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STATUTORY INSTRUMENTS

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**1992 No. 434**

**The National Health Service (Service Committees  
and Tribunal) (Scotland) Regulations 1992**

**PART II**

**INVESTIGATION OF MATTERS RELATING TO SERVICES**

**Constitution of service committees**

**2.—**(1) Every Health Board shall establish in accordance with the provisions of this regulation the following service committees:—

- (a) a medical service committee;
  - (b) a pharmaceutical service committee;
  - (c) a dental service committee;
  - (d) an ophthalmic service committee; and
  - (e) a joint services committee.
- (2) The medical service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
  - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be doctors appointed by the area medical committee.
- (3) The pharmaceutical service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
  - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be pharmacists appointed by the area pharmaceutical committee.
- (4) The dental service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
  - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be dentists appointed by the area dental committee.
- (5) The ophthalmic service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
  - (b) 7 other persons of whom—
    - (i) 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board;
    - (ii) 2 shall be ophthalmic medical practitioners appointed by the area medical committee; and

(iii) 2 shall be opticians appointed by the area optical committee.

(6) Where the ophthalmic service committee investigates a matter which does not involve a question relating to an ophthalmic medical practitioner, one only of the members who are ophthalmic medical practitioners may take part in the investigation.

(7) Where the ophthalmic service committee investigates a matter which does not involve a question relating to an optician, one only of the members who are opticians may take part in the investigation.

(8) The joint services committee shall consist of—

- (a) a chairman appointed by the Health Board from its lay members; and
- (b) 12 other persons of whom—
  - (i) 4 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board;
  - (ii) 2 shall be appointed by the medical service committee from their members or deputies who are doctors;
  - (iii) 2 shall be appointed by the pharmaceutical service committee from their members or deputies who are pharmacists;
  - (iv) 2 shall be appointed by the dental service committee from their members or deputies who are dentists; and
  - (v) 2 shall be appointed by the ophthalmic service committee from their members or deputies who are ophthalmic medical practitioners or opticians.

(9) Where an appropriate area professional committee—

- (a) is unable to appoint any member of a service committee; or
- (b) has not been recognised for the area of a Health Board,

the Health Board may arrange for any member of a service committee who requires to be appointed by the appropriate area professional committee to be appointed by the appropriate area professional committee for the area of another Health Board.

(10) When any matter stands referred under regulation 9 to the joint services committee—

- (a) the members of the joint services committee appointed by the medical service committee shall not take part in the investigation unless the matter involves a question relating to a doctor;
- (b) the members of the joint services committee appointed by the dental service committee shall not take part in the investigation unless the matter involves a question relating to a dentist;
- (c) the members of the joint services committee appointed by the pharmaceutical service committee shall not take part in the investigation unless the matter involves a question relating to a pharmacist; and
- (d) the members of the joint services committee appointed by the ophthalmic service committee shall not take part in the investigation unless the matter involves a question relating to an ophthalmic medical practitioner or optician.

(11) As respects each service committee, not fewer than 3 lay persons and not fewer than 3 professional persons shall be appointed as deputies, according to the same provisions as apply to the appointment of members of that committee other than the chairman.

(12) Where a member of a service committee, other than the chairman, is absent a deputy appointed according to the same provisions as that member may act in his place.

(13) As respects each service committee, a person shall be appointed by the Health Board from the lay members of that committee to act as deputy for the chairman of the committee and the person so appointed may, in the absence of the chairman, act in his place.

(14) The Health Board may make standing orders with respect to the term of office of the chairman, deputy chairman, members and deputy members of a service committee:

Provided that the term of office of the chairman shall not exceed 1 year without prejudice to his eligibility for re-appointment.

### **Submission of complaints relating to terms of service**

**3.—**(1) A person who desires to make a complaint to a Health Board involving an allegation of a failure by a professional person to comply with his terms of service shall submit the complaint to the General Manager, subject to regulations 6 and 7, in accordance with the following paragraphs of this regulation.

(2) A complainer shall submit a complaint involving—

- (a) a doctor;
- (b) a pharmacist;
- (c) an ophthalmic medical practitioner; or
- (d) an optician,

within 13 weeks after the event which gave rise to the complaint.

(3) A complainer shall submit a complaint involving a dentist—

- (a) within 13 weeks after the event which gave rise to the complaint; or
- (b) within 6 months after the completion of the treatment in which the failure is alleged to have arisen,

whichever is the sooner.

(4) A complaint—

- (a) shall be submitted in writing unless the General Manager is satisfied that the complainer is unable whether by reason of physical disability or otherwise to write in the English language, in which case the complaint may be made orally;
- (b) shall contain sufficient information as to the substance of the complaint; and
- (c) if made orally in accordance with sub-paragraph (a), shall be—
  - (i) made by the complainer at the principal office of the Health Board or any other office of the Health Board which they designate for the purpose of this sub-paragraph;
  - (ii) received by the General Manager; and
  - (iii) transcribed by an officer of the Health Board.

(5) Where, on consideration of a complaint which has been submitted in writing, it appears to the General Manager that insufficient information as to the substance of the complaint has been given, he shall send a notice in writing to the complainer requiring him to provide a statement of further information as to the substance of the complaint within 3 weeks from the date of the notice.

### **Investigation of complaints relating to terms of service**

**4.—**(1) Subject to the following provisions of this regulation and to regulation 9, any complaint made in accordance with regulation 3 shall be referred to the appropriate service committee for investigation.

(2) For the purposes of paragraph (1), the appropriate service committee means—

- (a) in relation to a doctor, the medical service committee;
- (b) in relation to a dentist, the dental service committee;
- (c) in relation to an ophthalmic medical practitioner or an optician, the ophthalmic service committee; and
- (d) in relation to a pharmacist, the pharmaceutical service committee.

(3) Where the name of the professional person against whom a complaint is made was, at the time of—

- (a) the event; or
- (b) where regulation 3(3)(b) applies, the completion of the treatment,

which gave rise to the complaint, included in the relevant list of professional persons, the complaint shall, subject to the provisions of this Part, be referred to the appropriate service committee under paragraph (1), notwithstanding that the name of the professional person has since been removed from that list.

#### **Withdrawal and termination of complaints**

5.—(1) A complaint which has been made in accordance with regulation 3 may be withdrawn by the complainer at any time before the service committee present their report to the Health Board under Schedule 1 subject—

- (a) to the complainer giving written notice to the General Manager of his intention to withdraw the complaint; and
- (b) where such notice is given after the General Manager has referred the complaint to the appropriate service committee pursuant to regulation 4, to the chairman of the service committee consenting to the withdrawal of the complaint.

