

## SCHEDULE

### The General Dental Council (Fitness to Practise) Rules 2006

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The General Dental Council make the following Rules in exercise of their powers conferred under section 50C(5) and (6) of, paragraphs 2, 3 and 7 of Schedule 3 to, paragraphs 2, 3 and 7 of Schedule 4B to, and paragraphs 1, 2 and 3 of Schedule 4C to, the Dentists Act 1984<sup>(1)</sup>.

The General Dental Council have consulted in accordance with section 50D of that Act<sup>(2)</sup>.

# PART 1

## Citation, commencement and interpretation

### Citation and commencement

1. These Rules may be cited as the General Dental Council (Fitness to Practise) Rules 2006 and shall come into force on 31st July 2006.

### Interpretation

2. In these Rules—

“the Act” means the Dentists Act 1984;

“allegation” means an allegation that the fitness to practise of a registered dentist or registered dental care professional is impaired and includes an allegation treated as arising by virtue of section 27(4) or 36N(4) of the Act<sup>(3)</sup> (allegations);

“interim orders hearing” means a hearing before the Interim Orders Committee or a Practice Committee at which that Committee are to consider whether to make, revoke, confirm or replace an interim order, or to add to, vary or revoke any condition imposed by an interim order, under section 32 or 36V of the Act<sup>(4)</sup> (interim orders);

“legal adviser” means a person appointed under paragraph 1 of Schedule 4C to the Act<sup>(5)</sup> (advisers);

“party” to proceedings means the respondent or the Council;

“presenter” means the representative of the Council presenting the case on their behalf;

“relevant register” means, in relation to a dentist or former dentist, the dentists register and, in relation to a member of a profession complementary to dentistry or former member of such a profession, the dental care professionals register;

“respondent” means—

- (a) a registered dentist or registered dental care professional (including one whose registration is suspended) who is the subject of an allegation,
- (b) a registered dentist or registered dental care professional (including one whose registration is suspended) to whose registration the proceedings relate, or
- (c) a former registered dentist or former registered dental care professional who is applying for the restoration of his name to the relevant register;

“restoration hearing” means a hearing before the Professional Conduct Committee at which they are to consider an application for restoration to the relevant register under

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(1) Schedule 3 was substituted by, and Schedules 4B and 4C were inserted by, S.I.2005/2011.

(2) Section 50D was inserted by S.I. 2005/2011.

(3) Section 27 was substituted by, and section 36N was inserted by, S.I. 2005/2011.

(4) Section 32 was substituted by, and section 36V was inserted by, S.I. 2005/2011.

(5) Schedule 4C was inserted by S.I. 2005/2011.

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section 24, 28, 36I or 36R of the Act<sup>(6)</sup> (restoration following erasure on grounds of fraud or on grounds of impairment of fitness to practise); and

“resumed hearing” means a hearing for the purpose of reviewing directions given, or orders made, by a Practice Committee, at which a Practice Committee are to consider whether to give a direction under section 27C or 36Q of the Act<sup>(7)</sup> (resumed hearings).

## PART 2

### Investigating Committee

#### Initial consideration by the registrar

3. The registrar shall consider a complaint or other information in relation to a registered dentist or a registered dental care professional, including a dentist or dental care professional whose registration is suspended, and shall determine whether a complaint or information amounts to an allegation.

#### Notification of allegation

4.—(1) Where the registrar determines that a complaint or information amounts to an allegation, he shall send a notification to the respondent and the maker of the allegation (if any) accordingly.

(2) The notification sent under paragraph (1) shall—

- (a) contain a summary of the allegation;
- (b) subject to rule 7(3), be accompanied by a copy of the documents in the registrar’s possession which relate to the allegation;
- (c) invite the respondent to respond to the allegation with written representations addressed to the Investigating Committee within a period which the registrar shall specify in the notification; and
- (d) where the allegation has been made by a person, inform the respondent that representations received from him may be disclosed to that person for comment.

(3) Rule 65 shall apply in relation to the notification to be sent under this rule.

#### Meeting to consider allegation

5. The Investigating Committee shall hold a meeting, in the presence of the registrar but in the absence of the parties, to consider an allegation which has been referred to them.

#### Evidence

6. The Investigating Committee may, subject only to the requirements of relevance and fairness, admit any documentary evidence, whether or not that evidence would be admissible in any proceedings in a court.

#### Determination

7.—(1) Subject to paragraph (2), upon consideration of an allegation the Investigating Committee may determine—

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(6) Sections 24 and 28 were substituted by, and sections 36I and 36R were inserted by, S.I. 2005/2011.

(7) Sections 27C and 36Q were inserted by S.I. 2005/2011.

- (a) to adjourn consideration of the allegation and direct the registrar to carry out such enquiries as the Investigating Committee shall specify;
- (b) that the allegation ought not to be considered by a Practice Committee but no warning or advice ought to be given under sub-paragraph (c) or (d);
- (c) that the allegation ought not to be considered by a Practice Committee and that the matter should be closed by the communication to the respondent or to any other person involved in the investigation of such advice as the Investigating Committee may issue in accordance with section 27A(2) or 36O(2) of the Act<sup>(8)</sup> (the Investigating Committee);
- (d) that the allegation ought not to be considered by a Practice Committee and that the matter should be closed by the communication to the respondent of such warning as the Investigating Committee may issue in accordance with section 27A(2)(a) or 36O(2)(a) of the Act; or
- (e) that the allegation ought to be considered by a Practice Committee.

