

## Health and Care Professions Tribunal Service

# PRACTICE NOTE

## Proceeding in the Absence of the Registrant

This Practice Note has been issued for the  
Guidance of Panels and to assist those appearing before them.

### Introduction

1. This practice note primarily applies to final and review hearings for registrants who are subject to a fitness to practise allegation. Separate guidance is available specifically for interim order hearings.
2. 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 Panel rules<sup>1</sup> provide that, if a registrant is neither present nor represented at a hearing, the Panel has the discretion to proceed if it is satisfied that all reasonable steps have been taken to serve notice of the hearing on the registrant and that it is fair to do so in the circumstances of the case.
3. In exercising the discretion to proceed in absence, Panels must strike a balance between fairness to the registrant and fairness to the wider public interest, ensuring that there is adequate focus on public protection. Fairness to the registrant is of prime importance, but the overarching statutory objective of regulation is to protect the public.
4. Where a registrant does not attend a hearing and asks the Panel to adjourn, the Panel should have regard to the [Practice Note on Postponements and Adjournments](#).

### Notice of proceedings

5. The first issue to be addressed is whether notice of the proceedings has been served on the registrant in accordance with the Panel Rules. The Panel rules

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<sup>1</sup> HCPC (Investigating Committee) (Procedure) Rules 2003, Rule 9; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, Rule 11; HCPC (Health Committee) (Procedure) Rules 2003, Rule 11.

require notice to be sent to the registrant's address 'as it appears in the register'. This is a point on which detailed inquiry by a Panel will rarely be necessary. Registrants have an obligation to keep their register entry up to date and, as the Court of Appeal stated in *GMC v Adeogba*:<sup>2</sup>

*"there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."*<sup>3</sup>

6. The decision in *Adeogba* makes clear that, in terms of service, the HCPC's only obligation is to communicate using the address given by the registrant, as it appears in the register.
7. When deciding if the notice has served in accordance with the Panel Rules, the Panel should not have regard to any further efforts that could have been made by the HCPC to bring the notice to the registrant's attention. These are not required under the Panel Rules.

### **Deciding whether to proceed in absence**

8. If the Panel is satisfied on the issue of notice, it must then decide whether to proceed in the registrant's absence, having regard to all the circumstances of which the Panel is aware, and balancing fairness to the registrant with fairness to the HCPC and the interests of the public.
9. At this stage, the Panel may have regard to any steps that were taken by the HCPC to bring the notice to the registrant's attention, or any such steps that could reasonably and proportionately have been taken. Where a registrant is known not to be residing at their address in the register, the Panel may have regards to any efforts made by the HCPC to find out their address, provide notice of the hearing to that address, and/or otherwise communicate with the Registrant about the hearing.
10. It may also attempt to correspond with them at any other known address if this can reasonably be done and appears likely to be effective at bringing the matter to the registrant's attention. In considering what is reasonable, the HCPC will have regard to data security and its duty to comply with the General Data Protection Regulation. It will not be reasonable for the HCPC to send personal data to addresses on a speculative basis, without having good grounds to believe that by doing so the data will reach the intended recipient and be secure.

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<sup>2</sup> 2016] EWCA Civ 162

<sup>3</sup> paragraph 20

11. In *Jatta v NMC*<sup>44</sup> the court held that a Panel is entitled to proceed in absence where a registrant is no longer at their registered address and has failed to provide revised contact details. This applies even where the only address that the regulator has is one at which the Panel knows the document would not have come to the registrant's attention.

12. In the extremely rare event that there is an issue about whether a registrant could possibly have been expected to respond in time for the hearing, Panels should have regard to the Practice Note on Postponements and Adjournments (link). That Practice Note includes information about deemed service under the Civil Procedure Rules. While the Civil Procedure Rules do not apply to HCPTS proceedings, they may provide a useful benchmark as to how long it takes before service may be deemed to have taken place. The Panel should have regard to the factors which were identified as relevant to a decision to proceed in the absence of the defendant in criminal proceedings by the Court of Appeal in *R v Hayward*,<sup>5</sup> as qualified by the House of Lords in *R v Jones*.<sup>6</sup> The factors (modified to apply to fitness to practise proceedings) are as follows.