(2) Where, at any time after notice of a complaint has been made in accordance with regulation 3, but before the Health Board concerned make a decision under regulation 11 in relation to that complaint, the professional person to whom the complaint refers dies, no further action shall be taken under these Regulations in relation to that complaint.

#### **Late submission of complaints relating to terms of service**

6.—(1) Where a complaint is made after the expiry of the period specified in regulation 3(2) or (3) in relation to that matter, the complainer shall furnish to the General Manager, in addition to the complaint, a statement of the reasons for the failure to submit the complaint in time.

(2) Where a complaint is made after the expiry of the period specified in regulation 3(2) or (3) in relation to that matter, the appropriate service committee shall not investigate the complaint unless—

- (a) they are satisfied that the failure to submit the complaint within the period specified and on any subsequent day falling before the date on which the complaint was made was occasioned by illness or by some other reasonable cause; and
- (b) they have obtained—
  - (i) the consent of the professional person concerned; or
  - (ii) if such consent is not given, the consent of the Secretary of State.

(3) If an application for the Secretary of State's consent to an investigation is made, the General Manager shall furnish to the Secretary of State and the professional person concerned a copy of—

- (a) the complaint;
- (b) the statement of the reasons for the failure to submit the complaint in time; and
- (c) any further information which the Secretary of State may require,

and the professional person concerned shall be entitled, within 4 weeks from the date of receipt by him of copies of such complaint, statement and further information (if any), to submit to the Secretary of State a statement of the grounds on which he contends that the investigation should not take place.

(4) The Secretary of State, after considering an application for consent to an investigation and any statement in answer, shall—

- (a) either dismiss the application or give his consent to the investigation for the purposes of paragraph (2)(b); and
- (b) inform the complainer, the Health Board and the professional person concerned of his decision.

### **Appeal to Secretary of State to require an investigation**

7.—(1) Where, for the purposes of regulation 6(2), the appropriate service committee decide neither to investigate a complaint nor to obtain consent to investigate a complaint, the General Manager shall—

- (a) notify the complainer of their decision and the reasons for it and inform him of his right of appeal to the Secretary of State under paragraph (2); and
- (b) notify the Secretary of State of their decision and the reasons for it and furnish him with a copy of—
  - (i) the complaint; and
  - (ii) the statement of the reasons for the failure to submit the complaint in time.

(2) A complainer may appeal to the Secretary of State against the decision of an appropriate service committee, for the purposes of regulation 6(2), neither to investigate the complaint nor to obtain consent to investigate the complaint within a period of 4 weeks beginning on the day after the date on which notification of the Health Board's decision was sent to him by sending written notice of appeal containing a statement of the reasons why he contends that such an investigation should take place.

(3) Where an appeal is made by a complainer in accordance with paragraph (2), the Secretary of State—

- (a) where he is of the opinion that there were no reasonable grounds for the failure to submit the complaint in time, may dismiss the appeal forthwith; or
- (b) if he does not so dismiss the appeal, shall send to the service committee and the professional person concerned a copy of the notice of appeal and statement furnished by the complainer for the purposes of paragraph (2) and shall allow them to submit a statement-in-answer within such period as he may specify.

(4) The Secretary of State, after considering the notice of appeal and any statement-in-answer, shall—

- (a) either dismiss the appeal or require the service committee to investigate the complaint; and
- (b) inform the complainer, the Health Board and the professional person concerned of his decision and the reasons for it.

### **Investigation of matters relating to provision of general services**

8.—(1) Subject to regulation 9 and the following paragraphs of this regulation, a Health Board (which in this regulation shall include any committee of a Health Board duly authorised by it in that behalf) may refer for investigation—

- (a) to the appropriate service committee, any matter relating to the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical

services under the appropriate provisions of section 19, 25, 26 or 27 of the Act whether or not any such matter has been raised on complaint made in accordance with regulation 3; and

- (b) to the pharmaceutical service committee, any matter which a Health Board is required to refer to that committee in accordance with their scheme prepared under regulation 29 of the General Medical and Pharmaceutical Services Regulations for testing the quality and checking the amounts of drugs and listed appliances supplied.

(2) For the purposes of paragraph (1), the appropriate service committee means—

- (a) in relation to general medical services, the medical service committee;
- (b) in relation to general dental services, the dental service committee;
- (c) in relation to general ophthalmic services, the ophthalmic service committee; and
- (d) in relation to pharmaceutical services, the pharmaceutical service committee.

(3) Subject to paragraph (5), a Health Board shall not, without the consent of the professional person concerned or of the Secretary of State, refer under paragraph (1) a matter for investigation which involves an allegation of a failure by—

- (a) a doctor;
- (b) an ophthalmic medical practitioner;
- (c) an optician; or
- (d) a pharmacist,

to comply with his terms of service unless the reference is made within 13 weeks after the event which gave rise to the allegation.

(4) Subject to paragraph (5), a Health Board shall not, without the consent of the dentist concerned or of the Secretary of State, refer under paragraph (1) a matter for investigation which involves an allegation of a failure by a dentist to comply with his terms of service unless the reference is made—

- (a) within 13 weeks after the event which gave rise to the allegation; or
- (b) within 6 months after the completion of the treatment in which the failure is alleged to have arisen,

whichever is the sooner.

(5) The provisions of regulation 6(3) with reference to the procedure for an application for the Secretary of State's consent to an investigation following such a complaint as is referred to in regulation 3(1) shall apply to an application for his consent for the purposes of paragraph (3) or (4) with the substitution—

- (a) of the word "complaint" wherever it occurs in regulation 6(3), with the words "terms of the proposed reference"; and
- (b) of the words "for the failure to submit the complaint in time" where they occur in regulation 6(3)(b), with the words "why the proposed reference could not have been made before the periods specified in regulation 8(3) or (4)".

(6) Where the name of the professional person in respect of whom a matter involves an allegation of a failure to comply with his terms of service was, at the time of—

- (a) the event; or
- (b) where regulation 8(4)(b) applies, the completion of the treatment,

which gave rise to the allegation, included in the relevant list of professional persons, the matter may, subject to the provisions of this Part, be referred to the appropriate service committee under paragraph (1), notwithstanding that the name of the professional person has since been removed from that list.

- (7) A matter in respect of which—
- (a) an investigation may be made under regulation 16; or
  - (b) a question arises to which regulation 19 applies,
- shall not be referred to a service committee under paragraph (1).