(2) The Investigating Committee shall not make a determination under paragraph (1)(b), (c), (d) or (e) unless they are satisfied that the respondent and the maker of the allegation (if any) have been provided with a reasonable opportunity to submit written representations commenting on the allegation and, subject to paragraph (3), the evidence relating to the allegation.

(3) The registrar shall not disclose to the maker of the allegation any evidence relating to the health or private and family life of the respondent or a third party which has been provided by the respondent or a third party.

#### **Enquiries following adjournment**

**8.** The enquiries which the Investigating Committee may direct the registrar to carry out under rule 7(1)(a) may include—

- (a) specific factual enquiries;
- (b) the commissioning of medical or other expert reports;
- (c) the commissioning of an assessment of the respondent's professional performance.

#### **Resumed consideration of allegation**

**9.** When they resume consideration of an allegation after an adjournment under rule 7(1) (a) the Investigating Committee shall deal with the matter in accordance with rule 7.

#### **Review of previous determination**

**10.** Where the Investigating Committee receive an application for review of a previous determination in accordance with section 27A(8)(b) or 36O(8)(b) of the Act, the Investigating Committee shall consider the applicant's written representations in support of the application, after satisfying themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

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<sup>(8)</sup> Sections 27A and 36O were inserted by S.I. [2005/2011](#).

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## PART 3

### Consideration of allegations by a Practice Committee

#### Application of Part 3

11. This Part shall apply to proceedings under Part 3 (the dental profession) or Part 3A (professions complementary to dentistry) of the Act(9) in which a Practice Committee are to consider an allegation against a respondent, other than at a resumed hearing.

#### Consideration at a hearing

12. Where the Investigating Committee have referred an allegation to a Practice Committee, the Practice Committee to which the allegation has been referred shall hold a hearing to consider the allegation.

#### Notification of hearing

13.—(1) The registrar shall send to the respondent a notification of hearing, and that notification shall—

- (a) inform the respondent of the date, time and venue of the hearing;
- (b) inform the respondent of his right to attend and to be represented at the hearing;
- (c) inform the respondent of a Practice Committee's power to proceed with the hearing in his absence;
- (d) inform the respondent of his right to adduce evidence;
- (e) contain a charge setting out the grounds by reason of which it is alleged that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, and particularising the facts alleged against the respondent in support of the allegation;
- (f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and
- (g) require the respondent to inform the registrar whether he intends to attend the hearing and to be represented at the hearing.

(2) The notification of hearing shall be sent to the respondent no later than 28 days before the date fixed for the hearing, unless the respondent has agreed in writing to an earlier hearing date.

(3) The registrar may, if he considers that it is appropriate to do so and the hearing is to be before the Professional Conduct Committee or the Professional Performance Committee, send the same notification to more than one respondent, in which case rule 25(1) shall apply.

(4) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit written representations.

#### Order of proceedings

14. A Practice Committee shall conduct a hearing in the following four stages—

- (a) the preliminary stage;

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(9) Part 3A was inserted by S.I. 2005/2011.

- (b) the factual inquiry;
- (c) submissions by the parties; and
- (d) the determination of the case.

#### **Interim orders hearing before a Practice Committee**

**15.**—(1) At any stage in proceedings to which this Part applies, a Practice Committee may, either of their own motion or on the application of a party, hold an interim orders hearing in relation to the respondent who is a party to those proceedings.

(2) A Practice Committee shall not make, confirm or replace an interim order, or make an order adding to or varying any condition imposed by an interim order, under section 32 or 36V of the Act, unless they are satisfied that the respondent has been provided with an opportunity of appearing before the Practice Committee and being heard on the question of whether such an order should be made in his case.

#### **Order of proceedings at an interim orders hearing before a Practice Committee**

**16.** Unless a Practice Committee determine otherwise, the order of proceedings at an interim orders hearing before them shall be as follows—

- (a) the presenter shall make submissions, and present any relevant evidence, as to why, in relation to the respondent, it may be necessary to make, revoke, confirm or replace an interim order, or to add to, vary or revoke any condition imposed by an interim order;
- (b) the respondent or the respondent's representative may make submissions, and present any relevant evidence, in response to the submissions made under paragraph (a);
- (c) the Practice Committee shall withdraw to deliberate in private, and shall determine whether to make an interim order under section 32 or 36V of the Act; and
- (d) the parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

#### **The preliminary stage**

**17.**—(1) The parties shall be asked by the Chairman of a Practice Committee if they desire the notification of hearing that was sent to the respondent to be read out.

(2) Where both parties state that they do not desire the notification of hearing to be read out, it shall not be read out, but shall form part of the public record relating to the hearing.

(3) Where one of the parties states (or both parties state) that the party desires the notification of hearing to be read out, it shall be read out by the Secretary appointed for the hearing.

(4) A Practice Committee shall in the first instance deal with any preliminary applications, admissions or preliminary matters of law, and make determinations in respect of them before the commencement of the factual inquiry.

(5) The Chairman of a Practice Committee shall inform the parties of the determinations made under paragraph (4).

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### **Amendment of the charge**

**18.**—(1) At any stage before making their findings of fact in accordance with rule 19, a Practice Committee may amend the charge set out in the notification of hearing unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

(2) Before making any amendment under paragraph (1), a Practice Committee shall consider any representations from the parties.

