

## SCHEDULE

### The Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers) Rules 2007

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Explanatory Note

The Council of the Royal Pharmaceutical Society of Great Britain makes these rules in exercise of the powers conferred by articles 7(2) to (5) and (8), 61(4), 62(7) and 66(1) of the Pharmacists and Pharmacy Technicians Order 2007.

In accordance with article 66(3) of that Order, the Council of the Royal Pharmaceutical Society of Great Britain has consulted, in relation to the rules under articles 61(4) and 62(7), Primary Care Trusts in England, Local Health Boards in Wales and Health Boards in Scotland.

## PART 1

### Preliminary

#### Citation and commencement

1. These Rules may be cited as the Royal Pharmaceutical Society of Great Britain (Fitness to Practise and Registration Appeals Committees and their Advisers) Rules 2007 and shall come into force on 30th March 2007.

#### Interpretation

2.—(1) In these Rules—

“appointments group” means the group established by the Council in accordance with rule 5;

“appropriate person” means a natural person of good character, who is a fit and proper person to act as a member of a committee;

“CHRE” means the Council for the Regulation of Health Care Professionals established under section 25 of the National Health Service Reform and Health Professions Act 2002<sup>(1)</sup>, which is also known as the Council for Healthcare Regulatory Excellence;

“committee”, unless the context otherwise requires, means a fitness to practise committee or the Registration Appeals Committee;

“hearing” means proceedings of a statutory committee at which the parties to the proceedings may attend or be represented;

“interim order” means an interim suspension order or an order for interim conditional registration;

“the Order” means the Pharmacists and Pharmacy Technicians Order 2007;

“lay member” means a member of a committee or group who is neither a registrant, nor in the employ of a registrant, nor a person with a registrable qualification in pharmacy; and

“professional member” means a person whose name is entered in Part 1 of one of the Society’s Registers.

(2) Pending the coming into force of article 21 of the Order, any requirement by virtue of these Rules that a person shall be a registered pharmacy technician shall be construed as a requirement that he be registered in the voluntary register of pharmacy technicians maintained by the Society.

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(1) 2002 c.17.

## PART 2

### Composition of committees

#### Composition of the committees

- 3.—(1) The Investigating Committee shall consist of—
- (a) a lay member who is the chair,
  - (b) a lay member who is the deputy chair;
  - (c) three other lay members; and
  - (d) five professional members.
- (2) The Disciplinary Committee shall consist of—
- (a) a legally qualified lay member who is the chair;
  - (b) three legally qualified lay members who are deputy chairs;
  - (c) six other lay members; and
  - (d) nine professional members.
- (3) The Health Committee shall consist of—
- (a) a lay member who is the chair;
  - (b) two lay members who are deputy chairs;
  - (c) four other lay members; and
  - (d) six professional members.
- (4) The Registration Appeals Committee shall consist of—
- (a) a legally qualified lay member who is the chair;
  - (b) a legally qualified lay member who is the deputy chair;
  - (c) three other lay members; and
  - (d) five professional members.

## PART 3

### Appointment and removal of committee members

#### Eligibility of Council members for appointment to committees

4.—(1) Council members may be appointed to the Investigating Committee but may not be appointed to the Health, Disciplinary or the Registration Appeals Committees.

(2) Former Council members may be appointed to the Disciplinary, Health and Registration Appeals Committees, provided that they have not held office as a Council member for a period of three years prior to the date of application for membership of the Committee.

#### Appointments group

- 5.—(1) The Council shall establish an appointments group for the purpose of—
- (a) appointing appropriate persons to serve—
    - (i) as members, other than the chairs and deputy chairs, of the Health and Disciplinary Committees,

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- (ii) as members (including the chairs and deputy chairs) of the Investigating and Registration Appeals Committees; and
  - (b) assisting the Privy Council in the appointment of the chairs and deputy chairs of the Health and Disciplinary Committees;
  - (c) assisting the Council in appointing legal, clinical and specialist advisers; and
  - (d) where appropriate removing from office persons it has appointed.
- (2) The appointments group shall consist of—
- (a) a lay member who is the chair;
  - (b) a lay member who is the deputy chair;
  - (c) two professional members who are pharmacists; and
  - (d) one professional member who is a pharmacy technician.
- (3) In the absence of the chair of the appointments group, the deputy chair of the group may perform the functions of the chair.
- (4) No member of the Council or employee of the Society may be a member of the appointments group.
- (5) The members of the appointments group shall be paid such remuneration and allowances as the Council may reasonably determine.

