

**2016 No. 902**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**DENTISTS**

**PROFESSIONS COMPLEMENTARY TO DENTISTRY**

**The General Dental Council (Fitness to Practise) (Amendment)  
Rules Order of Council 2016**

<i>Made</i> - - - -	<i>9th September 2016</i>
<i>Laid before Parliament</i>	<i>13th September 2016</i>
<i>Laid before the Scottish Parliament</i>	<i>13th September 2016</i>
<i>Coming into force</i> - -	<i>1st November 2016</i>

At the Council Chamber, the 9th day of September 2016

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

The General Dental Council has made the General Dental Council (Fitness to Practise) (Amendment) Rules 2016 as set out in the Schedule to this Order.

In accordance with sections 50C(2) and (3) of the Dentists Act 1984<sup>(a)</sup> the Rules shall not come into force until approved by order of the Privy Council.

**Citation and commencement**

1. This Order may be cited as the General Dental Council (Fitness to Practise) (Amendment) Rules Order of Council 2016 and comes into force on 1st November 2016.

**Privy Council approval**

2. Their Lordships, having taken the Rules contained in the Schedule into consideration, are pleased to, and do approve them.

*Richard Tilbrook*  
Clerk of the Privy Council

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(a) 1984 c. 24. Section 50C was inserted by S.I. 2005/2011 and amended by S.I. 2009/1182.

# SCHEDULE

Article 2

## The General Dental Council (Fitness to Practise) (Amendment) Rules 2016

The General Dental Council, having consulted in accordance with section 50D of the Dentists Act 1984(a), make the following Rules in exercise of their powers conferred by sections 27(6A), 27A(13), 27AA, 27AB(1), 36N(6A), 36O(13), 36OA, 36OB(1), 50C(5) and (6) of, and paragraph 2(1)(b) of Schedule 3 and paragraph 2(1)(b) of Schedule 4B to that Act(b).

### Citation and commencement

1. These Rules may be cited as the General Dental Council (Fitness to Practise) (Amendment) Rules 2016 and shall come into force on 1st November 2016.

### Amendment of the General Dental Council (Fitness to Practise) Rules 2006

2. The General Dental Council (Fitness to Practise) Rules 2006(c) are amended as follows.

### Amendment of rule 2

3. In rule 2 (interpretation)—

(a) after the definition of “allegation” insert—

““Case Examiner” means an officer of the Council appointed by the registrar on the Council’s behalf (whether as a replacement for another Case Examiner or otherwise) for the purposes of exercising the functions of the Investigating Committee in accordance with these rules, being a registered dentist, registered dental care professional, or lay person;

“Case Examiners” means, in relation to any allegation, the two Case Examiners to whom an allegation is referred under rule 3(2)(a), one of whom must be a lay person and the other either a registered dentist or a registered dental care professional;” and

(b) after the definition of “interim orders hearing” insert—

““lay person” means a person who—

- (a) is not and never has been registered in a register maintained by the Council,
- (b) is not a director of a body corporate registered in a register maintained by the Council, and
- (c) does not hold qualifications which would entitle the holder to apply for registration in a register maintained by the Council;”.

### Renaming of Part 2

4. For the heading of Part 2, substitute “Referral and notification of allegations”.

### Substitution of rule 3

5. For rule 3 (initial consideration by the registrar), substitute—

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(a) 1984 c. 24. Section 50D was inserted by S.I. 2005/2011.  
(b) Sections 27(6A), 27A(13), 27AA, 27AB, 36N(6A), 36O(13), 36OA and 36OB(1) were inserted by S.I. 2016/496, section 50C was inserted by SI 2005/2011 and amended by SI 2009/1182, Schedule 3 was substituted by S.I. 2005/2011, Schedule 4B was inserted by S.I. 2005/2011.  
(c) These rules are scheduled to S.I. 2006/1663.

