?

Despite firmly believing that a complaint against him is misconceived, would a member be inclined to accept a consent order merely to avoid a hearing at which the press is listening? Is that in the interests of justice?

If the member practises in a small town environment, the 'public' presence may include local journalists and professional peers, with predictable consequences.

These risks are more pronounced when the issues under scrutiny are of a highly technical nature. In such circumstances we all know that some press reports can

be guaranteed to get the story completely wrong. There is no effective redress against that.

## Avoiding sensationalism

The function of the disciplinary process is to explore and rule on the conduct of a member in the light of all the evidence before the tribunal. Its purpose is not to put him in the village stocks so that every prurient passer-by can scowl at his misfortune.

It may well be that the new rules include safeguards to exclude the press during sensitive mitigation – but that would merely alert

journalists to something sensational rather than serve justice.

The truth is that the institute's internal disciplinary processes are of no interest whatsoever to the general public. There are few, if any, allegations that these processes are conducted unfairly; and none that I have heard suggesting the institute is not doing its job.

Whenever we are told that regulation is being 'modernised' we need to take a closer look. On 1 July you will be subject to a severe criminal penalty if you fail to display statutory 'no smoking' signs in your office, despite the fact that yours has always been a no-smoking office, and known to be so!

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