

General Osteopathic Council

Professional Conduct Committee

Practice Note

Proceeding in the absence of the registrant

Effective from 20 June 2013

On occasion, the Professional Conduct Committee (PCC) may have to decide whether to proceed with a hearing in the absence of the registrant – that is, where the osteopath does not attend the hearing. This document provides guidance to the PCC on the factors to take into account when deciding whether to proceed in the registrant's absence.

As a general principle, the registrant has the right to be present and represented at a hearing. The PCC may, however, proceed with the hearing, make a finding and if appropriate apply a sanction in the registrant's absence.

Any decision to proceed in the absence of the registrant will be made by the PCC Panel that is considering the case. The Panel, when making its decision, will take the following steps:

Step 1

The PCC must first be satisfied that all reasonable steps have been taken to serve the notice of the hearing on the registrant concerned. The GOsC's solicitor should provide to the Committee evidence that the notice of hearing was sent:

- at least 28 days before the hearing date
- to the registrant's address in the Register or their last known address
- by registered post, special or recorded delivery or by delivering it to the registrant or leaving it at their address in the Register.

Such evidence should include a print out of the registrant's Register entry and proof of delivery of the notice of hearing.

Other evidence may include:

- any correspondence or indication from the registrant that they had received the notice of hearing
- telephone attendance notes showing that the registrant was also informed by telephone of the hearing date, time and place.

- email correspondence with the registrant, notifying them of the hearing date, time and place.

If the PCC is not satisfied that all reasonable steps have been taken to serve the notice of the hearing on the registrant, then it must not proceed with the hearing on that occasion.

If the PCC is satisfied that all reasonable steps have been taken to serve the notice of the hearing on the registrant, it should then decide whether it is appropriate and fair to proceed with the hearing in the absence of the registrant or their representative.

Step 2

In deciding whether it is appropriate and fair, the PCC should proceed with the utmost caution and in accordance with the principles set out in *R v Jones*[2003] 1 A.C.1; *R v Hayward* [2001] Q.B. 862; and *Tait v RCVS* [2003] UKPC34. The PCC should, therefore, take the following factors into account:

- the nature and circumstances of the registrant's absence
- whether the absence is deliberate or involuntary
- the risk of the Committee reaching the wrong conclusion about the reasons for the registrant's absence
- whether a postponement is likely to result in the registrant attending the proceedings at a later date
- the likely length of any such postponement
- the general public interest and the particular interests of any complainants and witnesses that a hearing take place within a reasonable time of the events to which it relates
- the effect of delay on the memories of witnesses
- the risk of the committee reaching the wrong decision on the merits of the case as a result of not hearing the registrant's account
- whether the registrant wishes to be represented at the hearing or has waived that right
- the extent to which any representative would be able to receive instructions from, and present the case on behalf of, the absent registrant
- the extent of the disadvantage to the registrant in not being able to give evidence having regard to the nature of the case
- where the hearing involves more than one registrant, the undesirability of separate hearings, and the prospects of a fair hearing for those registrants who are present
- the seriousness of the allegation.

Step 3

If the PCC decides to proceed in the registrant's absence, it should record its decision and the reasons for it.

If the PCC decides not to proceed, it should record its decision and the reasons for it and the hearing should be postponed to a later date. The registrant will be notified of the new hearing date.

Please note: this document is designed to guide the PCC. It is not intended to restrict it from exercising its own judgement. Every case, even if it contains similarities to other cases, is unique and the PCC will judge each case on its particular merits and make decisions accordingly.

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