### **“Initial consideration and referral of allegations**

**3.**—(1) The registrar must investigate a complaint or other information received in relation to a registered dentist or a registered dental care professional, including a dentist or dental care professional whose registration is suspended, and must determine whether a complaint or information amounts to an allegation.

(2) Where the registrar determines that a complaint or other information amounts to an allegation the registrar—

- (a) must refer the allegation to the Case Examiners for consideration under rule 5; and
- (b) may at any time before the Case Examiners have begun to consider the allegation, refer the allegation to the Interim Orders Committee.”.

### **Amendment of rule 4**

**6.** In rule 4(2) (notification of allegation)—

- (a) in sub-paragraph (b) for “rule 7(3)” substitute “rule 6(8)”; and
- (b) in sub-paragraph (c) for “Investigating Committee” substitute “Case Examiners”.

### **New Parts 2A, 2B and 2C**

**7.** For rules 5 to 10, substitute—

## **“PART 2A**

### **Case Examiners**

#### **Consideration of allegations**

**5.**—(1) Where an allegation is referred by the registrar under rule 3(2)(a) or 9(8)(b), the Case Examiners must, for the purpose of making a determination referred to in rule 6(1), consider that allegation.

(2) In carrying out that consideration, the Case Examiners may, subject only to the requirements of relevance and fairness, consider any documentary evidence, whether or not that evidence would be admissible in any proceedings in a court.

(3) Where the Case Examiners consider it necessary for the purposes of their consideration, they may adjourn their consideration of an allegation and direct the registrar to carry out such enquiries as they may specify.

(4) Where one or both of the Case Examiners consider it appropriate, the Case Examiners may refer the allegation to the Interim Orders Committee in accordance with section 27A(4A) or section 36O(4A) of the Act.

#### **Determination**

**6.**—(1) A determination by the Case Examiners that—

- (a) an allegation ought not to be considered by a Practice Committee; or
- (b) an allegation ought to be considered by a Practice Committee,

must be unanimous.

(2) If the Case Examiners fail to agree as to a determination under paragraph (1), they must refer the allegation for consideration by the Investigating Committee under rule 7.

(3) The Case Examiners must not make a determination under paragraph (1) unless they are satisfied that the respondent and the maker of the allegation (if any) have been provided

with a reasonable opportunity to submit written representations commenting on the allegation and, subject to paragraph (8), the evidence relating to the allegation.

(4) Where the Case Examiners determine that the allegation ought not to be considered by a Practice Committee they may also do one or more of the following—

- (a) issue to the respondent a warning or give advice regarding the respondent's future conduct, performance and practice;
- (b) issue advice on any issue arising in the course of the investigation to any other person involved in that investigation.

(5) Where the Case Examiners determine that an allegation ought not to be considered by a Practice Committee, they must at the same time as making that determination revoke with immediate effect any interim order which has been made under section 32 or section 36V of the Act in respect of the respondent in consequence of that allegation.

(6) Where the Case Examiners determine that the allegation ought to be considered by a Practice Committee, the Case Examiners must either—

- (a) refer the allegation—
  - (i) to the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 27(2)(b) or 36N(2)(b) of the Act (deficient professional performance),
  - (ii) to the Health Committee, in the case of an allegation based on the ground mentioned in section 27(2)(c) or 36N(2)(c) of the Act (adverse physical or mental health),
  - (iii) to the Professional Conduct Committee, in any other case, or
  - (iv) where paragraph (9) applies, to whichever of the Practice Committees they consider most appropriate; or
- (b) in accordance with rule 6A, invite the respondent to comply with such undertakings as the Case Examiners consider appropriate: this is subject to paragraph (7).

(7) The Case Examiners must not invite the respondent to comply with undertakings under paragraph (6)(b) where there is a realistic prospect that, if the allegation were referred for consideration by a Practice Committee, the respondent's name would be erased from the register.

(8) Any evidence which the respondent or a third party has provided relating to the health or private and family life of the respondent or a third party must not be disclosed by the registrar to the maker of the allegation.

