



Policy Advisory Committee
9 March 2017
Draft Rule 8 Practice Note

Classification Public

Purpose For decision

Issue This paper proposes an updated and modified draft Rule 8 Practice Note. This modified Practice Note provides a framework for decision making which is focused on the GOSc's overarching objective to protect the public and will assist Committees to dispose of appropriate cases proportionately.

Recommendation To consider the draft rule 8 Practice Note and to recommend it to Council for consultation.

Financial and resourcing implications Within existing budget

Equality and diversity implications An Equality and Diversity statement has been included in the draft Practice Note. Monitoring of diversity data will form part of the Regulation Department Quality Assurance Framework

Communications implications The amended draft Practice Note will be put to Council for approval in May 2017, prior to a public consultation being undertaken.

Annexes A. Current Rule 8 Practice Note and flowchart
B. Revised Rule 8 Practice Note and flowchart

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Background

1. At its meeting on 2 November 2016, Council noted there appeared to be few cases being disposed of by way of the consensual disposal provisions contained within Rule 8 of General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules (the Rule 8 Procedure). Council suggested that a review of this practice note be undertaken to assess whether greater use could be made of the Rule 8 procedure. A review of the Rule 8 procedure has subsequently been incorporated into the GOsC Business Plan for 2017-18.
2. In October 2013, Council agreed the Disposal of Proceedings using the Procedure Set out in Rule 8 of the of General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules together with an accompanying Practice Note and guidance for registrants on how the procedure operates (the Rule 8 Practice Note).
3. In order for the Rule 8 Procedure to apply, the case against the registrant must have previously been considered by the Investigating Committee; a case to answer must have been found by that Committee; and the case then referred to the PCC.
4. In summary, Rule 8 enables cases which have been referred to the Professional Conduct Committee (PCC) to be disposed of by the PCC without a hearing, where:
 - a. the Registrant admits all the facts set out in the complaint;
 - b. the Registrant accepts that those facts amount to unacceptable professional conduct (UPC), professional incompetence or that they have been convicted of a criminal offence in the UK which has a material relevance to their fitness to practise osteopathy; and
 - c. the PCC considers that the complaint should be dealt with by way of admonishment.
5. The current Rule 8 Practice Note and flowchart (omitting the guidance to registrants and notification forms) can be found at Annex A.
6. In seeking to operationalise the Rule 8 procedure, detailed guidance was developed to assist case workers and registrants (and their representatives) to identify cases that would be suitable for consideration by the PCC under the procedure. A number of 'suitability criteria' were identified from previous decisions of the PCC and from the GOsC's Indicative Sanctions Guidance. The aim of the guidance was only those cases which meet these criteria could be processed under the Rule 8 Procedure. To date, six cases have been dealt with under the Rule 8 Procedure.

Discussion

7. In practice the procedure laid down within the existing Rule 8 Practice Note has been found to be overly prescriptive in several key respects which may prevent the potential benefits arising from consensual disposal being fully utilised. For example: the decision making process requires the PCC to consider the same case twice. This has proved to be cumbersome and creates an additional meeting of the PCC in the decision making process which is not envisaged within the Rules. Additionally, the existing suitability criteria set out a long list of cases which may be suitable for the Rule 8 procedure. Suitability criteria represent an additional hurdle not prescribed for in the Rule 8 Procedure.
8. The Rule 8 process has been streamlined and represents a shift away from a long list of cases that may be suitable for disposal under Rule 8 with the focus instead on a proportionate and sufficient outcome. Instead the modified Practice Note provides a framework for decision making which is focused on the GOsC's overarching objective to protect the public. However, in achieving the above objective the Practice Note will not impact upon the Committees reaching independent decisions.
9. Amendments have been made in the following key respects:
 - a. The title of the Practice Note has been simplified
 - b. The function of determining whether a case is appropriate to be dealt with under the Rule 8 procedure has now been delegated to a PCC Panel Chair. This change aligns the Rule 8 procedure more closely to the process followed for determining whether an interim order should be applied for as prescribed within the current interim suspension order guidance. However, the decision of whether to apply Rule 8 is appropriate still sits with the PCC.
 - c. The suitability criteria have been stripped away and replaced with terminology consistent with the nomenclature within the rules.
 - d. The list of cases which may be considered suitable for the Rule 8 procedure has been removed as these are no longer relevant and are inconsistent with the threshold criteria for unacceptable professional conduct introduced in May 2015. Reference to the GOsC Indicative Sanctions Guidance setting out factors where an admonishment may be sufficient and appropriate is retained within the draft note.
10. A revised draft Rule 8 Practice Note and flowchart are presented at Annex B for the Committee's consideration (for the sake of brevity the guidance to registrants and notices have been omitted but will be updated following consultation).
11. Council will be asked to approve the draft Rule 8 Practice Note at its next meeting and it will be then be subject to public consultation.

