

SCHEDULE

The General Pharmaceutical Council (Fitness to Practise and Disqualification etc.) Rules 2010

PART 5

Matters arising both before and during hearings

Practice directions

22. The chair may issue practice directions of general application to any proceedings of the Committee.

Clinical and other specialist advice

23. The Committee may, at any time in the course of proceedings before it (including at a hearing), seek advice from—

- (a) a clinical adviser, appointed under article 64(1)(a) of the Order, on a health related issue; or
- (b) another specialist adviser, appointed under article 64(2)(a) of the Order, on issues falling within their speciality or related to it.

Evidence

24.—(1) All questions of admissibility of evidence and law before the Committee are to be decided by the Committee (after having obtained the advice of the legal adviser, where appropriate).

(2) Subject only to the requirements of relevance and fairness, the Committee may receive—

- (a) subject to paragraph (3), any documentary evidence; and
- (b) where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in any subsequent civil proceedings if the decision of the Committee were appealed to the relevant court.

(3) Where a party wishes to adduce a witness statement, the Committee may only receive such evidence if the statement—

- (a) contains an attestation, in a format acceptable to the Committee, that the statement is true; and
- (b) is signed by the person making it.

(4) Where a person concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), a copy of the certificate of conviction certified by a competent officer of the court or for a conviction in Scotland, an extract conviction, is admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence which may be adduced by the person concerned in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that the person concerned is not the person referred to in the certificate or extract.

(6) Where it is alleged that an applicant or registrant has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006(1) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(2)) by the Independent Barring Board (“the Board”)—

(1) 2006 c.47.

(2) S.I. 2007 No.1351 (N.I.11).

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- (a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 that attests to that inclusion is to be conclusive proof of that inclusion, unless the applicant or registrant concerned can prove that they are not the person referred to in the information provided; and
 - (b) a document from the Board, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact that led to that inclusion is conclusive proof of those facts.
- (7) Where it is alleged that an applicant or registrant is included in the children’s or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007⁽³⁾)—
- (a) information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to that inclusion is conclusive proof of that inclusion, unless the applicant or registrant concerned can prove that they are not the person referred to in the information provided; and
 - (b) a document from the Scottish Ministers, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact that led to that inclusion is conclusive proof of those facts.
- (8) A formal notification of a determination about a person’s fitness to practise made by a body responsible under any enactment for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, is to be sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.
- (9) The Committee may only allow a party to adduce written evidence at a hearing which has not been served in accordance with these Rules (or these Rules as modified by case management directions) in such exceptional circumstances as it may determine.
- (10) In determining whether a registrant’s fitness to practise is impaired by reason of physical or mental health, or when giving advice to the Registrar in relation to an applicant’s physical or mental health, the Committee may take into account, amongst other matters—
- (a) a refusal by the person concerned to submit to medical examination;
 - (b) the current physical or mental condition of the person concerned;
 - (c) any continuing or episodic condition suffered by the person concerned; and
 - (d) any underlying condition suffered by the person concerned which, although in remission, is capable of causing impairment of fitness to practise if it recurs.
- (11) Where the Committee finds that a registrant concerned has failed to comply with the standards, that failure—
- (a) may be taken into account by the Committee in determining whether or not the registrant concerned’s fitness to practise is impaired; and
 - (b) is not, of itself, to be taken to establish that the registrant’s fitness to practise is impaired.
- (12) In paragraph (11), “the standards” means the standards of conduct, ethics and performance (including the Council’s Code of Conduct, Ethics and Performance and the related guidance) published by the Council under article 48(2) of the Order.

Absence of the person concerned

25. Where the person concerned is neither present nor represented at any hearing and the Committee is satisfied that—

(3) 2007 asp 14.

- (a) service of the Notice of Hearing or the Interim Order Notice has been properly effected; or
- (b) all reasonable efforts have been made to serve the person concerned with the Notice of Hearing or the Interim Order Notice,

the Committee may nevertheless proceed to consider and determine the matter or allegation.

Agreement of undertakings and giving of advice and warnings

26.—(1) The Committee may, if it thinks fit, dispose of fitness to practise proceedings by agreeing undertakings with the registrant concerned (that is, that the registrant will comply with such undertakings as the Committee considers appropriate) where they admit that their fitness to practise is impaired.

- (2) The Committee may, if it thinks fit, dispose of disqualification proceedings by—
 - (a) agreeing undertakings with the section 80 party (that is, that the section 80 party will comply with such undertakings as the Committee considers appropriate); or
 - (b) giving advice or a warning,

instead of issuing a direction under section 80 of the Act.

Joinder of allegations for a joint hearing

27.—(1) Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the Committee may consider and determine a fitness to practise or a disqualification allegation against two or more persons concerned at the same hearing where—

- (a) the allegation against each person concerned arises out of the same circumstances; or
 - (b) in the view of the Committee, a joint hearing is necessary or desirable.
- (2) Where a joint hearing is held—
- (a) these Rules are to have effect in relation to the hearing with the necessary modifications directed by the chair; and
 - (b) each person concerned is to be able to exercise any of the rights granted to that person under these Rules whether or not any other person concerned wishes to exercise that right.

Consideration of allegations that relate to more than one category of impairment

- 28.**—(1) As regards any fitness to practise allegation before the Committee, if—
- (a) the particulars of the allegation in the Notice of Hearing relate to more than one category of impairment of fitness to practise; and
 - (b) those particulars include a conviction or caution,

the chair must ensure (by adapting the procedure for the hearing, where necessary) that at the principal hearing, the Committee makes its findings of facts in relation to the allegations that do not relate to the conviction or caution before it hears and makes its findings of fact in relation to the conviction or caution.

(2) In the circumstances set out in paragraph (1), the chair must also ensure (by adapting the procedure for the hearing, where necessary), that the Committee only makes its decision as regards impairment of fitness to practise once it has made its finding of fact in relation to all the allegations set out in the Notice of Hearing.

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Consideration of additional allegations

29. Where, before a principal hearing, the Council becomes aware of an additional allegation against a person concerned—

- (a) the Council may request case management directions; and
- (b) the chair may, where they consider it just to do so, direct that the new allegation be considered at the same hearing as the allegation that has already been referred, and that these Rules are to apply as modified to take into account the particular circumstances of the case.

Additional evidence for review hearings

30. Where, before a review hearing, the Council becomes aware of new evidence which it wishes to bring to the attention of the Committee (for example, evidence of a failure to comply with conditions)—

- (a) the Council may request case management directions; and
- (b) the chair may direct that the new evidence be considered at the review hearing, and that these Rules are to apply as modified to take into account the particular circumstances of the case.