

## SCHEDULE

### **THE HEALTH PROFESSIONS COUNCIL (CONDUCT AND COMPETENCE COMMITTEE) (PROCEDURE) RULES 2003**

The Health Professions Council, in exercise of its powers under articles 22(4), 30(9), 32, 33(4) and 41(2) of and paragraph 18 of Schedule 1 to the Health Professions Order 2001(1) and of all other powers enabling it in that behalf and after consulting in accordance with article 41(3) of that Order, hereby makes the following rules:

#### **Citation and commencement**

1. These Rules may be cited as the Health Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003 and shall come into force on 9th July 2003.

#### **Interpretation**

2. In these Rules—

“allegation” means any allegation of a kind mentioned in article 22(1)(a) of the Order or any matter which is treated as an allegation by virtue of action taken under article 22(6) of the Order;

“Chairman” means the chairman of the Committee or, in relation to any proceedings conducted by a panel appointed by the Committee in accordance with paragraph 19(6) of Schedule 1 to the Order, the chairman of that panel;

“Committee” means the Conduct and Competence Committee of the Council;

“complainant” means a person by whom an allegation has been made to the Council;

“Health Committee” shall be construed in accordance with article 3(9) of the Order;

“health professional” means a person whose name appears in the register against whom an allegation has been made and includes a person whose registration is currently suspended;

“the Order” means the Health Professions Order 2001; and

“Solicitor” means any solicitor appointed by the Council to represent it at a hearing before the Committee which relates to an allegation against a health professional or Counsel instructed to represent the Council at any such hearing.

#### **Service of Documents**

3.—(1) In these Rules a reference to the sending of a notice or other document to any person is a reference to it being sent—

- (a) in the case of the Council, its committees or the Registrar, to the offices of the Council;
- (b) in the case of a health professional, to his address as it appears in the register; and
- (c) in all other cases, to the last known address of that person.

(2) All communications to be sent for the purposes of these Rules may be sent by post and any such communication shall be treated as having been sent on the day on which it was posted.

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## **Referral to Health Committee**

4.—(1) Where it appears to the Committee that an allegation which it is considering would be better dealt with by the Health Committee, the Committee may refer the allegation to the Health Committee for consideration and shall suspend its consideration of the allegation.

(2) If, following a referral under this rule, the Health Committee certifies to the Committee that the fitness to practise of the health professional is not impaired by reason of his physical or mental health the Committee shall resume and conclude its consideration of the allegation.

(3) If, following a referral under this rule, the Health Committee certifies to the Committee that it has dealt with the allegation and that no further action by the Committee is required in relation to the allegation the Committee shall take no further action in relation to the allegation.

## **Allegations**

5.—(1) Where an allegation is referred to the Committee it shall without delay—

- (a) send to the health professional a notice setting out the allegation;
- (b) invite the health professional to submit written representations to the Committee and inform him that any such representations must be sent to the Committee before the end of the period of 28 days beginning with the date on which the notice is sent;
- (c) inform the health professional—
  - (i) that he may, before the end of the period of 28 days beginning with the date on which the notice is sent, request that a hearing be held, and
  - (ii) that, even if he does not request a hearing, the Committee may hold a hearing if it considers it to be desirable; and
- (d) inform the health professional of his right to be heard, and to be represented, at such a hearing.

(2) Where any written representations are made to the Committee under paragraph (1)(b) it may, if it sees fit, send a notice to the complainant notifying him of the representations and inviting him, before the end of the period of 14 days beginning with the date on which the invitation was sent, to deal with any points raised by the Committee in respect of those representations.

(3) The Council shall give notice of any allegation which is referred to the Committee to—

- (a) where known, the employer of the health professional or any other person with whom he has an arrangement to provide professional services;
- (b) where known, any other body by which the health professional is authorised to practise a health or social care profession; and
- (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland.

## **Hearings**

6.—(1) If the health professional has requested that a hearing be held or the Committee determines that it would be desirable to hold a hearing the Committee shall fix a day on which it is to hear the case and send the parties notice of the day, time and venue for the hearing.

(2) The Committee shall not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the Committee sent the notice referred to in paragraph (1) to the health professional.

(3) A health professional may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council.

### **Preliminary meetings**

7.—(1) The Committee or the Chairman may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the Committee to perform its functions.

(2) At any meeting which he conducts under paragraph (1) the Chairman may give directions under article 32(3) of the Order and, with the agreement of the parties, take any action which the Committee would be competent to take at such a meeting.

### **Further investigations**

8.—(1) Before holding any hearing the Committee may carry out such investigations or seek such advice or assistance as it sees fit and, in particular, may—

- (a) ask the health professional to provide a written description of his practice;
- (b) inspect a sample of the health professional's patient or client records;
- (c) invite the health professional to take a test of competence; or
- (d) interview the complainant, the health professional and any person nominated by the health professional.

(2) For the purpose of paragraph (1)(b) the Committee may only inspect patient or client records with the consent of the patient or client concerned unless the records are provided in a form from which the patient or client cannot be identified.

(3) For the purpose of paragraph (1)(d) the Committee may only interview a person with his consent and a person who consents to be interviewed may be represented at that interview by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council.

(4) The Committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations and any such representations shall be sent to the Committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person.

(5) The Committee shall provide the health professional with any information or opinion which the Committee has received and afford the health professional the opportunity to comment on that information or opinion either before or at any hearing conducted under rule 10.

