

2013 No. 2537

HEALTH CARE AND ASSOCIATED PROFESSIONS

OPTICIANS

**The General Optical Council (Fitness to Practise) Rules Order of
Council 2013**

Made - - - - *3rd October 2013*

Laid before Parliament *16th October 2013*

Coming into force - - *1st April 2014*

At the Council Chamber, Whitehall the 3rd day of October 2013

By the Lords of Her Majesty's Most Honourable Privy Council

The General Optical Council, has made the General Optical Council (Fitness to Practise) Rules 2013, which are set out in the Schedule to this Order, in exercise of their powers under sections 13E(1), 23C, 23D(7), 23E(8) and 31A of the Opticians Act 1989(a), after consultation with such organisations representing the interests of registrants as the Council consider appropriate.

By virtue of section 34(1)(b) of the Act, such Rules shall not come into force until approved by Order of the Privy Council.

Their Lordships, having taken these Rules into consideration, are pleased to and do approve them.

This Order may be cited as the General Optical Council (Fitness to Practise) Rules Order of Council 2013 and comes into force on 1st April 2014.

Richard Tilbrook
Clerk of the Privy Council

(a) 1989 c.44. Section 13E was inserted by S.I. 2005/848, article 16. Sections 23C, 23D and 23E were inserted by article 17 and section 31A by article 22 of S.I. 2005/848. Sections 23C and 23D were amended by S.I. 2009/1604, article 2.

(b) Section 34(1) was amended by S.I. 2008/1774, article 2, Schedule 2, paragraph 4.

SCHEDULE

The General Optical Council (Fitness to Practise) Rules 2013

The General Optical Council, in exercise of their powers under sections 13E(1), 23C, 23D(7), 23E(8) and 31A of the Opticians Act 1989, after consultation with such organisations representing the interests of registrants as the Council consider appropriate, make the following Rules—

PART 1

Citation, Commencement and Interpretation

1. These Rules may be cited as the General Optical Council (Fitness to Practise) Rules 2013 and shall come into force on 1st April 2014.

Interpretation

2.—(1) In these Rules—

“allegation” means an allegation of impairment as set out in section 13D(a), based on one or more of the grounds described in that section;

“business registrant” means a body corporate registered in the register maintained by the Council under section 9(b);

“case examiner” means an officer of the Council appointed by the registrar on the Council’s behalf for the purposes of exercising the functions of the Investigation Committee in accordance with these Rules, being a registered optometrist, registered dispensing optician, or lay person;

“case examiners” means, in relation to any allegation, two case examiners to whom an allegation is referred under rule 4, one of whom must be a lay person and the other being either a registered dispensing optician, or a registered optometrist;

“clinical adviser” means a clinical adviser appointed under section 23E(1)(a)(c) (other advisers);

“conditional order” means an order made under section 13F(d) (powers of the Fitness to Practise Committee) that a registrant’s registration or entry relating to a specialty is to be conditional upon compliance with specified requirements;

“deliberating in private” means deliberating in the absence of the parties, their representatives and the public;

“Fitness to Practise Committee” means the Committee referred to in section 5C(1)(e) (Fitness to Practise Committee);

“Hearings Manager” means an officer of the Council appointed by the registrar on the Council’s behalf for the purposes of dealing with matters relating to the procedural and administrative arrangements for hearings;

“interim order” means an order under section 13L(f) (interim orders);

“interim order hearing” means a hearing for the purposes of considering whether to make an interim order;

(a) Section 13D was inserted by S.I. 2005/848, articles 2 and 16 and amended by the Policing and Crime Act 2009 (c.26) section 81.

(b) Section 9 was amended by S.I. 2005/848, articles 2 and 10.

(c) Section 23E was inserted by S.I. 2005/848, articles 2 and 17.

(d) Section 13F was inserted by S.I. 2005/848, articles 2 and 16.

(e) Section 5C was inserted by S.I. 2005/848, articles 2 and 4.

(f) Section 13L was inserted by S.I. 2005/848, articles 2 and 16.

“the Investigation Committee” means the Committee referred to in section 4(1)(a) (Investigation Committee);

“lay person”, in relation to a person appointed as a case examiner, means a person—

- (a) who is—
 - (i) not, and never has been, registered in a register maintained by the Council,
 - (ii) not a director of a body corporate registered in a register maintained by the Council, and
- (b) who does not hold qualifications which would entitle the holder to apply for registration in one of the registers maintained under section 7(b) or 8B(c);

“legal adviser” means a legal adviser appointed under section 23D(1)(d) (legal advisers);

“party” in relation to a hearing or other proceedings held under the Opticians Act 1989 means the registrant or the Council (or their representatives) and references to the parties shall be construed accordingly;

“the Presenting Officer” means the representative of the Council instructed by the registrar to act on behalf of the Council in proceedings before the Fitness to Practise Committee, and may include solicitor or counsel;

“private hearing” means a hearing of the Fitness to Practise Committee which only the following are entitled to attend—

- (i) the parties and any person representing a party,
- (ii) any person acting as secretary to the Committee,
- (iii) any person giving evidence,
- (iv) any legal adviser, clinical adviser or specialist adviser,
- (v) any person responsible for the recording of the proceedings, and
- (vi) any other person whose presence is deemed necessary by the Chair of the Committee;

“procedural hearing” means any hearing at which the Fitness to Practise Committee may determine matters of procedure only;

“registrant”—

- (a) for the purposes of the service of any notification or other notice under these Rules or the provision of information, includes a person whom the registrant informs the registrar is instructed to represent that registrant; and
- (b) in relation to a hearing, includes any representative of the registrant attending the hearing in accordance with the provisions of rule 21(2);

“registrar” means the registrar of the Council referred to in section 1(3) (constitution and functions of the Council);

“specialist adviser” means a specialist adviser appointed under section 23E(1)(b);

“specialty” means a specialty or level of proficiency particulars of which may, by virtue of rule 10 (specialties) of the General Optical Council (Registration) Rules 2005(e), be entered in a register in respect of a registrant;

“standard directions” means the standard procedural directions set out in the table in rule 29;

“substantive hearing” means any hearing at which the Fitness to Practise Committee may—

- (a) determine any issue relating to an allegation against a registrant; or

(a) Section 4 was substituted by S.I. 2005/848, articles 2 and 4.

(b) Section 7 was amended by S.I. 2005/848, articles 2 and 7.

(c) Section 8B was inserted by S.I. 2007/3101, regulation 1.

(d) Section 23D was inserted by S.I. 2005/848, articles 2 and 17 and amended by the Constitutional Reform Act 2005 (c.4), section 59, Schedule 11, Part 3, paragraph 5.

(e) The Rules are scheduled to the General Optical Council (Registration Rules) Order of Council (S.I. 2005/1478).

- (b) make an order under the provisions of sections 13F to 13I(a) (power to order immediate suspension etc. after a finding of impairment of fitness to practise and hearings to review such orders); and

“suspension order” means any order made under section 13F directing that a registrant’s registration be suspended for a specified period or indefinitely or that a registrant’s entry relating to a specialty be removed for a specified period.

(2) In these Rules any reference to a numbered section is a reference to the section of the Opticians Act 1989 which bears that number.

