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**6a: Consultation on Proposed Amendments to the Fitness to Practise Rules to support OHPA Transitional Arrangements — Annex B**

**General Medical Council (Fitness to Practise) Rules Order of Council 2004**

2004 No 2608

**HEALTH CARE AND ASSOCIATED PROFESSIONS  
DOCTORS**

**General Medical Council (Fitness to Practise) Rules Order of Council 2004**

Made 4th October 2004

Laid before Parliament 7th October 2004

Coming into force 1st November 2004

At the Council Chamber, Whitehall, the 4th day of October 2004

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

Whereas, in exercise of their powers under section 35CC(1), paragraph 4A(1) of Schedule 1 to, and paragraphs 1(1) to (5) and 5A(1), (2), (3) and (3A) of Schedule 4 to, the Medical Act 1983 and article 18 of the Medical Act 1983 (Amendment) Order 2000 and of all other powers enabling it in that behalf, the General Medical Council has made the General Medical Council (Fitness to Practise) Rules 2004 as set out in the Schedule to this Order:

And whereas by paragraph 4A(4) of Schedule 1 to and paragraph 1(7) and 5A(9) of Schedule 4 to that Act and article 18(2) to that Order, such rules shall not come into force until approved by Order of the Privy Council:

Now, therefore, Their Lordships, having taken these rules into consideration, are pleased to, and do hereby approve them.

This Order may be cited as the General Medical Council (Fitness to Practise) Rules Order of Council 2004, and shall come into force on 1st November 2004.

UK Parliament SIs 2000-Present/2004/2601-2650/General Medical Council (Fitness to Practise) Rules Order of Council 2004 (SI 2004/2608)/Signature(s)

*A K Galloway*

Clerk of the Privy Council

## **SCHEDULE**

### **THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE) RULES 2004**

The General Medical Council, in exercise of its powers under section 35CC(1) of, paragraph 4A(1) of Schedule 1 to, and paragraphs 1(1) to (5) and 5A(1), (2), (3) and (3A) of Schedule 4 to, the Medical Act 1983, and article 18 of the Medical Act 1983 (Amendment) Order 2000, and of all other powers enabling it in that behalf, and after consulting with such bodies or persons representing medical practitioners, or medical practitioners of any description, as appeared to the General Medical Council requisite to be consulted, hereby makes the following Rules:

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**Part 1**  
**Preliminaries**

**Citation and commencement**

**1.**

These Rules may be cited as the General Medical Council (Fitness to Practise) Rules 2004, and shall come into force on 1st November 2004.

**Interpretation**

**2.**

In these Rules-

"**the Act**" means the Medical Act 1983;

"**allegation**" means an allegation that the fitness to practise of a practitioner is impaired and includes an allegation treated as arising by virtue of section 35CC(3) of the Act and an allegation relating to a person whose registration is suspended;

"**application**" means, in Part 6 of these Rules, an application to restore a person's name to the register, and the applicant shall be construed accordingly;

"**assessment report**" means a report prepared following the assessment of a practitioner's performance or health in accordance with Schedule 1 or 2;

"**Assessment Team**" means a team of three or more performance assessors appointed by the Registrar in order to carry out the assessment of a practitioner's performance in accordance with Schedule 1;

"**Case Examiner**" means a medical or lay officer of the General Council appointed by the Registrar for the purposes of exercising the functions of the Committee, and "**Case Examiners**" means the medical and lay Case Examiners to whom an allegation is referred under rule 4(2), 5(2), 12(6)(b) or 28(3)(c) and includes any replacement Case Examiner appointed by the Registrar;

"**Case Manager**" means a legally qualified person appointed by the Registrar for the purposes of rule 16;

"**the Committee**" means the Investigation Committee;

"**FTP Panel**" means a Fitness to Practise Panel constituted under rules made under paragraph 19E of Schedule 1 to the Act;

"**interim order**" means an order made in accordance with section 41A of the Act (and includes an order made in accordance with section 41A and 41B of the Act prior to the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002);

"**Interim Orders Panel**" means an Interim Orders Panel constituted under paragraph 19A of Schedule 1 to the Act;

"**lay**", in relation to any person, means a person who is not and never has been provisionally registered or fully registered, was at no time registered with limited registration and does not hold qualifications which would entitle them to apply for provisional or full registration under the Act;

"**Legal Assessor**" means a person appointed under paragraph 7 of Schedule 4 to the Act;

"**medical**", in relation to any person, means a registered medical practitioner;

"**medical examiner**" means a registered medical practitioner appointed by the Registrar under rule 3(1)(b) for the purposes of carrying out health assessments in accordance with Schedule 2;

"**Panel**" means a FTP Panel or an Interim Orders Panel;

"**panellist**" means a person sitting on the Committee or a Panel;

"**party**" means the practitioner or the General Council (or their representatives), and references to "**the parties**" shall be construed accordingly;

"**performance assessor**" means a person appointed by the Registrar under rule 3(1)(a) for the purposes of carrying out performance assessments in accordance with Schedule 1;

"**practitioner**" means a person holding full or provisional registration under the Act (including any person whose registration is suspended) who is the subject of an allegation or in respect of whom a direction has been made under section 35D of the Act;

"**the Presenting Officer**" means the representative of the General Council instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Panel or the Committee, and may include solicitor or counsel;

"**private**" means in the presence of the parties and their representatives but in the absence of the wider public;

"**regulatory body**" shall be construed in accordance with section 35C(9) of the Act;

"**specialist health adviser**" means a registered medical practitioner appointed by the Registrar under rule 3(2) for the purposes of advising a FTP Panel in relation to medical issues regarding a practitioner's health;

"**specialist performance adviser**" means a registered medical practitioner appointed by the Registrar under rule 3(2) for the purposes of advising a FTP Panel in relation to medical issues regarding a practitioner's performance;

"**specialty**" shall be construed to include general medical practice; and

"**warning**" means a warning under section 35C(6) or section 35D(3) of the Act.

### **Appointment of panels of advisers, assessors and examiners**

#### **3.**

- (1) The Registrar may appoint-
  - (a) a panel of medical and lay performance assessors for the purposes of carrying out performance assessments in accordance with Schedule 1; and
  - (b) a panel of medical examiners for the purposes of carrying out health assessments in accordance with Schedule 2.

- (2) The Registrar may appoint-
  - (a) a panel of specialist health advisers for the purposes of advising a FTP Panel in relation to medical issues regarding a practitioner's health which may arise at a hearing before the FTP Panel; and
  - (b) a panel of specialist performance advisers for the purposes of advising a FTP Panel in relation to medical issues regarding a practitioner's performance which may arise at a hearing before the FTP Panel.
- (3) Members of the General Council shall not be eligible for appointment to a panel under paragraph (1) or (2).
- (4) In selecting a specialist health adviser in relation to a particular case, the Registrar-
  - (a) shall have regard to the physical or mental condition which is alleged to impair the practitioner's fitness to practise; and
  - (b) shall not select a person who has previously been selected to act as a medical examiner in relation to that case.
- (5) In selecting a specialist performance adviser in relation to a particular case, the Registrar-
  - (a) shall have regard to the specialty to which the allegation relates; and
  - (b) shall not select a person who has previously been selected to act as a member of an Assessment Team in relation to that case.
- (6) The advice of a specialist health adviser or a specialist performance adviser shall be given or repeated in the presence of the parties in attendance at the hearing.