(9) This paragraph applies where the Case Examiners make a determination under paragraph (1)(b) in respect of two or more allegations relating to the same respondent and those allegations are any of the following—

- (a) an allegation based on the ground mentioned in section 27(2)(b) of the Act and an allegation or allegations based on any other ground mentioned in section 27(2) of the Act;
- (b) an allegation based on the ground mentioned in section 27(2)(c) of the Act and an allegation or allegations based on any other ground mentioned in section 27(2) of the Act;
- (c) an allegation based on the ground mentioned in section 36N(2)(b) of the Act and an allegation or allegations based on any other ground mentioned in section 36N(2) of the Act;
- (d) an allegation based on the ground mentioned in section 36N(2)(c) of the Act and an allegation or allegations based on any other ground mentioned in section 36N(2) of the Act.

## **Undertakings**

**6A.**—(1) Where rule 6(6)(b) applies, the Case Examiners must write to the respondent inviting the respondent to state within the period of 28 days from the date of the letter (or such further period as they may allow) whether the respondent is prepared to comply with such undertakings as specified in the letter (“the Case Examiner undertakings”).

(2) If within the period referred to in paragraph (1), the respondent—

- (a) notifies the registrar that the respondent does not agree to comply with the Case Examiner undertakings; or
- (b) does not accept the invitation referred to in paragraph (1),

the Case Examiners must refer the allegation to a Practice Committee in accordance with rule 6(6)(a).

(3) If within the period referred to in paragraph (1), the respondent agrees in writing to comply with all of the Case Examiner undertakings, the Case Examiners must—

- (a) cease consideration of the allegation; and
- (b) revoke with immediate effect any interim order which has been made under section 32 or section 36V of the Act in respect of the respondent in consequence of the allegation.

(4) Where paragraph (3) applies, the Case Examiners may, if they consider it appropriate to do so, direct the registrar to enter details of the undertakings in the entry of the register relating to the person who is the subject of the allegation.

## **Undertakings: variation, breach etc.**

**6B.**—(1) Where the Case Examiners have ceased consideration of an allegation in accordance with rule 6A(3), the registrar may carry out any investigations that are, in the registrar’s opinion, appropriate to the consideration of—

- (a) whether the respondent has complied with all of the Case Examiner undertakings; or
- (b) the respondent’s fitness to practise.

(2) Where, as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason, it appears to the Case Examiners that any of the Case Examiner undertakings should be varied or cease to apply, they must direct the registrar—

- (a) to write to the respondent inviting the respondent to agree in writing within 28 days from the date of that letter to comply with all such undertakings as are varied by the Case Examiners as they consider appropriate (“the varied undertakings”); or
- (b) that the Case Examiner undertakings should no longer apply and that the allegation should not be considered further.

(3) Paragraph (4) applies where as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason, it appears to the Case Examiners that the respondent has—

- (a) failed to comply with any Case Examiner undertaking; or
- (b) failed to comply with any varied undertaking; or
- (c) not accepted the invitation to agree to all of the varied undertakings.

(4) Where this paragraph applies, the Case Examiners may—

- (a) refer the allegation to a Practice Committee in accordance with rule 6(6)(a); or
- (b) direct the registrar to write to the respondent inviting the respondent to notify the registrar in writing, within 28 days from the date of that letter, that the respondent will comply with any such undertaking.

(5) Where paragraph (4)(b) applies and if within the time specified in that paragraph the registrar has not received written agreement from the respondent to comply with all of the Case Examiner undertakings or varied undertakings, the Case Examiners must refer the allegation to a Practice Committee in accordance with rule 6(6)(a).

(6) Where, as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason—

- (a) it appears to the Council that the respondent has failed to observe any of the Case Examiner undertakings or varied undertakings, and
- (b) the registrar considers that that failure amounts to an allegation,

the registrar must refer that allegation to the Case Examiners for consideration under rule 5.