PART 2

INVESTIGATION

Delegation of functions of the Investigation Committee

- 3. Where an allegation has been made against a registrant—
 - (a) an officer of the Council may, until such time as the allegation is considered by the case examiners or the Investigation Committee under rules 12 or 13, exercise the function of investigating allegations which is conferred on the Investigation Committee by section 13D(5) (investigation of allegation of impairment of fitness to practise): this does not apply where paragraph (b) does;
 - (b) the registrar and case examiners must, subject to the provisions of this Part and Part 4, exercise the functions conferred on the Investigation Committee by section 13D(5) to (9).

Initial consideration and referral of allegations

4.—(1) Pursuant to a delegation under rule 3(b), an allegation must initially be considered by the registrar.

(2) The registrar must consider whether or not to refer the matter to the Fitness to Practise Committee for consideration as to whether an order for interim suspension or interim conditional registration should be made.

(3) Where the registrar considers that the allegation does not fall within any of the grounds described in section 13D the registrar must notify the maker of the allegation accordingly.

(4) Where the registrar considers that the allegation falls within one or more grounds described in section 13D, the registrar must refer the allegation to the case examiners for consideration under rule 12.

This is subject to paragraph (5).

(5) The registrar must refer an allegation falling within section 13D(2)(c) relating to a conviction which has resulted in the imposition of a custodial sentence, whether immediate or suspended, to the Fitness to Practise Committee.

Notification and evidence gathering

5.—(1) Paragraphs (2) to (5) apply where an allegation is to be considered by the case examiners under rule 12 but has not yet been so considered.

- (2) The registrar must write to the registrant—
 - (a) informing the registrant of the allegation that the registrant’s fitness to practise may be impaired;

(a) Sections 13F to 13I were inserted by S.I. 2005/848, articles 2 and 16.

- (b) providing the registrant with copies of any information or documents received by the Council in support of the allegation and which the registrar intends to place before the case examiners;
- (c) inviting the registrant to respond to the allegation with written representations and copies of any information or documents which the registrant wishes to be considered by the case examiners within the period of 28 days from the date of the registrar's letter; and
- (d) informing the registrant that such representations will be disclosed, where the registrar considers it appropriate, to the maker of the allegation for comment.

(3) Unless the registrar considers it inappropriate, the registrar must disclose to the maker of the allegation such representations as are received from the registrant, inviting written comments within a specified period.

(4) The registrar must send to the registrant a copy of any written comments received from the maker of the allegation following disclosure under paragraph (2): but unless the registrar so decides in the particular circumstances of the case, any further comments submitted by the registrant shall not be placed before the case examiners or the Investigation Committee when they consider the allegation.

(5) The registrar must carry out such investigations as in the registrar's opinion are appropriate to consideration of the allegation under rule 12.

(6) Where rule 13(1) applies, the registrar must carry out such investigations as in the registrar's opinion are appropriate to consideration of the allegation by the Investigation Committee in accordance with section 13D(5) to (9).

PART 3

ASSESSMENTS OF INDIVIDUAL REGISTRANTS

Appointment of assessors and direction for assessment by the Investigation Committee

6.—(1) Where the Investigation Committee is considering an allegation against an individual registrant; or where the Investigation Committee receives a referral from the case examiners under rule 12(1)(c), it may—

- (a) appoint one or more persons to assess and report to it on—
 - (i) the registrant's health, or
 - (ii) the standard or quality of the work done or being done by the registrant; and
- (b) direct the registrant to meet with the person or persons appointed and to submit to any examination required for the purposes of their assessment and report.

(2) Where the Investigation Committee gives a direction under paragraph (1), it must specify the matters on which the registrant is to be assessed.

Appointment of assessors and direction for assessment by the Fitness to Practise Committee

7.—(1) Where an allegation against an individual registrant has been referred to the Fitness to Practise Committee under section 13D(6)(b) (reference by registrar following direction from the Investigation Committee), the Fitness to Practise Committee may—

- (a) appoint one or more persons to assess and report to it on—
 - (i) the registrant's health, or
 - (ii) the standard or quality of the work done or being done by the registrant; and
- (b) direct the registrant to meet with the person or persons appointed and to submit to any examination required for the purposes of their assessment and report.

(2) Where the Fitness to Practise Committee gives a direction under paragraph (1), it must specify the matters on which the registrant is to be assessed.

Assessment notification

8. Where the Investigation Committee under rule 6, or the Fitness to Practise Committee under rule 7, has appointed an assessor, the registrar must—

- (a) serve on the registrant a notification of the appointment;
- (b) fix the date of the meeting with the assessor; and
- (c) serve on the registrant, and on the assessor, a notification of—
 - (i) the date of the meeting, and
 - (ii) the direction the Committee has given under rule 6(1)(b) or 7(1)(b).

Date of assessment meeting

9. The meeting referred to in rule 8 shall take place no earlier than 28 days after the date upon which the notification required by paragraph (c) of that rule was served on the registrant.

Assessment report

10.—(1) An assessor appointed under rule 6 or rule 7 to conduct an assessment of the standard or quality of the registrant’s work must, upon completion of that assessment, prepare a report.

(2) Where more than one assessor is appointed under rule 6 or rule 7, the report referred to in paragraph (1) must be jointly prepared by all of those assessors.

(3) Each assessor appointed under rule 6 or rule 7 to conduct an assessment of the registrant’s health must prepare a report after completing the assessment.

(4) Any report prepared under paragraphs (1), (2) or (3) must be sent by the assessor or assessors preparing it to the registrar, who will send the report to the registrant.

(5) The registrant may submit comments on any report prepared under rule 6 or rule 7 within 28 days of the date on which it is sent to the registrant by the registrar.

Failure to submit to or co-operate with an assessment

11. Where a registrant has failed to submit to, or to co-operate with, any examination required or directed under rule 6 or rule 7, the Investigation Committee or, as the case may be, the Fitness to Practise Committee may draw such inferences in relation to the registrant as seem appropriate.

PART 4

REFERRAL TO THE FITNESS TO PRACTISE COMMITTEE

Consideration and decisions by the case examiners

12.—(1) As soon as reasonably practicable after an allegation has been referred by the registrar under rule 4(4), the case examiners must consider it and—

- (a) may, if both agree, decide—
 - (i) that the allegation ought to be considered by the Fitness to Practise Committee,
 - (ii) that the allegation ought not to be referred to the Fitness to Practise Committee and—
 - (aa) that no further action will be taken, or
 - (bb) to give a warning to the registrant regarding the registrant’s future conduct or performance, or
 - (iii) that their consideration of the allegation should be adjourned pending further investigations;

(b) must, where they cannot agree, refer the allegation for consideration by the Investigation Committee under rule 13;

(c) must, where the case is one in which the registrant's health or the standard or quality of the registrant's work are called into question and an assessment is necessary, refer the allegation to the Investigation Committee requesting that the Investigation Committee appoint an assessor, or assessors, and direct an assessment in accordance with rules 6, 8, 9 and 10.

(2) As soon as reasonably practicable after reaching a decision described in paragraph (1)(a)(i) or (ii), the case examiners must give a direction to the registrar in accordance with section 13D(6) or, as the case may be section 13D(8), providing reasons for their decision, and the registrar must follow the procedure under those paragraphs accordingly.

(3) If the case examiners decide to give the registrant concerned a warning, the procedure set out in rule 14 must be followed.

(4) If the case examiners decide to adjourn their consideration as set out in paragraph (1)(a)(iii), they must inform the registrar and direct the registrar as to the further investigations to be undertaken.

