
STATUTORY INSTRUMENTS

2004 No. 1767

The Nursing and Midwifery Council (Education, Registration
and Registration Appeals) Rules Order of Council 2004

PART 4

Registration Appeals

Interpretation

18. In these part of the Rules—

“appeal”	means an appeal which is made to the Council in accordance with article 37(1) of the Order;
“Appeal Panel”	means a panel appointed under rule 25 to consider an appeal;
“appellant”	means a person who has lodged an appeal against the Registrar’s decision;
“Chair”	means the chair of an Appeal Panel; and
“decision letter”	means a letter so headed notifying the applicant of the Registrar’s decision in respect of her application.

Service of documents in relation to registration appeals

19.—(1) In this part of the 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, an Appeal Panel or the Registrar, to the offices of the Council;
- (b) in the case of the appellant, to the address identified in her notice of appeal; 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 date which appears on the letter or document.

Period during which an appeal may be made

20. The period within which a person may appeal to the Council under article 37(1) of the Order is

- (a) where the appeal is against a decision referred to in sub-paragraph (a), (b) or (c) of that article, before the end of the period of 28 days beginning with the date of the decision letter; or

- (b) where the appeal is against a failure to issue a decision as referred to in sub-paragraph (d) of that article, before the end of the period of 28 days beginning with the day after the expiry of the period referred to in article 9(4) of the Order.

Notice of appeal

21.—(1) An appeal shall be made by giving notice in writing in accordance with the following paragraphs.

- (2) The notice shall be addressed to the Registrar at the offices of the Council and shall
 - (a) include
 - (i) the name and address of the appellant,
 - (ii) her personal identification number or her personal reference number,
 - (iii) where the appeal is against a decision referred to in article 37(1)(a), (b) or (c) of the Order, the date, nature and other relevant details of the decision against which the appeal is brought,
 - (iv) where the appeal is against a failure to issue a decision as referred to in article 37(1) (d) of the Order, the date, nature and other relevant details of the application in respect of which there has been a failure to issue a decision,
 - (v) a concise statement of the grounds of the appeal, and
 - (vi) the name and address of the appellant’s representative (if any) and a statement as to whether the Council should correspond with that representative concerning the appeal instead of with the appellant;
 - (b) state that the notice is a notice of appeal; and
 - (c) be signed by or on behalf of the appellant.
- (3) The appellant shall attach to the notice of appeal a copy of any documents on which she proposes to rely for the purposes of her appeal.

Acknowledgement by the Council

22.—(1) Upon receiving a valid notice of appeal the Council shall send the appellant a notice acknowledging its receipt and informing the appellant that

- (a) she may, before the end of the period of 28 days beginning with the date on which the notice was sent, request that a hearing be held;
- (b) even if she does not request a hearing, the Council may hold one if it considers it to be desirable; and
- (c) she may be heard and be represented at such a hearing.

(2) The period within which the appellant may make a request that a hearing be held may be extended by the Council at its discretion.

Notice of hearing

23.—(1) If the appellant has requested that a hearing be held, or the Council considers that it would be desirable to hold a hearing, the Council shall fix a date on which it is to hear the appeal and send notice to the parties of the day, time and venue for the hearing.

- (2) The Council shall give the appellant at least 28 days notice of the date of such a hearing.

Parties, representation etc.

24.—(1) Before the end of the period of 28 days beginning with the day on which the notice referred to in rule 23(1) is sent, the parties shall inform the Council whether they intend to attend the hearing, whether they will be represented at it and whether they intend to call any witnesses and, if so, they shall provide the names and addresses of their witnesses to the Council.

(2) An appellant who does not intend to attend or be represented at a hearing may, before the beginning of the period of seven days ending with the date on which the hearing is to be held, send to the Council additional written representations in support of her appeal.

(3) The Registrar shall be the respondent in any proceedings.

(4) The appellant 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.

(5) The Council may invite any person who, in its opinion, has an interest in the proceedings to make written representations and any such representations shall be sent to the Council within 14 days of the date on which the invitation is sent to that person.

Consideration by the Appeal Panel

25.—(1) Except where the Council considers an appeal itself, an appeal shall be considered by an Appeal Panel appointed by the Council for that purpose.

(2) The quorum of the Council when considering an appeal is seven and shall consist of registrant members and lay members and the number of members who are registrants may exceed the number of lay members but may not exceed them by more than one.

(3) An Appeal Panel shall comprise not fewer than three persons selected with due regard to the matter under consideration and shall include

- (a) a person who is registered in the same part of the register as that in which the appellant is, or is applying to be, registered;
- (b) a person who has never been admitted to the register or the old register and who is not a registered medical practitioner; and
- (c) where the health of the appellant is in issue, a registered medical practitioner.

(4) A member of the Council shall be appointed as Chair.

(5) A person who has been involved in any other capacity in a case which is to be considered by an Appeal Panel shall not be appointed as a member of that Panel.

(6) Decisions by an Appeal Panel shall be made by a majority vote of those present and, in the event of a tie, the Chair shall have an additional casting vote which shall be cast in favour of the appellant.