Recommendation: to consider the draft rule 8 Practice Note and to recommend it to Council for consultation.



General Osteopathic Council

Professional Conduct Committee Practice Note: 2013/4

Disposal of Proceedings using the Procedure Set Out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000

Effective: 17 October 2013

Introduction

1. This practice note covers the limited categories of cases in which the Professional Conduct Committee (PCC) of the General Osteopathic Council (GOsC) may decide to dispose of proceedings against a registrant without holding a hearing, and by issuing an admonishment.
2. The procedure governing these categories of case is set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000¹ ('the PCC Rules').
3. In this Practice Note, the procedure shall be referred to as the Rule 8 Procedure.
4. The PCC shall, at its discretion, decide whether or not a particular case is suitable for disposal under the Rule 8 Procedure, having regard to the GOsC's Indicative Sanctions Guidance and the suitability criteria set out in this document.
5. Within the framework established by legislation, the GOsC seeks to address concerns about the fitness to practise of its registrants in a fair and proportionate manner. In doing so, it has regard to the need to: protect patients and the public; maintain public confidence in the osteopathy profession; and declare and uphold proper standards of conduct and competence amongst osteopathic professionals.
6. The GOsC considers that decisions made by the PCC under the Rule 8 Procedure, in those cases which meet the suitability criteria identified below, are a cost-effective and proportionate way of achieving this aim.

The circumstances in which the Rule 8 procedure applies

7. The Rule 8 Procedure only applies to an allegation that a registrant:

¹ Scheduled to S.I. 2000/241

- a. is guilty of unacceptable professional conduct;
 - b. is guilty of professional incompetence; or
 - c. has been convicted in the UK of a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy.
8. In order for the Rule 8 Procedure to apply, the case against the registrant must have previously been considered by the Investigating Committee; a case to answer must have been found by that Committee; and the case then referred to the PCC.
 9. The Rule 8 Procedure will only apply to those cases which the PCC considers suitable. The criteria for identifying cases that may be suitable for disposal under the Rule 8 Procedure are set out in this Practice Note.
 10. The Rule 8 Procedure will only apply where the registrant is prepared to admit the facts set out in the complaint or allegation; and to admit that such facts amount to the relevant allegation (either unacceptable professional conduct, professional incompetence, or a conviction in the UK for a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy).
 11. The registrant must also agree to dispense with the requirement to hold a hearing before the PCC; and to accept the sanction of an admonishment.

Identification of cases for consideration under the Rule 8 Procedure

12. Cases for consideration under the Rule 8 Procedure shall normally be identified before the registrant is served with a Notice of Hearing under Rule 7 of the PCC Rules. This is because once the Notice has been served, the GOsC will have already incurred fixed costs and made arrangements for the hearing.
13. Where a Notice of Hearing has already been served, the PCC shall only consider a case under the Rule 8 Procedure in exceptional circumstances.
14. Cases for consideration under the Rule 8 Procedure may be identified by the Regulation Department of the GOsC, or by the registrant (or the registrant's representative). However, there is no compulsion on the GOsC or its case workers to negotiate about the use of the Rule 8 Procedure or to agree to seek disposal of a case using it.
15. The Registrant has a right to have the allegations against him or her determined at a hearing. The Rule 8 Procedure can only be followed where the Registrant provides written confirmation to the Regulation Department of the GOsC that he or she agrees to dispense with this right, and intends to admit the facts and the allegations made against him or her.