(5) Where any additional evidence is obtained as a result of investigations conducted pursuant to paragraph (1)(a)(iii)—

(a) the registrar must provide the registrant with that evidence and, where appropriate, may also provide the maker of the allegation with it;

(b) the registrar must allow the registrant a reasonable opportunity to comment on the additional evidence;

(c) if the registrant submits comments as provided for in paragraph (b), the registrar must allow the maker of the allegation a reasonable opportunity to comment on the registrant's comments;

(d) the additional evidence obtained, together with any comments from the registrant and the maker of the allegation on the additional evidence, must be provided to the case examiners for the purpose of the resumption of their consideration of the allegation.

(6) Where the case examiners have referred an allegation to the Investigation Committee in accordance with paragraph (1)(c), and the allegation has been referred back to the case examiners in accordance with rule 13(2)(a), the case examiners must resume their consideration of the allegation to take any of the decisions pursuant to paragraph (1)(a).

(7) If, on any occasion when they come to consider the material referred to them, one of the case examiners is of the opinion that the Fitness to Practise Committee should consider making an interim order in relation to a registrant, that case examiner must direct the registrar in accordance with section 13D(9).

(8) The consideration by the case examiners must take place in private.

Cases considered by the Investigation Committee

13.—(1) Where rule 12(1)(b) applies, the case examiners must notify the registrar accordingly, and the registrar must refer the allegation for consideration by the Investigation Committee in accordance with section 13D(5) to (9).

(2) Where, following a referral from the case examiners under rule 12(1)(c), the Investigation Committee has directed that an assessment of the registrant be conducted—

(a) the Investigation Committee must refer the allegation back to the case examiners and provide any report of the assessment to them together with any comments submitted by the registrant pursuant to rule 10(5);

(b) the Investigation Committee must proceed with the further consideration of the allegation in accordance with section 13D(5) to (9) and rule 11 if the registrant has failed to co-operate with, or submit to, an assessment: in such a case the case examiners must not consider the allegation further.

(3) The Investigation Committee may adjourn its consideration of the allegation pending further investigations.

(4) If the Investigation Committee decides to adjourn its consideration as set out in paragraph (3), it must inform the registrar and direct the registrar as to the further investigations to be undertaken.

(5) Where the registrar has undertaken further investigations pursuant to paragraph (4), the registrar must—

- (a) provide any additional evidence obtained as a result of investigations to the registrant and, where appropriate, may provide the additional evidence to the maker of the allegation;
- (b) allow the registrant a reasonable opportunity to comment on the additional evidence;
- (c) allow the maker of the allegation a reasonable opportunity to comment on any comments made by the registrant pursuant to paragraph (b);
- (d) provide the Investigation Committee, for the purpose of the resumption of its consideration of the allegation, with the additional evidence obtained, together with any comments from the registrant and the maker of the allegation on that additional evidence.

(6) The consideration by the Investigation Committee must take place in private.

Warnings

14.—(1) Where the case examiners under rule 12(1)(a)(ii), or the Investigation Committee under rule 13(1) and pursuant to section 13D(7), decide that an allegation against a registrant ought not to be considered by the Fitness to Practise Committee, they must consider whether or not to give a warning to the registrant regarding the registrant's future conduct or performance.

(2) Where the case examiners or the Investigation Committee are minded to give a warning, they must direct the registrar to notify the registrant in writing that the registrant is entitled to make written representations in that connection: such representations must be received within the period of 28 days beginning with the date of the notice.

(3) The case examiners or, as the case may be, the Investigation Committee must consider any representations made by the registrant pursuant to paragraph (2) and decide whether or not to give a warning to the registrant.

Review of decision not to refer

15.—(1) A decision not to refer an allegation to the Fitness to Practise Committee may be reviewed by the case examiners—

- (a) at any time within five years of the date of the letter notifying the registrant of the decision; or
- (b) within a longer period where the case examiners consider the circumstances are exceptional.

This subject to paragraph (2).

(2) The case examiners must not review such a decision unless either—

- (a) they consider that there is new evidence or information which makes such a review—
 - (i) necessary for the protection of the public,
 - (ii) necessary for the prevention of injustice to the registrant, or
 - (iii) otherwise necessary in the public interest; or
- (b) they receive information that the Council has erred in its administrative handling of the case and they are satisfied that it is necessary in the public interest to do so.

(3) Where the case examiners decide to review a decision under paragraph 15(1), they must direct the registrar to—

- (a) inform the registrant, the registrant’s current employer (if known to the registrar) and the maker of the allegation of the decision to review;
 - (b) inform the registrant and the maker of the allegation of any new evidence or information and, where appropriate, provide them with copies of any new evidence received; and
 - (c) seek representations from the registrant and the maker of the allegation regarding the review of the decision.
- (4) Where the case examiners have reviewed a decision they may decide that—
- (a) the original decision should stand;
 - (b) where no warning was given to the registrant at the time of the original decision, a warning should be given to the registrant regarding the registrant’s future conduct or performance;
 - (c) the allegation ought to be referred to the Fitness to Practise Committee; or
 - (d) a warning given at the time of the original decision should not have been given and remove the record of it.
- (5) The case examiners must direct the registrar to notify the following persons in writing as soon as reasonably practicable of the outcome of a review under paragraph (1), together with the reasons for that decision—
- (a) the registrant;
 - (b) the maker of the allegation; and
 - (c) any other person the case examiners consider has an interest in receiving a notification, including the registrant’s current employer (if known to the registrar).
- (6) Decisions by the case examiners under paragraphs (3) and (4) must be unanimous: where the case examiners cannot agree, the original decision not to refer the allegation shall stand.

Termination of referral

16.—(1) Where an allegation against a registrant has been referred to the Fitness to Practise Committee under section 13D(6)(b) (reference by registrar following direction), the case examiners may review the referral.

(2) Where case examiners are to review a referral under paragraph (1), the registrar must first write to the maker of the allegation giving the maker of the allegation the opportunity to submit any comments within a period of 28 days starting with the date of the registrar’s letter.

(3) Not before the expiry of the period of 28 days referred to in paragraph (2), the case examiners must—

- (a) consider the referral, and any comments received from the maker of the allegation; and
- (b) decide whether the allegation ought not to be considered by the Fitness to Practise Committee, and give reasons for their decision.

(4) Where the case examiners decide that the allegation ought not to be considered by the Fitness to Practise Committee, they must give a direction to that effect to the registrar, and the Fitness to Practise Committee must not consider that allegation.

(5) Where the case examiners give a direction under paragraph (4), as soon as reasonably practicable, the registrar must give written notification of the case examiners’ decision, together with the reasons for that decision, to—

- (a) the registrant;
- (b) the maker of the allegation; and
- (c) any other person the registrar considers has an interest in receiving a notification, including the registrant’s current employer (if known to the registrar).

PART 5

INTERIM ORDERS

Notification of application for interim order

17. Where a matter has been referred to the Fitness to Practise Committee to consider the making of an interim order, the registrar must serve on the registrant a Notice of Interim Order Hearing which must—

- (a) state the date, time and venue of the interim order hearing;
- (b) include a statement setting out the alleged facts constituting the basis of the application;
- (c) enclose copies of any documentary evidence upon which the Presenting Officer intends to rely;
- (d) inform the registrant of the registrant's right to attend the hearing and be represented in accordance with rule 21;
- (e) inform the registrant of the power of the Fitness to Practise Committee to proceed in the registrant's absence under rule 22;
- (f) inform the registrant of the provisions relating to evidence set out in rule 20(3), (4) and (5);
- (g) set out the Committee's powers of disposal under section 13L; and
- (h) require the registrant to inform the registrar by a specified date whether the registrant intends to do all or any of the following—
 - (i) attend the hearing,
 - (ii) oppose the making of the interim order,
 - (iii) be represented at the hearing.