## **Part 2**

### **Investigation of Allegations**

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

#### **4.**

- (1) An allegation shall initially be considered by the Registrar.
- (2) Subject to paragraph (5) and rule 5, where the Registrar considers that the allegation falls within section 35C(2) of the Act, he shall refer the matter to a medical and a lay Case Examiner for consideration under rule 8.
- (3) Where-
  - (a) the Registrar considers that an allegation does not fall within section 35C(2) of the Act;
  - (b) in the case of an allegation falling within paragraph (5), the Registrar does not consider it to be in the public interest for the allegation to proceed; or
  - (c) the Registrar considers that an allegation should not proceed on grounds that it is vexatious,

he shall notify the practitioner and the maker of the allegation (if any) accordingly.

(4) The Registrar may, before deciding whether to refer an allegation, carry out any investigations as in his opinion are appropriate to the consideration of-

- (a) whether or not the allegation falls within section 35C(2) of the Act;
- (b) the practitioner's fitness to practise; or
- (c) the matters outlined within paragraph (5) below.

(5) No allegation shall proceed further if, at the time it is first made or first comes to the attention of the General Council, more than five years have elapsed since the most recent events giving rise to the allegation, unless the Registrar considers that it is in the public interest, in the exceptional circumstances of the case, for it to proceed.

### **Functions of the Registrar in relation to cautions, convictions and determinations**

#### **5.**

(1) Subject to rule 4(5), the Registrar shall refer an allegation falling within section 35C(2)(c) of the Act relating to a conviction resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to a FTP Panel.

(2) Subject to rule 4(5), the Registrar shall refer any other allegation falling within section 35C(2)(c) or (e) of the Act directly to a FTP Panel, unless he is of the opinion that it ought to be referred to a medical and a lay Case Examiner for consideration under rule 8.

### **Referral to Interim Orders Panel**

#### **6.**

If, at any stage, the Registrar is of the opinion that an Interim Orders Panel should consider making an interim order in relation to a practitioner, he shall refer the allegation to an Interim Orders Panel accordingly.

### **Investigation of allegations**

#### **7.**

(1) As soon as is reasonably practicable after referral of an allegation for consideration under rule 8, the Registrar shall write to the practitioner-

- (a) informing him of the allegation and stating the matters which appear to raise a question as to whether his fitness to practise is impaired;
- (b) providing him with copies of any documents received by the General Council in support of the allegation;
- (c) inviting him to respond to the allegation with written representations within the period of 28 days from the date of the letter; and
- (d) informing him that representations received from him will be disclosed, where appropriate, to the maker of the allegation (if any) for comment.

(2) The Registrar shall carry out any investigations, whether or not any have been carried out under rule 4(4), as in his opinion are appropriate to the consideration of the allegation under rule 8.

(3) The Registrar may direct that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2.

- (4) Where an assessment has been carried out in accordance with Schedule 1 or 2, the Registrar shall send a copy of the assessment report to the practitioner.
- (5) Where an assessment has been carried out in accordance with Schedule 1, the Registrar shall send a copy of the assessment report to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so.
- (6) Where the Registrar receives information that-
- (a) the practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2; or
  - (b) having submitted to an assessment under Schedule 1, the practitioner has failed to comply with reasonable requirements imposed by the Assessment Team;

the Registrar may-

- (i) refer the allegation for determination by a FTP Panel, and
- (ii) in a case falling within sub-paragraph (b), refer the practitioner to a FTP Panel for the purposes of making a direction under paragraph 5A(3) of Schedule 4 to the Act.

### **Consideration by Case Examiners**

#### **8.**

- (1) An allegation referred by the Registrar under rule 4(2), 5(2), 12(6)(b) or 28(3)(c) shall be considered by the Case Examiners.
- (2) Upon consideration of an allegation, the Case Examiners may unanimously decide-
- (a) that the allegation should not proceed further;
  - (b) to issue a warning to the practitioner in accordance with rule 11(2);
  - (c) to refer the allegation to the Committee under rule 11(3) for determination under rule 11(6); or
  - (d) to refer the allegation for determination by a FTP Panel.
- (3) The Case Examiners may unanimously decide to recommend that the practitioner be invited to comply with undertakings in accordance with rule 10(3) and, where they do so and the practitioner confirms he is prepared to comply with such undertakings in accordance with rule 10(4), they shall make no decision under paragraph (2) accordingly.
- (4) As soon as reasonably practicable, the Case Examiners shall inform the Registrar of their decision, together with the reasons for that decision, and the Registrar shall notify the practitioner and the maker of the allegation (if any), in writing, accordingly.
- (5) If the Case Examiners fail to agree as to the disposal of an allegation under paragraph (2), or whether to recommend that the practitioner be invited to comply with undertakings under paragraph (3), they shall notify the Registrar accordingly, and the Registrar shall refer the allegation for consideration by the Committee under rule 9.
- (6) If, at any stage, one of the Case Examiners is of the opinion that an Interim Orders Panel should consider making an interim order in relation to a practitioner, he shall direct the Registrar accordingly.

## Consideration by the Committee

### 9.

Upon consideration of an allegation referred under rule 8(5), the Committee may-

- (a) determine that the allegation should not proceed further;
- (b) dispose of the allegation by issuing a warning to the practitioner without an oral hearing in accordance with rules 11(2) to (4);
- (c) determine that an oral hearing should be held for determination under rule 11(6);
- (d) refer the allegation for determination by a FTP Panel; or
- (e) where the Case Examiners have failed to agree whether to recommend that the practitioner be invited to comply with undertakings in accordance with rule 10(3), determine that the practitioner be invited to comply with such undertakings as the Committee think fit and direct the Case Examiners to make no decision under rule 8(2) accordingly.

## Undertakings

### 10.

(1) Where, before an allegation has been determined by the Case Examiners under rule 8(2), or referred to the Committee or a FTP Panel, the Registrar considers it appropriate to do so, the Registrar may refer the allegation to the Case Examiners for consideration under this rule.

(2) If after considering the allegation it appears to the Case Examiners that—

- (a) the practitioner's fitness to practise is impaired; or
- (b) the practitioner suffers from a continuing or episodic physical or mental condition which, although in remission at the time of the assessment, may be expected to cause a recurrence of impairment of the practitioner's fitness to practise,

they may recommend that the practitioner be invited to comply with such undertakings as they think fit (including any limitations on the practitioner's practice).

