
PRACTICE NOTE

Proceeding in the Absence of the Registrant

This Practice Note has been issued jointly by the HPC Practice Committees for the guidance of Panels and to assist those appearing before them.

Introduction

As a general principle, a registrant who is facing a fitness to practise allegation has the right to be present and represented at a hearing. However, the procedural rules¹ for such hearings provide that, if a registrant is neither present nor represented, the Panel may nevertheless proceed if it is satisfied that all reasonable steps have been taken to serve notice of the hearing on the registrant.

The decision to proceed with a hearing in the absence of the registrant is a matter within the discretion of the Panel. However, that discretion is one which has been described by the courts as “severely constrained”². As the House of Lords held in *R v Jones*,³ the discretion to commence and conduct proceedings in the absence of the registrant “should be exercised with the utmost care and caution.”

In exercising that discretion, Panels must strike a careful balance between fairness to the registrant and the wider public interest.

Exercise of discretion

In deciding whether to proceed in the absence of the registrant, Panels must consider all of the circumstances of the case, including whether the registrant’s actions amount to a waiver of the right to be present or represented.

In reaching a decision, Panels should take account of the factors identified by the Court of Appeal in *R v Jones*.⁴ That case concerned the absence of a criminal defendant, but the factors identified in that case (appropriately modified as set out below) are relevant to fitness to practice proceedings:

¹ Rule 9, HPC (Investigating Committee) (Procedure) Rules 2003 (SI 2003/1574); Rule 11, HPC (Conduct and Competence Committee) (Procedure) Rules 2003 (SI 2003/1575); Rule 11, HPC (Health Committee) (Procedure) Rules 2003 (SI 2003/1576), r. 11.

² *Tait v The Royal College of Veterinary Surgeons* [2003] UKPC 34

³ [2002] UKHL 5

⁴ [2001] EWCA Crim. 168

- the nature and circumstances of the registrant's absence and, in particular, whether the behaviour may be deliberate and voluntary and thus a waiver of the right to appear;
- whether an adjournment might result in the registrant attending the proceedings at a later date;
- the likely length of any such adjournment;
- whether the registrant, despite being absent, wished 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;
- the seriousness of the allegation;
- the general public interest and, in particular, the interest of any victims or witnesses that a hearing should take place within a reasonable time of the events to which it relates;
- the effect of delay on the memories of witnesses;
- where allegations against more than one registrant are joined and not all of them have failed to attend, the prospects of a fair hearing for those who are present.

Procedure

If a Registrant fails to attend a hearing and has not provided any explanation for being absent, the Panel will need to determine whether it is appropriate to proceed in the registrant's absence. The Panel should first seek clarification of whether notice of the hearing was correctly sent to the registrant. If it is satisfied that notice was properly given (but not otherwise) the Panel should then consider the factors set out above to determine whether, in all the circumstances, it is appropriate to proceed with the hearing in the absence of the registrant. The decision reached and the reason for doing so should be recorded as part of the record of the proceedings.

If the Panel decides that a hearing should take place or continue in the absence of the registrant, they must ensure that the hearing is as fair as the circumstances permit. In particular, reasonable steps must be taken during the giving of evidence to test the HPC's case and to make such points on behalf of the registrant as the evidence permits. The Panel must also avoid reaching any improper conclusion about the absence of the registrant and, in particular, must not treat the registrant's absence as an admission of guilt.

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