### **Referral of investigations to the joint services committee**

- 9.—(1) Where—
- (a) in the opinion of a Health Board any complaint which requires to be referred in terms of regulation 4(1) to the appropriate service committee; or
  - (b) in the opinion of a Health Board, or any committee of a Health Board duly authorised in that behalf, any matter which it may refer under regulation 8(1) to the appropriate service committee,

is appropriate for investigation by the joint services committee, the Health Board or, as the case may be, the committee duly authorised in that behalf, may refer the complaint or matter to the joint services committee for investigation and such a reference shall for the purposes of these Regulations be treated as if it were a reference under regulation 4(1) or, as the case may be, a reference under regulation 8(1).

(2) Where, in the opinion of a service committee, any matter referred to it involves a question relating to a professional person other than the category of professional person in relation to which the service committee would be the appropriate service committee for the purposes of investigating a complaint made in accordance with regulation 3, or involves a matter relating to the provision of services other than those in relation to which the service committee is the appropriate service committee for the purposes of regulation 8(1), the service committee shall—

- (a) take no further action for the purposes of investigating the matter referred; and
- (b) refer the matter to the joint services committee for investigation and such a reference shall for the purposes of these Regulations be treated as if it were a reference under regulation 4(1) or, as the case may be, a reference under regulation 8(1).

### **Procedure and reports of service committees**

10. Schedule 1 shall have effect for the purposes of—
- (a) the procedure of; and
  - (b) the submission of reports to Health Boards by,

service committees in relation to any investigation required to be made following a reference under regulation 4(1) or 8(1).

### **Decision of Health Board**

11.—(1) A Health Board, after due consideration of a report submitted to them by a service committee by virtue of Schedule 1, shall—

- (a) accept as conclusive the findings of fact made by the service committee;
- (b) draw such inferences from those findings of fact as they see fit, having regard to such extent as they think fit to the service committee's report as it relates to the inferences which may properly be drawn from those findings;
- (c) determine whether the professional person to whom the report relates, where it is in relation to a complaint made in accordance with regulation 3 or a reference under regulation 8(1) which involves an allegation of a failure to comply with terms of service, has failed to

comply with any one or more of his terms of service identified to him by the chairman of the service committee pursuant to paragraph 5(2) or 6(2) of Schedule 1; and

- (d) determine—
- (i) in the case of a complaint made in accordance with regulation 3 or a reference under regulation 8(1) which involves an allegation of a failure to comply with terms of service, the action to be taken in relation to the professional person concerned in accordance with either or both of paragraphs (2) and (4) having regard to any recommendation made by the service committee pursuant to paragraph 21(2) of Schedule 1;
  - (ii) in the case of a reference made under regulation 8(1) which does not involve an allegation of a failure to comply with terms of service, whether to take action in relation to the professional person concerned in accordance with paragraph (2); or
  - (iii) in any case to which the report of the service committee relates, that no further action shall be taken in relation to that report.

(2) Where, in the case of any doctor to whom a report of a service committee relates, a Health Board are satisfied—

- (a) after consideration of the report in accordance with paragraph (1);
- (b) whether or not they have found him to have failed to comply with his terms of service; and
- (c) after consultation with the area medical committee,

that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all of those persons, they may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.

(3) Where, pursuant to paragraph (2), a Health Board impose a special limit on the number of patients for whom a doctor may undertake to provide treatment, paragraphs (4) to (8) of regulation 17 of the General Medical and Pharmaceutical Services Regulations (limitation of number of persons in doctors' lists) shall have effect in his case with suitable modifications and, in particular, as if references in those paragraphs—

- (a) to a maximum number were references to the special limit imposed under paragraph (2) of this regulation; and
- (b) to an excess were references to the extent to which the number of patients in the doctor's list exceeds that special limit.

(4) Where they have determined that a professional person to whom the report of a service committee relates has failed to comply with any one or more of his terms of service, the Health Board concerned may—

- (a) without prejudice to sub-paragraph (b), determine that there should be recovered from him, whether by way of a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the service committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recoverable shall be paid to that person;
- (b) recommend to the Secretary of State that an amount should be recovered from the professional person concerned, whether by way of withholding from his remuneration or otherwise;
- (c) where the professional person is a dentist, require the dentist until further notice to submit to the Scottish Dental Practice Board for prior approval estimates in respect of any description of treatment specified by that Board;



- (d) determine that the professional person should be warned to comply with his terms of service in future;
  - (e) where they are of the opinion that the continued inclusion of the name of a professional person to whom the report of the service committee relates in the appropriate list of professional persons would be prejudicial to the efficiency of the category of services relevant to that list, make representations to that effect to the Tribunal.
- (5) As soon as may be practicable after a Health Board have made their decision on the report of a service committee, the General Manager shall—
- (a) send a copy of that report and the Health Board’s decision thereon and their reasons for it—
    - (i) in the case of a complaint made in accordance with regulation 3, to the complainer;
    - (ii) to the professional person concerned;
    - (iii) to the Secretary of State; and
    - (iv) if so requested by the complainer or the professional person concerned, to any patient concerned in the report, if that patient is not the complainer, and to any adviser to the complainer or professional person;
  - (b) where applicable, inform in writing the complainer or the professional person concerned of his right of appeal to the Secretary of State under regulation 12 and of the power of the Secretary of State on such an appeal to award expenses.
- (6) Any amount determined under paragraph (4)(a) as being recoverable shall—
- (a) be a debt owing by the professional person concerned to the Health Board making the determination; and
  - (b) be recoverable from that professional person whether or not his name has, since—
    - (i) the event; or
    - (ii) where regulation 3(3)(b) or 8(4)(b) applies, the completion of the treatment, which gave rise to the determination that he has failed to comply with his terms of service, ceased to be included in the relevant list of professional persons.
- (7) Where a Health Board make a determination under paragraph (4)(a), no action shall be taken on that determination before—
- (a) if no appeal is brought, the end of the period for bringing an appeal specified in regulation 12(2); or
  - (b) if an appeal is brought, they have received the notice of the Secretary of State’s decision of the appeal.

### **Appeal to Secretary of State from decision of Health Board**

- 12.—**(1) An appeal may be made to the Secretary of State—
- (a) by a complainer or a professional person, against a determination by a Health Board under regulation 11(1)(c) which is adverse to him; or
  - (b) by a professional person, against any determination by a Health Board under regulation 11(1)(d)(i) to take action in accordance with any one or more of paragraphs (2) or (4)(a) or (c) of regulation 11; or
  - (c) by a complainer who has asserted to the Health Board that, by reason of the failure by the professional person concerned to comply with his terms of service, he has incurred or is likely to incur any such expenses as might be the subject of a determination under regulation 11(4)(a), against a determination by the Health Board under regulation 11(1)(d)(i) which is adverse to him in that respect.