### **Compliance with standards**

9. Where the Committee has found that the health professional has failed to comply with the standards of conduct, performance and ethics established by the Council under article 21(1)(a) of the Order, the Committee may take that failure into account but such failure shall not be taken of itself to establish that the fitness to practise of the health professional is impaired.

### **Conduct of hearing**

10.—(1) At any hearing—

- (a) the proceedings shall be held in public unless the Committee is satisfied that, in the interests of justice or for the protection of the private life of the health professional, the complainant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing;
- (b) subject to sub-paragraph (c) the rules on the admissibility of evidence that apply in civil proceedings in the appropriate court in that part of the United Kingdom in which the hearing takes place shall apply;

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- (c) the Committee may hear or receive evidence which would not be admissible in such proceedings if it is satisfied that admission of that evidence is necessary in order to protect members of the public;
  - (d) where the health professional has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based;
  - (e) the Committee may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form;
  - (f) the Committee may adjourn the proceedings from time to time as it thinks fit.
- (2) In paragraph (1)(b) the “appropriate court” means—
- (a) the Court of Session in Scotland;
  - (b) the High Court of Justice in Northern Ireland; and
  - (c) the High Court of Justice in England and Wales.
- (3) The Committee may require any person (other than the health professional) to attend a hearing and give evidence or produce documents.
- (4) At the beginning of any hearing the Chairman shall explain to the parties the order of proceedings which the Committee proposes to adopt and, unless the Committee determines otherwise, the parties shall be heard in the following order—
- (a) the Chairman shall invite the Solicitor to present the case against the health professional and to adduce the evidence in support of that case;
  - (b) any witness called by the Solicitor shall be examined by him, may be cross-examined by the health professional or his representative, may be re-examined by the Solicitor and may be questioned by the Committee;
  - (c) at the conclusion of the case against the health professional the Chairman shall invite the health professional or his representative to address the Committee and to adduce evidence as to the health professional’s fitness to practise;
  - (d) any witness called by the health professional shall be examined by him or his representative, may be cross-examined by the Solicitor, may be re-examined by the health professional or his representative and may be questioned by the Committee;
  - (e) the Chairman shall invite the Solicitor to address the Committee again;
  - (f) the health professional or his representative may then address the Committee for a second time.

### **Absence of the health professional**

**11.** Where the health professional is neither present nor represented at a hearing, the Committee may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing under rule 6(1) on the health professional.

### **Disposal of cases**

**12.—(1)** Where the Committee concludes its consideration of an allegation it shall dispose of the case in accordance with article 29 of the Order.

(2) The Committee shall notify the health professional and the complainant of its decision and the reasons for reaching that decision and shall inform the health professional of his right of appeal.

## **Review of orders and applications for restoration to the register**

**13.**—(1) Where the Committee proposes to—

- (a) review an order in accordance with article 30 of the Order; or
- (b) consider an application for restoration in accordance with article 33 of the Order,

it shall without delay send a notice to the relevant person informing him of his right to appear, and to be represented, before the Committee to argue his case.

(2) For the purposes of this rule “relevant person” means—

- (a) a person against whom an order has been made under article 29 of the Order and which may be reviewed under article 30 of the Order; or
- (b) a person applying under article 33 of the Order for restoration to the register.

(3) Where the relevant person, before the end of the period of 28 days beginning with the date on which the notice under paragraph (1) is sent, sends a notice to the Committee stating that he wishes to appear before it, the Committee shall fix a day on which it is to hear the case and send to the relevant person notice of the day, time and venue for the hearing.

(4) The Committee shall not fix a date for the hearing which is before the end of the period of 28 days beginning with the day on which the relevant person sends the notice referred to in paragraph (3) to the Committee.

(5) The relevant person may be represented in any proceedings by any person, whether or not legally qualified, except a member of the Council or any of its committees or a person employed by the Council.

(6) The Committee may require any person (other than the relevant person) to attend and give evidence or produce documents at any hearing to be held under paragraph (3).

(7) The Committee may invite any person who, in its opinion, has an interest in the proceedings to submit written representations and any such representations shall be sent to the Committee before the end of the period of 14 days beginning with the date on which the invitation is sent to that person.

(8) The Committee or the Chairman may hold a preliminary meeting in private with the parties, their representatives and any other person it or he considers appropriate if such a meeting would, in its or his opinion, assist the Committee to perform its functions.

(9) At any meeting which he conducts under paragraph (8) the Chairman may give directions under article 32(3) of the Order and, with the agreement of the parties, take any action which the Committee would be competent to take at such a meeting.

(10) A hearing under paragraph (3) shall be conducted in accordance with rule 10 but, where the proceedings relate to an application made by the relevant person, the Committee shall adopt an order of proceedings which provides for that person to present his case first and for the Solicitor to speak last.

(11) The Committee shall notify the relevant person of its decision and the reasons for reaching that decision and shall inform him of his right of appeal.

## **Extension of time limits**

**14.** The time for—

- (a) requesting that a hearing be held specified in rule 5(1)(c);
- (b) a person giving notice that he wishes to appear before the Committee specified in rule 13(3);
- (c) sending written representations specified in—
  - (i) rule 5(1)(b),

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- (ii) rule 8(4),
- (iii) rule 13(7); or
- (d) dealing with any points raised by the Committee in respect of any written representations mentioned in rule 5(2).

May be extended by the Chairman where he is satisfied that in all the circumstances it is reasonable to do so.