(3) Where the Case Examiners make a recommendation under paragraph (2), they shall inform the Registrar who shall write to the practitioner accordingly, inviting the practitioner to state within the period of 28 days from the date of the letter (or such further period as the Registrar may allow) whether the practitioner is prepared to comply with such undertakings.

(4) If within the period of 28 days from the date of the letter (or such further period as the Registrar may allow) the practitioner confirms in writing that he is prepared to comply with the undertakings recommended under paragraph (2), the Case Examiners shall cease consideration of the allegation and make no decision under rule 8(2), and the Registrar shall notify the practitioner and the maker of the allegation (if any) in writing accordingly.

(5) The Registrar shall not invite the practitioner to comply with any such undertakings where there is a realistic prospect that, if the allegation were referred to a FTP Panel, his name would be erased from the register.

(6) Where the Case Examiners have ceased consideration of an allegation in accordance with paragraph (4), the Registrar may carry out any investigations, which may include (but are not limited to) requesting the provision of reports or directing an assessment be carried out in accordance with Schedule 1 or 2, that are, in the Registrar's opinion, appropriate to the consideration of—

- (a) whether the practitioner has complied with any undertakings in place; or
- (b) the practitioner's fitness to practise.

(7) Where, as a result of information received by the General Council, it appears to the Case Examiners that any undertakings the practitioner has agreed to comply with under this rule should be varied or cease to apply, they shall inform the Registrar accordingly and the Registrar shall—

- (a) invite the practitioner to comply with such varied undertakings as appear to the Case Examiners to be appropriate; or
- (b) direct that the undertakings should no longer apply and that the allegation should not be considered further.

(8) Where the Registrar receives information that—

- (a) the practitioner has not within the period of 28 days from the date of the letter (or such further period as the Registrar may allow) agreed to comply with the undertakings with which the practitioner was invited to comply under paragraph (3) or (7)(a);
- (b) the practitioner has failed to observe an undertaking he has agreed to comply with under paragraph (4) or which has been varied following an invitation to comply with it under paragraph (7)(a); or
- (c) the practitioner's health or performance has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise,

the Registrar may refer the allegation for determination by a FTP Panel.

## **Warnings**

### **11.**

(1) If it appears to one or both of the Case Examiners that an allegation is one with respect to which he or they may wish to give a warning, he or they shall inform the Registrar, and the Registrar shall write to the practitioner to inform him that he is entitled to make written representations within the period of 28 days from the date of the letter.

(2) Subject to paragraph (3), if the Case Examiners are satisfied that the allegation ought not to be considered by a FTP Panel and-

- (a) the practitioner has made no representations under this rule; or
- (b) after considering any representations made, the practitioner has not contested the facts upon which the allegation is based,

they may if they think fit issue a warning to the practitioner.

(3) After considering any representations made by the practitioner, where-

- (a) the practitioner has requested that the allegation be referred for an oral hearing before the Committee; or
- (b) the Case Examiners otherwise consider it appropriate to do so,

the Case Examiners shall refer the allegation to the Committee for an oral hearing in accordance with this rule.

(4) Where the Committee-

- (a) is considering an allegation under rule 9 which has been referred as a result of the failure of the Case Examiners to agree as to disposal under rule 8(2)(a) or (d); and
- (b) considers that the allegation is one with respect to which it may wish to give a warning,

it shall inform the Registrar, and the Registrar shall write to the practitioner in accordance with paragraph (1), and paragraphs (2) and (3) shall apply as if references to the Case Examiners were references to the Committee.

- (5) Where an allegation has been referred to the Committee for an oral hearing under paragraph (3) or (4), the Registrar shall give notice to the practitioner-
  - (a) particularising the allegation against the practitioner and the facts upon which it is based;
  - (b) specifying the date, time and venue of the hearing;
  - (c) informing him of his right to attend the hearing and to be represented at a hearing in accordance with rule 33;
  - (d) informing him of the power of the Committee to proceed in his absence under rule 31; and
  - (e) informing him of the Committee's powers of disposal as set out in paragraph (6).
- (6) The Committee shall consider any allegation referred to it under paragraph (3) or (4), and shall-
  - (a) determine that the matter should not proceed further;
  - (b) dispose of the allegation by issuing a warning; or
  - (c) where new information adduced into evidence at the hearing indicates that to do so would be appropriate, refer the allegation for determination by a FTP Panel.
- (7) Where an allegation has been referred for an oral hearing under paragraph (3) or (4), the order of proceedings before the Committee shall be as follows-
  - (a) the Presenting Officer shall outline the allegation and the facts upon which it is based and, where the Committee considers such evidence is desirable to enable it to discharge its functions under this rule, may adduce any relevant oral or documentary evidence;
  - (b) the practitioner may respond to the allegation and, where the Committee considers such evidence is desirable to enable it to discharge its functions under this rule, may adduce any relevant oral or documentary evidence;
  - (c) the parties may make such further submissions as the Committee may allow;
  - (d) before making its decision, the Committee may adjourn for further investigations to be carried out, including an assessment of the practitioner's performance or health under Schedule 1 or 2; and
  - (e) the Committee shall announce its decision, and shall give its reasons for that decision.
- (8) In making its decision, the Committee shall, where appropriate, take into account the practitioner's previous fitness to practise history with the General Council or any other regulatory body.
- (9) The Registrar shall serve written notification of the Committee's decision upon the practitioner as soon as reasonably practicable.
- (10) The notice of decision shall-
  - (a) where the Committee decides that the matter should be referred to a FTP Panel, particularise the allegation against the practitioner that is to be referred; and
  - (b) where the Committee decides that the matter should be disposed of by issuing a warning, particularise the terms of the warning issued to the practitioner.

## Review of decisions

### 12.

(1) Subject to paragraph (2), the following decisions may be reviewed by the Registrar—

- (a) a decision not to refer an allegation to a medical and a lay Case Examiner or, for any other reason, that an allegation should not proceed beyond rule 4;
- (b) a decision not to refer an allegation to the Committee or a FTP Panel;
- (c) a decision to issue a warning in accordance with rule 11(2), (4) or (6); or
- (d) a decision to cease consideration of an allegation upon receipt of undertakings from the practitioner in accordance with rule 10(4).

(2) The Registrar may review all or part of a decision specified in paragraph (1) on his own initiative or on the application of the practitioner, the maker of the allegation (if any) or any other person who, in the opinion of the Registrar, has an interest in the decision when the Registrar has reason to believe that—

- (a) the decision may be materially flawed (for any reason) wholly or partly; or
- (b) there is new information which may have led, wholly or partly, to a different decision,

but only if one or more of the grounds specified in paragraph (3) are also satisfied.

(3) Those grounds 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 practitioner; or
- (c) otherwise necessary in the public interest.