#### **Recruitment of committee members**

- 6.—(1) Except where rule 15 applies, the appointments group shall, by means of open advertisement, invite applications to fill vacancies with regard to—
- (a) membership of committees; and
  - (b) posts for legal, clinical and specialist advisers.
- (2) All applications received shall be considered by the chair of the appointments group who shall draw up a shortlist of applicants to be interviewed by the appointments group.
- (3) The procedure for—
- (a) sifting of applications;
  - (b) interviewing of applicants;
  - (c) drawing up of shortlists;
  - (d) appointing members of the committees, except the chairs and deputy chairs of the Health and Disciplinary Committees;
  - (e) making recommendations to the Privy Council as regards the appointment of the chairs and deputy chairs of the Health and Disciplinary Committees; and
  - (f) making recommendations to the Council as regards the appointment of legal, clinical and specialist advisers,

shall be as determined by the chair of the appointments group.

- (4) No person may be appointed as a member of more than one of the committees.

#### **Required competencies for members of committees**

7.—(1) Subject to rule 8, the chair of the appointments group shall determine and publish the minimum competencies required for appointment as a member of a committee, except for the chairs and deputy chairs of the Health and Disciplinary Committees, including any specific competencies required of the other chairs or deputy chairs of the committees.

(2) The chair of the appointments group may advise the Privy Council on the minimum competencies that he thinks are required for appointment as a chair or deputy chair of the Health or Disciplinary Committee.

(3) In determining the competencies referred to in paragraph (1), or in giving advice as provided for in paragraph (2), the chair of the appointments group shall have regard to best practice on competencies required for membership of quasi-judicial committees, as disseminated by the Judicial Studies Board and the CHRE (or any successor bodies).

(4) No person shall be appointed as a member of a committee, other than as chair or deputy chair of the Health or Disciplinary Committee, unless that person possesses, or has demonstrated the ability to acquire quickly, the competencies determined by the chair of the appointments group.

### **Chairs and deputy chairs of committees**

**8.—**(1) The chair and deputy chair of the—

- (a) Disciplinary Committee; and
- (b) Registration Appeals Committee,

shall hold at least a ten year general qualification (within the meaning of section 71(3)(c) of the Courts and Legal Services Act 1990<sup>(2)</sup> (qualification for judicial and certain other appointments)) or be an advocate or solicitor in Scotland of at least ten years standing.

(2) In the absence of the chair of a committee, the deputy chair may perform the functions of the chair.

### **Standards and training for committee members**

**9.—**(1) A member of a committee shall—

- (a) attend all meetings and hearings at which his presence is required unless there is a good reason for him being unable to do so;
- (b) prepare for any meeting or hearing by reading any papers issued to the members of the committee beforehand;
- (c) if he is unable to attend a meeting or hearing at which his presence is required, take all reasonable steps to give advance warning of his absence to the chair or, where appropriate, the deputy chair; and
- (d) comply with the code for committee members approved by the Council and published on the Society's website<sup>(3)</sup>.

(2) Every member of a committee shall undertake periodic training provided or arranged by the Society (which may be training provided by the CHRE) in relation to human rights and regulatory law and best practice.

(3) Committee members (including chairs and deputy chairs) shall be periodically appraised, in accordance with arrangements determined by the chair of the appointments group.

### **Terms of appointment for committee members**

**10.—**(1) Members of committees shall not serve more than two consecutive terms of office.

(2) Each term of office shall not be longer than four years, but shall otherwise be of the duration determined by the appointments group, on appointment.

(3) This rule does not apply to the chair or a deputy chair of the Health or Disciplinary Committee.

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(2) 1990 c.41.

(3) The Society's website is at [www.rpsgb.org.uk](http://www.rpsgb.org.uk).

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### **Resignation of committee members**

11. A member of a committee may resign from that committee at any time, by notifying the chair of the appointments group (or, in the case of the chair or a deputy chair of the Health or Disciplinary Committee, the Privy Council) in writing.

### **Reserve list**

12.—(1) The appointments group shall maintain a reserve list of appropriate persons to serve as members of each of the committees (which shall include both prospective professional members and prospective lay members).