(2) A notice of an appeal under this regulation shall be sent in writing to the Secretary of State within a period of 4 weeks beginning on the day after the date on which notification of the Health Board's decision was sent to the appellant and shall contain a concise statement of facts and the grounds of appeal upon which the appellant intends to rely.

(3) Where a Health Board have made a recommendation in terms of regulation 11(4)(b), a professional person may, in lieu of exercising his right of appeal under paragraph (1), within a period of 4 weeks beginning on the day after the date on which notification of the decision of the Health Board was sent to him, make representations to the Secretary of State against such a recommendation.

(4) Subject to paragraph (5), the Secretary of State may, on application by a person desiring to appeal under paragraph (1) or to make representations under paragraph (3), extend the time for sending the notice of appeal or, as the case may be, making representations.

(5) An application under paragraph (4) may be made before or after the expiration of the period of 4 weeks mentioned in paragraphs (2) and (3) and shall—

- (a) be made in writing to the Secretary of State; and
- (b) state the grounds upon which it is made.

(6) Where, pursuant to regulation 11(4)(e), a Health Board have made representations to the Tribunal following their consideration of a report of a service committee, the Secretary of State may, for the purpose of any appeal under paragraph (1)(a), treat as conclusive any relevant finding of fact of the Tribunal.

### **Procedure on appeal to Secretary of State**

**13.**—(1) Subject to paragraph (2), if the Secretary of State, after considering the notice of appeal sent pursuant to regulation 12(2), is of the opinion that—

- (a) the notice of appeal discloses no reasonable grounds of appeal; or
- (b) the appeal is otherwise trivial or vexatious,

he may determine the appeal by dismissing it forthwith.

(2) Paragraph (1) shall not apply to an appeal by a professional person against a decision by a Health Board in which they have determined to take action under paragraph (2) or (4)(a), (b) or (c) of regulation 11.

(3) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal—

- (a) to the other person who was a party to the proceedings before the service committee (in this regulation being referred to as “the respondent”); and
- (b) to the Health Board.

(4) The respondent and the Health Board may, within 4 weeks from the date of receipt of the copy of the notice of appeal sent pursuant to paragraph (3), submit a statement-in-answer to the Secretary of State.

(5) The Secretary of State shall send a copy of any statement-in-answer submitted pursuant to paragraph (4) to each of—

- (a) the appellant; and
- (b) the Health Board or the respondent, as the case may be,

and shall inform them that they may, within 4 weeks from the date of receipt of that copy, submit written comments thereon to the Secretary of State.

(6) The Secretary of State shall send to the Health Board a copy of any written comments submitted pursuant to paragraph (5) by the appellant or the respondent and inform the Health Board

that they may, within 4 weeks from the date of receipt of the copy of such comments, submit any further written comments which they may wish to make.

(7) Where—

- (a) after the expiry of the periods specified in paragraphs (4), (5) and (6), or the last of such periods as is applicable in the circumstances; and
- (b) after due consideration of the notice of appeal and any statement-in-answer and written comments submitted,

the Secretary of State is of the opinion that the appeal is of such a nature that it can properly be determined without a hearing, he may dispense with a hearing and determine the appeal summarily.

(8) Where the Secretary of State decides that a hearing should be held he shall—

- (a) fix a time and place for the hearing;
- (b) give not less than 2 weeks' notice thereof to the appellant, the respondent and the Health Board; and
- (c) inform those persons that they may attend the hearing and take such part in the proceedings as the persons holding the hearing think proper.

(9) Subject to paragraph (10), for the purposes of a hearing, the Secretary of State shall appoint—

- (a) either 2 or 3 persons, whether officers of the Secretary of State or not, to hold the hearing (such persons being referred to in this regulation and in regulation 14 as the reporters); and
- (b) a person to act as clerk to the reporters.

(10) At least one of the reporters shall—

- (a) where the professional person concerned in the appeal is a doctor or a dentist, be a doctor or a dentist respectively selected by the Secretary of State from the panels of doctors and dentists referred to in paragraphs (6) and (10) of regulation 15;
- (b) where the professional person concerned in the appeal is an ophthalmic medical practitioner, an optician or a pharmacist, be a member of the same category of professional person as that professional person.

(11) At any hearing of an appeal—

- (a) the appellant and the respondent shall be entitled to attend and take part in the proceedings in person or be represented by any one of the following persons:—
  - (i) counsel;
  - (ii) a solicitor;
  - (iii) an officer or member of any organisation of which he is a member;
  - (iv) a member of his family;
  - (v) a friend;

- (b) the Health Board shall be entitled to take part in the proceedings and be represented by a member, their General Manager, or by counsel or solicitor.

(12) After the hearing, the reporters shall draw up a report and present it to the Secretary of State, who shall, after due consideration of the report, determine the appeal.

(13) After the Secretary of State determines an appeal pursuant to paragraph (1), (7) or (12), he shall notify the complainer, the professional person concerned and the Health Board of his decision, which shall be final and conclusive, and the reasons for it.

(14) An appellant may withdraw his appeal at any time before it is determined—

- (a) by giving written notice to the Secretary of State of his intention to do so; and
- (b) with the consent of the Secretary of State.

### **Provisions as to a hearing**

14.—(1) The provisions of the following paragraphs of this regulation shall apply in respect of any hearing held in relation to an appeal which the Secretary of State decides pursuant to regulation 13(8) shall be held.

- (2) A hearing shall be in private and no person shall be admitted other than—
- (a) the reporters and the clerk;
  - (b) those persons mentioned in regulation 13(11);
  - (c) such other persons who appear to the reporters to have an interest;
  - (d) a member of the Council on Tribunals or of the Scottish Committee thereof when acting in that capacity.

(3) Subject to paragraph (4) below, no person who in terms of regulation 13(11) is entitled to attend and take part in a hearing shall, except with the consent of the reporters, be entitled to introduce new evidence or make new contentions in relation to the subject matter of the appeal at the hearing which do not appear to the reporters to have been raised before the service committee in the course of the proceedings in respect of which the appeal is made.

(4) A person who in terms of regulation 13(11) is entitled to attend and take part in a hearing may introduce new evidence or make new contentions in relation to the subject matter of the appeal at the hearing if he gives not less than 1 week's notice in writing prior to the date of the hearing to the Secretary of State or to the reporters of the nature of the new evidence or contentions which he intends to introduce or make and submits copies of any relevant documents in support of the same.