(4) The Registrar shall not, save in exceptional circumstances, commence a review of all or part of a decision specified in paragraph (1) more than two years after it was made.

(5) Where the Registrar decides to review all or part of a decision specified in paragraph (1), he shall in writing—

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

and shall carry out any investigations which, in the opinion of the Registrar, are appropriate to facilitate the making of the decision under paragraph (6).

(6) Where the Registrar, taking account of all relevant material including that obtained under paragraph (5), concludes that all or part of a decision specified in paragraph (1) was materially flawed (for any reason) or that there is new information which would probably have led, wholly or partly, to a different decision and that a fresh decision is necessary on one or more of the grounds specified in paragraph (3), he may decide—

- (a) to substitute for all or part of the original decision any decision which he could have made under Part 2 of these Rules; or
- (b) that an allegation should be referred for reconsideration by the Case Examiners under rule 8, 10 or 11.

Otherwise, he must decide that the original decision should stand.

(7) Where the Registrar has reviewed all or part of a decision specified in paragraph (1), he shall notify—

- (a) the practitioner;
- (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 (6) and the reasons for that decision.

### **Relevant date for the purpose of sections 35A and 35B of the Act**

#### **13.**

For the purposes of sections 35A and 35B of the Act, the relevant date shall be the day on which the earliest of the following occurs-

- (a) the decision of the Registrar to carry out investigations under rule 4(4)(a) and (b) or 7(2);
- (b) the referral of an allegation to an Interim Orders Panel;
- (c) the referral of an allegation for consideration by the Case Examiners under rule 8;
- (d) the referral of an allegation to a FTP Panel; or
- (e) the making of a direction that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2.

**Part 3**  
**Action Following Referral**

**Investigation following referral**

**13A.**

After an allegation has been referred to a FTP Panel, the Registrar may carry out such investigations as the Registrar considers appropriate including directing that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2.

**Appointment of specialist advisers**

**14.**

Before the opening of any hearing before a FTP Panel, the Registrar may in accordance with rules 3(4) and (5) select from the panels maintained for such purposes-

- (a) one or more specialist health advisers;
- (b) one or more specialist performance advisers; or
- (c) one or more specialist health advisers and specialist performance advisers,

in order to advise the FTP Panel, as required, during the hearing.

**Notice of hearing**

**15.**

- (1) Subject to rule 16, as soon as reasonably practicable after an allegation has been referred to a FTP Panel the Registrar shall serve a notice of hearing on the practitioner.
- (2) The notice of hearing shall-
  - (a) particularise the allegation against the practitioner and the facts upon which it is based;
  - (b) specify the date, time and venue of the hearing;
  - (c) inform the practitioner of his right to attend the hearing and to be represented at the hearing in accordance with rule 33;
  - (d) inform the practitioner of the power of the FTP Panel to proceed in his absence under rule 31;
  - (e) inform the practitioner of his right to adduce evidence in accordance with rule 34 and to call and cross-examine witnesses; and
  - (f) inform the practitioner of the FTP Panel's powers of disposal under section 35D, section 38 and section 41A of the Act.
- (3) The Registrar shall give no less than 28 days' notice of the date and location of the hearing and no less than 7 days' notice of the precise time and venue of the hearing.
- (4) The Registrar may give a shorter period of notice than that specified in paragraph (3) where the practitioner consents or the Registrar considers it reasonable in the public interest in the exceptional circumstances of the case.

## Case management

### 16.

(1) The Registrar shall appoint one or more legally qualified Case Managers for the purposes of this rule.

(2) Following the referral of a case to a FTP Panel for-

- (a) a hearing to consider an allegation in accordance with rule 17;
- (b) a review hearing to consider an allegation in accordance with rule 22; or
- (c) consideration of an application for restoration in accordance with rule 24,

the Registrar may list the matter for a case review before a Case Manager.

(3) Unless the parties agree otherwise, the practitioner shall be given no less than 14 days' notice of any case review.

(4) A case review may be conducted by telephone or by such other method as may be agreed between the parties or, where the parties fail to agree, as decided by the Case Manager.

(5) The Case Manager shall act independently of the parties and may give directions to secure the just, expeditious and effective running of proceedings before the FTP Panel.

(6) Directions issued by the Case Manager may include, but are not limited to, such of the following as he considers appropriate having regard to the nature of the allegation, any representations made by the parties and all other material factors-

- (a) that each party disclose to the other-
  - (i) any documentary evidence in their possession or power relating to the allegation,
  - (ii) details of the witnesses (including the practitioner) on whom they intend to rely and signed witness statements setting out the substance of their evidence,
  - (iii) a curriculum vitae and an expert report in respect of any expert on whom they intend to rely, and
  - (iv) skeleton arguments;
- (b) that each party provide an estimate as to the likely length of the hearing and the date or dates on which they propose that the hearing should take place;
- (c) that the parties state whether or not the health of the practitioner is to be raised as an issue in the proceedings;
- (d) that the practitioner indicates, so far as is practicable-
  - (i) whether the allegation is admitted,
  - (ii) which facts are admitted and which facts remain in dispute,
  - (iii) which witness evidence is admitted and which witnesses are required for cross examination, and
  - (iv) whether any preliminary legal arguments are to be made;
- (e) where the allegation is admitted, a direction that the parties produce a statement of agreed facts;
- (f) where the parties agree, a direction that a witness statement shall stand as the evidence-in-chief of that witness;

- (g) a direction that a particular witness should be treated as a vulnerable witness, and directions as to how the evidence of such witness should be obtained or presented to the FTP Panel;
  - (h) a direction for an adjournment of the case review or an additional case review where the circumstances of the case require; and
  - (i) time limits for compliance with any of the directions listed above.
- (7) Within the period of 7 days beginning with the date of a case review, the Case Manager shall serve on the parties a record of the directions issued by him.
- (8) A FTP Panel may draw such inferences as it considers appropriate in respect of the failure by a party to comply with directions issued by the Case Manager.

