

## SCHEDULE

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

### PART 7

#### General

##### **Postponements and adjournments**

**37.**—(1) The chair may, of their own motion or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Rules before the hearing begins.

(2) The Committee may, of its own motion or upon the application of a party, adjourn the proceedings at any stage provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or the Committee must, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the parties.

(4) Where a person concerned applies for a postponement or adjournment on grounds of ill-health—

- (a) the person concerned must adduce appropriate medical certification in support of that application; and
- (b) the chair or Committee may, if not satisfied by the medical certification produced, require the person concerned to submit to be examined by a registered medical practitioner approved by the Council.

(5) Where the proceedings have been postponed or adjourned, the secretary must, as soon as practicable, notify the parties of the date, time and venue of the postponed or resumed hearing.

##### **Disposal of allegations without hearings**

**38.**—(1) Where—

- (a) an allegation has been referred to the Committee by the Investigating Committee;
- (b) a principal hearing has not yet taken place in the proceedings; and
- (c) the presenter for either the principal hearing or an interim order hearing that relates to the allegation considers that, on the basis of the evidence available or other information in the possession of the Council, the hearing should not be held,

the presenter must inform the Investigating Committee of their opinion forthwith and of the reasons for their opinion.

(2) Upon receipt of the presenter's opinion, the Investigating Committee must consider the matter and may give a direction that the referral to the Committee (either for a principal or an interim order hearing, or both) is rescinded.

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(3) The Investigating Committee must not rescind a referral for a principal hearing without first giving the maker of the relevant allegation (if any) a reasonable opportunity to comment on the proposed rescission.

### **Attendance of the public at hearings**

**39.**—(1) Except as provided for in this rule, hearings of the Committee must be held in public.

(2) Any hearing before the Committee relating to a health allegation, or an interim order hearing before the Committee, must be held in private, unless the Committee is satisfied—

- (a) having given the parties (where present), and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) in the case of the hearing relating to a health allegation, having obtained the advice of the legal and clinical advisers,

that the public interest in holding the hearing in public outweighs the interest of the registrant concerned or the third party in maintaining their privacy.

(3) A hearing before the Committee other than a hearing referred to in paragraph (2) may be held wholly or partly in private if the Committee—

- (a) has given the parties (where present), and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) is satisfied that the interest of the person concerned or the third party in maintaining their privacy outweighs the public interest in holding the hearing, or the part of the hearing, in public.

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

### **Representation**

**40.**—(1) The presenter is to be a person who is—

- (a) a barrister, advocate or solicitor who falls within sub-paragraph (i) or (ii) of article 61(2) (c) of the Order;
- (b) a solicitor in Scotland who does not fall within sub-paragraph (a); or
- (c) an employee of the Council.

(2) The person concerned may be represented by a person who is—

- (a) a barrister, advocate or solicitor who falls within sub-paragraph (i) or (ii) of article 61(2) (c) of the Order;
- (b) a solicitor in Scotland who does not fall within sub-paragraph (a); or
- (c) a representative from that party's defence organisation or their trade union.

(3) Where the person concerned is not represented, they may be accompanied and advised by a supporter, but the supporter—

- (a) must not be—
  - (i) a member of the Council or of one of its statutory committees,
  - (ii) an employee of the Council, or
  - (iii) a witness at the hearing; and
- (b) may only address the Committee with the permission of the chair.

### **Amendment of the particulars of the allegation at principal hearings**

**41.**—(1) At a principal hearing, at any stage before making its findings of fact, the Committee may of its own motion or following an application of one of the parties, amend the particulars of the allegation set out in the Notice of Hearing, unless it is of the view that the required amendment would prejudice the fairness of the proceedings.

(2) Before making any amendment under paragraph (1), the Committee must consider—

- (a) any representations from the parties (where present); and
- (b) in the case of a hearing in relation to a health allegation, the advice of the legal and clinical advisers.

### **Burden and standard of proof**

**42.**—(1) Where facts at a principal hearing are in dispute, the burden of proving the facts rests on the Council.

(2) At a restoration hearing, the Committee may only grant the application if the applicant has proved their entitlement to be registered.

(3) Where facts are in dispute, the Committee must consider whether they have been established in accordance with the civil standard of proof.

### **Witness evidence**

**43.**—(1) Witnesses are to be required to take an oath, or to affirm, before giving their oral evidence.

(2) The Council may not compel the person concerned to be a witness.

(3) A party may not call a person to be a witness unless that party has provided to the other party a written statement of evidence provided by the witness which meets the requirements of rule 24, at least 7 days before the date of the hearing, unless the chair determines otherwise.

(4) The Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness must not be revealed in public.

(5) Where a witness's first language is not English, the Committee may direct that their evidence be given through an interpreter.