(5) Where a person gives notice in terms of paragraph (4), the Secretary of State or the reporters shall send copies of the notice and any documents submitted with it to the other persons to whom notice of the hearing has been given pursuant to regulation 13(8).

- (6) The Health Board—
- (a) may, with the consent of the Secretary of State, make such contribution as they think fit; or
  - (b) shall, if directed by the Secretary of State to do so, make such contribution as he may determine,

towards the expenses incurred in the appeal by any person present at the hearing.

- (7) The provisions of Schedule 2 shall have effect with regard to the hearing of an appeal.

### **Procedure on recovery of sums by withholding remuneration or otherwise**

15.—(1) Subject to paragraph (2), if the Secretary of State is satisfied—

- (a) after considering—
  - (i) where neither an appeal has been made under regulation 12(1) nor representations made under regulation 12(3) within the period specified in regulation 12(2) or (3), any report of a service committee and decision of the Health Board thereon sent pursuant to regulation 11(5)(a) to the effect that the professional person concerned has failed to comply with his terms of service;
  - (ii) whether in the course of an appeal to him under regulation 12(1)(a) or (b) which he determines without a hearing or in connection with representations made to him under regulation 12(3), any report of a service committee and decision of the Health Board thereon to the effect that the professional person concerned has failed to comply with his terms of service;
  - (iii) a report under regulation 13(12) of the reporters holding a hearing (if any); or
  - (iv) a statement of the Tribunal after any inquiry under Part III of these Regulations,

that a professional person to whom the report or statement relates has failed to comply with his terms of service;

- (b) after considering any report of a medical officer that a doctor has failed to comply with paragraph 19 of his terms of service; or
- (c) after considering any report of a dental officer that a dentist has failed to keep records as required by paragraph 23 of his terms of service,

he may, subject to the following provisions of this regulation, direct the Health Board to recover such amount as he thinks fit either by deduction from the remuneration of the professional person or otherwise and such sum shall be a debt due by the professional person to the Health Board.

(2) The Secretary of State shall not make a direction under paragraph (1) where the Health Board concerned have made a determination—

- (a) under regulation 11(1)(d)(iii); or
- (b) under regulation 11(4)(d),

and no appeal has been made under regulation 12(1)(a) within the period specified in regulation 12(2).

(3) Subject to paragraph (4), before making a direction under paragraph (1), the Secretary of State shall notify the professional person concerned -

- (a) that the Secretary of State is considering making a direction under paragraph (1); and
- (b) that the professional person concerned may make written representations on the matter by submitting them to the Secretary of State within 4 weeks from the date of receipt of the notification.

(4) Paragraph (3) shall not apply in a case where the professional person exercised the right to make representations under regulation 12(3).

(5) The Secretary of State shall constitute a medical advisory committee for the purpose of assisting him in the discharge of his duties under paragraph (1) in relation to doctors.

(6) The medical advisory committee shall consist of 2 medical practitioners of whom—

- (a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and
- (b) 1 shall be selected by the Secretary of State from a panel of doctors nominated by a body which is in his opinion representative of doctors.

(7) Before making a direction under paragraph (1) in respect of a doctor, the Secretary of State—

- (a) shall, where the failure to comply with the doctor's terms of service is of a kind specified in paragraph (8); or
- (b) may, in the case of any other failure to comply with those terms of service,

refer the matter to the medical advisory committee and shall consider the report which they make to him thereon.

(8) The following kinds of failure to comply with terms of service applicable to doctors are specified in this paragraph:—

- (a) failure to exercise reasonable skill and care in the treatment of a patient;
- (b) failure to visit or treat a patient whose condition so requires;
- (c) failure to order or supply any necessary drug or appliance for the use of a patient; or
- (d) failure to discharge the obligations imposed on a doctor to give a patient the requisite assistance to enable him to obtain any treatment which is not within the scope of the doctor's obligations under the terms of service.

(9) The Secretary of State shall constitute a dental advisory committee for the purpose of assisting him in the discharge of his duties under paragraph (1) in relation to dentists.

(10) The dental advisory committee shall consist of 2 dental practitioners of whom—

- (a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and
- (b) 1 shall be selected by the Secretary of State from a panel of dentists nominated by a body which is in his opinion representative of dentists.

(11) Before making a direction under paragraph (1) in respect of a dentist, the Secretary of State—

- (a) shall, where the failure to comply with the dentist's terms of service consists of failure to employ a proper degree of skill and attention in the dental treatment of a patient; or
- (b) may, in the case of any other failure to comply with those terms of service,

refer the matter to the dental advisory committee and shall consider the report which they make to him thereon.

(12) Any amount which a Health Board are directed under paragraph (1) to recover from a professional person shall—

- (a) be a debt owing by the professional person concerned to the Health Board to whom the direction is given; and
- (b) be recoverable from that professional person whether or not his name has, since—
  - (i) the event; or
  - (ii) where regulation 3(3)(b) or 8(4)(b) applies, the completion of the treatment, which gave rise to the determination that he has failed to comply with his terms of service, ceased to be included in the relevant list of professional persons.

### **Investigation of apparently excessive prescribing by doctors**

**16.**—(1) An area medical committee shall from time to time investigate the character and quantity of the drugs and listed appliances ordered or supplied by doctors for persons for whose treatment the doctor is responsible under paragraph 4 of his terms of service.

(2) Where, after investigation under paragraph (1), the area medical committee are of the opinion, by reason of the character or quantity of the drugs or listed appliances ordered or supplied by a doctor for his patient, that the cost of such drugs or listed appliances is in excess of what was reasonably necessary for the adequate treatment of that patient, they shall make a report to the Health Board in accordance with paragraphs (3) and (4).

(3) Where an area medical committee intend to make a report in circumstances as mentioned in paragraph (2), they shall—

- (a) furnish the doctor concerned with a statement indicating the grounds upon which they propose to make a report; and
- (b) inform the doctor that he may either—
  - (i) submit to the committee a written statement-in-answer; or
  - (ii) appear before the committee in person for the purpose of being heard in relation to the statement furnished by the committee.