16. A statement setting out how the case is seen to meet the suitability criteria set out in this Practice Note must be provided to the PCC before it decides whether or not the Rule 8 Procedure should be used.

Action following identification of case

17. Where the Regulation Department or the registrant considers that the case meets the suitability criteria, the Regulation Department shall notify the Chair of the PCC that is to consider the case.
18. Where the allegation has been made by a complainant, the complainant shall be notified of the intention to place the matter before the PCC for consideration under the Rule 8 Procedure.
19. Any observations made by the complainant shall be notified to the PCC.
20. The registrant shall be offered the opportunity to submit additional material to the PCC, such as testimonials and character references.
21. The Regulation Department and the registrant (or the registrant's representative) shall prepare an agreed bundle. The agreed bundle shall include:
 - a. the papers originally before the Investigating Committee;
 - b. any additional material submitted by the registrant;
 - c. the observations of the complainant (if any);
 - d. the statement setting out how the case is seen to meet the suitability criteria; and
 - e. the views of the GOsC Registrar (if any).

Consideration by PCC

22. Before deciding whether or not to use the Rule 8 Procedure, the Professional Conduct Committee shall consider:
 - a. the statement setting out how the case is seen to meet the suitability criteria;
 - b. the observations of the complainant (if any);
 - c. the evidence assembled and any additional material submitted by the registrant;
 - d. the PCC's Indicative Sanctions Guidance;

- e. the suitability criteria set out in this Practice Note;
- f. the views of the Registrar (if any); and
- g. any advice tendered by the legal assessor.

Action where the Rule 8 Procedure is not considered suitable

- 23. Where the PCC does not consider the case is suitable for the Rule 8 Procedure (including because it considers that the sanction of admonishment is not appropriate in the circumstances or because it considers that the case does not meet the suitability criteria), it shall give reasons for its decision.
- 24. The decision and reasons shall normally be sent to the registrant within seven working days.
- 25. The case shall then be listed for a hearing in the usual way before a differently constituted PCC, and in due course a Notice of Hearing shall be served on the registrant.

Action where the Rule 8 Procedure is considered suitable

- 26. Where the PCC considers it appropriate to do so, the registrant shall be served with:
 - a. a Notice of Intention to use the Rule 8 Procedure (Appendix A); and
 - b. a Rule 8 Statement (Appendix B).
- 27. The admissions made by the registrant; the registrant's agreement to dispense with a hearing; and the acceptance of the sanction of admonishment by the registrant, shall be recorded on a Rule 8 Statement.
- 28. The Rule 8 Statement must be signed and dated by the registrant, and must be returned by the time stated on the document.
- 29. Upon receipt of the signed and dated Rule 8 Statement, the PCC shall issue its determination and sanction in the form set out at Appendix C.
- 30. The findings and sanction shall form part of the registrant's fitness to practise record held by the GOsC, and shall be published and disclosed in accordance with the GOsC's Fitness to Practise Publication Policy. This shall include publication on the GOsC's website.

The Suitability Criteria

- 31. Cases which are **not** suitable for the Rule 8 Procedure include, but are not limited to, complaints and allegations involving:

