

Arrangement of Rules

PART 5

Procedure at hearings

Application of Part 5

16. This part shall apply to—

- (a) the Investigating Committee, when considering—
 - (i) an allegation which relates to a fraudulent or incorrect entry in the register at a hearing, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order; and
- (b) the Conduct and Competence Committee or the Health Committee when considering—
 - (i) an allegation that the registrant’s fitness to practise is impaired at a hearing,
 - (ii) whether to make, revoke, confirm, vary or replace an interim order,
 - (iii) an order previously made by it, at a review hearing, or
 - (iv) an application for restoration to the register.

Interpretation

17. In this part, “Committee” means—

- (a) the Investigating Committee considering an allegation which relates to a fraudulent or incorrect entry in the register, or considering whether to make, revoke, confirm, vary or replace an interim order;
- (b) the Conduct and Competence Committee; or
- (c) the Health Committee.

Preliminary meetings

18.—(1) Before any allegation is considered by a Committee at a hearing in accordance with the provisions of this Part, that Committee or the Chair of the Committee may hold a preliminary meeting if such a meeting would, in its or her opinion, assist the Committee to perform its functions.

(2) A preliminary meeting referred to in paragraph (1) shall be—

- (a) chaired by the Chair of the Committee considering the allegation;
- (b) held with a legal assessor in attendance; and
- (c) held in private with the parties, their representatives and any person the Chair or Committee considers appropriate.

(3) The Chair of the preliminary meeting may give the directions mentioned in article 32(3) of the Order.

(4) The Chair of the preliminary meeting shall give the parties not less than 14 days notice of any preliminary meeting.

(5) Directions given by the Chair of the preliminary meeting may include, but shall not be limited to—

- (a) time limits for the service of evidence and disclosure of expert evidence (if any);

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- (b) a requirement that each party provide an estimate as to the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;
 - (c) where facts are not in dispute, or the issue of misconduct is admitted, a requirement that the parties produce a statement of agreed facts;
 - (d) save in the case of an allegation of a kind referred to in article 22(1)(a)(iv) of the Order, a requirement that the parties state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so, whether, in their view, medical reports should be obtained and the case considered by the Health Committee;
 - (e) a requirement that a party call the author of any expert report;
 - (f) where agreed between the parties, a direction that the witness statement of a witness shall stand as the evidence in chief of that witness;
 - (g) where the Committee is considering—
 - (i) an allegation that the registrant’s fitness to practise is impaired by reason of her physical or mental health, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order, whether the proceedings should be held in public or private;
 - (h) special measures to be put in place at the hearing for vulnerable witnesses; and
 - (i) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held.
- (6) At the preliminary meeting, the legal assessor may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence.
- (7) Notwithstanding paragraph (6), decisions as to whether or not any evidence is to be admitted at the hearing shall be taken by the Committee considering the allegation.
- (8) The Chair of the preliminary meeting shall keep a record of the directions given and shall send written confirmation of such directions to the parties promptly.

Public and private hearings

- 19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.
- (2) A hearing before the Health Committee shall be conducted in private unless the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Health Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor,
- that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant, and require all or part of the hearing to be held in public.
- (3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—
- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
 - (b) having obtained the advice of the legal assessor,
- that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.
- (4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Representation and entitlement to be heard

20.—(1) The presenter and the registrant shall be entitled to be heard by the Committee.

(2) The registrant may be represented by—

- (a) solicitor or Counsel;
- (b) a representative from her professional body or trade union; or
- (c) subject to paragraph (4), any other person.

(3) Where the registrant is not represented, she may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without its permission.

(4) A person who represents or accompanies the registrant shall not be called as a witness at the hearing.

(5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.

Absence of the practitioner

21.—(1) This rule shall not apply to hearings at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;
- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Witnesses

22.—(1) Witnesses shall be required to take an oath, or to affirm, before giving evidence at any hearing.

(2) The 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 23(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 the Committee.

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

(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents.

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

Vulnerable witnesses

23.—(1) In proceedings before the Conduct and Competence Committee or the Health Committee, the following may be treated as vulnerable witnesses—

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- (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 allegation against the registrant 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 assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee may include, but shall not be limited to—

- (a) use of video links;
- (b) subject to paragraph (4), use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning;
- (c) use of interpreters (including signers and translators); and
- (d) the hearing of evidence by the Committee in private.

(4) Where—

- (a) the allegation against a registrant is sexual in nature;
- (b) a witness is the alleged victim; and
- (c) the registrant is not represented,

she 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 the Committee considers appropriate.