18. Unless the registrar is of the view that the public interest requires an earlier hearing, the interim order hearing must take place no earlier than 7 days after the date upon which the Notice of Interim Order Hearing was sent to the registrant in accordance with rule 17.

19. Where, after the sending of the Notice of Interim Order Hearing, the date, time or venue of the interim order hearing is required to be varied from those specified in the Notice, the registrar must make such efforts as are reasonable in the circumstances to inform the registrant of any such variations before the interim order hearing.

Conduct of interim order hearings

20.—(1) This rule applies where the Fitness to Practise Committee is considering whether to make an interim order.

(2) Interim order hearings are to be private hearings.

(3) At the hearing, the Fitness to Practise Committee may receive any evidence which appears to it to be fair and relevant to its consideration under section 13L.

This is subject to paragraph (4) and (5).

(4) No person shall give oral evidence at an interim order hearing unless the Fitness to Practise Committee considers such evidence is desirable to enable it to discharge its functions.

(5) The Fitness to Practise Committee may, at any stage in the proceedings, allow a party to produce at the hearing any written evidence where—

- (a) the registrant consents; or
- (b) after consultation with the legal adviser, it is satisfied that it would be conducive to the discharge of its functions to do so.

(6) The Fitness to Practice Committee can take the steps referred to in paragraph (5) notwithstanding that a copy of the evidence in question has not been provided to the other party before the hearing, or that the author is not being called as a witness.

(7) Rules 21 and 22 are to apply at interim order hearings.

This is subject to paragraphs (2) to (4).

(8) Unless the Fitness to Practise Committee otherwise decide, the order of proceedings at an interim order hearing is to be as follows—

- (a) the Presenting Officer is to inform the Committee of the reasons why it may be necessary to make an interim order against the registrant 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 and may adduce any relevant evidence;
- (c) the Committee must deliberate in private;
- (d) the Committee must announce its decision, together with the reasons for its decision, in public.

PART 6

HEARINGS OF THE FITNESS TO PRACTISE COMMITTEE

Representation

21.—(1) The parties to hearings before the Fitness to Practise Committee are entitled to be heard.

(2) The parties may be represented at any such hearing by—

- (a) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990(a));
- (b) an advocate in Scotland, or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
- (c) a member of the Bar of Northern Ireland or Solicitor of the Supreme Court of Northern Ireland.

(3) In addition to the persons mentioned in paragraph (2), a registrant may be represented by any of the following—

- (a) a representative of any professional organisation of which the registrant is a member;
- (b) where the registrant is a business registrant, a responsible officer of the body corporate; or
- (c) if the registrant so requests and the Fitness to Practise Committee agrees, any other person.

(4) Where an individual registrant is not represented, the registrant may be accompanied and advised by any person, but such person shall not be entitled to address the Committee without its permission.

This is subject to paragraph (5).

(5) A person who gives evidence at a hearing is not, without the permission of the Fitness to Practise Committee, entitled to represent or accompany the registrant at the hearing.

(a) 1990 c.41.

Proceeding in the absence etc. of the registrant

22. Where the registrant is neither present nor represented at a hearing, the Fitness to Practise Committee may nevertheless proceed if—

- (a) it is satisfied that all reasonable efforts have been made to notify the registrant of the hearing in accordance with section 23A(a) and rule 61; and
- (b) having regard to any reasons for absence which have been provided by the registrant, it is satisfied that it is in the public interest to proceed.

Joinder

23.—(1) If the conditions specified in paragraph (2) are satisfied, the Presenting Officer may apply to the Fitness to Practise Committee at a procedural hearing for a direction that one substantive hearing may be held in relation to two or more registrants.

(2) The conditions are that—

- (a) all reasonable efforts have been made to notify each registrant of the application referred to in paragraph (1); and
- (b) each registrant is offered an opportunity to be heard on the application at the procedural hearing.

(3) At the procedural hearing, the Fitness to Practise Committee may, where it considers it just to do so, direct that one hearing be held in relation to two or more registrants and where such direction is made—

- (a) these Rules are to have effect in relation to the hearing with the necessary adaptations; and
- (b) each registrant is to be able to exercise any of the rights granted to that registrant under these rules, whether or not any other registrant wishes to exercise that right.

24. The Fitness to Practise Committee may, where it considers it just to do so, consider and determine in one hearing an allegation by reason of two or more grounds of impairment specified in section 13D, whether those allegations were the subject of a single or separate referrals to the Committee.

Substantive Hearings in public

25.—(1) Substantive hearings before the Fitness to Practise Committee must be held in public. This is subject to the following provisions of this rule.

(2) The Fitness to Practise Committee may determine that the proceedings, or any part of the proceedings, are to be a private hearing, where the Committee consider it appropriate, having regard to—

- (a) the interests of the maker of an allegation (where one has been made);
- (b) the interests of any patient or witness concerned;
- (c) the interests of the registrant; and
- (d) all the circumstances, including the public interest.

(3) A hearing, or any part of a hearing, of the Fitness to Practise Committee must be a private hearing where the Fitness to Practise Committee is considering the physical or mental health of the registrant.

This is subject to paragraph (4).

(a) Section 23A was inserted by S.I. 2005/848, articles 2 and 17.

(4) Where the Fitness to Practise Committee is considering matters referred to in paragraph (3), it may meet in public where it considers that it would be appropriate to do so, having regard to the matters set out in paragraph (2).

(5) The Fitness to Practise Committee may at any time deliberate in private.

Exclusion from hearings

26. The Fitness to Practise Committee may exclude from the whole or any part of a hearing, any person (including a party or a party's representative) whose conduct, in the Committee's opinion, has disrupted or is likely to disrupt the proceedings.

PART 7

PROCEDURE AND ORDER OF PROCEEDINGS

Procedural and substantive hearings

27.—(1) Where an allegation has been referred to the Fitness to Practise Committee—

- (a) there may be one or more procedural hearings in accordance with rules 30 to 33;
- (b) there is to be a substantive hearing.

(2) Paragraph (1) is not to apply in any case where the case examiners have given a direction under rule 16(4).

(3) Procedural hearings are to be private hearings.

Notification

28.—(1) Where an allegation has been referred to the Fitness to Practise Committee, the registrar must, as soon as reasonably practicable, serve on the registrant a notification setting out—

- (a) the allegation and the grounds upon which it has been made;
- (b) the registrant's right to attend and be represented at the hearing in accordance with rule 21;
- (c) the power of the Fitness to Practise Committee to proceed in the registrant's absence under rule 22;
- (d) the registrant's right to adduce evidence and to call and cross-examine witnesses in accordance with rules 46(10) and 47; and
- (e) the Committee's powers of disposal under sections 13F to 13I.

Standard procedural directions

29.—(1) Unless varied by a direction of the Fitness to Practise Committee under rule 32, or by a direction issued without a procedural hearing at the written request of all the parties under rule 33, the standard procedural directions set out in the Table are to apply when an allegation is referred to the Fitness to Practise Committee.