- a. violence;
 - b. sexualised behaviour as defined in *Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals* published by the Professional Standards Authority (formerly the CHRE) in January 2008;
 - c. sexual and physical abuse of minors and children (including child pornography and neglect);
 - d. vulnerable persons: to be regarded as persons under 18, or adults who are to be regarded as vulnerable within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006;
 - e. dishonesty, deception or fraudulent behaviour;
 - f. failure to have in place adequate professional indemnity insurance;
 - g. criminal convictions resulting in the imposition of a sentence of imprisonment (or suspended imprisonment);
 - h. actions or omissions which have resulted in significant harm to a patient, or which had the potential to do so;
 - i. significant failings in the treatment of one or more patients; and
 - j. matters of a nature which have the potential to damage the reputation or standing of the profession.
32. Cases which **may** be considered suitable for the Rule 8 Procedure include allegations involving:
- a. Single instances of poor or inadequate record keeping *provided that any failings identified in the records did not place the patient at risk of significant harm or did not have the potential to do so*
 - b. Single instances of failure to obtain an adequate case history, *provided that any failings identified did not place the patient at risk of significant harm or did not have the potential to do so*
 - c. Single instances of failure to carry out an adequate patient examination, *provided that any failings identified did not place the patient at risk of significant harm or did not have the potential to do so*
 - d. Single instances of failure to obtain adequate consent to treatment or examination, *provided that:*

- i. *any failings identified did not relate to intimate treatment or intimate examination*
 - ii. *there is no complaint of sexualised behaviour; and*
 - iii. *any failings identified did not place the patient at risk of significant harm or did not have the potential to do so*
- e. Single instances of inadequate explanation of examination to be undertaken *provided that:*
- i. *any failings identified did not relate to intimate treatment or intimate examination*
 - ii. *there is no complaint of sexualised behaviour*
- f. Single instances of a failure to take adequate steps to protect the dignity of a patient, *provided that there is no complaint of sexualised behaviour*
- g. Single instances of inadequate explanation of techniques to be performed, *provided that such techniques did not result in significant harm to the patient or have the potential to do so*
- h. Poor communication, *provided that:*
- i. *there are no underlying language difficulties which might expose a patient to a risk of significant harm*
 - ii. *there is no complaint of sexualised behaviour*
- i. Rudeness and poor customer service *provided that no potential underlying health issues have been identified in relation to the registrant*
33. In paragraph 32 above, references to “single instances” may include:
- a. single occasion of wrongdoing/failure in relation to a single consultation;
 - b. multiple wrongdoing/failures within a single consultation; or
 - c. multiple wrongdoing/failures in multiple consultations which all relate to a single patient.
34. In deciding whether the suitability criteria are met, the PCC will consider the registrant’s previous fitness to practise history and the GOsC’s Indicative Sanctions Guidance and in particular consider whether:
- a. there is evidence to suggest that the registrant poses any danger to patients or the public;

- b. the registrant has shown insight into their failings;
- c. the behaviour was an isolated incident;
- d. there has been any repetition of the behaviour complained about;
- e. the registrant acted under duress;
- f. the registrant has genuinely expressed remorse;
- g. there is evidence that the registrant has taken rehabilitative/corrective steps;
or
- h. the registrant has previous good history.