### **The factual inquiry**

**19.**—(1) The factual inquiry shall commence with the presenter opening the case and presenting evidence.

(2) The respondent or the respondent's representative may cross-examine any witness called by the presenter.

(3) When the presenter has completed presenting evidence, the respondent or the respondent's representative may open the case for the defence, which may include a submission that there is no case to answer.

(4) Where the respondent or the respondent's representative makes a submission that there is no case to answer, a Practice Committee shall adjourn the hearing and deliberate in private for the purpose of determining whether to accept the submission.

(5) The Chairman of a Practice Committee shall announce whether the submission that there is no case to answer has been accepted.

(6) Where a Practice Committee have accepted the submission, they may make such orders as to costs and other matters as they consider necessary.

(7) Where there has been no submission that there is no case to answer, or there has been such a submission but it has been unsuccessful, the respondent or the respondent's representative shall present evidence.

(8) The presenter may cross-examine any witness called by the respondent or the respondent's representative.

(9) The respondent or the respondent's representative shall, after all of the evidence has been presented, set out or, as the case may be, conclude the case for the defence.

(10) The evidence that may be presented under paragraph (1) or (7) shall not include any evidence as to mitigation, but shall be restricted to evidence relating to the facts alleged in the notification of hearing.

(11) A Practice Committee shall, on the conclusion of the case for the defence, adjourn the hearing to deliberate in private as to their findings of fact.

(12) A Practice Committee shall announce their findings of fact, by reference to the matters mentioned in the notification of hearing, in the presence of the parties.

(13) Where a Practice Committee determine that none of the facts alleged in the notification of hearing have been proved against the respondent, they shall make the determination that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is not impaired.

### **Submissions**

**20.**—(1) Where a Practice Committee determine that some or all of the facts alleged in the notification of hearing have been proved against the respondent, the presenter shall—

- (a) address the Practice Committee on the respondent's history;



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- (b) make submissions on the question of whether, in the light of the facts found, the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and
  - (c) where the submission is that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, make submissions as to what action should be taken.
- (2) The presenter may, in making submissions under paragraph (1)(b) or (c), refer to relevant guidance issued by the Council.
- (3) When the presenter has completed his submissions, the respondent or the respondent's representative shall—
- (a) address the Practice Committee on the respondent's history;
  - (b) make submissions on the question of whether, in the light of the facts found, the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and
  - (c) where the presenter has submitted that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, make submissions as to what action, if the Practice Committee accept that submission, should be taken.
- (4) The respondent or the respondent's representative may, on concluding his address and submissions under paragraph (3), make a plea in mitigation by reference to the personal circumstances of the respondent.

### **Determination**

**21.**—(1) A Practice Committee shall, on conclusion of the address and submissions by the respondent or the respondent's representative, withdraw to deliberate in private, and shall determine—

- (a) whether the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired; and
- (b) if the Practice Committee determine that the respondent's fitness to practise as a dentist or as a member of a profession complementary to dentistry is impaired, whether to give any direction under section 27B(6) or 36P(7) of the Act<sup>(10)</sup> (the Practice Committees).

(2) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

(3) Any interim order relating to the respondent shall be revoked in accordance with section 27B(9) or 36P(10) of the Act at the same time as the announcement is made under paragraph (2).

### **Orders for immediate suspension and immediate conditional registration**

**22.**—(1) Before making any order for immediate suspension or immediate conditional registration under section 30(1) or (2) or 36U(1) or (2) of the Act<sup>(11)</sup> (orders for immediate suspension and immediate conditional registration), a Practice Committee shall invite the presenter and the respondent or the respondent's representative to make submissions as to whether such an order should be made and, if so, on what terms the order should be made.

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<sup>(10)</sup> Sections 27B and 36P were inserted by S.I. 2005/2011.

<sup>(11)</sup> Section 30 was substituted, and section 36U was inserted, by S.I. 2005/2011.

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(2) After hearing the submissions a Practice Committee shall withdraw to deliberate in private and determine whether to make an order for immediate suspension or immediate conditional registration.

(3) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the determination of the Practice Committee and the reasons for it in their presence.

### **Notification of decisions**

**23.** The registrar shall send notification of any determination or order made by a Practice Committee under rule 16(c), 21(1) or 22(2), and the reasons for that determination or order, to—

- (a) the person (if any) making the allegation; and
- (b) any other person who in the registrar’s opinion has an interest in the proceedings.

### **Publication of information**

**24.—**(1) The registrar shall publish—

- (a) the charge contained in the notification of hearing sent to the respondent under rule 13;
- (b) any amendments to the charge made in accordance with rule 18(1); and
- (c) with the exception of any confidential details relating to the physical or mental health of the respondent, details of any determination or order made by a Practice Committee under rule 16(c), 21(1) or 22(2).

(2) Where all or part of a hearing has been held in private in accordance with rule 53, publication under paragraph (1) shall not identify any party or witness who took part in the private hearing (or that part of the hearing that was in private), other than the respondent.

(3) Publication under paragraph (1) may be made in electronic form on the website of the Council~~(12)~~.

### **Joinder**

**25.—**(1) Unless they are of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal adviser, the Professional Conduct Committee or the Professional Performance Committee may consider allegations against two or more respondents at the same hearing where—

- (a) the allegation against each respondent arises out of the same circumstances; or
- (b) in the view of the Professional Conduct Committee or the Professional Performance Committee, it would be just to do so.

