



## **Practice Note: Cancellation of Hearing under Rule 19**

**Effective: 17 July 2019**

### **Introduction**

1. Within its statutory framework and fitness to practise procedures, the General Osteopathic Council (GOsC) seeks to address concerns about the fitness to practise of its registrants in a fair and proportionate manner. Once a case has been referred to it, the GOsC Professional Conduct Committee (PCC) has a duty to consider the case in this context, with reference to wider public interest considerations. The PCC should also take account of the distinctive features and particular facts of each case individually when reaching a decision.
2. Rule 19 enables either the GOsC or the registrant to make an application to the Professional Conduct Committee (PCC) to conclude a case without a final hearing. The reasons behind such an application can cover a broad range of cases depending on the facts of the case, and any events that may arise subsequent to the Investigating Committee's referral of the case to the PCC.
3. This Practice Note has been designed to provide a framework to best enable the PCC to achieve its objectives when considering an application to cancel a hearing under Rule 19 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000 ('the PCC Rules').

### **Equality and Diversity Statement**

4. The GOsC is committed to ensuring that processes for dealing with concerns about osteopaths are just and fair. All those involved in our processes are required to be aware of, and observe, equality and human rights legislation. Decision-making of the PCC should be consistent and impartial, and comply with the aims of the public sector equality duty.

### **The circumstances in which the Rule 19 procedure applies**

5. Rule 19 of the PCC Rules sets out a prescriptive procedure as to the approach the PCC should adopt when giving consideration to a Rule 19 application, as follows:  
'Cancellation of hearing  
19.—(1) Where after a complaint has been referred to the Committee for consideration it appears to the Committee that such consideration cannot due to exceptional circumstances properly take place, it may, after taking advice from the legal assessor and after consulting the Investigating Committee and obtaining the consent of the osteopath concerned, direct that a hearing should not be held and that the case should be concluded,

provided that where there is an individual complainant the Committee shall, before it consults the Investigating Committee, endeavour to ascertain the views of the complainant.

- (2) The Committee shall not be required to obtain the consent of the osteopath under paragraph (1) above where such consent could not properly be obtained due to death, mental or physical incapacity.
  - (3) As soon as any decision is reached as to cancellation of a hearing, the Committee shall send notice of that decision to the osteopath and to the complainant if any'.
6. The Rule 19 procedure applies where the case against the registrant has been referred by the Investigating Committee to the PCC for consideration.<sup>1</sup>
  7. An application under Rule 19 may only be made if the following criteria are met:
    - a. The allegation is that the registrant:
      - i. is guilty of unacceptable professional conduct; or
      - ii. is guilty of professional incompetence; or
      - iii. has been convicted in the UK of a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy;
    - b. The Investigating Committee has been consulted on the proposed course of action;
    - c. the registrant has provided their written consent to the cancellation of the hearing; and
    - d. where there is a complainant, the GOsC has endeavoured to obtain their views.
  8. In practice, an application for a direction under Rule 19 will usually be made by the GOsC. However, this does not preclude a registrant from applying for the disposal of the case under Rule 19.

### **Action following identification of case under the Rule 19 procedure**

The Committee has delegated the function of deciding whether a Rule 19 meeting is appropriate to a Panel Chair of the PCC.

9. Where the GOsC's Regulation Department and the registrant consider that the case may be appropriate for disposal at a meeting under the Rule 19 Procedure, the Regulation Department and the registrant should agree a 'bundle' of relevant documents to be sent to a Panel Chair of the PCC.

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<sup>1</sup> It should be noted that, similarly to Rule 19 of the PCC Rules, Rule 36 of The GOsC (Health Committee) (Procedure) Rules Order of Council 2000 (the Health Committee Rules) enables the Health Committee to consider an application from either party to cancel a hearing. Due to the similarity in wording between Rule 19 and Rule 36, the GOsC considers that elements of the Rule 19 Practice Note could be applied to applications to the Health Committee under Rule 36 of the Health Committee Rules.

### **Consideration by PCC Panel Chair**

10. Before deciding whether a Rule 19 meeting is appropriate, the PCC Panel Chair shall have regard to all the circumstances of the case, including the guidance set out in this Practice Note; the views of the Investigating Committee, the complainant (where these have been able to be obtained), the GOsC and the registrant. The PCC Panel Chair should provide written reasons for every decision made. However, usually it will only be appropriate to agree that the Rule 19 application can be dealt with at a meeting or a hearing where there has been a material change such as new evidence or information has come to light, or where a witness, who provides the sole or decisive evidence in support of the majority of the allegation, is no longer available.
11. It is not possible to set out an exhaustive list of indicative factors that would suggest a Rule 19 application is suitable for consideration at a meeting (as opposed to at a hearing). However, where the issues giving rise to the Rule 19 application are not contentious or where the issues are straightforward and it is unlikely that oral representations from the parties will be required and where both the GOsC and the registrant are in agreement that a meeting is suitable, may all be indicative factors that a meeting is both an appropriate and sufficient mechanism to manage the Rule 19 application. For example: the long-term illness of a complainant who provides the main or sole evidence in the case who is unable to take part in the hearing because of their ill health.

### **Communication with the Complainant**

12. Not all cases that may be suitable for disposal under Rule 19 involve complainants. However, where the case involves a complainant (and other witnesses) who have provided evidence during the investigation, it is essential that the GOsC takes all reasonable and proportionate steps to engage with the complainant and seek their view so that any response they provide can be taken into account by the PCC Chair and the PCC.
13. While the views of the complainant are important, their consent to disposal by way of Rule 19 is not an essential requirement of the process.