(2) Persons may only be retained in a reserve list for a period of three years, after which time their suitability for continued inclusion in such list shall be reconsidered by the appointments group.

(3) Persons on the reserve list may be appointed as members of a committee (other than as chair or deputy chair of the Health or Disciplinary Committee) without further interview by the appointments group, in the event that a vacancy arises on a committee.

(4) Persons on the reserve list may be invited to attend training provided or arranged by the Society to maintain their suitability for continued inclusion on the reserve list.

(5) In the event that a committee member is unable to sit to consider a case for any reason, persons on the reserve list for that committee may be co-opted onto the committee, if its chair decides that it is appropriate to do so, to serve as a committee member for that particular case.

### **Suspension and removal of committee members**

13.—(1) The appointments group shall remove from a committee any member (other than a chair or deputy chair of the Health or Disciplinary Committee), or from the reserve list any person—

- (a) who resigns his membership of a committee in accordance with rule 11;
- (b) whose term of appointment has expired; or
- (c) who, in the opinion of the appointments group—
  - (i) has ceased to be an appropriate person (for example, by reason of misconduct or a criminal conviction),
  - (ii) has seriously or persistently failed to meet the standards of performance, conduct or attendance required of a member of a committee in the ordinary course of his duties,
  - (iii) is unable to perform his duties because of ill health,
  - (iv) in the case of a professional member, has ceased to be registered in the practising part of the Register as regards which he is a professional member,
  - (v) has improperly disclosed confidential information obtained by him in the course of his membership of a committee,
  - (vi) has brought the Society into disrepute,
  - (vii) has failed to comply with the code for committee members approved by the Council and published on the Society's website, or
  - (viii) should no longer continue to be a member of a committee in the public interest.

(2) The appointments group may suspend a member of a committee (other than a chair or deputy chair of the Health or Disciplinary Committee) while investigations are being undertaken into his suitability to remain as a member of that committee.

(3) The appointments group shall afford any member of a committee or person who is on the reserve list who is under investigation, the opportunity to make written and oral representations before reaching a decision on whether to remove him from the committee or the reserve list.

(4) The procedure for the suspension or dismissal of a committee member shall be as set out in writing and given to every committee member (including whenever it is amended by the chair of the appointments group).

(5) If the appointments group considers that the Privy Council may need to exercise its powers to suspend or remove a chair or deputy chair of the Health or Disciplinary Committee, it may advise the Privy Council accordingly.

### **Casual vacancies**

**14.** Where a vacancy occurs on a committee as a result of the resignation, removal or death of a member of that committee, the appointments group shall—

- (a) appoint a replacement from the list of reserves; or
- (b) where no suitable replacement is available from the list, appoint a replacement in accordance with rule 6.

### **Power to co-opt members**

**15.—(1)** Subject to paragraphs (2) to (4), the chair of a committee may (in addition to the circumstances provided for in rule 12(5)), after consulting with the legal adviser, co-opt appropriate persons to act as members of that committee, where it is necessary or desirable to do so in order for the committee to be able to dispose of a particular case.

(2) No person shall be co-opted as a member of a committee, unless that person possesses, or has demonstrated the ability to acquire quickly, the competencies determined by the chair of the appointments group.

(3) No member of the Council may be co-opted as a member of a committee.

(4) No member of a committee may be co-opted onto another committee.

## **PART 4**

### **Provisions relating to meetings and hearings**

#### **Committee secretary**

**16.—(1)** Each committee shall be assisted by a secretary.

(2) No person shall act as secretary to a committee if he is a member of the Council.

(3) No person acting as secretary to the Investigating Committee may act as secretary to the Disciplinary or Health Committee.

(4) The secretary shall be responsible for the administrative arrangements relating to the proceedings of the committee.

(5) The secretary shall, in consultation with the chair of the relevant committee, select the legal, clinical and specialist advisers, to advise the committee, as required in any particular case.

(6) The secretary of a committee shall keep a record, or shall ensure that a record is kept, of all decisions made by the committee and of the reasons for them.

(7) The secretary shall not participate in the decision making of a committee (and is not entitled to vote).

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### **The composition of committees at particular meetings or hearings**

17.—(1) Subject to paragraph (2), the quorum for a meeting, other than a case management meeting, or a hearing of a committee shall be three members, which shall include—

- (a) the chair or deputy chair;
- (b) a lay member; and
- (c) a professional member.