Standard Procedural Directions Table

<i>Direction Number</i>	<i>Directions</i>
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Service of evidence

1. No later than six months from the date on which the allegation was referred to the Fitness to Practise Committee, the Presenting Officer must serve on the registrant concerned—
 - (a) finalised particulars of the allegation, sufficiently particularised to enable the registrant concerned to understand the allegation;
 - (b) any statements of evidence, expert reports or other documents relied upon by the Presenting Officer in support of the Council's case, not previously served upon the registrant;
 - (c) any evidence or documents in the possession of the Presenting Officer (other than documents for which privilege is claimed) which, whilst not relied upon in the Council's case, may assist in the preparation of the registrant's defence;
 - (d) a list of witnesses whose evidence will be relied on by the Council in support of its case, and
 - (e) a time estimate for the Council's case.
2. No later than 28 days from the date when the material set out in direction 1 was sent to the registrant, the registrant must serve on the Presenting Officer a time estimate for the substantive hearing.
3. No later than 4 months from the date when the material set out in direction 1 was sent to the registrant, the registrant must serve on the Presenting Officer—
 - (a) any statements of evidence (including witness statements), expert reports or other documents relied upon in support of the registrant's case;
 - (b) a list of witnesses whose evidence will be relied upon in support of the registrant's case; and
 - (c) a time estimate for the registrant's case.

Inspection of documents

4. At any time after the service of a document by a party under this Part up until the commencement of the relevant hearing, the party being served with the document may serve notification on the other party in possession of the original version of the document requesting to inspect and examine it.
5. The party in possession of the original version of the document must provide facilities for its inspection and examination—
 - (a) within 10 days from the notification of the request; or
 - (b) if the request is notified less than 10 days before the date on which the hearing is to commence, as soon as it is reasonably practicable to provide those facilities.

Hearing bundles

6. Before any hearing, no later than 10 working days before the Monday of the week in which the hearing is to take place before the Fitness to Practise Committee, the parties must serve on each other copies of the bundles on which they intend to rely at the hearing.
7. No later than 5 working days before the Monday of the week in which the hearing is to take place, the parties must serve on the Hearings Manager 8 paginated copies of—
 - (a) where the bundle for the hearing has been agreed between the parties, the agreed bundle; or

- (b) where the bundle for the hearing has not been agreed—
 - (i) a statement by each party setting out why the bundle for the hearing has not been agreed,
 - (ii) a statement from the party seeking to rely on any disputed material why that party seeks to include it in the bundle, and
 - (iii) the bundles on which each party intends to rely at the hearing.

Witness lists

- 8. No later than 5 working days before the Monday of the week in which the hearing is to take place, the parties must serve on the Hearings Manager a list (which they must endeavour to agree but must otherwise serve separately) indicating —
 - (a) any witness whose evidence has been agreed and who therefore does not need to be called; and
 - (b) any witness who is to be called to give oral evidence before the Committee.
- 9. Any document which has not been served on the Fitness to Practise Committee in accordance with the provisions of directions 2 to 8 is only to be admitted into the evidence at the hearing with the permission of the Fitness to Practise Committee.

(2) Paragraph (1) does not apply where rule 20 applies.

Procedural hearings

30. Either the Presenting Officer or the registrant may require a procedural hearing to be held by notifying the Hearings Manager and the other parties in writing.

31. The Hearings Manager must serve on the parties notification in writing of the date of the procedural hearing, which must not be earlier than 7 days after the date upon which party requiring the hearing notified the registrar of the request.

32. At a procedural hearing, the Fitness to Practise Committee may—

- (a) invite representations from any party who attends; and
- (b) vary the standard directions.

33.—(1) The Fitness to Practise Committee may vary the standard procedural directions in rule 29, either at a procedural hearing or, following a written request from all the parties, upon the next occasion when the Committee sits.

(2) Any varied directions issued by the Committee—

- (a) must provide for a timetable for the disclosure of evidence by each party; and
- (b) may provide for any other procedural steps as seem appropriate to the Fitness to Practise Committee for the further conduct of the matter.

Date of substantive hearing

34.—(1) The Hearings Manager must serve on the parties a notification in writing of the date of the substantive hearing.

(2) The substantive hearing must not be held earlier than 28 days after the date upon which the notification of the date of hearing was served on the registrant.

Adjournment

35.—(1) At any stage, a party may apply to the Fitness to Practise Committee for the adjournment of a hearing and must notify the other parties of the application.

(2) Such an application must be considered either—

- (a) at the hearing at which the application is made; or
- (b) if the application is made otherwise than at a hearing, on the next date upon which the Fitness to Practise Committee sit: in such a case all parties must be notified of that date by the Hearings Manager.

36.—(1) Upon the hearing of an application under rule 35, or of its own motion, the Fitness to Practise Committee may adjourn a hearing.

(2) Where the Fitness to Practise Committee decides to adjourn a hearing, it may fix a new date for the hearing.

37. Where the Fitness to Practise Committee decides to adjourn a hearing under rule 36, the Hearings Manager is to serve on the parties a notification of the adjournment and the new date for the hearing.

Standard and burden of proof

38. The standard of proof applicable to proof of any facts alleged by the Council at substantive hearings before the Fitness to Practise Committee is the standard applicable in civil proceedings.

39. The burden of proof at substantive hearings before the Fitness to Practise Committee rests upon the Council.

Admissibility of evidence

40.—(1) The Fitness to Practise Committee may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law.

This is subject to paragraphs (2) and (3).

(2) Where evidence would not be admissible in civil proceedings in England and Wales, the Committee shall not admit such evidence unless, on the advice of the legal adviser, it is satisfied that its duty of making due inquiry into the case before it makes its admission desirable.

(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.

(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.

(5) The only evidence which may be adduced by the person referred to in paragraphs (3) and (4) in rebuttal of a conviction or determination certified in the manner specified in those paragraphs is evidence for the purpose of proving that the person is not the person referred to in the certificate or extract.

(6) The registrant may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved.

(7) A copy of a document of which the original is admissible may be received by the Committee without strict proof.

(8) A party may at any time serve notice, which may be admitted into evidence by the Committee, on the other party to produce the original or a copy of any document that is—

- (a) relevant to the proceedings; and
- (b) alleged to be in the possession, ownership or control of that party.

Vulnerable witnesses

41.—(1) Any person falling into one or more of the following categories may be treated by the Fitness to Practise Committee as a vulnerable witness in proceedings before it—

- (a) any witness under the age of 17 at the time of the hearing;
- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- (c) any witness who is significantly impaired in relation to intelligence and 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; and
- (f) any witness who complains of intimidation.

(2) Subject to the advice of the legal adviser, and upon hearing representations from the parties, the Committee may adopt such measures as it considers desirable to enable them 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) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the Committee;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee consider necessary in the circumstances in order to prevent—
 - (i) the identity of the witness being revealed to the press or the general public, or
 - (ii) access to the witness by the registrant; and
- (e) the hearing of evidence by the Committee in a private hearing.

(4) A registrant who is acting in person may not, without the written consent of the witness, cross-examine that witness where—

- (a) the allegation against the registrant is based on facts which are sexual in nature; and
- (b) that witness is an alleged victim in relation to that allegation.