## **Part 4**

### **Procedure of a FTP Panel**

#### **Procedure before a FTP Panel**

#### **17.**

- (1) A FTP Panel shall consider any allegations referred to it in accordance with these Rules, and shall dispose of the case in accordance with sections 35D, 38 and 41A of the Act.
- (2) The order of proceedings at the hearing shall be as follows-
- (a) the FTP Panel shall hear and consider any preliminary legal arguments;
  - (b) the Chairman of the FTP Panel shall-
    - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number, or
    - (ii) otherwise, require the Presenting Officer to confirm the practitioner's name and GMC Reference Number;
  - (c) the person acting as secretary to the FTP Panel shall read out the allegation, and the alleged facts upon which it is based;
  - (d) the Chairman of the FTP Panel shall inquire whether the practitioner wishes to make any admissions;
  - (e) where facts have been admitted, the Chairman of the FTP Panel shall announce that such facts have been found proved;
  - (f) where facts remain in dispute, the Presenting Officer shall open the case for the General Council and may adduce evidence and call witnesses in support of it;
  - (g) the practitioner may make submissions regarding whether sufficient evidence has been adduced to find the facts proved or to support a finding of impairment, and the FTP Panel shall consider and announce its decision as to whether any such submissions should be upheld;
  - (h) the practitioner may open his case and may adduce evidence and call witnesses in support of it;
  - (i) the FTP Panel shall consider and announce its findings of fact;
  - (j) the FTP Panel shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired;

- (k) the FTP Panel shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired, and shall give its reasons for that decision;
  - (l) the FTP Panel may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed;
  - (m) the FTP Panel may agree as an alternative to imposing any sanction any written undertakings (including any limitations on his practice) offered by the practitioner-
    - (i) which it considers to be sufficient to protect patients and protect the public interest, and
    - (ii) where the practitioner expressly agrees that the Registrar shall disclose details of any such undertakings (save those relating exclusively to the health of the practitioner) to-
      - (aa) any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so;
      - (bb) any person from whom the practitioner is seeking such employment or such an arrangement; and
      - (cc) any enquirer;
  - (n) the FTP Panel shall consider and announce its decision as to the sanction or warning, if any, to be imposed or undertakings to be taken into account and shall give its reasons for that decision;
  - (o) the FTP Panel shall receive any further evidence and hear any further submissions from the parties as to whether an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration, before considering and announcing whether it shall impose such an order and its reasons for that decision; and
  - (p) the FTP Panel shall deal with any interim order in place in respect of the practitioner.
- (3) Where it appears to the FTP Panel at any time that-
- (a) the particulars of the allegation or the facts upon which it is based, of which notice has been given under rule 15, should be amended; and
  - (b) the amendment can be made without injustice,

it may, after hearing the parties and consulting with the Legal Assessor, amend the particulars on appropriate terms.

- (4) At any stage in the proceedings, before making a determination that a practitioner's fitness to practise is impaired, the FTP Panel may, having regard to the nature of the allegation under consideration, adjourn and direct-
- (a) that a specialist health adviser or specialist performance adviser be appointed to assist the FTP Panel; or
  - (b) that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2.
- (5) On receipt of an assessment report produced further to a direction under paragraph (4)(b), the FTP Panel may-
- (a) proceed to consider and determine the allegation in accordance with paragraph (2); or

- (b) refer the allegation to the Registrar for consideration by the Case Examiners in accordance with rule 10(2).
- (6) When determining whether a practitioner's fitness to practise is impaired by reason of adverse physical or mental health, the FTP Panel may take into account-
- (a) the practitioner's current physical or mental condition;
  - (b) any continuing or episodic condition suffered by the practitioner; and
  - (c) a condition suffered by the practitioner which, although currently in remission, may be expected to cause a recurrence of impairment of the practitioner's fitness to practise.
- (7) Where a practitioner has been referred under rule 7(6)(ii) for failure to comply with reasonable requirements imposed by an Assessment Team, the FTP Panel may dispose of the case, where it considers it appropriate to do so, by suspending the practitioner's name from the register or imposing conditions on his registration in accordance with section 35D of the Act.
- (8) Subject to paragraph (7), where a practitioner has failed to submit to, or to comply with, an assessment under Schedule 1 or 2, and-
- (a) there is credible evidence before the FTP Panel that the practitioner's fitness to practise is impaired;
  - (b) a reasonable request has been made by the Registrar to the practitioner that he submit to or comply with the assessment; and
  - (c) no reasonable excuse for such failure has been provided by the practitioner,
- the FTP Panel may take such failure into account in determining the question of whether the practitioner's fitness to practise is impaired.
- (9) At any stage before making its decision as to sanction or warning, the FTP Panel may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

## **Part 5**

### **Review Hearings**

#### **Application of Part 5**

##### **18.**

This Part shall apply to any hearing (a review hearing) at which an FTP Panel is to determine whether or not to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act.

#### **Functions of Registrar**

##### **19.**

Prior to the opening of a review hearing, the Registrar shall consider the directions made by a FTP Panel in respect of the practitioner at any previous hearing, and may-

- (a) make such inquiry or procure the production of such expert or other report as he considers necessary; and
- (b) invite the practitioner to undergo an assessment of his performance or health in accordance with Schedule 1 or 2.

## **Notice of review hearing**

### **20.**

- (1) No later than 28 days before the hearing, the Registrar shall serve on the practitioner notice of the review hearing-
- (a) particularising the direction made at the previous hearing and the grounds for the same;
  - (b) stating the matters set out at rule 15(2)(b) to (e);
  - (c) where an early review hearing is to be held, disclosing the information that makes such early review desirable;
  - (d) indicating the subsection of section 35D of the Act under which the FTP Panel is proposing to act, and the powers available to the FTP Panel under that provision;
  - (e) requesting the practitioner to notify the Registrar, within 14 days of the date of the notice, whether he wishes to attend the hearing; and
  - (f) inviting the practitioner, if he chooses not to attend the hearing, to make written representations to be received by the Registrar no later than 14 days before the hearing.
- (2) The notice under paragraph (1) shall be accompanied by a copy of any statement, report or other document which-
- (a) has not previously been sent to the practitioner or his representative; and
  - (b) is relevant to the question whether a direction should be made under this Part or the terms on which it should be made.
- (3) If any statement, report or other document is subsequently obtained by the General Council which is relevant to the question whether a direction should be made under this Part or the terms on which it should be made, the practitioner shall be given a reasonable opportunity of responding before the FTP Panel makes such direction.

## **Early review hearing**

### **21.**

The Registrar may refer a case to a FTP Panel for an early review hearing, where information is received that, in the opinion of the Registrar, makes an early review hearing desirable.

## **Procedure following referral of a new allegation**

### **21A.**

- (1) If, since the previous hearing, a new allegation against the practitioner has been referred to the FTP Panel, it shall first proceed with that allegation in accordance with rule 17(2)(a) to (i).
- (2) The FTP Panel shall thereafter proceed in accordance with rule 22 except that, when determining whether the fitness to practise of the practitioner is impaired and what direction (if any) to impose under section 35D(5), (6), (8) or (12) of the Act, it shall additionally have regard to its findings in relation to the new allegation.