### **Warnings**

**6C.**—(1) Where one or both of the Case Examiners are minded to give a warning under rule 6(4)(a), they must direct the registrar to notify the respondent in writing that they are so minded and that the respondent is entitled to make written representations in that connection which must be received by the Case Examiners within the period of 28 days beginning with the date of that notice.

(2) The Case Examiners must consider any representations made by the respondent pursuant to paragraph (1) before deciding whether or not to give a warning to the respondent.

(3) If the Case Examiners issue a warning they may, if they consider it appropriate to do so, direct the registrar to enter details of that warning in the entry in the register relating to the person who is the subject of the allegation.

### **Review of warnings by Case Examiners**

**6D.**—(1) The Case Examiners may, in accordance with section 27A(11) or 36O(11) of the Act, review their decision under rule 6(4)(a) to issue a warning.

(2) Where the Case Examiners decide to review their decision to issue a warning they must inform the registrar who must in writing—

- (a) notify the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Case Examiners has an interest in the decision to issue a warning, of the decision to review and give reasons for their decision;
- (b) notify the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Case Examiners has an interest in the decision to issue a warning, of any new information and, where appropriate, provide them with that information; and
- (c) seek representations from the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Case Examiners has an interest in the decision to issue a warning, regarding the review of that decision.

(3) The registrar may carry out any investigations which, in the opinion of the registrar, are appropriate to facilitate the making of a decision under paragraph (4) or (5).

(4) Where the Case Examiners, taking account of all relevant material including that obtained under paragraph (3), conclude that the decision specified in paragraph (1) was materially flawed (for any reason) or that there is new information which now indicates that it was not appropriate to issue a warning, they must—

- (a) revoke the decision made under rule 6(4)(a) to issue a warning; and
- (b) where the details of the warning have been entered in the register, direct the registrar to remove those details from the entry in the register relating to the respondent.

(5) Where the Case Examiners, taking account of all relevant material including that obtained under paragraph (3), conclude that the decision specified in paragraph (1) was not materially flawed or that there is no new information which now indicates that it was not appropriate to issue a warning, they must decide that the original decision to issue a warning should stand.

(6) Where the Case Examiners have reviewed a decision specified in paragraph (1) they must notify—

- (a) the respondent;
- (b) the maker of the allegation (if any);
- (c) any other person who in the opinion of the Case Examiners has an interest in receiving the notification,

in writing, as soon as reasonably practicable, of the decision made under paragraph (4) or (5) and the reasons for that decision.

### **Review of previous determinations (Case Examiners)**

**6E.**—(1) The Case Examiners may review and if they consider it appropriate revise a determination made by them that an allegation ought to be considered by a Practice Committee—

- (a) on a reference back to them from a Practice Committee under section 27B(4) or section 36P(5) of the Act; or
- (b) on an application made by the Council, the registrar, the person who is the subject of the allegation or any person making the allegation but only if such review is carried out—
  - (i) where there is to be a hearing before a Practice Committee, before the commencement of that hearing, or
  - (ii) where there is not to be a hearing before a Practice Committee, before the Practice Committee have begun to consider written statements or representations.

(2) Rule 6(4) applies to a determination by the Case Examiners, following a review under paragraph (1), that an allegation ought not to be considered by a Practice Committee, as it applies to a determination under rule 6(1) that an allegation ought not to be considered by a Practice Committee.

(3) If the Case Examiners determine following a review under paragraph (1) that an allegation ought not to be considered by a Practice Committee, they shall, at the same time, revoke with immediate effect any interim order which has been made under section 32 or section 36V of the Act in respect of the respondent in consequence of that allegation.

(4) On a review referred to in paragraph (1), where one or both of the Case Examiners considers it appropriate, they may refer the allegation to the Interim Orders Committee.

(5) Where, the Case Examiners receive an application for a review of a previous determination in accordance with paragraph (1)(b), the Case Examiners must, before considering the applicant's written representations in support of the application, satisfy themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

## PART 2B

### The Investigating Committee

#### Consideration of allegations

7.—(1) Where an allegation is referred to the Investigating Committee under rule 6(2) or 9(8)(b), the Investigating Committee must, for the purposes of making a determination referred to in rule 8(1), hold a meeting, in the presence of the registrar but in the absence of the parties, to consider that allegation.