(2) Where—

- (a) an allegation against a respondent has been referred to a Practice Committee,
- (b) that allegation has not yet been heard, and
- (c) a new allegation against the respondent which is of a similar kind or is founded on the same alleged facts is received by the Council,

the Practice Committee may consider the new allegation at the same time as the original allegation, notwithstanding that the new allegation has not been included in the notification of hearing.

(3) Where it is proposed that a new allegation should be heard by a Practice Committee under paragraph (2), they shall—

- (a) inform the respondent of the new allegation, and the alleged facts on which it is based; and
- (b) provide the respondent with an opportunity to make written representations on the new allegation and require any such representations to be received within the period of 28 days beginning with the date on which notification of the new allegation was sent to the respondent, or within such period as is otherwise agreed by the parties.

#### **Reference of cases to another Practice Committee etc.**

**26.—**(1) At any stage in proceedings to which this Part applies, a Practice Committee may—

- (a) refer to another Practice Committee any matter arising which they consider should be dealt with by that other Practice Committee;
- (b) take advice, as they consider necessary and appropriate, from another Practice Committee; and
- (c) refer to the Interim Orders Committee any allegation which they consider should be dealt with by the Interim Orders Committee.

(2) Where a Practice Committee refer a case to another Practice Committee under paragraph (1)(a), section 27B or 36P of the Act shall apply as if the case had originally been referred by the Investigating Committee to that other Practice Committee.

## **PART 4**

### **Resumed hearings**

#### **Application of Part 4**

**27.** This Part shall apply to a resumed hearing before a Practice Committee.

#### **Notification of resumed hearing**

**28.—**(1) The registrar shall send to the respondent a notification of resumed hearing, and that notification shall—

- (a) inform the respondent of the date, time and venue of the resumed hearing;
- (b) inform the respondent of his right to attend and to be represented at the resumed hearing;
- (c) inform the respondent of a Practice Committee's power to proceed with the resumed hearing in his absence;
- (d) inform the respondent of his right to adduce evidence;
- (e) inform the respondent of the grounds for holding the resumed hearing and specify the matters which a Practice Committee are to consider at that hearing and the directions which they could give in the respondent's case;

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- (f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and
- (g) require the respondent to inform the registrar whether he intends to attend the resumed hearing and to be represented at that hearing.

(2) The notification of resumed hearing shall be sent to the respondent no later than 28 days before the date fixed for the resumed hearing, unless the respondent has agreed in writing to an earlier resumed hearing date.

(3) The registrar may, if he considers that it is appropriate to do so and the resumed hearing is to be before the Professional Conduct Committee or the Professional Performance Committee, send the same notification to more than one respondent, in which case rule 25(1) shall apply.

(4) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit written representations.

### **Order of proceedings**

**29.** Unless a Practice Committee determine otherwise, the order of proceedings at a resumed hearing shall be as follows—

- (a) the presenter shall—
  - (i) inform the Practice Committee of the background to the case and the sanctions previously imposed on the respondent,
  - (ii) direct the attention of the Practice Committee to any relevant evidence previously considered by the Practice Committee including transcripts of previous hearings,
  - (iii) present any relevant evidence not previously considered by the Practice Committee, and
  - (iv) make submissions as to the matters being considered by the Practice Committee; and
- (b) the respondent or the respondent’s representative may—
  - (i) present any relevant evidence on which the respondent intends to rely, and
  - (ii) make submissions as to the matters being considered by the Practice Committee.

### **Decision**

**30.—(1)** A Practice Committee shall, on conclusion of the address and submissions by the respondent or the respondent’s representative, withdraw to deliberate in private, and shall decide whether to give a direction under section 27C or 36Q of the Act.

(2) The parties and the public shall be re-admitted and the Chairman of a Practice Committee shall announce the decision of the Practice Committee and the reasons for it in their presence.

(3) Rule 22 shall apply in relation to the making of any order for immediate suspension or immediate conditional registration at a resumed hearing.

### **Notification of decision**

**31.** The registrar shall send notification of any decision or order made by a Practice Committee at a resumed hearing under rule 22(2) or 30(1), and the reasons for that decision or order, to—

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- (a) the person (if any) who made the allegation; and
- (b) any other person who in the registrar's opinion has an interest in the proceedings.

#### **Publication of information**

**32.**—(1) The registrar shall publish details of any decision or order made by a Practice Committee at a resumed hearing under rule 22(2) or 30(1), with the exception of any confidential details relating to the physical or mental health of the respondent.

(2) Where all or part of a hearing has been held in private in accordance with rule 53, publication under paragraph (1) shall not identify any party or witness who took part in the private hearing (or that part of the hearing that was in private), other than the respondent.

(3) Publication under paragraph (1) may be made in electronic form on the website of the Council.