## Procedure at a review hearing

### 22.

The order of proceedings at a review hearing shall be as follows-

- (a) the FTP Panel shall hear and consider any preliminary legal arguments;
- (b) the Chairman of the FTP Panel shall-
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number, or
  - (ii) otherwise, require the Presenting Officer to confirm the practitioner's name and GMC Reference Number;
- (c) the Presenting Officer shall-
  - (i) inform the FTP Panel of the background to the case, and the sanction previously imposed,
  - (ii) direct the attention of the FTP Panel to any relevant evidence, including transcripts of previous hearings, and may adduce evidence and call witnesses in relation to the practitioner's fitness to practise or his failure to comply with any requirement imposed upon him as a condition of registration;
- (d) the practitioner may present his case and may adduce evidence and call witnesses in support of it;
- (e) the FTP Panel shall receive further evidence and hear any further submissions from the parties as to whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration;
- (f) the FTP Panel shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration, and shall give its reasons for that decision;
- (g) the FTP Panel may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act;
- (h) the FTP Panel may agree as an alternative to imposing any sanction any written undertakings (including any limitations on his practice) offered by the practitioner-
  - (i) which it considers to be sufficient to protect patients and protect the public interest, and
  - (ii) where the practitioner expressly agrees that the Registrar shall disclose details of any such undertakings (save those relating exclusively to the health of the practitioner) to-
    - (aa) any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so;
    - (bb) any person from whom the practitioner is seeking such employment or such an arrangement; and
    - (cc) any enquirer; and
  - (i) the FTP Panel shall consider and announce its decision as to the direction, if any, to be made or undertakings to be taken into account and shall give its reasons for that decision.

## Part 6

### Restoration to the Register

#### Action on receipt of a restoration application

#### 23.

- (1) Upon receipt of an application for restoration made under section 41 of the Act, the Registrar may-
  - (a) make such investigations, and obtain such information, documents or reports as he considers appropriate; and
  - (b) direct the applicant to undergo an assessment of his performance or health in accordance with Schedule 1 or 2.
- (2) No later than 28 days before the hearing before a FTP Panel to consider his application, the Registrar shall serve on the applicant notice of the hearing-
  - (a) stating the matters set out at rule 15(2)(b) to (e);
  - (b) requesting the applicant to notify the Registrar, within 14 days of the date of the notice, whether he wishes to attend the hearing; and
  - (c) inviting the applicant, if he chooses not to attend the hearing, to make written representations to be received by the Registrar no later than 14 days before the hearing;
  - (d) where the applicant has made a previous unsuccessful application, informing him of the FTP Panel's power to suspend indefinitely his right to make further applications for restoration under section 41(9) of the Act; and
  - (e) where the applicant has made a previous unsuccessful application and chooses not to attend the hearing, inviting him to make written representations on the issue of indefinite suspension of his right to make further applications, to be received by the Registrar no later than 14 days before the hearing.
- (3) The notice under paragraph (2) shall be accompanied by a copy of any statement, report or other document which-
  - (a) has not previously been sent to the applicant or his representative; and
  - (b) is relevant to the question whether his name should be restored to the register.
- (4) If any statement, report or other document is subsequently obtained by the General Council which is relevant to the FTP Panel's decision whether to direct that the applicant's name be restored to the register, the applicant shall be given a reasonable opportunity of responding before the FTP Panel makes its decision.

#### Procedure at a restoration hearing

#### 24.

- (1) The FTP Panel shall consider an application in accordance with the procedure set out in this Rule.
- (2) The order of proceedings at a hearing to determine an application shall be as follows-
  - (a) the FTP Panel shall hear and consider any preliminary legal arguments;
  - (b) the Chairman of the FTP Panel shall-

- (i) where the applicant is present, require the applicant to confirm his name and GMC Reference Number, or
  - (ii) otherwise, require the Presenting Officer to confirm the applicants name and GMC Reference Number;
- (c) the Presenting Officer shall-
- (i) address the FTP Panel as to the background to the case and the circumstances in which the applicant's name was erased from the register,
  - (ii) direct the attention of the FTP Panel to any relevant evidence, including transcripts of previous hearings, and may adduce evidence and call witnesses in relation to the practitioner's fitness to practise;
- (d) the applicant may address the FTP Panel and adduce evidence and call witnesses in relation to any relevant matter, including his suitability for restoration to the register;
- (e) the FTP Panel may receive further evidence and hear any further submissions from the parties as to its decision whether to grant or refuse the application;
- (f) the FTP Panel shall then consider and announce whether to grant or refuse the application, and shall give its reasons for that decision;
- (g) before reaching a decision under sub-paragraph (f), the FTP Panel may adjourn and give such directions as it sees fit, including that the applicant should undergo an assessment of his performance or health in accordance with Schedule 1 or 2;
- (h) where the FTP Panel adjourns under sub-paragraph (g), it shall-
- (i) consider any assessment reports produced further to a direction under sub-paragraph (g), together with any other relevant evidence and reports, and
  - (ii) invite further representations and evidence from the parties,
- before reaching a decision as to whether the applicant should be restored to the register; and
- (i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration under section 41(9) of the Act, the FTP Panel shall-
- (i) consider any representations made and evidence received, and
  - (ii) where the applicant is present, invite further representations and evidence from him specifically upon this issue.

## **Part 7**

### **Interim Orders**

#### **Initial consideration**

#### **25.**

- (1) This Part applies where an allegation has been referred to an Interim Orders Panel by the Registrar for consideration as to whether to make or review an interim order.
- (2) Where an interim order has previously been made in respect of a practitioner the Registrar-

- (a) shall refer the case to an Interim Orders Panel for the purposes of subsection (2)(a) or (9) of section 41A of the Act; or
- (b) may refer the case to an Interim Orders Panel where new information is received by the General Council which, in his opinion, suggests that the interim order imposed on the practitioner's registration ought to be reviewed.

### **Notice of hearing**

#### **26.**

- (1) Prior to the initial or any review hearing relating to an interim order, the Registrar shall serve on the practitioner-
  - (a) a notice of hearing;
  - (b) a copy of any written evidence obtained by the General Council which is relevant to the question of whether or not an interim order should be made or reviewed; and
  - (c) in relation to a review hearing, a copy of the order to be reviewed,in such time before the hearing as is reasonable in the circumstances of the case.
- (2) The notice of hearing shall-
  - (a) state the matters set out at rules 15(2)(a) to (c);
  - (b) inform the practitioner of the power of the Interim Orders Panel to proceed in his absence under rule 31;
  - (c) set out briefly the reasons why it is necessary to make or review an interim order;
  - (d) inform the practitioner of the Interim Orders Panel's powers of disposal under section 41A of the Act;
  - (e) request the practitioner to notify the Registrar as soon as possible whether he intends to attend the hearing; and
  - (f) invite the practitioner, if he chooses not to attend the hearing, to submit any written representations, within such period as is reasonable in the circumstances and as is specified in the notice, to the Registrar.

### **Procedure at an interim orders hearing**

#### **27.**

- (1) At the hearing, the Interim Orders Panel may, subject to paragraphs (2) and (3), receive any evidence which appears to it to be fair and relevant to its consideration under section 41A(1), (2) or (3) of the Act.
- (2) No person shall give oral evidence at the hearing unless the Interim Orders Panel consider such evidence is desirable to enable it to discharge its functions.
- (3) The Interim Orders Panel may, at any stage in the proceedings-
  - (a) with the consent of the practitioner; or
  - (b) where, after consultation with the Legal Assessor, it is satisfied that to do so would be desirable to enable it to discharge its functions,

allow a party to produce at the hearing any written evidence, notwithstanding that a copy has not been provided to the other party before the hearing or that its author is not being called as a witness.