(6) Witnesses other than the person concerned—

- (a) must first be examined by the party calling them;
- (b) may be cross-examined;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned, with the leave of the chair, by the Committee or by a clinical, legal or specialist adviser.

(7) The parties may then question the witnesses on matters arising out of the Committee's questions, with the party calling the witness being given the last opportunity to do so (as between the parties).

(8) Where the person concerned is a witness, they—

- (a) must first be examined by the person representing them or, if there is no such person, must be questioned by the Committee through the chair;
- (b) may then be cross-examined;
- (c) may then be re-examined by the person representing them, if any; and

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(d) may then be questioned, with the leave of the chair, by the Committee whether or not they are represented.

(9) Any further questioning of witnesses is to be at the discretion of the chair.

(10) Except for expert witnesses and the person concerned, witnesses are not to be allowed to attend the proceedings until after they have completed giving their evidence and been formally released by the chair.

### **Vulnerable witnesses at hearings**

**44.**—(1) In proceedings before the Committee, the following may, if the quality of their evidence is otherwise likely to be adversely affected, be treated as vulnerable witnesses—

- (a) any witness under the age of 18;
- (b) any witness with a mental disorder (within the meaning of the Mental Health Act 1983<sup>(1)</sup>);
- (c) any witness who is significantly impaired in relation to intelligence or social functioning;
- (d) any witness with a physical disability who requires assistance to give evidence;
- (e) any witness, where an allegation against a person concerned is of a sexual nature and the witness was the alleged victim; or
- (f) any witness who complains of intimidation.

(2) Upon—

- (a) hearing representations from the parties; and
- (b) in relation to a health allegation, after seeking the advice of a legal adviser,

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 are not to 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 the witness is present at the hearing for cross-examination and questioning; and
- (c) use of interpreters (including signers and translators).

(4) Where—

- (a) there is an allegation against a person concerned of a sexual nature;
- (b) a witness is the alleged victim; and
- (c) the person concerned is not represented,

the person concerned is not to be allowed to cross-examine the witness directly in person.

(5) In the circumstances set out in paragraph (4), any questioning of the witness is to be undertaken by such person as the Committee considers appropriate.

### **Review of undertakings**

**45.**—(1) Where undertakings have been agreed by the Committee under rule 26, the Registrar may carry out any investigations which may include (but are not limited to) requesting the provision of reports or directing an assessment to be carried out where, in the Registrar's opinion these are appropriate to the consideration of—

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(1) 1983 c.20. "Mental disorder" is defined in section 1(2) as any disorder or disability of the mind.

- (a) whether the registrant concerned or section 80 party has complied with any undertakings in place; or
  - (b) in the case of a registrant, the registrant concerned's fitness to practise.
- (2) Where, as a result of information received by the Council, it appears to the Registrar that any undertakings agreed under rule 26 should be varied or cease to apply, the Registrar must—
- (a) invite the registrant concerned or section 80 party to agree such varied undertakings as appear to the Registrar to be appropriate; or
  - (b) direct that the undertakings are no longer to apply.
- (3) Where the Registrar receives information that—
- (a) the registrant concerned or section 80 party has failed to comply with an undertaking agreed under rule 26 or which, having been agreed under rule 26, has been varied following an invitation to comply with it under paragraph (2)(a); or
  - (b) in the case of a registrant, the registrant concerned's health or performance has deteriorated or otherwise gives further concern regarding their fitness to practise,
- the Registrar may refer the matter to the Committee for a review hearing.

### **Costs of the hearing**

- 46.**—(1) Where a principal hearing, a review hearing or a restoration hearing is to be held, a party may serve on the other party, and on the secretary, a schedule of costs or expenses relating to or connected with that hearing no less than 24 hours before the date of the hearing.
- (2) After announcing the Committee's decision, the chair may invite representations as to whether costs or expenses should be assessed against either party.
- (3) After hearing any representations from the parties, the Committee may, if it thinks fit and having regard to the party's ability to pay, order that a party pay by a specified date all or part of the costs or expenses relating to the hearing incurred by the other party.
- (4) Where the Committee orders a party to pay costs or expenses, the chair may—
- (a) summarily assess the costs or expenses to be paid; or
  - (b) require the parties to agree either the figure for the costs or expenses to be awarded or for those costs or expenses to be assessed by a person appointed by the secretary.
- (5) Where a person is appointed by the secretary in accordance with paragraph (4)(b), that person must also determine how the costs of the assessment are to be apportioned.

### **Notes and transcripts of hearings**

- 47.**—(1) Subject to paragraph (3), the Committee must arrange for all hearings to be recorded in writing or electronic form.
- (2) Any party to the proceedings must, on application to the Committee and on payment of any fee determined by the Council under article 65(1) of the Order, be furnished with a transcript of the record of any part of the hearing at which the party was entitled to be present.
- (3) The private deliberations of the Committee must not be recorded.