(4) After due consideration of any statement-in-answer submitted or oral representations made by a doctor pursuant to paragraph (3), an area medical committee shall prepare and submit to the relevant Health Board a report on the matter which shall—

- (a) state fully the facts of the case as ascertained by the committee;

- (b) state whether the committee are of the opinion and, if so, on what grounds, that the cost of drugs or listed appliances is in excess of what was reasonably necessary for the adequate treatment of the doctor's patient; and
  - (c) if the committee are of the opinion as mentioned in sub-paragraph (b), contain a recommendation as to the sum, if any, which, in their opinion, might properly be recovered from the doctor.
- (5) If, at any time, it appears to a Health Board that the area medical committee have delayed or failed to carry out their duties under paragraphs (1) to (4), the Health Board may, after giving not less than 2 weeks' prior notice in writing to the area medical committee, appoint some fit and proper person or persons not exceeding 2 in number for the purpose of holding an investigation for the same purposes as mentioned in paragraph (1) in relation to an area medical committee.
- (6) For the purposes of an investigation held pursuant to paragraph (5), the person or persons appointed to hold it shall—
- (a) have the same powers and duties as are conferred and imposed on an area medical committee by paragraphs (2) to (4); and
  - (b) be entitled to require the relevant area medical committee to furnish him or them, as the case may be, with any statistical or other information which is available to that committee and is relevant to the investigation.
- (7) The person or persons appointed by the Health Board under paragraph (5) shall, following the investigation, prepare a report for submission to the Health Board and on receipt of that report the Health Board shall refer it to the medical service committee for consideration and for submission to the Health Board of a recommendation as to the action to be taken.
- (8) After due consideration of a report submitted to them pursuant to paragraph (4) or (7), and any recommendation by the medical service committee pursuant to paragraph (7), a Health Board—
- (a) shall determine whether the cost of the drugs or listed appliances ordered or supplied by the doctor to whom the report relates is in excess of what was reasonably necessary for the adequate treatment of the patient concerned; and
  - (b) may, where they have determined that the cost of such drugs or listed appliances is excessive, recover from the doctor concerned, whether by deduction from his remuneration or otherwise, such sum as they think fit.
- (9) As soon as may be practicable after a Health Board have made their decision on the report of the area medical committee or other person or persons, the General Manager shall—
- (a) send a copy of that report and of the Health Board's decision thereon to the doctor to whom it relates and to the Secretary of State;
  - (b) send a copy of their decision to the area medical committee; and
  - (c) where applicable, inform in writing the doctor and the area medical committee concerned of their right of appeal to the Secretary of State under regulation 17 and of the power of the Secretary of State in such an appeal to award expenses.
- (10) Where it appears to the Secretary of State that there has been—
- (a) delay or failure by an area medical committee to carry out fully their duties under paragraphs (1) to (4); and
  - (b) a failure by the relevant Health Board to appoint a person or persons in pursuance of paragraph (5) to carry out an investigation in accordance with that paragraph,
- he may appoint a person or persons, not exceeding 2 in number, for the purpose of holding an investigation for the same purposes as mentioned in paragraph (1) in relation to an area medical committee.

(11) The person or persons appointed by the Secretary of State under paragraph (10) shall hold an investigation and thereafter make a report to the Secretary of State.

(12) For the purposes of an investigation under paragraph (11), the person or persons appointed shall—

- (a) have the same powers and duties as are conferred and imposed on an area medical committee by paragraphs (2) to (4); and
- (b) be entitled to require the area medical committee and Health Board to furnish him or them, as the case may be, with any statistical or other information which is available to that committee or Health Board and is relevant to the investigation.

(13) After due consideration of a report submitted to him pursuant to paragraph (11), the Secretary of State—

- (a) shall determine whether the cost of the drugs or listed appliances ordered or supplied by the doctor to whom the report relates is in excess of what was reasonably necessary for the adequate treatment of the patient concerned; and
- (b) may, where he has determined that the cost of such drugs or listed appliances is excessive, direct the Health Board on whose medical list the name of that doctor is included, whether by deduction from his remuneration or otherwise, to recover such sum as the Secretary of State thinks fit,

and the Secretary of State's decision under this paragraph shall be final and conclusive.

### **Appeal on prescribing**

**17.**—(1) Subject to paragraph (2), an appeal may be made to the Secretary of State—

- (a) by a doctor against a decision of a Health Board under regulation 16(8) which is adverse to him; or
- (b) by an area medical committee against a decision of a Health Board under regulation 16(8) which does not give effect to their recommendation,

by sending notice of appeal in writing to the Secretary of State within 4 weeks from the date on which notification of the Health Board's decision was received by him.

(2) Subject to paragraph (3), the Secretary of State may entertain an appeal under paragraph (1), notwithstanding that the notice of appeal is received after the expiry of the period mentioned in paragraph (1), where he is satisfied that by reason of exceptional circumstances it is expedient to do so.

(3) Where the Secretary of State receives a notice of appeal after the expiry of the period mentioned in paragraph (1), before deciding whether to entertain the appeal pursuant to paragraph (2) he shall—

- (a) send a copy of the notice of appeal to the doctor or area medical committee concerned who is not the appellant; and
- (b) inform that person or committee that he or they, as the case may be, may submit to the Secretary of State written representations why the appeal should not be entertained.

(4) The appellant shall submit within such period as the Secretary of State may allow a concise statement of the facts and contentions upon which he intends to rely.

(5) Where a notice of appeal is sent pursuant to paragraph (1), or where the Secretary of State decides to entertain a notice of appeal pursuant to paragraph (2), the Secretary of State shall—

- (a) send a copy of the notice of appeal and of the statement submitted by the appellant to—
  - (i) the Health Board concerned;
  - (ii) the doctor or area medical committee concerned who is not the appellant;



(b) inform the Health Board and that person or committee that they or he may submit a statement-in-answer to the Secretary of State,  
and where a statement-in-answer is received by the Secretary of State in accordance with this paragraph he shall send a copy of it to the appellant and to the other party concerned who is not the appellant.

(6) After due consideration of a notice of appeal and any statement-in-answer relating to it, the Secretary of State—

(a) may, in the case of an appeal—

(i) by an area medical committee; or

(ii) by a doctor where that doctor does not desire that a hearing be held,

dispense with a hearing and determine the appeal summarily if he is of the opinion that the appeal is of such a nature that it can properly be determined without a hearing; or

(b) unless he determines the appeal pursuant to sub-paragraph (a), shall—

(i) fix a time and place for a hearing;

(ii) give not less than 2 weeks' notice thereof to the appellant, the Health Board and the other party concerned who is not the appellant; and

(iii) inform those persons that they may attend the hearing and take part in the proceedings as the person or persons holding the hearing think proper.

(7) For the purposes of a hearing, the Secretary of State shall appoint—

(a) a person or persons, not exceeding 3 in number, and whether an officer or officers of the Secretary of State or not, to hold the hearing; and

(b) a person to act as clerk.

(8) As soon as may be practicable after a hearing, the person or persons holding the hearing shall draw up a report and present it to the Secretary of State who shall, after considering the report, determine the appeal.