- (4) At an interim orders hearing-
- (a) the Interim Orders Panel shall hear and consider any preliminary legal arguments;
  - (b) the Chairman of the Interim Orders Panel shall announce that the hearing has commenced and shall-
    - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number, or
    - (ii) otherwise, require the Presenting Officer to confirm the practitioner's name and GMC Reference Number;
  - (c) the Presenting Officer shall address the Interim Orders Panel regarding whether it is necessary to make or review an interim order in respect of the practitioner and, subject to paragraphs (1) to (3), may adduce evidence in this regard;
  - (d) the practitioner may present his case and, subject to paragraphs (1) to (3), may adduce evidence in support of it;
  - (e) the parties and members of the Interim Orders Panel may put questions to any witness;
  - (f) where the practitioner gives oral evidence, the Presenting Officer and members of the Interim Orders Panel may put questions to him; and
  - (g) the Interim Orders Panel shall announce its decision, and shall give its reasons for that decision.
- (5) The Interim Orders Panel may vary the order of proceedings under paragraph (4) where it is in the interests of justice to do so.
- (6) Where-
- (a) an interim order is being reviewed by an Interim Orders Panel; and
  - (b) the hearing is, or is likely to be, the last such hearing before the expiry of the interim order,

the Interim Orders Panel may, after making its determination, notify the Registrar that an application should be made to the relevant court for the interim order to be extended under section 41A(6) of the Act.

## **Part 8**

### **General**

#### **Cancellation of a hearing**

#### **28.**

- (1) Where, after an allegation has been referred to the Committee and before the opening of the hearing before the Committee—
- (a) the practitioner withdraws their request for an oral hearing; or

- (b) it appears to the Registrar for some other reason that the hearing should not be held,

the Registrar may refer the matter to a member of the Committee for a decision as to whether or not the hearing should be cancelled.

(2) Where, after an allegation has been referred to a Panel and before the opening of the hearing before the Panel—

- (a) evidence becomes available to the Registrar that suggests that the practitioner's fitness to practise is not impaired;
- (b) in the case of proceedings under Part 7, evidence becomes available to the Registrar that suggests that the Interim Orders Panel need not consider whether to make or review an interim order; or
- (c) it appears to the Registrar for some other reason that the hearing before the Panel should not be held,

the Registrar may refer the matter to a member of the Committee for a decision as to whether or not the hearing should be cancelled.

(3) When considering whether to cancel a hearing under paragraph (1) or (2), the person making the decision may—

- (a) decide that the hearing should proceed on the basis of some or all of the particulars alleged;
- (b) decide to cancel the hearing; or
- (c) decide that the allegation should be referred for consideration by the Case Examiners in accordance with rule 10 or 11.

(4) Where a decision is taken under paragraph (3) of this rule, the Registrar shall, as soon as is reasonably practicable, serve notice of the decision in writing upon the practitioner and the maker of the allegation (if any), and shall give the reasons for the decision in the notice.

## **Postponements and adjournments**

### **29.**

(1) Before the opening of any hearing of which notice has been served on the practitioner in accordance with these Rules, a member of the Committee may, of their own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as they think fit.

(2) Where a hearing of which notice has been served on the practitioner in accordance with these Rules has commenced, the Committee or Panel considering the matter may, at any stage in their proceedings, whether of their own motion or upon the application of a party to the proceedings, adjourn the hearing until such time and date as they think fit.

(3) No hearing shall be postponed or adjourned under paragraphs (1) or (2) unless the parties have been given a reasonable opportunity to make representations on the matter.

(4) Where a hearing has been postponed or adjourned, the Registrar shall, as soon as practicable, notify the parties of the time, date and place at which the hearing is to take place or to resume.

### **Preliminary legal arguments**

#### **30.**

Where the Committee or a Panel considers and determines any preliminary legal arguments, such determination shall bind any subsequent Committee or Panel considering the case notwithstanding that any panellists present at the original hearing are not present at the subsequent hearing, or that any panellists present at the subsequent hearing were not present at the original hearing, unless the subsequent Committee or Panel, on the advice of the Legal Assessor, considers such determination to have been wrongly decided.

### **Absence of the practitioner**

#### **31.**

Where the practitioner is neither present nor represented at a hearing, the Committee or Panel may nevertheless proceed to consider and determine the allegation if they are satisfied that all reasonable efforts have been made to serve the practitioner with notice of the hearing in accordance with these Rules.

### **Joinder**

#### **32.**

The Committee or Panel may consider and determine together-

- (a) two or more allegations against the same practitioner which fall within-
  - (i) the same category; or
  - (ii) separate categories,

of impairment as set out in sections 35C(2)(a) to (e) of the Act; or

- (b) allegations against two or more practitioners,

where it would be just to do so.

### **Representation**

#### **33.**

(1) At a hearing, the practitioner may be represented by-

- (a) a solicitor or counsel;
- (b) a representative from any professional organisation of which he is a member; or
- (c) at the discretion of the Committee or Panel, a member of his family or other person.

(2) A person who gives evidence at a hearing shall not be entitled to represent or accompany the practitioner at that hearing.

(3) The practitioner (either in person or by a representative under paragraph (1)) and the Presenting Officer shall be entitled to be heard by the Committee or Panel.

## Evidence

### 34.

- (1) Subject to paragraph (2), the Committee or a Panel may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.
- (2) Where evidence would not be admissible in criminal proceedings in England, the Committee or Panel shall not admit such evidence unless, on the advice of the Legal Assessor, they are satisfied that their duty of making due inquiry into the case before them 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 practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.
- (6) The practitioner 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 or a Panel without strict proof.
- (8) A party may, at any time, serve notice 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,and such notice may be admitted into evidence by the Committee or Panel.
- (9) In relation to proceedings before the Committee or a FTP Panel, unless otherwise agreed between the parties or directed by a Case Manager, each party shall not less than 28 days before the date of a hearing-
  - (a) provide to the other party a list of every document which he proposes to introduce as evidence;
  - (b) provide to the other party a copy of every document listed in paragraph (a) which the other party has not previously received; and
  - (c) require the other party to notify him, within 14 days of the list being provided to him, whether or not he requires any relevant person to attend and give oral evidence in relation to the subject matter or making of such document.
- (10) Where one party notifies the other under paragraph (9)(c) that he requires a relevant person to attend to give oral evidence, the document concerned may nonetheless be received into evidence without such oral evidence where the Committee or FTP Panel is of the view that, having regard to all the circumstances (including the difficulty or expense of obtaining such attendance) and the justice of the case, it is proper to do so.
- (11) Having regard to any directions given by a Case Manager, on the application of a party, the Committee or a Panel may admit any signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned.
- (12) The standard of proof applicable in any proceedings–

- (a) before a FTP Panel where the allegation and the alleged facts are read out by the person acting as secretary in accordance with rule 17(2)(c) on or after 31st May 2008; and
- (b) before the Investigation Committee where the Presenting Officer begins to outline the allegation and the facts in accordance with rule 11(7) on or after 31st May 2008,

is that applicable to civil proceedings.