(6) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Order of proceedings at initial hearing

24.—(1) Unless the Committee determines otherwise, the order of proceedings at the initial hearing of an allegation shall be as follows—

- (a) the Chair shall require the registrant to confirm her name and personal identification number;
- (b) the Chair shall cause the charge to be read out;
- (c) the Chair shall—
 - (i) inquire whether the registrant wishes to make any objections to the charge on a point of law, and
 - (ii) inquire whether the registrant wishes to make any admissions;
- (d) where facts have been admitted by the registrant, the Chair shall announce that such facts have been found proved;
- (e) where in respect of an allegation of a kind referred to in article 22(1)(a) of the Order the registrant admits that her fitness to practise is impaired—
 - (i) the Chair shall announce that the registrant’s fitness to practise is impaired,
 - (ii) the procedure in sub-paragraphs (f) to (l) shall not apply, and

- (iii) the procedure in sub-paragraphs (m) to (o) shall apply;
 - (f) where facts remain in dispute, the presenter shall adduce evidence in support of the Council's case;
 - (g) except on the hearing of an allegation by the Health Committee or the hearing of an allegation of lack of competence, upon the close of the Council's case and—
 - (i) upon the application of the registrant, or
 - (ii) of its own volition,the Committee may determine that the allegation is not well founded;
 - (h) except where the Committee has determined that the allegation is not well founded under sub-paragraph (g), the registrant may adduce evidence in support of her case;
 - (i) the Committee shall deliberate in private in order to make its findings on the facts and shall then announce the findings it has made;
 - (j) save in exceptional circumstances, the Committee shall not be required to give reasons for its findings of fact;
 - (k) where the allegation is of a kind referred to in article 22(1)(a) of the Order, the Committee shall invite representations from the parties as to whether, on the basis of any facts found proved, the registrant's fitness to practise is impaired;
 - (l) in such a case, the Committee shall deliberate in private, and then in the presence of the parties (if present), shall—
 - (i) announce its decision as to whether the registrant's fitness to practise is impaired, and
 - (ii) give reasons for its decision;
 - (m) in all cases the Committee—
 - (i) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct, and
 - (ii) shall invite representations from the registrant as to any mitigating circumstances which may affect the Committee's decision on the sanction, if any, to be imposed,and shall take any representations received into account before making its decision on sanction;
 - (n) the Committee shall deliberate in private and shall then in the presence of the parties (where present)—
 - (i) announce its decision on sanction, and
 - (ii) give reasons for its decision; and
 - (o) where, after announcing its decision on sanction, the Committee considers that it may be appropriate to make an interim order pending the outcome of any appeal, it shall—
 - (i) invite representations from the parties (where present) on whether or not an interim order should be made,
 - (ii) shall take any representations received into account before deciding whether or not to make an interim order,
 - (iii) shall deliberate in private, and
 - (iv) shall announce its decision in the presence of the parties (where present), and shall give reasons for its decision.
- (2) Notwithstanding the order set out in paragraph (1), the Committee may allow the parties to make additional submissions.

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Order of proceedings at a review or restoration hearing

25.—(1) This rule shall not apply to an interim orders hearing.

(2) Unless the Committee determines otherwise, the order of proceedings at a review hearing or a restoration hearing shall be as follows—

- (a) the presenter shall—
 - (i) inform the Committee of the background to the case, and the sanctions previously imposed on the registrant, and
 - (ii) direct the attention of the Committee to any relevant evidence including transcripts of previous hearings;
- (b) the registrant may adduce any relevant evidence on which she intends to rely;
- (c) the Committee shall deliberate in private and shall dispose of the case in accordance with article 30 or 33(5) to (7) of the Order; and
- (d) the Committee shall give reasons for its decision.

Order of proceedings at an interim orders hearing

26.—(1) Except where rule 24(1)(o) applies, this rule shall apply to any hearing at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Unless the Committee determines otherwise, the order of proceedings at an interim orders hearing shall be as follows—

- (a) the presenter shall inform the Committee of the reasons why it may be necessary to make an interim order on the registrant, or to revoke, confirm, vary or replace any order previously made, and may adduce any relevant evidence in this regard;
- (b) the registrant may make representations as to why an interim order should not be made, or should be revoked or not confirmed, varied or replaced, and may adduce any relevant evidence, including oral testimony, in support of her case; and
- (c) the Committee shall deliberate in private and shall then announce its decision, together with the reasons for its decision, in the presence of the parties (where present).

Notes and transcript of proceedings

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

(2) Any party to the proceedings shall, on application to the Council, be furnished with a transcript of the record of any part of the hearing or preliminary meeting at which she was entitled to be present.

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