(2) In carrying out that consideration, the Investigating Committee may, subject only to the requirements of relevance and fairness, consider any documentary evidence, whether or not that evidence would be admissible in any proceedings in a court.

(3) Where the Investigating Committee consider it necessary for the purposes of their consideration, they may adjourn their consideration of an allegation and direct the registrar to carry out such enquiries as they may specify.

(4) Where the Investigating Committee considers it appropriate they may refer the allegation to the Interim Orders Committee in accordance with section 27A(4A) or section 36O(4A) of the Act.

#### Determination

8.—(1) Upon consideration of an allegation under rule 7, the Investigating Committee must determine that—

- (a) the allegation ought not to be considered by a Practice Committee; or
- (b) the allegation ought to be considered by a Practice Committee.

(2) The Investigating Committee must not make a determination under paragraph (1) unless they are satisfied that the respondent and the maker of the allegation (if any) have been provided with a reasonable opportunity to submit written representations commenting on the allegation and, subject to paragraph (6), the evidence relating to the allegation.

(3) Where the Investigating Committee determine that the allegation ought not to be considered by a Practice Committee they may also do one or more of the following—

- (a) issue a warning to the respondent or give advice regarding the respondent's future conduct, performance and practice;
- (b) issue advice on any issue arising in the course of the investigation to any other person involved in that investigation.

(4) Where the Investigating Committee determine that the allegation ought to be considered by a Practice Committee, the Investigating Committee must either—

- (a) refer the allegation to—
  - (i) the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 27(2)(b) or 36N(2)(b) of the Act (deficient professional performance),
  - (ii) the Health Committee, in the case of an allegation based on the ground mentioned in section 27(2)(c) or 36N(2)(c) of the Act (adverse physical or mental health), or
  - (iii) the Professional Conduct Committee, in any other case; or
- (b) in accordance with rule 8A, invite the respondent to comply with such undertakings as the Investigating Committee consider appropriate: this is subject to paragraph (5).

(5) The Investigating Committee must not invite the respondent to comply with undertakings under paragraph (4)(b) where there is a realistic prospect that, if the allegation



were referred for consideration by a Practice Committee, the respondent's name would be erased from the register.

(6) Any evidence which the respondent or a third party has provided relating to the health or private and family life of the respondent or a third party must not be disclosed by the registrar to the maker of the allegation.

### **Undertakings**

**8A.**—(1) Where rule 8(4)(b) applies, the Investigating Committee must write to the respondent inviting the respondent to state within the period of 28 days from the date of the letter (or such further period as they may allow) whether the respondent is prepared to comply with such undertakings as specified in the letter (“the Investigating Committee undertakings”).

(2) If within the period referred to in paragraph (1), the respondent—

- (a) notifies the registrar that the respondent does not agree to comply with the Investigating Committee undertakings; or
- (b) does not accept the invitation referred to in paragraph (1),

the Investigating Committee must refer the allegation to a Practice Committee in accordance with rule 8(4)(a).

(3) If within the period referred to in paragraph (1), the respondent agrees in writing to comply with all of the Investigating Committee undertakings, the Investigating Committee must—

- (a) cease consideration of the allegation; and
- (b) revoke with immediate effect any interim order which has been made under section 32 or section 36V of the Act in respect of the respondent in consequence of the allegation.

### **Undertakings: variation, breach etc.**

**8B.**—(1) Where the Investigating Committee have ceased consideration of an allegation in accordance with rule 8A(3), the registrar may carry out any investigations that are, in the registrar's opinion, appropriate to the consideration of—

- (a) whether the respondent has complied with all of the Investigating Committee undertakings; or
- (b) the respondent's fitness to practise.