***a. 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.***

- i. Public protection through the effective regulation of registrants is the overriding objective against which all of the other factors have to be balanced. The fair, economical, expeditious and efficient disposal of allegations made against registrants is fundamental to that objective. Hearings should be adjourned only where there is a compelling reason to do so that overrides the key objective of public protection.

***b. 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.***

- i. Registrants are required to engage with the regulatory process, and must not be able to deliberately frustrate it by choosing not to appear. Cases should be adjourned only where there is a good reason for the registrant's non-attendance, such as ill-health or a serious injury. If a registrant provides appropriate evidence of inability to attend due to ill health, Panels should be slow to reject it.<sup>77</sup>
- ii. In cases where there has been a lack of engagement by the registrant and the HCPC expects non-attendance, Panels are

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<sup>4</sup> [2009] EWCA Civ 824

<sup>5</sup> [2001] EWCA Crim. 168

<sup>6</sup> 2002] UKHL 5

<sup>7</sup> *Hayat v GMC* [2017] EWHC 1899 (Admin)

entitled to expect HCPC Presenting Officers to assist them by providing a brief chronology of the registrant's interaction with the HCPC, including confirmation of where correspondence from the HCPC has been sent.

- iii. In cases where the registrant fails to appear at a hearing and there has been either a lack of engagement or a point at which they have clearly chosen to disengage, Panels should resist the temptation to ask hearing officers to attempt to contact the registrant by telephone. A registrant who has decided, for whatever reason, not to attend a hearing is unlikely to be willing to provide a full and frank response when put on the spot in this manner.

**c. *Whether an adjournment is likely to result in the registrant attending the proceedings at a later date.***

- i. In many cases where the registrant fails to attend a hearing without good cause, there will be a history of failure to engage with the fitness to practise process and, in such cases, adjourning the proceedings to provide the registrant with a further opportunity to attend is likely to be a fruitless exercise.
- ii. *Hayward* and *Jones* concerned criminal proceedings and, as the court noted in *Adeogba*, "it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far",<sup>8</sup> particularly in relation to this factor. As the court pointed out in that case, where a criminal defendant fails to appear, proceedings can be adjourned so that they can be arrested and brought before the court. That remedy is not available in regulatory proceedings, so, unless there is clear evidence that the registrant would be willing to attend a future hearing, it is unlikely to be a compelling reason to adjourn.

**d. *The extent of the disadvantage to the registrant in not being able to give evidence having regard to the nature of the case.***

- i. Panels should bear in mind that not giving live evidence may well put the registrant at a serious disadvantage particularly in terms of demonstrating insight. In *Burrows v GMC*<sup>9</sup> the Court held that failure to attend in cases relating to dishonesty amounts to courting removal from the register.

**e. *The likely length of any such adjournment.***

**f. *Whether the registrant, despite being absent, wishes to be represented at the hearing or has waived that right.***

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<sup>8</sup> paragraph 18

<sup>9</sup> [2016] EWHC 1050 (Admin)

- g. The extent to which any representative would be able to receive instructions from, and present the case on behalf of, the absent registrant.***
- h. The effect of delay on the memories of witnesses.***
- i. 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 for proceeding in absence**

13. If the Panel decides that a hearing should take place or continue in the absence of the registrant, the decision reached and the reasons for doing so should be clearly recorded as part of the record of the proceedings. The Panel must also ensure that the hearing is as fair as the circumstances permit. This includes taking reasonable steps during the giving of evidence to test the HCPC's case and to make such points on behalf of the registrant as the evidence permits. The role of the legal assessor is particularly important in such circumstances.
14. The Panel must also avoid drawing any improper conclusion from the absence of the registrant. In particular, it must not treat the registrant's absence as an admission that an allegation is well founded, though in some cases where the registrant has deliberately failed to engage adverse inferences may be appropriate.<sup>10</sup>

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<sup>10</sup> Kearsley v Nursing and Midwifery Council [2016] EWHC 1603 (Admin), General Medical Council v. Udoye [2021] EWHC 1511 (Admin)