(9) After the Secretary of State determines an appeal pursuant to paragraph (6) or (8), he shall notify the appellant, the Health Board and the other party concerned who is not the appellant of his decision, which shall be final and conclusive, and the reasons for it.

(10) The provisions of regulations 13(11) and 14 shall, subject to any necessary modifications, apply to an appeal under this regulation as if it were an appeal under regulation 12.

#### **Determination whether a fee may be charged by a doctor**

**18.**—(1) Subject to paragraph (2), the following provisions of this regulation shall apply to the determination of any question arising, either in the course of any investigation by a medical service committee or otherwise, as to whether any treatment by a doctor given to a person for whose treatment the doctor is responsible under paragraph 4 of his terms of service is treatment for which he may demand or accept a fee or remuneration under those terms of service.

(2) This regulation shall not apply to a question—

(a) which arises in relation to paragraph 20(1)(a) or (e) of his terms of service; or

(b) whether a certificate is reasonably required by a person for whose treatment a doctor is responsible under paragraph 4 of the doctor's terms of service under or for the purposes of any enactment.

(3) Where, in relation to treatment given by a doctor, a question to which this regulation applies arises, the matter shall be referred by the Health Board concerned to the area medical committee for determination.

- (4) An area medical committee to whom a matter has been referred under paragraph (3) shall—
- (a) send to the doctor to whom the matter relates a written statement indicating the nature of the matter referred to the committee for determination;
  - (b) inform the doctor that he may—
    - (i) submit to the committee, within 4 weeks from the date of receipt of the statement sent under sub-paragraph (a), a statement-in-answer; or
    - (ii) appear in person before the committee for the purpose of making representations.
- (5) An area medical committee shall—
- (a) where the doctor submits a statement-in-answer, send a copy of it to the Health Board concerned and inform them that they may submit to the committee, within 4 weeks from the date of receipt of the copy of such statement, written representations;
  - (b) where the doctor wishes to appear before and is heard by the committee, allow representatives of the Health Board concerned to appear before the committee for the purpose of making representations.
- (6) Where, pursuant to paragraph (5), the Health Board concerned submit written representations, the area medical committee shall send a copy of them to the doctor concerned.
- (7) After due consideration of any statement-in-answer or representations made pursuant to paragraph (4) or (5), an area medical committee shall determine the question referred and shall inform the doctor and the Health Board concerned and also the Secretary of State of their determination by sending to each of them a copy of it.
- (8) Where in relation to a determination of an area medical committee under paragraph (7)—
- (a) the Health Board concerned notifies the Secretary of State within 4 weeks from the date on which they receive notification of the determination that they disagree with it, the Secretary of State shall; or
  - (b) the Health Board concerned are satisfied with the determination but the Secretary of State decides to do so, the Secretary of State may,
- refer the question for determination by 3 referees appointed under this paragraph, of whom 2 shall be doctors (not being officers of the Secretary of State), and 1 shall be a practising advocate or solicitor.
- (9) The rules of procedure set out in Schedule 3 shall apply to the procedure in relation to a question referred to them pursuant to paragraph (8) and of the decision of the referees in relation to it.

#### **Determination whether a substance is a drug and recovery of cost**

- 19.**—(1) The provisions of this regulation shall apply to the determination of any question arising as to whether a substance supplied by a doctor, or by a pharmacist on the prescription of a doctor, was a drug for the purposes of pharmaceutical services.
- (2) If a Health Board are of the opinion that any substance supplied by a doctor or a pharmacist on the prescription of a doctor was not a drug for the purposes of pharmaceutical services, they shall—
- (a) notify the doctor in writing of their opinion; and
  - (b) inform him that he may, within 1 week from the date of receipt of such notice, require the Health Board to refer the question for determination under this regulation.
- (3) Any question to which this regulation applies—
- (a) shall, if the doctor concerned so requires pursuant to paragraph (2); or
  - (b) may, in any other case in which a Health Board think fit,
- be referred by the Health Board concerned to the area medical committee for determination.

(4) Where a question is referred to an area medical committee pursuant to paragraph (3), the Health Board concerned shall inform the area pharmaceutical committee of the referral.

(5) As soon as may be practicable after a question is referred to an area medical committee, that committee shall—

- (a) send to the doctor to whom the question relates a written statement indicating the nature of the question referred;
- (b) inform the doctor that he may—
  - (i) submit to the committee a statement-in-answer; or
  - (ii) appear in person before the committee for the purposes of making representations.

(6) An area medical committee shall, where the doctor wishes to appear before and is heard by the committee, allow representatives of the Health Board concerned to appear before the committee for the purpose of making representations.

(7) After due consideration of any statement-in-answer or representations, whether made in writing or orally, made pursuant to paragraph (5) or (6), an area medical committee shall determine the question referred and shall inform the doctor and the Health Board concerned and also the Secretary of State of their determination by sending them a copy of it.

(8) Where in relation to a determination made by an area medical committee under paragraph (7) —

- (a) the doctor concerned notifies the Secretary of State within 4 weeks from the date on which he receives notification of the determination that he is dissatisfied with the determination;
- (b) the Health Board concerned notify the Secretary of State within 4 weeks from the date on which they receive notification of the determination that they are dissatisfied with the determination; or
- (c) whether or not the doctor or the Health Board concerned notify him under subparagraph (a) or (b), the Secretary of State is dissatisfied with the determination,

the Secretary of State shall refer the question for determination by a referee or referees not exceeding 3 in number.

(9) For the purposes of paragraph (8), the referee or referees appointed shall not be an officer or officers of the Secretary of State and—

- (a) where 1 referee only is appointed, he shall be a doctor; and
- (b) where more than 1 referee is appointed, at least 1 shall be a doctor.

(10) Where in relation to a question to which this regulation applies there is a determination—

- (a) by an area medical committee pursuant to paragraph (7); or
- (b) by a referee or referees pursuant to paragraph (8),

that a substance concerned was not a drug for the purposes of pharmaceutical services, the Health Board concerned shall, in respect of that substance, recover from the doctor concerned a sum calculated in accordance with paragraph (11).

(11) For the purposes of paragraph (10), the sum to be recovered by a Health Board shall be—

- (a) where the substance concerned was an ingredient in a preparation of which other ingredients were drugs for the purposes of pharmaceutical services, the cost of that substance calculated in accordance with sub-paragraph (b) together with half the amount of the dispensing fee payable in respect of the supply of the preparation; or
- (b) in other cases, a sum calculated in accordance with the method set forth in the drug tariff for calculating the payment for drugs and preparations not specified therein.