(2) Where, as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason, it appears to the Investigating Committee that any of the Investigating Committee undertakings should be varied or cease to apply, they must direct the registrar—

- (a) to write to the respondent inviting the respondent to agree in writing within 28 days of the date of that letter to comply with all such undertakings as are varied by the Investigating Committee as they consider appropriate (“the varied undertakings”); or
- (b) that the Investigating Committee undertakings should no longer apply and that the allegation should not be considered further.

(3) Paragraph (4) applies where as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason, it appears to the Investigating Committee that the respondent has—

- (a) failed to comply with any Investigating Committee undertaking; or
- (b) failed to comply with any varied undertaking; or
- (c) not accepted the invitation to agree to all of the varied undertakings.

- (4) Where this paragraph applies, the Investigating Committee may—
- (a) refer the allegation to a Practice Committee in accordance with rule 8(4)(a); or
  - (b) direct the registrar to write to the respondent inviting the respondent to notify the registrar in writing, within 28 days from the date of that letter, that the respondent will comply with any such undertaking.

(5) Where paragraph (4)(b) applies and if within the time specified in that paragraph the registrar has not received written agreement from the respondent to comply with all of the Investigating Committee undertakings or varied undertakings, the Investigating Committee must refer the allegation to a Practice Committee in accordance with rule 8(4)(a).

(6) Where, as a result of information received by the Council or as a result of investigations carried out by the registrar under paragraph (1) or for any other reason—

- (a) it appears to the Council that the respondent has failed to observe any of the Investigating Committee undertakings or varied undertakings, and
- (b) the registrar considers that that failure amounts to an allegation,

the registrar must refer that allegation to the Case Examiners for consideration under rule 5.

### **Warnings**

**8C.**—(1) Where the Investigating Committee are minded to give a warning under rule 8(3)(a), they must direct the registrar to notify the respondent in writing that they are so minded and that the respondent is entitled to make written representations in that connection which must be received by the Investigating Committee within the period of 28 days beginning with the date of that notice.

(2) The Investigating Committee must consider any representations made by the respondent pursuant to paragraph (1) before deciding whether or not to give a warning to the respondent.

### **Review of warnings by Investigating Committee**

**8D.**—(1) The Investigating Committee may, in accordance with section 27A(11) or 36O(11) of the Act, review their decision under rule 8(3)(a) to issue a warning.

(2) Where the Investigating Committee decide to review their decision to issue a warning, they must inform the registrar who must in writing—

- (a) notify the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Investigating Committee has an interest in the decision to issue a warning, of the decision to review and give reasons for their decision;
- (b) notify the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Investigating Committee has an interest in the decision to issue a warning, of any new information and, where appropriate, provide them with that information; and
- (c) seek representations from the respondent, the maker of the allegation (if any) and any other person who in the opinion of the Investigating Committee has an interest in the decision to issue a warning, regarding the review of that decision.

(3) The registrar may carry out any investigations which, in the opinion of the registrar, are appropriate to facilitate the making of a decision under paragraph (4) or (5).

(4) Where the Investigating Committee, taking account of all relevant material including that obtained under paragraph (3), conclude that the decision specified in paragraph (1) was materially flawed (for any reason) or that there is new information which now indicates that it was not appropriate to issue a warning, they must—

- (a) revoke the decision made under rule 8(3)(a) to issue a warning; and

- (b) where the details of the warning have been entered in the register, direct the registrar to remove those details from the entry in the register relating to the respondent.

(5) Where the Investigating Committee, taking account of all relevant material including that obtained under paragraph (3), conclude that the decision specified in paragraph (1) was not materially flawed or that there is no new information which now indicates that it was not appropriate to issue a warning, they must decide that the original decision to issue a warning should stand.

(6) Where the Investigating Committee have reviewed a decision specified in paragraph (1), they must notify—

- (a) the respondent;
- (b) the maker of the allegation (if any);
- (c) any other person who in the opinion of the Investigating Committee has an interest in receiving the notification,

in writing, as soon as reasonably practicable, of the decision made under paragraph (4) or (5) and the reasons for that decision.

