

## **Draft Professional Conduct Committee Practice Note**

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

#### **Introduction**

1. This practice note covers the limited categories of case in which the Professional Conduct Committee 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 2000 (S.I. 2000/241) ('the 2000 Conduct 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, having regard to the need to protect patients and the public; to maintain public confidence in the osteopathy profession; and to declare and uphold proper standard of conduct and competence amongst osteopathic professionals.
5. The Professional Conduct Committee (PCC) considers that use of the Rule 8 procedure, in those cases which meet the suitability criteria identified below, is a cost-effective and proportionate way of achieving this aim.

#### **The circumstances in which the Rule 8 procedure applies**

6. 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 for a criminal offence which has a material relevance to the registrant's fitness to practise osteopathy.

7. 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.
8. The Rule 8 procedure will only apply to those cases which the PCC considers suitable. The criteria for suitability are set out in this Practice Note.
9. 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 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.
10. 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**

11. 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 2000 Conduct Rules.
12. The PCC shall not normally consider cases under the Rule 8 procedure after the Notice of Hearing has been served.
13. 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).
14. A statement setting out how the case meets 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**

15. The Regulation Department shall notify a Chair of the PCC of any cases which it, or the registrant, considers does meet the suitability criteria.
16. 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.
17. Any objections made by the complainant shall be notified to the PCC.
18. The registrant shall be offered the opportunity to submit additional material to the PCC, such as testimonials and character references.

19. The Regulation Department and the registrant (or his or her representatives) 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 views of the complainant (if any) and
  - d. the statement setting out how the case meets the suitability criteria.

### **Consideration by PCC**

20. A panel shall be convened to consider the matter on the papers.
21. Before deciding whether or not to use the Rule 8 procedure, the panel shall consider:
  - a. the statement setting out how the case meets the suitability criteria
  - b. the views of the complainant (if any)
  - c. the evidence assembled and any additional material submitted by the registrant
  - d. the PCC's Indicative Sanctions Guidance; and
  - e. the suitability criteria set out in this Practice Note.

### **Action where the Rule 8 procedure is not considered suitable**

22. Where the Chair and panel do not consider the case suitable for the Rule 8 procedure, they shall give reasons for their decision. The reasons shall normally be sent to the registrant within seven working days.
23. The case shall then be listed for a hearing before a different Chair and Committee members in the usual way, and in due course a notice of hearing shall be served on the registrant.

### **Action where the rule 8 procedure is considered suitable**

24. Where the Chair and panel consider it appropriate to do so, the Chair shall serve on the registrant:
  - a. a notice of intention to use the Rule 8 procedure (Annex A), and
  - b. a Rule 8 statement (Annex B).
25. 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.

26. The Rule 8 statement must be signed and dated by the registrant, and must be returned by the time stated on the document.
27. Upon receipt of the signed and dated Rule 8 statement, the Chair and panel of the PCC shall issue its determination and sanction in the form set out at Annex C.
28. 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 Disclosure Policy. This shall include publication on the GOsC's website.

### **The Suitability Criteria**

29. Cases NOT suitable for the Rule 8 procedure include 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 CHRE in January 2008
  - c. child pornography
  - 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 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. treatment which has resulted in significant harm to a patient, or which had the potential to do so
  - i. matters of a nature which have the potential to damage the reputation or standing of the profession.
30. 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 constitute gross negligence*

- 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 constitute gross negligence*
  - 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 constitute gross negligence*
  - 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 constitute gross negligence.*
  - 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 expose the patient to the risk of significant harm*
  - 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.*
31. In deciding whether the suitability criteria are met, the Chair and panel of the PCC will also 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 his or her 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.**

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](http://www.osteopathy.org.uk)

**General Osteopathic Council**

**Professional Conduct Committee: disposal of proceedings in accordance with Rule 8 of the General Osteopathic Council (professional conduct committee) (procedure) rules 2000**

**Notice of intention to use the Rule 8 procedure**

To [insert details of registrant]

Having considered the evidence available (including any material submitted by you), the Committee is minded to dispose of the complaint/allegation against you by way of the procedure set out in rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2008, a copy of which is enclosed.

I therefore invite you to indicate on the enclosed Rule 8 Statement, whether you accept the facts set out in the complaint/allegation made against you; and if so, whether you accept that those facts amount (to unacceptable professional conduct/professional incompetence/you having been convicted of a criminal offence in the UK which has a material relevance to the practice of osteopathy – **Delete as appropriate**).

If you indicate your acceptance by signing and returning the rule 8 Statement, the Professional Conduct Committee (PCC) will be minded to dispose of the matter without a hearing, and by issuing an admonishment to you.

However, the PCC will hold a hearing if you do not indicate your acceptance; or if you require a hearing to be held. You will have the right to attend, and to be legally represented at, any hearing.

Before deciding whether or not to indicate your acceptance, you are advised to seek advice from your legal representative; professional association; professional indemnity and liability insurers; or defence organisation.