### Appeals from decisions of Scottish Dental Practice Board

**20.**—(1) This regulation applies to appeals which are permitted by paragraph (2) against decisions of the Scottish Dental Practice Board (in this regulation being referred to as “the Practice Board”).

(2) Subject to paragraph (3), an appeal may be made to a Health Board in whose dental list the name of the dentist concerned is included—

- (a) by any person aggrieved by a decision of the Practice Board concerning the treatment or intended treatment by the dentist concerned of a patient; or
- (b) by any dentist aggrieved by a decision of the Practice Board—
  - (i) concerning fees in respect of his provision or intended provision of general dental services; or
  - (ii) under regulation 12A of the General Dental Services Regulations (prior approval — patterns of treatment)(1).

(3) Where the name of the dentist concerned in any appeal under paragraph (2) is included in the dental list of more than one Health Board, the appeal may be made—

- (a) in the case of an appeal under paragraph (2)(a), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (b) in the case of an appeal by a dentist under paragraph (2)(b)(i), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (c) in the case of an appeal by a dentist under paragraph (2)(b)(ii)—
  - (i) in which the decision of the Practice Board under regulation 12A of the General Dental Services Regulations was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the local pattern of treatment of other dentists, to the Health Board in whose area the pattern of treatment of other dentists has been the subject of comparison; or
  - (ii) in which the decision of the Practice Board under regulation 12A of the General Dental Services Regulations was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the pattern of treatment of other dentists throughout Scotland, to any of the Health Boards in whose dental list the dentist’s name is included.

(4) For the purposes of this regulation, the parties to an appeal are the Practice Board and the appellant, being the aggrieved person or dentist as the case may be.

(5) Notice of appeal shall—

- (a) be given to the Health Board in writing;
- (b) except where the Health Board are satisfied that the lateness of the appeal is due to illness or other reasonable cause, be given within 4 weeks from the date on which the appellant received notice of the decision of the Practice Board;
- (c) state the date on which the appellant was informed of that decision; and
- (d) contain a concise statement of the facts and contentions upon which it is intended to rely.

(6) The Health Board shall, within 4 weeks from the date of receipt of the notice of appeal, request from the Practice Board a written statement of the reasons for their decision and the Practice Board shall, within 4 weeks from the date of receipt of that request, send such a statement to the Health Board.

(7) Subject to paragraph (8), the Health Board shall consider the notice of appeal and the statement of the Practice Board and—

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(1) 1974/505; regulation 12A was inserted by S.I. 1990/1772 and amended by S.I. 1992/16.

- (a) where the appeal is against a refusal of the Practice Board to approve an estimate or a claim for remuneration on the ground that the services to which the estimate or claim relate cannot be provided as part of general dental services, they shall refer the notice of appeal and the Practice Board's statement to the Secretary of State, and on referring the appeal the Health Board shall inform the parties of the referral;
  - (b) where in an appeal by a dentist against a decision of the Practice Board concerning fees, the Practice Board certifies in its statement that it authorised those fees and that they were fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration published by the Secretary of State under regulation 26 of the General Dental Services Regulations (statement of dental remuneration) for the services provided or to be provided, the Health Board shall dismiss the appeal forthwith unless they are of the opinion that it involves a dispute as to the item or sub-item of treatment in that Determination applicable to those services;
  - (c) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the Health Board shall, within 4 weeks from the date of receipt of the Practice Board's statement, appoint—
    - (i) where the appeal is made under paragraph (2)(b)(ii), 3 dentists;
    - (ii) in an appeal under paragraph (2)(a) or (b)(i), 2 dentists,as referees to determine the appeal, one of whom they shall select from a panel of dental practitioners who are or have been engaged in the provision of general dental services and who is nominated by the area dental committee, failing which the area dental committee for the area of another Health Board.
- (8) Where, after considering the notice of appeal and the statement of the Practice Board, the Health Board are of the opinion that the notice of appeal discloses no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious, the Health Board shall—
- (a) consult with the area dental committee; and
  - (b) following such consultation, either—
    - (i) determine the appeal by dismissing it forthwith; or
    - (ii) if the Health Board consider it desirable to do so, appoint referees in terms of paragraph (7)(c) to determine the appeal.
- (9) Where the Health Board dismiss an appeal pursuant to paragraph (7) or (8), they shall—
- (a) inform the parties of their decision by sending them a copy of it together with their reasons for it; and
  - (b) in the case of a dismissal under paragraph (7)(b), send to the appellant a copy of the Practice Board's statement.
- (10) Where an appeal is referred to the Secretary of State pursuant to paragraph (7)(a), the Secretary of State shall—
- (a) determine the appeal in such manner as he thinks fit; and
  - (b) as soon as may be practicable after he has determined the appeal, which shall be final and conclusive, inform the parties and the Health Board of his decision by sending them a copy of it together with his reasons for it.
- (11) Where, pursuant to paragraph (7)(c), the Health Board appoint referees to determine the appeal, the Health Board shall—
- (a) at least 2 weeks before the hearing (or within such shorter period as the parties may agree), give written notice to the parties of the date, time and place of the hearing and of the names of the referees;

(b) at least 7 days before the hearing (or within such shorter period as the parties may agree), provide—

- (i) the referees and the appellant with a copy of the Practice Board’s statement; and
- (ii) the referees and the Practice Board with a copy of the notice of appeal.

(12) Where the parties to an appeal, to whom notice of a hearing has been sent pursuant to paragraph (11), notify the Health Board in writing prior to the date of the hearing, that they do not intend to make oral representations at a hearing—

- (a) the Health Board shall inform the referees forthwith; and
- (b) the referees shall thereafter determine the appeal without holding a hearing.

(13) Subject to paragraph (14), if in the course of a hearing a party introduces any issue which in the opinion of the referees was not sufficiently disclosed in the notice of appeal by the appellant or statement by the Practice Board, the referees may as they think fit admit such issue.

(14) Where the referees intend to admit an issue pursuant to paragraph (13), the hearing shall be adjourned for such period as the referees consider necessary unless the other party requests that the hearing should proceed and the referees agree to do so.

(15) As soon as may be practicable after—

- (a) receiving notification under paragraph (12) that a hearing is not necessary; or
- (b) a hearing has been held,

the referees shall determine the appeal and notify the Health Board in writing of their decision, which shall be final and conclusive, and their reasons for it.

(16) After the Health Board receive notice of the referees' decision pursuant to paragraph (15), they shall, within 2 weeks from the date of receipt of that notice, send a copy of it to each of the parties.