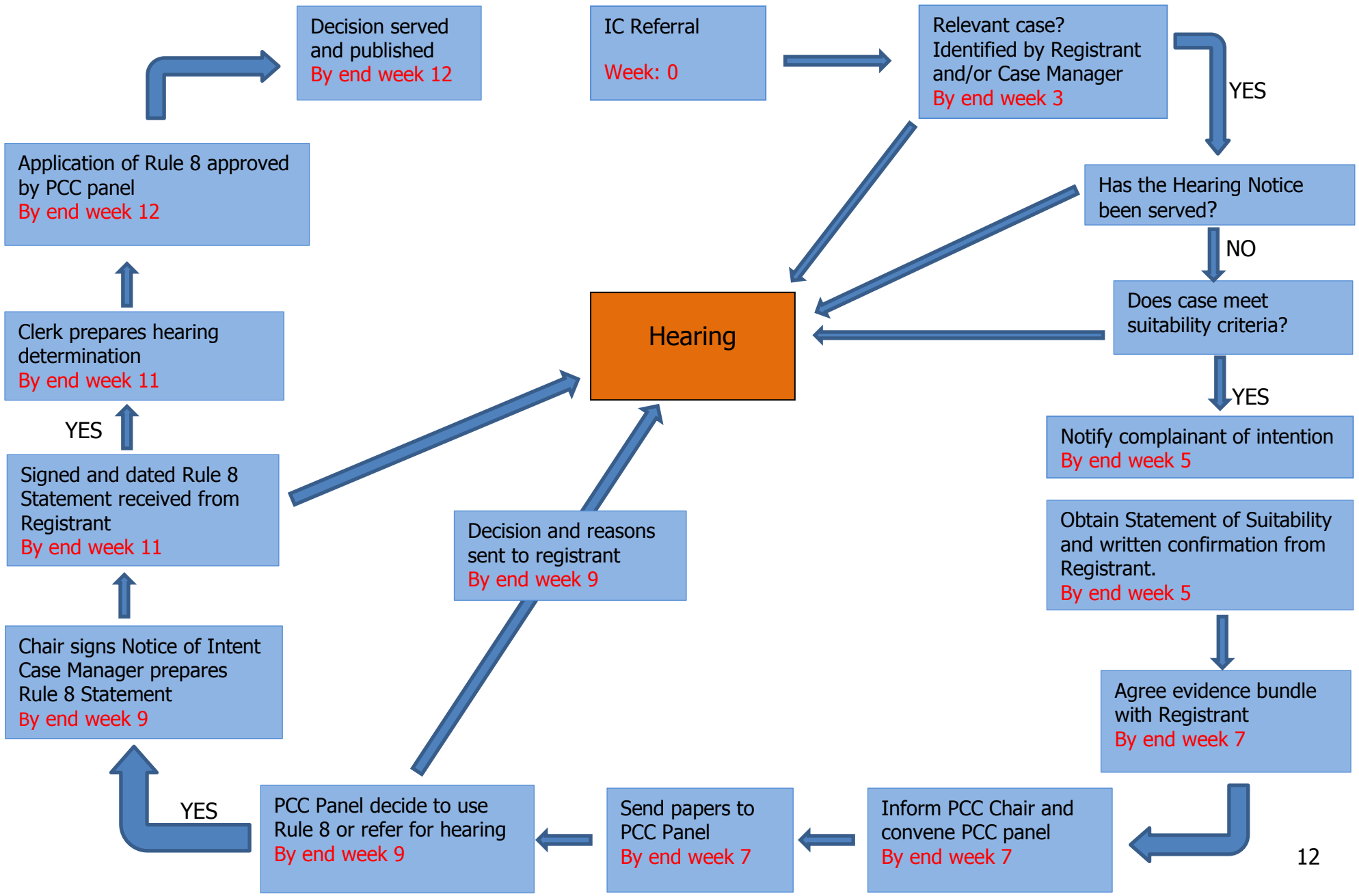
Items a) and d) are factors that indicate that the Rule 8 procedure may not be suitable.

35. The suitability criteria set out in this document are not exhaustive. In any particular case, the PCC will exercise its discretion as to whether the complaint or allegation should be disposed of using the Rule 8 procedure.

For further information about the PCC's procedures and guidance, please see the GOsC's website: www.osteopathy.org.uk

Annex A to 8

Start here





General Osteopathic Council

Professional Conduct Committee Practice Note:

Consensual Disposal: Rule 8

Effective:

Introduction

1. This practice note covers the limited categories of cases in which the Professional Conduct Committee (PCC) of the General Osteopathic Council (GOsC) may decide to dispose of proceedings against a registrant without holding a hearing.
2. The procedure governing these categories of case is set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000² ('the PCC Rules').
3. In this Practice Note, the procedure shall be referred to as the Rule 8 Procedure.
4. Within the framework established by legislation, the GOsC seeks to address concerns about the fitness to practise of its registrants in a fair and proportionate manner. In doing so, it has regard to the need to: protect patients and the public; maintain public confidence in the osteopathy profession; and declare and uphold proper standards of conduct and competence amongst osteopathic professionals. In achieving these objectives, this Practice Note has been designed to provide a framework for decision making by Fitness to Practise Committees but it does not impact upon how Committees reach independent decisions.
5. The GOsC considers that decisions made by the PCC under the Rule 8 Procedure, are a cost-effective and proportionate way of achieving this aim.