#### **Reference of cases to another Practice Committee etc.**

**33.** Rule 26(1) shall apply to proceedings to which this Part applies.

## **PART 5**

### **Interim orders hearings before the Interim Orders Committee**

#### **Application of Part 5**

**34.** This Part applies to an interim orders hearing before the Interim Orders Committee.

#### **Notification of interim orders hearing**

**35.**—(1) The registrar shall send to the respondent a notification of interim orders hearing, and that notification shall—

- (a) inform the respondent of the date, time and venue of the interim orders hearing;
- (b) inform the respondent of his right to attend and to be represented at the interim orders hearing;
- (c) state the reasons why it may be necessary to impose an interim order on the respondent or to review any interim order previously made;
- (d) inform the respondent of the Interim Orders Committee's power to proceed with the interim orders hearing in his absence;
- (e) inform the respondent of his right to adduce evidence;
- (f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and
- (g) require the respondent to inform the registrar whether he intends to attend the interim orders hearing and to be represented at that hearing.

(2) The notification of interim orders hearing shall be sent to the respondent in such time in advance of the interim orders hearing as may be reasonable in all the circumstances of the case.

(3) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit written representations.

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### **Order of proceedings**

**36.** Unless the Interim Orders Committee determine otherwise, the order of proceedings at an interim orders hearing before them shall be as follows—

- (a) the presenter shall make submissions, and present any relevant evidence, as to why, in relation to the respondent, it may be necessary to make, revoke, confirm or replace an interim order, or to add to, vary or revoke any condition imposed by an interim order;
- (b) the respondent or the respondent’s representative may make submissions, and present any relevant evidence, in response to the submissions made under paragraph (a);
- (c) the Interim Orders Committee shall withdraw to deliberate in private, and shall determine whether to make an interim order under section 32 or 36V of the Act; and
- (d) the parties and the public shall be re-admitted and the Chairman of the Interim Orders Committee shall announce the determination of the Interim Orders Committee and the reasons for it in their presence.

### **Evidence**

**37.** The Interim Orders Committee may, subject only to the requirements of relevance and fairness, admit any evidence, whether or not that evidence would be admissible in any proceedings in a court.

### **Notification of decision**

**38.** The registrar shall send notification of the decision of the Interim Orders Committee under rule 36(c), and the reasons for that decision, to—

- (a) the person (if any) making the allegation; and
- (b) any other person who in the registrar’s opinion has an interest in the proceedings.

### **Publication of information**

**39.**—(1) The registrar shall publish details of the decision of the Interim Orders Committee under rule 36(c), with the exception of any confidential details relating to the physical or mental health of the respondent.

(2) Where all or part of a hearing has been held in private in accordance with rule 53, publication under paragraph (1) shall not identify any party or witness who took part in the private hearing (or that part of the hearing that was in private), other than the respondent.

(3) Publication under paragraph (1) may be made in electronic form on the website of the Council.

## **PART 6**

### **Restoration hearings**

#### **Application of Part 6**

**40.** This Part shall apply to a restoration hearing before the Professional Conduct Committee.

### **Notification of restoration hearing**

**41.**—(1) The registrar shall send to the respondent a notification of restoration hearing, and that notification shall—

- (a) inform the respondent of the date, time and venue of the restoration hearing;
- (b) inform the respondent of his right to attend and to be represented at the restoration hearing;
- (c) inform the respondent of the Professional Conduct Committee’s power to proceed with the restoration hearing in his absence;
- (d) inform the respondent of his right to adduce evidence;
- (e) contain a copy of the determination of the Practice Committee directing that the respondent’s name be erased from the relevant register;
- (f) be accompanied by a copy of these Rules where they have not previously been sent to the respondent; and
- (g) require the respondent to inform the registrar whether he intends to attend the restoration hearing and to be represented at that hearing.

(2) The notification of restoration hearing shall be sent to the respondent no later than 28 days before the date fixed for the restoration hearing, unless the respondent has agreed in writing to an earlier restoration hearing date.

(3) The registrar may send notification of the proceedings to any person who in his opinion has an interest in those proceedings, and provide any person so notified with an opportunity to submit written representations.

### **Order of proceedings**

**42.**—(1) Unless the Professional Conduct Committee determine otherwise, the order of proceedings at a restoration hearing shall be as follows—

- (a) the presenter shall—
  - (i) inform the Professional Conduct Committee of the background to the case,
  - (ii) direct the attention of the Professional Conduct Committee to any relevant evidence previously considered by a Practice Committee including transcripts of previous hearings,
  - (iii) present any relevant evidence not previously considered by a Practice Committee, and
  - (iv) make submissions as to the matters being considered by the Professional Conduct Committee; and
- (b) the respondent or the respondent’s representative may—
  - (i) present any relevant evidence on which the respondent intends to rely, and
  - (ii) make submissions as to the matters being considered by the Professional Conduct Committee.

(2) In the case of a restoration hearing under section 28 or 36R of the Act (restoration of names to the relevant register following erasure under section 27B or 36P), the evidence to be presented by the respondent or the respondent’s representative under paragraph (1)(b)(i) includes—

- (a) such evidence as to the respondent’s fitness to practise as a dentist or as a member of a profession complementary to dentistry as the Professional Conduct Committee

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may have directed the respondent to produce under section 28(4)(a) or 36R(4)(a) of the Act;

- (b) evidence as to satisfaction of such requirements as the Professional Conduct Committee may have directed the respondent to satisfy under section 28(4)(b) or 36R(4)(b) of the Act.

### **Decision**

**43.**—(1) The Professional Conduct Committee shall, on conclusion of the address and submissions by the respondent or the respondent’s representative, withdraw to deliberate in private, and shall decide whether to grant the application for restoration to the relevant register and, in the case of the grant of an application under section 28 or 36R of the Act, any conditions attaching to such grant under section 28(6) or 36R(6) of the Act.