### **Review of previous determinations (Investigating Committee)**

**8E.** Where the Investigating Committee receive an application for a review of a previous determination in accordance with section 27A(8)(b) or 36O(8)(b) of the Act, the Investigating Committee must, before considering the applicant's written representations in support of the application, satisfy themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

## **PART 2C**

### **Review of determinations**

#### **Review by the registrar of previous determinations**

**9.—**(1) Where paragraph (3) applies, the registrar may review all or part of a determination specified in paragraph (2), on the registrar's own initiative or on the application of the respondent, the maker of the allegation (if any) or any other person who, in the opinion of the registrar, has an interest in that determination.

(2) The determinations specified for the purpose of paragraph (1) are—

- (a) a determination by the registrar that an allegation against a registered dentist is not one to which section 27 of the Act applies or that an allegation against a registered dental care professional is not one to which section 36N of the Act applies;
- (b) a determination by the Case Examiners or the Investigating Committee that an allegation referred to them ought not to be considered by a Practice Committee.

(3) This paragraph applies where the registrar has reason to believe that—

- (a) the determination may, for any reason, be materially flawed in whole or in part; or
- (b) there is new information which may have led, wholly or partly, to a different determination; and
- (c) one or more of the grounds specified in paragraph (4) are satisfied.

(4) The grounds referred to in paragraph (3)(c) are that, in the opinion of the registrar, a review is—

- (a) necessary for the protection of the public;
- (b) necessary for the prevention of injustice to the respondent; or

(c) otherwise necessary in the public interest.

(5) The registrar must not, save in exceptional circumstances, commence a review of all or part of a determination specified in paragraph (2) more than two years after the date of that determination.

(6) Where the registrar decides to review all or part of a determination specified in paragraph (2), the registrar must in writing—

- (a) notify the respondent, the maker of the allegation (if any) and any other person who, in the opinion of the registrar, has an interest in that determination, of the decision to review and give reasons for that decision;
- (b) notify the respondent, the maker of the allegation (if any) and any other person who, in the opinion of the registrar, has an interest in that determination, of any new information and, where appropriate, provide them with that information; and
- (c) seek representations from the respondent, the maker of the allegation (if any) and any other person who, in the opinion of the registrar, has an interest in the determination regarding the review of that determination.

(7) The registrar may carry out any investigations which, in the opinion of the registrar, are appropriate to facilitate the making of the decision under paragraph (8) or (9).

(8) Where the registrar, taking account of all relevant material including that obtained under paragraph (7), concludes that a determination specified in paragraph (2) was, for any reason, materially flawed in whole or in part or that there is new information which would probably have led, wholly or partly, to a different determination and that a fresh determination is necessary on one or more of the grounds specified in paragraph (4), the registrar may decide—

- (a) in respect of a determination falling within paragraph (2)(a), to substitute for all or part of the original determination any determination which the registrar could have made under Part 2 of these rules; or
- (b) in respect of a determination falling within paragraph (2)(b), that the allegation should be referred for reconsideration by the Case Examiners or the Investigating Committee under rules 5 and 7 respectively.

(9) Where the registrar, taking account of all relevant material including that obtained under paragraph (7), concludes that no part of a determination under paragraph (2) was materially flawed or that there is no new information which would probably have led, wholly or partly, to a different determination, the registrar must decide that the original determination should stand.

(10) Where the registrar has reviewed all or part of a determination specified in paragraph (2) the registrar must notify—

- (a) the respondent;
- (b) the maker of the allegation (if any); and
- (c) any other person who, in the opinion of the registrar, has an interest in receiving the notification,

in writing, as soon as reasonably practicable, of the decision under paragraph (8) or (9) and the reasons for that decision.”.