(2) Subject to paragraphs (4) to (7), the chairs of the Health and Disciplinary Committees shall, having consulted the secretaries of their Committees and with regard to the—

- (a) matters to be considered by the committee; and
- (b) availability, experience and expertise of committee members,

determine the particular size, composition and quorum of the Committee required for each hearing and any related meetings.

(3) Case management meetings shall be conducted by—

- (a) the chair of the committee; or
- (b) in the case of the Health Committee, the chair or a legal adviser to the committee.

(4) Where the chair of the Health or Disciplinary Committee determines that only specified members of the full Committee are required for a particular hearing and any related meetings, he shall also ensure that—

- (a) he or a deputy chair of his Committee is one of the specified members;
- (b) the quorum is not less than three; and
- (c) the number of registrants who are members of that formation of his Committee does not exceed the number of other members by more than one.

(5) Subject to paragraph (6), the chairs of the Health and Disciplinary Committees shall ensure that a member of their Committee who has sat in a formation of the Committee that has made an interim order in a particular case shall not sit in subsequent proceedings in that case, and that member shall not sit in subsequent proceedings in that case.

(6) Paragraph (5) shall not apply where the subsequent proceedings relate solely to interim measures under article 54 of the Order.

(7) For the purposes of paragraph (5), where an interim order is made in the course of the proceedings to determine a case substantively, the rest of the proceedings to determine the case substantively are not “subsequent proceedings”, even if for whatever reason the case is adjourned.

(8) At any meeting or hearing of a committee, the number of professional members considering a case shall not exceed the number of lay members by more than one.

### **Provisions against bias**

18.—(1) No member of a committee (or formation of a committee) shall sit as a member considering a particular case at any stage of the proceedings relating to that case, if that member has an actual or potential conflict of interest in relation to that case.

(2) The Registrar shall establish and maintain a register of the private interests of all the members of the committees (including chairs and deputy chairs).

(3) It shall be the duty of each member of a committee to notify the Registrar immediately of any private interest that he has not previously notified to the Registrar but which may need to be recorded in the register maintained under paragraph (2).



(4) The Registrar shall publish the register maintained under paragraph (2) on the Society's website.

### **Voting**

**19.**—(1) Decisions of a committee shall be taken by a simple majority of the members (the chair does not have a casting vote).

(2) If a member of a committee abstains, his abstention shall be treated as a vote against the motion that has been put to the vote.

### **Validity of proceedings**

**20.** The validity of any proceedings of a committee shall not be affected by any defect in the appointment of a committee member.

## **PART 5**

### **Advisers and their advice**

#### **Functions of legal advisers**

**21.**—(1) A legal adviser—

- (a) shall be present at all meetings of the Investigating Committee at which a decision is to be taken as to whether or not to—
  - (i) refer a case to the Disciplinary Committee or to the Health Committee, or
  - (ii) notify the Registrar that the Society should consider exercising any of its powers to bring criminal proceedings;
- (b) shall be present at any hearing before the Health Committee;
- (c) may, at the request of the chair or the secretary, be present at any other hearing before a committee, other than a hearing before the Disciplinary Committee; and
- (d) may be present at any other meetings or hearings of a committee of the Society, at the request of the Registrar or the chair of the committee.

(2) The function of the legal adviser at a meeting or hearing referred to in paragraph (1)(a) to (c) shall be to ensure that proceedings before the committee are conducted fairly.

(3) The legal adviser at a meeting or hearing referred to in paragraph(1)(a) to (c) shall—

- (a) advise the committee on questions of law that are referred to him by members of the committee;
- (b) intervene to advise the committee on an issue of law where it appears to him that, without his intervention, there is the possibility of an error of law being made;
- (c) inform the committee immediately of any irregularity in the conduct of proceedings before it; and
- (d) at the request of the chair, advise the committee on the structure, format and presentation of the reasons for a decision of that committee.

(4) The legal adviser at a case management meeting of the Health Committee, may, at the request of the chair of the Committee, conduct as much of the meeting as the chair requests him to conduct (notwithstanding that he is not a member of the committee), and while conducting the meeting, he may—

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- (a) issue directions to the parties; and
- (b) deliver an opinion on questions of law and admissibility of evidence.