### **Meeting: Consideration by the PCC where a meeting is considered appropriate**

14. Where the PCC Panel Chair has determined that the Rule 19 application may be considered at a meeting, the PCC will consider the Rule 19 application on the papers at a meeting where a Legal Assessor must also be present. This means that neither the GOsC nor the registrant will attend and no oral submissions can be made. At this meeting the PCC shall consider the documents considered by the PCC Panel Chair including:

- any observations made by the Investigating Committee;
- the views of the complainant (where these have been able to be obtained);
- any additional documents from the GOsC or registrant including any evidence obtained post referral;
- Full written submissions from the GOsC (and the registrant where these have been provided);

15. The PCC shall decide whether or not the case can be disposed of under Rule 19, taking into consideration the procedure set out within paragraphs 19 to 25 of this practice note. If the PCC determines that the Rule 19 Procedure is not appropriate, the PCC members who made that decision shall not form part of the PCC panel at the substantive hearing.
16. The PCC will produce written reasons for their decision, which will be served on the registrant within seven days of the decision being made.

### **Hearing: Consideration by the PCC where a hearing is required**

17. Where the PCC Panel Chair considers that a Rule 19 hearing is appropriate, a notice of hearing will be served on the registrant giving them at least 28 days' notice of the hearing. The notice of hearing will specify the date, time and venue for the hearing.
18. At this hearing, the PCC shall first invite submissions from the GOsC on the background facts and what it considers to be the exceptional circumstances of the case. The registrant or their legal representative will then be invited to provide any further submissions.
19. The PCC shall take advice from the Legal Assessor before determining whether there are exceptional circumstances in the case.
20. If the PCC determines that there are exceptional circumstances, it will then proceed to consider whether the effect of the exceptional circumstances in the case is such that consideration of the case at a hearing before the PCC cannot properly take place.
21. In reaching a decision, the PCC should give consideration as to whether, notwithstanding the exceptional circumstances and other features in the case, the case should continue. This encompasses the following two questions:
  - a. whether there is a real prospect of the alleged facts being proved before a PCC; and
  - b. if so, whether there is a real prospect that those facts would amount to the statutory ground as set out in paragraph 7(a) above.

22. The PCC should take into account the public interest and other relevant GOsC Practice Notes, including [the Hearings and Sanctions Guidance](#), and [Practice Note: 2015/1 The duty to act in the public interest](#), both of which are available on the GOsC website at the links provided.
23. Where the PCC concludes that there are no exceptional circumstances in the case, or the exceptional circumstances do not prevent consideration of the case from properly taking place at a hearing, the PCC shall produce a written decision to that effect and the case will proceed to a final hearing.
24. Where the PCC concludes that consideration cannot properly take place due to exceptional circumstances, it shall direct that the case should be concluded and produce a written decision to that effect.
25. Both the registrant and the complainant (and other witnesses in the case) will be informed of the decision of the PCC within seven days of the hearing.

### **Public Interest**

26. The Act<sup>2</sup> requires the PCC to act in the public interest when considering an allegation about a registrant's fitness to practise. In fulfilling this duty, the PCC should have regard to the following three objectives:
  - to protect, promote and maintain the health, safety and well-being of the public;
  - to promote and maintain public confidence in the profession of osteopathy;
  - to promote and maintain proper professional standards and conduct for members of that profession.

### **Exceptional Circumstances**

27. There is no guidance within Rule 19 itself as to what constitutes 'exceptional circumstances'. What amounts to 'exceptional' depends on the facts and individual features of the specific case. The word exceptional is not a term of art and should be given its ordinary, everyday meaning. The Oxford English dictionary defines it as 'unusual, not typical'.
28. The PCC may also be assisted by how the courts have approached the definition of 'exceptional circumstances'. Other regulators have adopted (with the approval of the higher courts) Lord Bingham's formulation in **R v Kelly (Edward) [2000] QB 198**:

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<sup>2</sup> Practice note: 2015/1 The duty to act in the public interest. While paragraph 3 of the schedule to the Health and Social Care (Safety and Quality) Act 2015 does not require the Investigating Committee to have regard to these objectives when considering allegations, it is good practice that it should.

'We must construe 'exceptional' as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance which is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional, a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.'

29. Proportionality should also be considered in assessing what may amount to exceptional circumstances and therefore outweigh the public interest in holding a hearing. In **R (On the Application of Agyarko) v Secretary of State for the Home Department [2017] UKSC11**, Lord Reed stated:

'... the ultimate question is how a fair balance should be struck between the competing public and individual interests involved, applying a proportionality test.'

30. The reasons behind a Rule 19 application can be of broad application, depending on the facts of the case and any events that may arise subsequent to the Investigating Committee's referral of the case to the PCC. The following examples of exceptional circumstances, taken from previous cases considered by the PCC, are illustrative only. They are not meant to be exhaustive, nor intended to restrict the PCC in applying its own independent judgement to the specific factual circumstances of a case. Previous illustrative examples of exceptional circumstances:

- The ill health of the complainant.
- Expert evidence received subsequent to the Investigating Committee's referral made it impossible to prove the material or significant part of the complaint.
- persistent non-engagement of the complainant and where all reasonable steps had been taken to secure the complainant's attendance at the hearing where their evidence is a critical part of the case against the registrant.

31. It should be noted that the above list is not intended to prevent the PCC from taking other factors into account, such as the public interest in a fair hearing and in the efficient disposal of the case. The PCC should therefore give appropriate weight to the wider public interest. In doing so, the PCC should bear in mind that, if it is not in the public interest to proceed, then to do so would be disproportionate, bearing in mind the exceptional circumstances of the case. The PCC should balance this against the interests of the complainant and the public interest in the case being fully and properly considered at a substantive hearing before the PCC.

## Rule 19 Procedure Flowchart