### **Amendment of rule 12**

8. In rule 12 (consideration at a hearing) before “Investigating Committee” insert “Case Examiners or the”.

### **Transitional and saving provision**

9.—(1) In this rule—

- (a) “the appointed day” means the day on which the General Dental Council (Fitness to Practise) (Amendment) Rules Order of Council 2016 comes into force;
  - (b) “the Amended Rules” means the General Dental Council (Fitness to Practice) Rules 2006 as amended by these rules;
  - (c) “the Rules” means the General Dental Council (Fitness to Practice) Rules 2006 as in force immediately prior to the appointed day.
- (2) Where before the appointed day a complaint or other information has been received in relation to a registered dentist or a registered dental care professional and—
- (a) the registrar has not determined under rule 3 of the Rules whether that complaint or other information amounts to an allegation; or
  - (b) the registrar has determined that a complaint or other information amounts to an allegation but the allegation has not yet been referred to the Investigating Committee for it to consider under rule 5 of the Rules,
- the complaint or other information or the allegation (as the case may be), will be dealt with in accordance with the Amended Rules.
- (3) Where before the appointed day—
- (a) the registrar has referred an allegation to the Investigating Committee; and
  - (b) the Investigating Committee have not begun their consideration of the allegation under rule 5 of the Rules;
- the allegation will be referred to the Case Examiners to be considered in accordance with the Amended Rules.
- (4) The Rules will continue to apply in respect of an allegation where, prior to the appointed day, the Investigating Committee have begun their consideration of that allegation in accordance with Part 2 of the Rules.

Given under the official seal of the General Dental Council this 19th day of April 2016.



*William Moyes*  
Chair  
*Ian Brack*  
Registrar

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order approves the General Dental Council (Fitness to Practise) (Amendment) Rules 2016 (“the 2016 Rules”) which amend the General Dental Council (Fitness to Practise) Rules 2006 (which are set out in the Schedule to S.I. 2006/1663) (“the 2006 Rules”).

Rule 3 of the 2016 Rules amends rule 2 of the 2006 Rules to include a definition of “Case Examiner”, “Case Examiners” and “lay person”.

Rules 5 and 6 of the 2016 Rules substitute rule 3 and amend rule 4 of the 2006 Rules respectively, the effect being that the registrar will investigate a complaint or information received in respect of a dentist or dental care professional and, if the registrar considers that this amounts to an allegation of impairment of fitness to practise, the registrar must refer this allegation to the Case Examiners and, where appropriate, may refer it to the Interim Orders Committee. Rule 4 of

the 2016 Rules amends the heading of Part 2 of the 2006 Rules to reflect the functions being carried out under this Part of the 2006 Rules.

Rule 7 of the 2016 Rules substitutes rules 5 to 10 of the 2006 Rules, inserting new Parts 2A to 2C which:

provide for Case Examiners to exercise certain functions relating to the consideration of allegations of impairment of fitness to practise, the procedure to be followed by the Case Examiners when exercising these functions and the determinations that they may make (new Part 2A). Rule 8 of the 2016 Rules makes a consequential amendment to rule 12 of the 2006 Rules;

sets out the procedure to be followed by the Investigating Committee when considering an allegation of impairment of fitness to practise and the determinations that they may make. The effect of the amendments to the 2006 Rules is that the registrar will first refer an allegation to the Case Examiners and only if the Case Examiners fail to agree on whether the allegation should be referred to a Practice Committee will the allegation be referred to the Investigating Committee for consideration (new Part 2B);

provide for reviews of determinations. The registrar will be able to review a decision that an allegation is not an allegation of impairment of fitness to practise (and therefore should not be considered by the Case Examiners) and may also, in the circumstances specified, review a determination by the Case Examiners or the Investigating Committee that an allegation of impairment of fitness to practise should not be considered by a Practice Committee (new Part 2C).

Rule 9 of the 2016 Rules makes transitional and saving provision.

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£6.00

UK201609099 09/2016 19585

<http://www.legislation.gov.uk/id/uksi/2016/902>

ISBN 978-0-11-114963-8



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