(5) At the request of the chair, the legal adviser who is present at a meeting or hearing of a committee referred to in paragraph (1) may be present during the private deliberations of a committee, but he shall not participate in the decision making of the committee (and is not entitled to vote).

### **Functions of clinical advisers**

**22.**—(1) A clinical adviser—

- (a) shall be present at any meeting of the Investigating Committee at which a decision is to be taken as to whether or not to refer a case to the Health Committee;
- (b) shall be present at any hearing before the Health Committee; and
- (c) may be present at any meeting of, or hearing before, the Registration Appeals Committee at which the health of an applicant for registration is, or is likely to be, considered.

(2) The function of the clinical adviser who is present at a meeting or hearing referred to in paragraph (1) shall be to—

- (a) advise the committee on any issues within his areas of medical expertise that may be referred to him by a member of that committee; and
- (b) intervene to advise the committee on an issue where it appears to him that, without his intervention, there is the possibility of an error being made.

(3) At the request of the chair, the clinical adviser who is present at a meeting or hearing referred to in paragraph (1) may be present during the private deliberations of a committee, but he shall not participate in the decision making of the committee (and is not entitled to vote).

### **Functions of specialist advisers**

**23.**—(1) A specialist adviser—

- (a) may be present at any meeting of the Investigating Committee at which a decision is to be taken as to whether or not to—
  - (i) refer a case to the Disciplinary Committee or to the Health Committee, or
  - (ii) notify the Registrar that the Society should consider exercising any of its powers to bring criminal proceedings;
- (b) may be present at any hearing before the Disciplinary Committee at which an allegation of deficient professional performance is to be considered;
- (c) may be present at any hearing before the Health Committee; and
- (d) may be present at a meeting of, or hearing before, the Registration Appeals Committee.

(2) The function of a specialist adviser at a meeting or hearing referred to in paragraph (1) shall be to advise the committee on issues within his areas of expertise that may be referred to him by a member of that committee.

(3) At the request of the chair, the specialist adviser who is present at a meeting or hearing referred to in paragraph (1) may be present during the private deliberations of a committee, but shall not participate in the decision making of the committee (and is not entitled to vote).

### **Requirement to give or repeat advice in public**

**24.**—(1) This rule shall not apply to proceedings before the Investigating Committee.

(2) Subject to paragraph (3), any advice tendered by a legal, clinical or specialist adviser at a hearing shall be tendered in the presence of every party, or person representing a party, in attendance at the hearing.

(3) Where a statutory committee has begun to deliberate on its decision and needs to obtain advice in the course of its deliberations, a legal, clinical or specialist adviser may tender advice to the committee notwithstanding the absence of the parties or any person representing a party.

(4) Where advice is tendered in the absence of the parties or their representatives in accordance with paragraph (3)—

- (a) the legal, clinical or specialist adviser shall repeat the advice tendered to the committee before the parties, or any person representing a party, in attendance at the hearing; and
- (b) the parties or their representatives in attendance at the hearing shall be provided with a reasonable opportunity to comment on the advice given by the legal, clinical or specialist adviser, before the committee makes its decision on the issue under consideration.

#### **Requirement to keep records of advice and interventions**

**25.**—(1) The secretary to a committee shall keep a record of any advice tendered to that committee (or repeated) in public by the legal, clinical or specialist adviser to that committee.

(2) The chair of a committee shall keep a record of any interventions made by the legal, clinical or specialist adviser during the private deliberations of that committee.

(3) A copy of any advice tendered by the legal, clinical or specialist adviser shall be sent to the parties to the proceedings (that is, the Society and the appellant or person concerned, as the case may be) or their representatives, as appropriate.

#### **Refusal by a committee to accept advice**

**26.** Where any advice tendered by the legal, clinical or specialist adviser to a committee is not accepted by that committee—

- (a) the chair of the committee shall announce the reasons for not accepting the advice tendered; and
- (b) the secretary to the committee shall—
  - (i) keep a record of the advice tendered, and the reasons why the committee refused to accept that advice, and
  - (ii) send a copy of the record of the advice tendered and the reasons why the committee refused to accept that advice, to the parties to the proceedings (that is, the Society and the appellant or person concerned, as the case may be) or their representatives, as appropriate.

#### **Questioning of witnesses**

**27.** A legal, clinical or specialist adviser advising a committee in accordance with these Rules may, with the permission of the chair of that committee, question any witness appearing before the committee.