(2) The parties and the public shall be re-admitted and the Chairman of the Professional Conduct Committee shall announce the decision of the Professional Conduct Committee and the reasons for it in their presence.

### **Notification of decision**

**44.** The registrar shall send notification of the decision of the Professional Conduct Committee under rule 43(1), and the reasons for that decision, to any person who in the registrar’s opinion has an interest in the proceedings.

### **Publication of information**

**45.**—(1) The registrar shall publish details of the decision of the Professional Conduct Committee under rule 43(1), with the exception of any confidential details relating to the physical or mental health of the respondent.

(2) Where all or part of a hearing has been held in private in accordance with rule 53, publication under paragraph (1) shall not identify any party or witness who took part in the private hearing (or that part of the hearing that was in private), other than the respondent.

(3) Publication under paragraph (1) may be made in electronic form on the website of the Council.

## **PART 7**

### **Fraudulent register entry hearings**

#### **Application of Part 7**

**46.** This Part shall apply to proceedings before the Professional Conduct Committee at which they are to consider a matter referred to them by the registrar under section 24(2) or 36I(2) of the Act (erasure on grounds of fraud).

#### **Consideration at a hearing**

**47.** Where the registrar has referred a matter to the Professional Conduct Committee under section 24(2) or 36I(2) of the Act, the Professional Conduct Committee shall hold a hearing to consider the matter.



### **Application of Part 3 to proceedings to which this Part applies**

**48.** Rules 13, 14 and 17 to 24 shall apply to proceedings to which this Part applies with the following modifications—

- (a) references to a Practice Committee shall be read as references to the Professional Conduct Committee;
- (b) in rule 13—
  - (i) for paragraph (1)(e) substitute—

“(e) contain a charge setting out the grounds on which the registrar believes that a specified entry in the relevant register relating to the respondent has been fraudulently procured, and particularising the facts alleged against the respondent;”, and
  - (ii) for paragraph (3) substitute—

“(3) The registrar may, if he considers that it is appropriate to do so, send the same notification to more than one respondent, in which case rule 49 shall apply.”;
- (c) in rule 19(13), for “the respondent’s fitness to practise as a dentist or as a member of a profession complementary to dentistry is not impaired” substitute “the entry in the relevant register relating to the respondent has not been fraudulently procured”;
- (d) in rule 20—
  - (i) for paragraphs (1)(b) and (3)(b) substitute—

“(b) make submissions on the question of whether, in the light of the facts found, the entry in the relevant register relating to the respondent has been fraudulently procured; and”;
  - (ii) for paragraph (1)(c) substitute—

“(c) where the submission is that the entry in the relevant register relating to the respondent has been fraudulently procured, make submissions as to whether the respondent’s name ought to be erased from the relevant register.”; and
  - (iii) for paragraph (3)(c) substitute—

“(c) where the presenter has submitted that the entry in the relevant register relating to the respondent has been fraudulently procured, make submissions as to whether, if the Professional Conduct Committee accept that submission, the respondent’s name ought to be erased from the relevant register.”;
- (e) in rule 21—
  - (i) for paragraph (1)(a) and (b) substitute—

“(a) whether the entry in the relevant register relating to the respondent has been fraudulently procured; and

(b) if the Professional Conduct Committee determine that the entry in the relevant register relating to the respondent has been fraudulently procured, whether to give any direction under section 24(3) or 36I(3) of the Act.”; and
  - (ii) omit paragraph (3);
- (f) in rule 23—
  - (i) for “rule 16(c), 21(1) or 22(2)” substitute “rule 21(1) or 22(2)”;

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- (ii) omit paragraph (a), and
- (iii) in paragraph (b), omit “other”; and
- (g) in rule 24(1)(c), for “rule 16(c), 21(1) or 22(2)” substitute “rule 21(1) or 22(2)”.

### **Joinder**

**49.** Unless they are of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal adviser, the Professional Conduct Committee may consider at the same hearing the question of whether the entries in the relevant register relating to two or more respondents have been fraudulently procured where—

- (a) the grounds on which the registrar believes that the entry in the relevant register relating to each respondent has been fraudulently procured arise out of the same circumstances; or
- (b) in the view of the Professional Conduct Committee, it would be just to do so.

## **PART 8**

### **General**

#### **Application of Part 8**

**50.** In this Part—

- (a) rules 51 and 57 shall apply to any proceedings before a Practice Committee under Part 3 or 3A of the Act; and
- (b) all other rules shall apply to any proceedings before a Practice Committee or the Interim Orders Committee under Part 3 or 3A of the Act, and in this Part “Committee” means a Practice Committee or the Interim Orders Committee.

#### **Preliminary meetings**

**51.—(1)** A Practice Committee may, before they hold a hearing, hold a preliminary meeting in private, if those persons who are to form the membership of a Practice Committee at the hearing consider that it would assist them in performing their functions.

(2) A preliminary meeting may be attended by the parties and the parties' representatives, and any other person who those persons specified in paragraph (1) consider appropriate.

(3) The preliminary meeting may be held by the Chairman of a Practice Committee.