In the event that you do wish this matter to be dealt with under the Rule 8 procedure, and only if you do wish to indicate your acceptance, please sign and return the enclosed rule 8 statement to the Regulation Department of the General Osteopathic Council (GOsC) by **[Insert date]**

Signed \_\_\_\_\_ Dated \_\_\_\_\_

Chair of the Professional Conduct Committee

## General Osteopathic Council

### Professional Conduct Committee: disposal of proceedings in accordance with Rule 8 of the General Osteopathic Council Professional Conduct Committee Rules 2000

#### Rule 8 statement

1. I, [INSERT NAME AND REGISTRATION NUMBER OF REGISTRANT], am registered with the General Osteopathic Council.
2. On [INSERT DATE], an allegation against me was referred to the Professional Conduct Committee of the General Osteopathic Council ("the Committee").
3. I now make this Statement for the purpose of disposing of the proceedings before the Committee, in accordance with Rule 8 of the General Osteopathic Council Professional Conduct Committee Rules 2000.

#### STATEMENT OF FACTS

4. [INSERT FACTS HERE]
5. I, [INSERT NAME OF REGISTRANT] accept the facts stated above as a true and accurate account of the matters which have been referred to the Committee for consideration.

Signed \_\_\_\_\_ Dated \_\_\_\_\_  
[INSERT NAME OF REGISTRANT]

#### ADMITTANCE OF FACTS AND ALLEGATION

6. I further accept that the facts stated at paragraphs [INSERT PARAGRAPH NUMBERS] above, constitute an allegation for the purposes of section 20 of the *Osteopaths Act 1993*, and that by reason of these facts, [I am guilty of unacceptable professional conduct/I am guilty of professional incompetence/I have been convicted in the UK of a criminal offence which is materially relevant to the practice of osteopathy]
7. I confirm that, having had the opportunity to take advice about this matter, I unreservedly admit both the facts set out above at paragraphs [INSERT PARAGRAPH NUMBERS] above; and the allegation made against me.

Signed \_\_\_\_\_ Dated \_\_\_\_\_  
[INSERT NAME OF REGISTRANT]

## **AGREEMENT TO PROCEED WITHOUT HEARING**

8. I further confirm that, having admitted both the facts and the allegation, I do not wish the matter to proceed to a hearing before the Committee.

## **ACCEPTANCE OF SANCTION**

9. I confirm that, having had the opportunity to take advice about this matter, I accept the sanction of admonishment imposed by the Committee on the basis of the facts and the allegation admitted by me above.
10. I understand that this sanction will now form part of the fitness to practise record about me which is held by the General Osteopathic Council (GOsC).

## **PUBLICATION AND DISCLOSURE**

11. I understand that this document, the written determination issued by the Committee, and the sanction imposed on me:
- a. will be published by the GOsC in accordance with its Fitness to Practise Publication Policy (including by publication on the GOsC's website); and
  - b. may be disclosed to third parties, together with other information about my fitness to practise history, should the GOsC consider it to be in the public interest to do so.

Signed \_\_\_\_\_ Dated \_\_\_\_\_

[INSERT NAME OF REGISTRANT]

Case: [INSERT No.]

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**General Osteopathic Council**

**Decision of the Professional Conduct Committee**

In the case of:

**[INSERT NAME OF REGISTRANT]**

**Registration Number: [INSERT REGISTRATION NO.]**

[INSERT DATE]

The Tribunal: [INSERT NAME OF CHAIR AND PANEL MEMBERS]

This case has been considered by the Professional Conduct without a hearing, under the procedure set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000.

Allegation:

The allegation, and the facts in support of that allegation, are set out in the registrant's rule 8 statement which is annexed to this decision.

Decision

The registrant has admitted both the allegation and the facts in support of the allegation. Accordingly, the allegation is found proved. The registrant accepts that he **(is guilty of unacceptable professional conduct/professional incompetence/has received a conviction in the UK for a criminal offence which has a material relevance to his/her fitness to practise osteopathy.)**

Sanction

Having regard to the Professional Conduct Committee's (PCC's) published Indicative Sanctions Guidance; the registrant's admissions set out in the rule 8 statement (; **and any other material submitted by the registrant**), the Committee is satisfied that a sanction of admonishment is appropriate in this case.

Section 22(13) of the *Osteopaths Act 1993* requires this Committee to publish a report that sets out the names of those osteopaths who have had Allegations found against them. The Registrant's name will be included in this report together with details of the allegations we have found proved and the sanction that that we have applied today.

## **General Osteopathic Council**

### **Disposal of Proceedings using the Procedure set out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 – Guidance for Registrants**

#### **About this document**

1. Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000 (S.I. 2000/241) sets out a procedure for reaching a final decision about a complaint or allegation that has been made against you, without the need to hold a hearing.
2. In this guidance, the procedure shall be referred to as the Rule 8 Procedure.
3. This document needs to be read together with the Professional Conduct Committee Practice Note [ /2013] *Disposal of Proceedings using the Procedure Set Out in Rule 8 of the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules 2000.*
4. This guidance sets out the matters you need to consider if a complaint or allegation has been made against you, and you wish to use the Rule 8 Procedure.
5. If you do wish to use the Rule 8 Procedure, you should notify the GOsC Regulation Department caseworker dealing with your case.

