

Health and Care Professions Tribunal Service

PRACTICE NOTE

Cross-Examination in Cases of a Sexual Nature

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

Introduction

1. The Panel rules¹ provide that:

“(4) Where—

- (a) the allegation against a registrant is based on facts which are sexual in nature;*
- (b) a witness is an alleged victim; and*
- (c) the registrant is acting in person;*

the registrant shall only be allowed to cross-examine the witness in person with the written consent of the witness.

(5) If, in the circumstances set out in paragraph (4) a witness does not provide written consent, the registrant shall, not less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on his [or her] behalf and, in default, the Council shall appoint such a person on behalf of the registrant.”

The appointment of a legally qualified person

2. In cases involving allegations of a sexual nature, a registrant who is conducting their own defence is only permitted to cross-examine a witness who is the alleged victim (the witness) with the witnesses' written consent. Where the witness does not consent, the registrant may appoint a legally qualified person to conduct the cross-examination. If the registrant fails to do so, then the HCPTS, at its own expense, must appoint a legally qualified person to conduct the cross-examination on the registrant's behalf.

¹ HCPC (Investigating Committee) (Procedure) Rules 2003, r. 8A; HCPC (Conduct and Competence Committee) (Procedure) Rules 2003, r. 10A; HCPC (Health Committee) (Procedure) Rules 2003, r. 10A.

Background

3. The decision to appoint a legally qualified person will be dictated by the nature of the allegation and willingness or otherwise of complainants to be questioned by the registrant concerned. The Panel rules provide that, in cases involving allegations of a sexual nature, it is for the witness to decide whether he or she is willing to be cross examined by the registrant. Consequently, Panels should not draw prejudicial inferences from the fact that a registrant is not cross-examining witnesses or that the HCPTS has appointed someone to do so on their behalf.
4. In practice, cases involving allegations of a sexual nature should be identified by HCPC case managers at an early stage and, where it is apparent that a registrant proposes to conduct their own defence and requires that the complainant be cross-examined, appropriate inquiries should be made of witnesses. If they indicate that they do not wish to be cross-examined by the registrant, the HCPC must inform the HCPTS, who should make arrangements for a legally qualified person to be appointed.

The role of the legally qualified person

5. The appointment of a legally qualified person in one which is made in the interests of justice, to ensure that the registrant is able to 'test the evidence' as part of their right to a fair hearing.
6. The legally qualified person's function is to ask questions on behalf of the registrant and, for that purpose, legally qualified person should be provided with case bundles, must familiarise themselves with the case and should take instructions from the registrant in the normal way. It is for the legally qualified person to exercise normal professional judgement about the handling of the case and the questions to be asked by way of cross-examination. This may also include the legally qualified person making applications to the panel which may relate to the cross-examination of the witness. For example, an application to admit a late document which the legally qualified person intends to ask the witness about.²
7. The role of the legally qualified person is intended to be limited to cross-examining those witnesses whom the registrant is prohibited from cross-examining. The legally qualified person's appointment under this rule will terminate at the conclusion of the cross-examination of those witnesses. In some cases, a legally qualified person may continue to act for the registrant. This is not subject the above rule and the legally qualified person will not be funded by the HCPTS for any representation outside of the scope of their appointment. Any agreements to further represent the registrant and its funding will be matter between the legally qualified person and the registrant.

² Abbas v CPS [2015] EWHC 579, at [48].

Procedure

8. Panels have the power to hold preliminary hearings for the purpose of case management and are encouraged to do so in cases of this nature, in order to resolve as many evidential or procedural issues as possible before the hearing takes place.