(5) In the circumstances set out in paragraph (4), in the absence of written consent, the registrant must, no less than 7 days before the hearing, appoint a legally qualified person to cross-examine the witness on the registrant's behalf: in default of the registrant doing so the Council must appoint such a person.

Witnesses

42.—(1) Witnesses are required to take an oath, or to affirm, before giving oral evidence at a hearing.

(2) The Fitness to Practise Committee may, upon the application of the party calling a witness, direct that any details which identify that witness may not be revealed in public.

(3) Except for expert witnesses and the registrant, witnesses are not allowed to be present during the hearing until after they have completed their evidence and have been formally released by the Committee.

Legal advisers

43. The Fitness to Practise Committee must be advised by a legal adviser who must—

- (a) be present at all hearings;

- (b) advise the Committee on any matters of law, evidence or procedure which are referred to the legal adviser by the Committee;
- (c) advise the Committee on an issue of law where it appears to the legal adviser that, without the legal adviser's intervention, there is the possibility of a mistake of law being made;
- (d) intervene to advise the Committee of any irregularity in the conduct of the proceedings which comes to the legal adviser's knowledge;
- (e) ensure that—
 - (i) advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing, or
 - (ii) where advice is tendered after the Committee has begun to deliberate in private, every such party is informed as to the advice given;
- (f) if the Committee so requires, advise on the drafting of the Committee's decisions.

Clinical advisers

44. Where a registrant's physical or mental health is to be considered by the Fitness to Practise Committee, the Committee is to be advised by a clinical adviser who must—

- (a) be present at the hearing at which the registrant's physical or mental health is to be considered;
- (b) advise the Committee on the significance of any evidence before it pertaining to the registrant's physical or mental health;
- (c) ensure that—
 - (i) advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing, or
 - (ii) if the advice is tendered after the Committee has begun to deliberate in private, every such party is informed as to the advice given.

Specialist advisers

45. Where a specialist adviser has been appointed in relation to a matter to be considered at a substantive hearing, the adviser must—

- (a) be present at the hearing;
- (b) advise the Fitness to Practise Committee on matters relating to the specialty for which the specialist adviser has been appointed;
- (c) ensure that—
 - (i) advice given to the Committee under paragraph (b) is tendered in the presence of the parties attending the hearing, or
 - (ii) if the advice is tendered after the Committee has begun to deliberate in private, that every such party is informed as to the advice given.

Order of proceedings at substantive hearings of the Fitness to Practise Committee

46.—(1) Unless the Fitness to Practise Committee determines otherwise, the procedure at a substantive hearing is to be as provided for in this rule.

- (2) The Chair of the Fitness to Practise Committee ("the Chair") is to—
 - (a) require the registrant's name and registration number to be confirmed by the registrant, where the registrant is present; or
 - (b) require the Presenting Officer to confirm the registrant's name and registration number, where paragraph (a) does not apply.
- (3) The Fitness to Practise Committee is to hear and consider any preliminary legal arguments.

- (4) The allegation against the registrant is to be read by the Hearings Manager.
- (5) The Chair is to inquire whether the registrant wishes to make any admissions.
- (6) Where facts have been admitted, the Chair must announce that such facts have been found proved.
- (7) Where facts remain in dispute, the Presenting Officer is to open the case for the Council and may adduce evidence and call witnesses in support of it.
- (8) Before opening the registrant's case, the registrant may make submissions as to—
 - (a) whether sufficient evidence has been adduced upon which the disputed facts could be found proved;
 - (b) whether the facts, whether they are disputed or proved, could support a finding of impairment.
- (9) The Fitness to Practise Committee must consider and announce its decision as to whether any submissions under paragraph (8) should be upheld.
- (10) Unless any submission under paragraph (8) is upheld and the hearing is consequently concluded, the registrant's case is to be opened, and the registrant may adduce evidence and call witnesses in support of it.
- (11) The Fitness to Practise Committee must then consider and announce its findings of fact and give reasons for that decision.
- (12) Following the announcement referred to in paragraph (11), the Fitness to Practise Committee may receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the grounds of impairment alleged under section 13D are established.
- (13) Where on the basis of the facts found proved by it, and having considered any further evidence or submissions referred to in paragraph (12), the Fitness to Practise Committee is minded to conclude that the alleged grounds of impairment under section 13D are established, it must announce that fact and reasons for it.
- (14) Following the announcement referred to in paragraph (13) the Fitness to Practise Committee may receive further evidence and hear any further submissions from the parties (not being evidence or submissions referred to in paragraph (12)) as to whether the registrant's fitness to practise is impaired.
- (15) The Fitness to Practise Committee must, having considered any further evidence submitted and any further submissions made under paragraph (14), announce its decision together with the reasons for it, on the question of whether the fitness to practise of the registrant is impaired.
- (16) Following the announcement of that decision the Fitness to Practise Committee may receive further evidence and hear any further submissions from the parties as to—
 - (a) the appropriate sanction, if any, to be imposed; or
 - (b) where the registrant's fitness to practise is not found to be impaired, the question of whether a warning should be imposed.
- (17) The Fitness to Practise Committee must, having considered any further evidence and any further submissions made under paragraph (16), announce its decision as to the sanction or warning (if any) to be imposed, giving reasons for its decision.
- (18) Where the Fitness to Practise Committee is minded to impose an order for immediate suspension or immediate conditions on the registrant's registration under section 13I, it must invite representations from the parties before making and announcing its decision as to whether to impose such an order, together with its reasons for that decision.
- (19) The Fitness to Practise Committee must revoke any interim order which remains in place in respect of the registrant in accordance with section 13L(11) and (12) (revocation of the order with immediate effect after determining the matter in accordance with section 13F).
- (20) Where it appears to the Fitness to Practise Committee at any time during the hearing, either upon the application of a party or of its own volition, that—

- (a) the particulars of the allegation or the grounds upon which it is based and which have been notified under rule 28, should be amended; and
- (b) the amendment can be made without injustice,

it may, after hearing the parties and consulting with the legal adviser, amend those particulars or those grounds in appropriate terms.

(21) In determining whether a registrant's fitness to practise is impaired, the Fitness to Practise Committee may take into account the registrant's failure to submit to, or to comply with, an assessment under rule 6 or rule 7 where—

- (a) there is credible evidence before it that the registrant's fitness to practise is so impaired;
- (b) a reasonable request has been made to the registrant by the Investigation Committee or the Fitness to Practise Committee that the registrant submit to or comply with the assessment; and
- (c) no reasonable excuse for such a failure has been provided by the registrant.

(22) When determining whether a registrant's fitness to practise is impaired by reason of adverse physical or mental health, the Fitness to Practise Committee may take into account—

- (a) the registrant's current physical or mental condition;
- (b) any continuing or episodic condition suffered by the registrant; and
- (c) a condition suffered by the registrant which, although currently in remission, may reasonably be expected to cause a recurrence of impairment of the registrant's fitness to practise.

(23) At any stage before making its decision as to the imposition of a sanction or warning, the Fitness to Practise Committee may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

Questions

47.—(1) A witness called by a party may be questioned—

- (a) by the party calling that witness;
- (b) subject to rule 41(4), by the opposing party in cross-examination; and
- (c) by the party calling the witness in re-examination.