(4) The directions that may be given by a Practice Committee under paragraph 2(3) of Schedule 3 or paragraph 2(3) of Schedule 4B to the Act<sup>(13)</sup> (proceedings before the Practice Committees) may in particular include—

- (a) time limits for the service of evidence and disclosure of expert evidence (if any);
- (b) a requirement that each party provide an estimate of the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;
- (c) where the facts are not in dispute a requirement that the parties produce a statement of agreed facts;
- (d) mutual disclosure of documents;

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<sup>(13)</sup> Schedule 3 was substituted, and Schedule 4B was inserted, by S.I. 2005/2011.

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- (e) the preparation of agreed bundles of documents to be distributed to the Chairman of a Practice Committee, members of a Practice Committee and the legal adviser in advance of the hearing;
  - (f) whether there should be a joint hearing, where rule 25(1) or 49 applies to the proceedings;
  - (g) the preparation of skeleton arguments where the parties are legally represented;
  - (h) a requirement that a party call the author of any expert report;
  - (i) where agreed between the parties, a direction that the witness statement of a witness shall stand as the evidence in chief of that witness;
  - (j) whether the hearing or part of it should be held in public or in private;
  - (k) special measures to be put in place at the hearing for vulnerable witnesses;
  - (l) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held; and
  - (m) the date of any hearing or part of a hearing.
- (5) The Chairman of a Practice Committee may give the directions referred to in paragraph (4), and may (if the parties agree) take such action as a Practice Committee would be competent to take at the preliminary meeting.
- (6) At the preliminary meeting, the legal adviser may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence.
- (7) The Chairman of the preliminary meeting shall keep a record of the directions given and shall send written confirmation of such directions to the parties promptly.

### **Representation of the parties**

- 52.—(1) Any party may be represented at a hearing before a Committee by counsel or a solicitor.
- (2) The respondent may also be represented by a member of an organisation of which the respondent is a member, or by a friend or family member, whether or not legally qualified.
- (3) The Council may also be represented by a person who is employed by the Council, whether or not legally qualified.

### **Public and private hearings**

- 53.—(1) A hearing before a Committee shall be conducted in public, except where paragraph (2) applies.
- (2) All or part of a hearing may be held in private—
- (a) where the interests of the parties or the protection of the private and family life of the respondent or any other person so requires; or
  - (b) to the extent that a Committee are of the opinion that, in the special circumstances of the case, it is strictly necessary to do so as publicity would prejudice the interests of justice.
- (3) Before deciding whether paragraph (2) applies, a Committee shall—
- (a) invite representations from the parties and any other party whom a Committee consider it appropriate to hear; and
  - (b) obtain the advice of the legal adviser.

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(4) In this rule, “in private” means in the presence of the parties and the parties' representatives, but otherwise excluding the public.

#### **Absence of the respondent**

**54.** Where the respondent fails to attend and is not represented at the hearing, a Committee—

- (a) shall require the presenter to present evidence that all reasonable efforts have been made, in accordance with these Rules, to send notification to the respondent that proceedings are to be brought which specifies a date for the hearing;
- (b) may, where the Committee are satisfied that the notification has been duly sent, direct that the matter should be heard and determined notwithstanding the absence of the respondent;
- (c) may adjourn the hearing and give directions.

#### **Witnesses**

**55.**—(1) A Committee may require a witness who does not wish to give evidence on oath to affirm before giving evidence at any hearing.

(2) A Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public.

(3) Witnesses—

- (a) shall first be examined by the party calling them;
- (b) subject to rule 56(4) and (5), may then be cross-examined by the opposing party;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by a Committee.

(4) Any further questioning of the witnesses shall be at a Committee's discretion.

(5) No witness as to fact may observe the proceedings until the witness has given evidence or been formally released by a Committee.

#### **Vulnerable witnesses**

**56.**—(1) A Committee may treat the following as vulnerable witnesses—

- (a) any witness under the age of 18;
- (b) any witness with a mental disorder;
- (c) any witness who is significantly impaired in relation to intelligence or social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the subject matter of the hearing is of a sexual nature and the witness was the alleged victim; or
- (f) any witness who complains of intimidation.

(2) After seeking the advice of the legal adviser, and upon hearing representations from the parties, a Committee may adopt such measures as they consider necessary to enable them to receive evidence from a vulnerable witness.

(3) Measures adopted by a Committee may include—

- (a) use of video links;

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- (b) subject to paragraph (4), use of pre-recorded evidence as the evidence in chief of a witness, provided that such a witness is available at the hearing for cross-examination and questioning;
  - (c) use of interpreters (including signers and translators); and
  - (d) subject to rule 53, the hearing of evidence by a Committee in private (as defined in that rule).
- (4) Where the proceedings concern an allegation against a respondent and—
- (a) the allegation is sexual in nature;
  - (b) a witness is the alleged victim; and
  - (c) the respondent is not represented,

the respondent shall not be allowed to cross-examine the witness directly in person.

(5) In the circumstances set out in paragraph (4), any questioning of the witness shall be undertaken by such person as a Committee consider appropriate.

## **Evidence**

**57.—**(1) A Practice Committee may in the course of the proceedings receive oral, documentary or other evidence that is admissible in civil proceedings in the appropriate court in that part of the United Kingdom in which the hearing takes place.

(2) A Practice Committee may also, at their discretion, treat other evidence as admissible if, after consultation with the legal adviser, they consider that it would be helpful to the Practice Committee, and in the interests of justice, for that evidence to be heard.