#### **What cases does the Rule 8 procedure apply to?**

6. The Rule 8 Procedure only applies to certain types of complaint and allegation. These are that you:
  - a. are guilty of unacceptable professional conduct
  - b. are guilty of professional incompetence; or
  - c. have been convicted in the UK for a criminal offence which has a material relevance to your fitness to practise osteopathy.
7. The Rule 8 Procedure only applies to cases that the PCC considers meet certain criteria, and in which it considers that an admonishment would be the most appropriate sanction to impose.
8. The suitability criteria are set out in the Annex to this document.
9. The PCC will not normally consider your case under the Rule 8 Procedure if you have already been sent a Notice of Hearing.

## **What matters should I take into account in deciding whether or not to use the Rule 8 Procedure?**

10. Before deciding whether or not to use the Rule 8 Procedure, you should seek advice from a lawyer, professional association; professional indemnity and liability insurer; or defence organisation, where possible.
11. You need to understand that you can only use the Rule 8 Procedure if you are prepared to make two very important admissions.
12. Firstly, you must fully admit the facts set out in the complaint or allegation made against you.
13. Secondly, you must also be prepared to admit that such facts amount to unacceptable professional conduct; professional incompetence; or a conviction in the UK for a criminal offence which has a material relevance to your fitness to practise osteopathy (as the case may be).
14. Any admissions must be made on the Rule 8 Statement, which will be sent to you by the Professional Conduct Committee.
15. You will have the opportunity to submit references and testimonials to the PCC, together with the admissions that you make on the Rule 8 Statement.
16. Once any admissions have been made by you, they will form part of the evidence against you.
17. As such, these admissions will affect the outcome of your case. They may also have an impact on your registration, and will be recorded by the General Osteopathic Council (GOsC) as part of your fitness to practise history.
18. It is therefore very important that you think carefully about whether you wish to make these two sets of admissions.
19. Before you make any admissions, you should seek advice from a lawyer; professional association; professional indemnity and liability insurer; or defence organisation, where possible.
20. You must also agree to dispense with the requirement for a hearing before the PCC. There is no need to hold a hearing, because all the facts and the allegations will have been admitted by you on the Rule 8 Statement.
21. Lastly, you will need to accept the sanction of admonishment to be imposed on you by the PCC.

22. You need to understand that the admissions made by you; the decision made by the PCC; and the sanction of admonishment that it imposes on you, will be published in accordance with the GOsC's Fitness to Practise Policy. This includes publication on the GOsC website.
23. You should understand that any sanction imposed by the PCC will be recorded by the GOsC as part of your fitness to practise history.
24. You also need to be aware that all decisions made by the PCC are sent to the Professional Standards Authority ([www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)) for scrutiny and review.
25. The Professional Standards Authority has the power to appeal any sanction that the Committee imposes to the High Court, on the grounds that it is 'unduly lenient' or that 'it should not have been made'; and that it is desirable for the protection of the public that the matter should be referred to Court.

### **Rule 8 checklist**

26. The following matters may help you consider whether or not to use the Rule 8 Procedure:
  - a. Have you already received a Notice of Hearing?
  - b. Does your case meet the suitability criteria set out in the Annex to this document?
  - c. Are you prepared to admit both the facts and the allegation?
  - d. Are you prepared to accept that no hearing is needed?
  - e. Are you prepared to accept an admonishment as the appropriate sanction?
  - f. Do you understand that the Rule 8 Statement; the decision of the PCC; and the Sanction imposed on you, will all be published by the GOsC and, in the public interest, may be disclosed to third parties (including any complainant and any employer)?
  - g. Do you understand that the admissions made in the Rule 8 Statement, and sanction imposed, will form part of your fitness to practise history held by the GOsC?
  - h. Do you understand that the Professional Standards Authority has the power to review the Committee's decision and sanction imposed; and that it can appeal them to the High Court on the basis that they are unduly lenient or should not have been made?
27. If you wish to use the Rule 8 Procedure, make sure that you:
  - a. notify the GOsC Regulation Department of your intention to use the Rule 8 Procedure before a Notice of Hearing is served on you

- b. notify the GOsC Regulation Department if you wish to submit further material to the Committee in the form of testimonials and references
- c. sign, date and return the Rule 8 Statement to the GOsC Regulation Department by the required date.

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## Annex: The Suitability Criteria

1. Cases NOT suitable for the Rule 8 procedure include 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 CHRE in January 2008
  - c. child pornography
  - 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 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. treatment which has resulted in significant harm to a patient, or which had the potential to do so
  - i. matters of a nature which have the potential to damage the reputation or standing of the profession.
2. 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 constitute gross negligence*
  - 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 constitute gross negligence*
  - 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 constitute gross negligence*
  - 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 any failings identified did not place the patient at risk of significant harm or constitute gross negligence.*
  - 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 expose the patient to the risk of significant harm*
  - 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.*
3. In deciding whether the suitability criteria are met, the Chair and panel of the Professional Conduct Committee (PCC) will also 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 his or her 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.**

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## PCC Rule 8 Procedures – Flowchart

## Annex C to xx