(2) In addition to any question put to any witness pursuant to paragraph (1), questions may also be put by—

- (a) a member of the Fitness to Practise Committee; and
- (b) with the permission of the Chair of the Committee—
 - (i) the legal adviser,
 - (ii) a clinical adviser, where appointed, on matters relating to the physical or mental health of the registrant, and
 - (iii) a specialist adviser, where appointed, on matters relating to the specialty for which the specialist has been appointed.

Declarations where allegation not proven

48. Where, in the case of an individual registrant, it has been alleged that the registrant's fitness to practise is impaired but the Fitness to Practise Committee decide that it is not impaired—

- (a) the Committee must, if requested by the registrant, make a declaration to that effect, giving reasons for its decision; or
- (b) the Committee may, if no such request is made but the registrant nonetheless consents, make such a declaration.

49. Where, in the case of a business registrant, it has been alleged that the registrant is not fit to carry on the business of an optometrist or a dispensing optician or both but the Fitness to Practise Committee decide that the registrant's fitness to carry on that business is not impaired—

- (a) the Committee must, if requested by the registrant, make a declaration to that effect, giving reasons for its decision; or
- (b) the Committee may, if no such request is made but the registrant nonetheless consents, make such a declaration.

Written decision

50. The Fitness to Practise Committee must give the parties a written record of its decisions under these Rules, together with any reasons which have been given for any decision made.

Notification and disclosure of outcome of investigations and hearings

51. The Council may disclose to the maker of the allegation and to the registrant's employer (if known to the registrar)—

- (a) a decision of the case examiners;
- (b) a decision of the Investigation Committee;
- (c) a decision of the Fitness to Practise Committee.

Costs and expenses

52.—(1) The Fitness to Practise Committee may, as it thinks fit, summarily assess the costs of any party to a substantive hearing or to any review hearing other than a hearing to review an interim order, and may order any party to pay all or part of the costs or expenses of any other party relating to that hearing.

(2) Where a party wishes the Fitness to Practise Committee to summarily assess and to make an order for costs, that party must notify the other parties and the Hearings Manager no later than 48 hours before the date of the hearing and must serve on any other parties, and on the Hearings Manager, a schedule of costs or expenses relating to the hearing.

(3) After announcing the Fitness to Practise Committee's decision, the Chair may invite representations as to whether costs or expenses should be assessed against either party.

(4) After hearing any representations from the parties, the Fitness to Practise Committee may, if it thinks fit and having regard to the party's ability to pay, order that a party shall pay all or part of the costs or expenses relating to the hearing incurred by the other party.

53.—(1) Where the Fitness to Practise 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 the figure for the costs or expenses to be awarded or to submit to taxation by a person appointed by the Hearings Manager.

(2) Where a person is appointed by the Hearings Manager in accordance with paragraph (1)(b), that person must also determine how the costs of the assessment are to be apportioned.

Period of payment

54. Where the Fitness to Practise Committee has made an order under rule 52, it may specify the period within which the costs or expenses are to be paid.

PART 8 REVIEWS

Referral for a review

55. Where the Fitness to Practise Committee has previously made an interim order, conditional order or suspension order in respect of a registrant, the registrar—

- (a) must refer the case to the Committee for the purposes of sections 13F(10) or 13L(3)(a) or (9); or
- (b) may refer the case to the Committee where new evidence is received by the Council which, in the registrar's opinion, suggests that an order imposed on the registrant's registration ought to be reviewed.

Notice of review

56. The registrar must serve on the registrant notification of the date of the proposed review of an interim order, a conditional order or a suspension order ("a review hearing") together with—

- (a) a copy of any statement, report, information or document which—
 - (i) the registrant has not previously been sent, and
 - (ii) is relevant to the review;
- (b) details of the order which is to be reviewed; and
- (c) the information set out in rule 28(1)(b) to (e).

Date of review

57. The review of a conditional order or a suspension order must not be held earlier than 28 days after the date upon which the notification was served on the registrant by virtue of rule 56: this does not apply where the registrant agrees to, or the Fitness to Practise Committee is of the view that the public interest requires, an earlier hearing.

Conduct of review hearing.

58.—(1) A review of an interim order shall be a private hearing.

(2) Unless the Fitness to Practise Committee determines otherwise, the order of proceedings at a review hearing is to be as follows—

- (a) the Presenting Officer is to inform the Committee of the background to the case and the order previously imposed on the registrant, and is to direct the attention of the Committee to any relevant evidence;
- (b) the registrant may adduce any relevant evidence on which the registrant intends to rely and may make submissions;
- (c) the Committee is to deliberate in private and determine disposal of the case in accordance with sections 13F and 13L;
- (d) the Committee must announce its decision together with the reasons for it in the presence of any parties who may attend.

PART 9

MISCELLANEOUS

Voting

59.—(1) Decisions of the Investigation Committee and Fitness to Practise Committee are to be taken by a simple majority.

(2) No Chair of a Committee may exercise a casting vote.

(3) No member of a Committee may abstain from voting.

(4) Where the votes are equal the Committee must decide the issue under consideration in favour of the registrant.

Record of hearing

60. A verbatim record, in either written or electronic form, must be taken of every hearing before the Fitness to Practise Committee.

Service of documents

61.—(1) Unless it is a notification under the Opticians Act 1989 (which must be served in accordance with section 23A), or a notice described in paragraph (3), any document which is to be served on a person under these Rules (in this rule, “a document”) may be sent by ordinary post.

(2) The service of a document may be proved by—

(a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or

(b) a signed statement from any person serving the document by hand.

(3) A notice to the recipient of the date of a hearing under these Rules, in so far as not a notification under the Opticians Act 1989, must be served in accordance with section 23A.

(4) If the registrant is represented by a solicitor, any document as described in paragraph (1) must be served at the solicitor’s practising address.

Transitional provisions

62.—(1) This rule applies if immediately before 1st April 2014 a registrant is—

(a) subject to proceedings before the Investigation Committee or the Fitness to Practise Committee; or

(b) a registrant about whom the Council has received information which might lead to such proceedings.

(2) The Council is to make such arrangements as it considers just for the disposal of the matter.

Revocation

63. The General Optical Council (Fitness to Practise) Rules 2005(a) are revoked.

Given under the official seal of the General Optical Council this 8th day of August 2013.

(a) The rules are scheduled to S.I. 2005/1475.



Brian Coulter
Member of Council
Gareth Hadley
Member of Council
Samantha Peters
Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

This Order approves Rules made by the General Optical Council (“the Council”) which make provision for the procedures to be followed in the Council’s fitness to practise proceedings. These Rules replace the General Optical Council (Fitness to Practise) Rules 2005 (“the 2005 Rules”).

Rule 1 of Part 1 provides for these Rules to come into force on 1st April 2014.

Rule 2 sets out the interpretation provisions of the Rules. The Rules create the case examiner mechanism and the term “case examiner” is defined in this Rule.

Part 2 sets out the procedures for the investigation of complaints of allegations of impairment of a registrant’s fitness to practise. Paragraph (a) of Rule 3 allows an officer of the Council other than the registrar to exercise the delegated function of the Investigation Committee to investigate an allegation until it is considered by the case examiners or the Investigation Committee. Paragraph (b) of Rule 3 provides for the registrar and case examiners to exercise the delegated function of the Investigation Committee under Sections 13D(5) to (9) of the Opticians Act 1989.

Rule 4 provides for the initial consideration and referral of allegations by the registrar. The registrar must consider whether to refer a registrant directly to the Fitness to Practise Committee for consideration of an interim conditions or suspension order, and must refer any allegation relating to a conviction which has resulted in the imposition of a custodial sentence directly to the Fitness to Practise Committee.