Equality and Diversity Statement

6. The GOsC is committed to ensuring that processes of 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 Committee should be consistent and impartial, and comply with the aims of the public sector equality duty.

² Scheduled to S.I. 2000/241

The circumstances in which the Rule 8 Procedure applies

7. The Rule 8 Procedure only applies to an allegation that a registrant:
 - a. is guilty of unacceptable professional conduct;
 - b. is guilty of professional incompetence; or
 - c. has been convicted in the UK of a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy.
8. In order for the Rule 8 Procedure to apply, the case against the registrant must have previously been considered by the Investigating Committee ('IC'); a case to answer must have been found by that Committee; and the case then referred to the PCC.
9. The Rule 8 Procedure will only apply to those cases which a PCC Panel Chair considers appropriate. The criteria for identifying cases that may be appropriate for disposal under the Rule 8 Procedure are set out in this Practice Note.
10. The Rule 8 Procedure will only apply where the registrant is prepared to admit the facts set out in the complaint or allegation; and to admit that such facts amount to the relevant allegation (either unacceptable professional conduct, professional incompetence, or a conviction in the UK for a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy).
11. The registrant must also agree to dispense with the requirement to hold a hearing before the PCC and to accept the sanction of an admonishment.

Identification of cases for consideration under the Rule 8 Procedure

12. Cases for consideration under the Rule 8 Procedure shall normally be identified before the registrant is served with a Notice of Hearing under Rule 7 of the PCC Rules. This is because once the Notice has been served, the GOsC will have already incurred costs and made arrangements for the hearing.
13. Where a Notice of Hearing has already been served, the PCC shall only consider a case under the Rule 8 Procedure in exceptional circumstances.
14. Cases for consideration under the Rule 8 Procedure may be identified by the Regulation Department of the GOsC, or by the Registrant (or the Registrant's representative). However, there is no compulsion on the GOsC or its case workers to negotiate about the use of the Rule 8 Procedure or to agree to seek disposal of a case in accordance with this Practice Note.
15. The registrant will be informed of the Rule 8 Procedure and provided with guidance (Appendix A).

16. The Registrant has a right to have the allegations against him or her determined at a hearing. The Rule 8 Procedure can only be followed where the Registrant provides written confirmation to the Regulation Department of the GOsC that he or she agrees to waive this right, and intends to admit the facts and the allegations made against him or her.

Action following identification of case

17. Where the Regulation Department or the Registrant considers that the case is appropriate for disposal under the Rule 8 Procedure, the Regulation Department and the Registrant should agree a bundle of documents to be sent to a Panel Chair of the PCC.
18. The Committee has delegated the function of deciding whether the case is appropriate to be disposed of under the Rule 8 Procedure to a Panel Chair of the PCC. When determining whether the Rule 8 Procedure is appropriate, the Panel Chair shall have regard to all the circumstances of the case including the factors set out within paragraphs 31 and 32 of this Practice Note and should provide written reasons for every decision made.
19. Where the allegation has been made by a complainant, the complainant shall be notified of the intention to place the matter before a PCC Panel Chair for consideration under the Rule 8 Procedure. The complainant shall be invited to make observations.
20. The bundle of documents sent to the PCC Panel Chair will include:-
 - a. the papers considered by the Investigating Committee;
 - b. any additional documents submitted by the Registrant (which may include testimonials and character references);
 - c. the observations from the complainant (if any).

Consideration by PCC Panel Chair

21. Before deciding whether or not to use the Rule 8 Procedure, the PCC Panel Chair shall consider:
 - a. the observations of the complainant (if any);
 - b. the evidence assembled and any additional material submitted by the Registrant;
 - c. the PCC's Indicative Sanctions Guidance;
 - d. the guidance set out in this Practice Note.