Preliminary meetings

26.—(1) The Appeal Panel or the Chair of the Appeal Panel may hold a preliminary meeting in private with the parties, their representatives and any other person it or she considers appropriate if such a meeting would, in their opinion, assist the Appeal Panel to perform its functions.

(2) At any meeting the Chair conducts under paragraph (1) she may give directions under article 32(3) of the Order and take any action which the Appeal Panel would be competent to take at such a meeting.

Powers to determine an appeal without a hearing

27.—(1) The Appeal Panel may determine an appeal without an oral hearing on the basis of any documents provided by the appellant under rule 21 or 24(2) where—

- (a) the Council does not receive a reply from the appellant within the time specified in rule 24(1) and the Appeal Panel is satisfied that all reasonable steps have been taken to give notice under rule 23(1), or the appellant replies under rule 24(1) to the effect that she does not wish to attend or be represented;
- (b) the Appeal Panel has notified the appellant and the Registrar of its intention to do so; and
- (c) the Appeal Panel considers it desirable to do so having taken into account any representations received in response to the notice referred to in paragraph (b).

(2) If the Appeal Panel decides under paragraph (1) to determine an appeal without an oral hearing, it shall take into account any written representations provided in accordance with rule 24(5) or written representations from the Registrar received by the Council before the beginning of the period of seven days ending with the date on which the Appeal Panel determines the appeal.

Postponement or adjournment of a hearing

28.—(1) The Appeal Panel, either of its motion or at the request of a party to the hearing, may postpone a hearing at any time before it begins and may adjourn the proceedings from time to time as it thinks fit.

(2) Where a hearing is postponed the Registrar shall send the appellant notice of the date on which the Appeal Panel is to hold the postponed hearing.

(3) The date for a postponed hearing shall not be fixed for any date before the end of the period of 14 days beginning with the day on which the Registrar sends the notice referred to in paragraph (2) to the appellant.

Absence of the appellant

29. Where—

- (a) the Council has fixed a date for a hearing; and
- (b) the appellant has informed the Council that she intends to attend or be represented; but
- (c) she does not attend and is not represented,

the Appeal Panel may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to give notice of the hearing to the appellant.

Conduct of the hearing

30.—(1) The hearing shall be held in public unless the Appeal Panel is satisfied that, in the interests of justice or for the protection of the private life of the appellant, any person giving evidence or of any patient or client, the public should be excluded from all or part of the hearing.

(2) At the beginning of the hearing the Chair shall explain to the parties the order of proceedings which the Appeal Panel proposes to adopt.

(3) The Appeal Panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties shall be heard in such order as the Appeal Panel shall determine having regard to the following—

- (a) the appellant may present her case in support of her appeal;

- (b) the appellant or any person called on her behalf may be cross-examined by the Registrar and, in the case of a person called on her behalf, re-examined by the appellant;
- (c) the Registrar may present her case in support of the decision appealed against or her failure to issue a decision;
- (d) the Registrar or any person called on her behalf may be cross-examined by the appellant and, in the case of a person called on the Registrar's behalf, re-examined by the Registrar;
- (e) the Registrar may address the Appeal Panel on her case in respect of the decision appealed against or her failure to issue a decision; and
- (f) the appellant may address the Appeal Panel on her case in respect of her appeal.

(4) The parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Appeal Panel both on the evidence and generally on the subject matter of the appeal.

(5) Subject to paragraph (6) where the appellant or the Registrar are represented, references in paragraphs (3) and (4) to the appellant or the Registrar

- (a) presenting the case;
- (b) calling, or questioning witnesses;
- (c) cross-examining or re-examining witnesses;
- (d) or addressing the Panel,

shall be read as references to the representative of the appellant or the Registrar as the case may be.

(6) Except as provided in paragraph (5) references in paragraph (3) to the Registrar shall be references to the Registrar or any other person nominated by her to appear on her behalf.

Procedure at the hearing

31.—(1) Subject to paragraph (3) the rules on 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.

(2) In paragraph (1) the “appropriate court” means a county court or, in Scotland, a sheriff.

(3) The Appeal Panel 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.

(4) The Appeal Panel may require any person (other than the appellant) to attend a hearing and give evidence or produce documents.

(5) At any hearing the Appeal Panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the notice of appeal or to adduce any evidence not presented to the Registrar before she took the disputed decision.

(6) Where the appellant 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.

(7) The Appeal Panel may require evidence to be given on oath or affirmation and for that purpose may administer oaths or affirmations in an appropriate form.

Disposal of cases

32. The Appeal Panel shall notify the appellant of its decision and the reasons for reaching that decision and shall inform the appellant of her right to appeal to a county court or, in Scotland a sheriff, under article 37(10) of the Order.

Consideration of cases by the Council

33. Where the Council considers an appeal, references in these Rules to an Appeal Panel, other than in the definition of “Appeal Panel”, rule 19(1)(a), 25(1) and 25(3), shall be construed as references to the Council.