Rule 5 provides for notification of an allegation to the registrant and sets out the process for investigation and for the provision of comments on the allegation by the registrant and the maker of the allegation.

Rules 6, 7, 8, 9, 10 and 11 in Part 3 set out the procedure by which an assessment of an individual registrant’s health or performance may be directed by either the Investigation Committee or the Fitness to Practise Committee. The assessors appointed must provide a report following the assessment which is to be sent to the registrant providing the registrant with the opportunity to submit comments.

Rule 11 provides for the Investigation Committee or the Fitness to Practise Committee to draw such inference as seems appropriate where the registrant has failed to co-operate with the assessment process.

Rule 12 of Part 4 sets out the process for the consideration of allegations by the case examiners. The case examiners, one professional and one lay, are able to take most of the decisions which under the 2005 Rules were taken by the Investigation Committee, including referral of an allegation to the Fitness to Practise Committee or the giving of a warning to the registrant. They must provide reasons for their decision to refer, or to not refer, an allegation to the Fitness to Practise Committee. They may direct that investigations be undertaken.

Allegations are only referred to the Investigation Committee by the case examiners where they are not unanimous in their decision, or where they decide an assessment of the registrant's health or performance is required. An assessment must be directed by the Investigation Committee.

Under paragraph (7) of Rule 12, either of the case examiners may, at any time when they are considering the matter, direct the registrar to refer the registrant to the Fitness to Practise Committee for consideration of an interim order.

Rule 13 of Part 4 sets out the process for the consideration by the Investigation Committee of an allegation referred to it by the case examiners or where it is to direct an assessment. Once an assessment has been conducted, the Investigation Committee must refer the allegation back to the case examiners with the report of the assessment, except where the registrant has failed to co-operate with the assessment.

The Investigation Committee may direct that a warning be given under Rule 14.

Rule 15 provides for the case examiners to review a decision not to refer an allegation to the Fitness to Practise Committee. Such a review may take place within 5 years of the notification to the registrant of the decision not to refer, or a longer period where the case examiners consider the circumstances are exceptional. The registrant and the maker of the allegation must be informed of the decision to review and their representations sought. A decision by the case examiners to conduct a review must be unanimous.

Rule 16 provides for the case examiners to review a referral of an allegation to the Fitness to Practise Committee. The Registrar must first give the maker of the allegation an opportunity to submit comments.

Where a referral is terminated by the case examiners, the Fitness to Practise Committee must not consider that allegation.

Rules 17, 18, 19 and 20 of Part 5 set out provisions for the notification of an application for an interim order to a registrant and the conduct of the interim order hearing.

An interim order hearing must take place no earlier than 7 days after the Notice of Interim Order hearing is sent to the registrant, unless the registrar is of the view that the public interest requires an earlier hearing.

Rule 20 sets out the procedure for the conduct of interim order hearings. Interim order hearings are private and no person is to give oral evidence unless the Fitness to Practise Committee considers such evidence is desirable to enable it to discharge its function.

Part 6 makes provision for various matters relating to hearings of the Fitness to Practise Committee, including representation of the parties and the power to proceed in the absence of the registrant. It also provides for joinder of allegations, so that one substantive hearing may be held in relation to two or more registrants, and so that the Fitness to Practise Committee may consider in one hearing allegations of impairment of fitness to practise on two or more grounds of impairment, whether those allegations have been the subject of a single or separate referrals to the Fitness to Practise Committee.

Hearings of the Fitness to Practise Committee must be held in public under paragraph (1) of Rule 25. Paragraph (2) of Rule 25 provides for circumstances in which the proceedings or part of them may be held in private.

Part 7 sets out rules of procedure relating to substantive and procedural hearings of the Fitness to Practise Committee. There may be one or more procedural hearings. These are held in private.

Rule 28 makes rules relating to the notification of the substantive hearing to the registrant.

Rule 29 sets out standard procedural directions which will apply in all cases referred to the Fitness to Practise Committee for a substantive hearing, unless they are varied by a direction of the Fitness to Practise Committee at a procedural hearing, or at the written request of the parties. The standard

procedural directions specify time periods within which the parties must agree and serve evidence, witness lists and time estimates for the case.

Rules 30, 31, 32 and 33 set out the rules governing procedural hearings.

Rules 38 and 39 provide that the standard of proof applicable to proof of any facts alleged by the Council is the civil standard and, by Rule 39, that the burden of proof rests upon the Council.

Rule 40 provides for the Fitness to Practise Committee to admit any evidence it considers fair and relevant to the case, whether or not such evidence would be admissible in a court of law. Where such evidence would not be admissible in civil proceedings in England and Wales, the Fitness to Practise Committee may not admit the evidence unless, on the advice of the legal adviser, it is satisfied that its duty of making due inquiry into the case makes the admission of the evidence desirable.

Subsequent paragraphs of Rule 40 deal with further evidential issues, such as proof of a conviction for a criminal offence by production of a Certificate of Conviction.

Rules 41 to 45 make provisions for witness, and also vulnerable witness, arrangements and for the Fitness to Practise Committee to be advised by a legal adviser, clinical adviser or specialist adviser.

Rule 46 sets out the procedure for a substantive hearing of the Fitness to Practise Committee. The Rule provides that the Fitness to Practise Committee must consider and reach separate decisions on whether the facts of the allegation are proved, whether it is minded to conclude that the alleged grounds of impairment are established, whether it finds the registrant's fitness to practise to be impaired and if so, on the appropriate sanction to be imposed.

The Fitness to Practise Committee is required to give reasons for its decisions at each stage. Where no sanction is imposed, the Fitness to Practise Committee may consider whether a warning should be issued.

Rule 46 also sets out the procedure for the imposition of an immediate order for suspension or conditions following a substantive decision of the Fitness to Practise Committee, and for the revocation of an existing interim order.

Rules 48 and 49 provide for a declaration to be made by the Fitness to Practise Committee where it has decided that an individual registrant's fitness to practise is not impaired or that a business registrant's fitness to carry on business is not impaired.

Rule 51 deals with the notification and disclosure of the outcome of investigations and hearings and provides that the Council may disclose certain decisions to the maker of the allegation and the registrant's employer, if known to the registrar.

Rule 52 makes provisions relating to costs and expenses. It provides that the Fitness to Practise Committee may summarily assess the costs of any party to a substantive hearing or to a review hearing (other than review of an interim order) and may order any party to pay all or part of the costs or expenses of the other party. Where the Fitness to Practise Committee makes a costs or expenses order, the Chair may either summarily assess the costs to be paid or require the parties to agree a figure, or to submit the matter for taxation.

Part 8 sets out the procedure for hearings to review interim orders and substantive orders of the Fitness to Practise Committee.

Part 9 makes provision as to voting procedures of the Fitness to Practise Committee and requires a verbatim record of every hearing to be kept. It also includes provisions relating to the service of documents.

Rule 62 is a transitional provision which applies to cases which, immediately before the commencement date, are either subject to proceedings before the Investigation Committee or the Fitness to Practise Committee, or where the Council has received information about a registrant

which might lead to such proceedings. Paragraph (2) of Rule 62 provides that the Council is to make such arrangements as it considers just for the disposal of such matters.

Rule 63 revokes the 2005 Rules.

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