Action where the Rule 8 Procedure is not considered appropriate

22. Where the PCC Panel Chair does not consider the case is appropriate for the Rule 8 Procedure (including because it considers that the sanction of admonishment is not appropriate in the circumstances), the Panel Chair shall give reasons for that decision.
23. The decision and reasons shall normally be sent to the registrant within seven working days.
24. The case shall then be listed for a substantive hearing in the usual way. The PCC Panel Chair who considered the Rule 8 Procedure shall not form part of the PCC panel at the substantive hearing.

Action where the Rule 8 Procedure is considered appropriate

25. Where the PCC Panel Chair considers the case is appropriate to be disposed of under Rule 8, the Registrant shall be served with:
 - a. a Notice of Intention to use the Rule 8 Procedure (Appendix B); and
 - b. a Rule 8 Statement (Appendix C).
26. The admissions made by the Registrant; the Registrant's agreement to waive the right to a hearing; and the acceptance of the sanction of admonishment by the registrant, shall be recorded on a Rule 8 Statement.
27. The Rule 8 Statement must be signed and dated by the Registrant, and must be returned by the date stated in the Notice of Intention to use the Rule 8 Procedure.
28. The PCC will consider the case at a meeting. The PCC shall consider:-
 - a. the documents considered the PCC Panel Chair;
 - b. the Notice of Intention signed by the PCC Panel Chair;
 - c. the Rule 8 Statement signed by the Registrant;
 - d. any additional documents from the GOsC or Registrant.
29. The PCC shall consider the case and give reasons for its decision (Appendix D).
30. The findings and sanction shall form part of the registrant's fitness to practise record held by the GOsC, and shall be published and disclosed in accordance with the GOsC's Fitness to Practise Publication Policy. This shall include publication on the GOsC's website.

Cases which are unlikely to be appropriate for disposal under the Rule 8 Procedure

31. Cases which are **unlikely** be appropriate for the Rule 8 Procedure include, but are not limited to, complaints and allegations involving:
- a. violence;
 - b. sexualised behaviour as defined in *Clear sexual boundaries between healthcare professionals and patients: responsibilities of healthcare professionals* published by the Professional Standards Authority (formerly the CHRE) in January 2008;
 - c. sexual and physical abuse of minors and children (including child pornography and neglect);
 - d. vulnerable persons: to be regarded as persons under 18, or adults who are to be regarded as vulnerable within the meaning of section 59 of the Safeguarding Vulnerable Groups Act 2006;
 - e. dishonesty, deception or fraudulent behaviour;
 - f. criminal convictions resulting in the imposition of a sentence of imprisonment (or suspended imprisonment);
 - g. significant failings in the examination and/or treatment of one or more patients; and

Cases which may not be appropriate for disposal under the Rule 8 Procedure

32. Cases which **may not** be appropriate for the Rule 8 Procedure include, but are not limited to, complaints and allegations involving actions or omissions which:
- demonstrate a failure to protect patients, colleagues or the wider public from the risk of harm;
 - undermine public confidence in the osteopathic profession;
 - demonstrate a significant failure to uphold the standards and competence among osteopathic professionals.
33. In deciding whether the case is appropriate for disposal under the Rule 8 Procedure, the PCC will consider the Registrant's previous fitness to practise history and the GOsC's Indicative Sanctions Guidance and in particular consider the following, non-exhaustive list:

- a. there is evidence to suggest that the Registrant poses any danger to patients or the public;
- b. the Registrant has shown insight into their failings;
- c. the behaviour was an isolated incident;
- d. there has been any repetition of the behaviour complained about;
- e. the Registrant acted under duress;
- f. the Registrant has genuinely expressed remorse;
- g. there is evidence that the Registrant has taken rehabilitative/corrective steps; or
- h. the Registrant has previous good history.

Items a) and d) are factors that indicate that the Rule 8 Procedure may not be appropriate.

34. In any particular case, the PCC will exercise its discretion as to whether the complaint or allegation should be disposed of using the Rule 8 Procedure.

For further information about the PCC's procedures and guidance, please see the GOSc's website: www.osteopathy.org.uk

Rule 8 Procedure Flowchart