(3) A Practice Committee may, at the request of a person giving evidence or that person's representative, or on their own initiative, make arrangements for the identity of a person giving evidence to be protected in such manner as the Practice Committee think appropriate.

(4) It shall be for the Council to prove any fact alleged in the notification of hearing, on the balance of probabilities.

- (5) Where a respondent has been convicted of a criminal offence—
- (a) a copy of the certificate of conviction, certified by a competent officer of a court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
  - (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(6) The only evidence which may be presented by the respondent in rebuttal of a conviction certified or extracted in accordance with paragraph (5)(a) is evidence for the purpose of proving that the respondent is not the person referred to in the certificate or extract.

- (7) Where a party has—
- (a) failed to comply with any directions for service of evidence given at a preliminary meeting under rule 51, including service of expert reports,
  - (b) shown no good cause for failure to comply with the directions given, and
  - (c) seeks to present such evidence at the hearing,

a Practice Committee may refuse to allow that party to admit the evidence in question.

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### **Postponement and adjournments**

**58.**—(1) A Committee may, of their own motion or upon the application of a party, postpone any hearing of which notification has been given under these Rules before the hearing takes place.

(2) A Committee may, of their own motion or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal adviser.

(3) Where the proceedings have been adjourned, the registrar shall, as soon as practicable, notify the parties of the date, time and venue of the continuation of the hearing.

(4) In considering whether or not to grant a request for postponement or adjournment, a Committee shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witness to be called by that party; and
- (c) fairness to the respondent.

(5) In this rule, “a Committee” means (except at the hearing of the case) those persons who are to form the membership of the Committee at that hearing.

### **Voting**

**59.**—(1) The Chairman of a Committee shall, in relation to any decision to be taken by the Committee, request the members present to vote by raising their hands, signify his own vote, and declare the way in which the question appears to have been determined.

(2) If the result declared is challenged by any member, the Chairman shall—

- (a) call upon each member individually to declare his vote;
- (b) announce his own vote; and
- (c) announce the number of members of the Committee who have voted each way and the result of the vote.

(3) If the votes are equal, the question shall be treated as having been resolved in favour of the respondent.

### **Absence of Chairman**

**60.** In the absence of the designated Chairman of a Committee at the commencement of a hearing, the other members of the Committee present shall elect one of their number to be Chairman of the Committee.

### **Notes and transcripts of proceedings**

**61.**—(1) The Council shall arrange for all hearings and preliminary meetings held by a Committee to be recorded in writing or electronic form.

(2) Any party shall, on application to the Council and on payment of a reasonable charge to cover the cost of copying and despatch, be sent a transcript of the record of any part of the hearing or preliminary meeting at which he was entitled to be present.

(3) Paragraphs (1) and (2) shall not apply to the private deliberations of a Committee.

### **Legal advisers**

**62.**—(1) In relation to any proceedings to which this Part applies—

- (a) a legal adviser, when advising a Committee, shall do so in the presence of every party or party’s representative who appears at the proceedings, or, where advice is given in private, every such party or representative shall be notified of the advice given by a legal adviser; and
- (b) every party or party’s representative shall be notified in any case where a legal adviser’s advice is not accepted by a Committee.

(2) Legal advisers shall, in addition to the general function specified in paragraph 1(2) of Schedule 4C to the Act, have the function, with the permission of the Chairman of a Committee, of questioning witnesses.

### **Medical advisers**

**63.**—(1) In relation to any proceedings to which this Part applies—

- (a) a medical adviser, when advising a Committee, shall do so in the presence of every party or party’s representative who appears at the proceedings, or, where advice is given in private, every such party or representative shall be notified of the advice given by a medical adviser; and
- (b) every party or party’s representative shall be notified in any case where a medical adviser’s advice is not accepted by a Committee.

(2) Medical advisers shall, in addition to the general function specified in paragraph 2(2) of Schedule 4C to the Act, have the function, with the permission of the Chairman of a Committee, of questioning witnesses.

(3) In this rule, “medical adviser” means a person appointed under paragraph 2 of Schedule 4C to the Act.

### **Professional advisers**

**64.**—(1) In relation to any proceedings to which this Part applies—

- (a) a professional adviser, when advising a Committee, shall do so in the presence of every party or party’s representative who appears at the proceedings, or, where advice is given in private, every such party or representative shall be notified of the advice given by a professional adviser; and
- (b) every party or party’s representative shall be notified in any case where a professional adviser’s advice is not accepted by a Committee.

(2) Professional advisers shall, in addition to the general function specified in paragraph 3(2) of Schedule 4C to the Act, have the function, with the permission of the Chairman of a Committee, of questioning witnesses.

(3) In this rule, “professional adviser” means a person appointed under paragraph 3 of Schedule 4C to the Act.

### **Service of documents**

**65.**—(1) Any notification to be sent for the purposes of any proceedings to which this Part applies may be sent by post and any such notification shall be treated as having been sent on the day on which it was posted.

(2) The service of any notification may be proved by—

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- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or
  - (b) a signed statement from any person delivering the notification by hand.
- (3) If the respondent is represented in any proceedings to which this Part applies by a solicitor, any notification or other documents which these Rules require to be sent to the respondent shall be sent to that solicitor at his practising address.”

Given under the official seal of the General Dental Council on 15th June 2006.

L.S.

*Hew Byrne Mathewson*  
*Duncan Rudkin*  
PresidentRegistrar