## **Witnesses**

### **35.**

- (1) Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.
- (2) Subject to rule 36, witnesses-
  - (a) shall first be examined by the party calling them;
  - (b) may then be cross-examined by the opposing party;
  - (c) may then be re-examined by the party calling them; and
  - (d) may at any time be questioned by the Committee or Panel and, with the leave of the Chairman at the hearing, a specialist health adviser or specialist performance adviser.
- (3) Any further questioning of the witnesses by the parties shall be at the discretion of the Committee or Panel.
- (4) The Committee or Panel may, upon the application of a party, agree that the identity of a witness should not be revealed in public.
- (5) The Committee or Panel may, on the application of a party or of its own motion, require a witness to attend a hearing and the relevant party shall exercise its power to compel attendance under paragraph 2 of Schedule 4 to the Act accordingly.
- (6) A witness of fact shall not, without leave of the Committee or Panel, be entitled to give evidence at a hearing unless he has been excluded from the proceedings until such time as he is called.

## **Vulnerable witnesses**

### **36.**

- (1) In proceedings before the Committee or a Panel, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-
  - (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 practitioner 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 Assessor, and upon hearing representations from the parties, the Committee or Panel may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee or Panel may include, but shall not 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 witness is available at the hearing for cross-examination and questioning by the Committee or Panel;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee or Panel 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 practitioner; and
- (e) the hearing of evidence by the Committee or Panel in private.

(4) Where-

- (a) the allegation against a practitioner is based on facts which are sexual in nature;
- (b) a witness is an alleged victim; and
- (c) the practitioner is acting in person,

the practitioner shall not without the written consent of the witness be allowed to cross-examine the witness in person.

(5) In the circumstances set out in paragraph (4), in the absence of written consent, the practitioner shall no less than 7 days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the General Council shall appoint such person on behalf of the practitioner.

### **Record of decisions of the Committee or Panel**

#### **37.**

The person acting as secretary to the Committee or Panel shall-

- (a) record in writing the decision of the Committee or Panel and reasons for their decision;
- (b) with the exception of confidential issues concerning the physical or mental health of the practitioner, publish the decision; and
- (c) inform the Registrar of the decision and the reasons for it.

### **Panel undertakings**

#### **37A.**

(1) Where undertakings have been agreed under rule 17(2)(m) or 22(h), the Registrar may carry out any investigations, which may include (but are not limited to) requesting the provision of reports or directing an assessment be carried out in accordance with Schedule 1 or 2, that are, in the Registrar's opinion, appropriate to the consideration of—

- (a) whether the practitioner has complied with any undertakings in place; or
  - (b) the practitioner's fitness to practise.
- (2) Where, as a result of information received by the General Council, it appears to the Case Examiners that any undertakings agreed under rule 17(2)(m) or 22(h) should be varied or cease to apply, they shall inform the Registrar accordingly and the Registrar shall—
- (a) invite the practitioner to comply with such varied undertakings as appear to the Case Examiners to be appropriate; or
  - (b) direct that the undertakings should no longer apply.
- (3) Where the Registrar receives information that—
- (a) the practitioner has failed to observe an undertaking agreed under rule 17(2)(m) or 22(h) or which, having been agreed under rule 17(2)(m) or 22(h), has been varied following an invitation to comply with it under paragraph (2)(a); or
  - (b) the practitioner's health or performance has deteriorated, or otherwise gives rise to further concern regarding their fitness to practise,

the Registrar may refer the matter to a FTP Panel for a review hearing under Part 5 of these Rules.

## **Voting**

### **38.**

- (1) Decisions of the Committee or of a Panel shall be taken by simple majority.
- (2) No Chairman of the Committee or Panel may exercise a casting vote.
- (3) No member of the Committee or Panel may abstain from voting.
- (4) Subject to paragraph (5), where the votes are equal, the Committee or Panel shall decide the issue under consideration in favour of the practitioner.
- (5) Where a FTP Panel is considering-
  - (a) an application to restore a practitioner's name to the register; or
  - (b) submissions made by the practitioner under rule 17(2)(g),

and the votes are equal, it shall decide the issue against the practitioner.

## **Notes and transcript of proceedings**

### **39.**

- (1) The Registrar shall arrange for the proceedings of the Committee or Panel to be recorded by electronic means or otherwise.
- (2) Any party to the proceedings shall, on application to the Registrar, be furnished with a copy of the record of any part of the proceedings at which he was entitled to be present.
- (3) Paragraphs (1) and (2) shall not apply to the deliberations of the Committee or Panel.

## Service of notices and documents

### 40.

- (1) Any notice of hearing required to be served upon the practitioner under these Rules shall be served in accordance with paragraph 8 of Schedule 4 to the Act.
- (2) Subject to paragraph (1), any notice or document required to be served upon the practitioner under these Rules may be served—
- (a) by ordinary post; or
  - (b) by electronic mail to an electronic mail address that the practitioner has notified to the Registrar as an address for communications.
- (3) If the practitioner is represented by—
- (a) a solicitor, the notice or document may also be—
    - (i) sent or delivered to the solicitor's practising address, or
    - (ii) sent by electronic mail to an electronic mail address of the solicitor; or
  - (b) a trade union or defence organisation, the notice or document may also be—
    - (i) sent or delivered to the trade union or defence organisation's business address; or
    - (ii) sent by electronic mail to an electronic mail address of the trade union or defence organisation,
- where the address has been notified to the Registrar as an address for communications.
- (4) The service of any notice or document under these Rules 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;
  - (b) a confirmation of receipt of the notice or document sent by electronic mail; or
  - (c) a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at—
    - (i) the practitioner's proper address;
    - (ii) the practising address or electronic mail address of the practitioner's solicitor; or
    - (iii) the business address or electronic mail address of the practitioner's trade union or defence organisation.

## **Attendance of the public**

### **41.**

- (1) Subject to paragraphs (2) to (6) below, hearings before the Committee and a FTP Panel shall be held in public.
- (2) The Committee or FTP Panel may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the particular circumstances of the case outweigh the public interest in holding the hearing in public.
- (3) Subject to paragraphs (4) to (6), the Committee or a Panel shall sit in private, where they are considering-
  - (a) whether to make or review an interim order; or
  - (b) the physical or mental health of the practitioner.
- (4) Where it is considering an allegation, the FTP Panel may revoke an interim order in public.
- (5) A Panel shall, where it is considering matters under paragraph (3)(a), sit in public where the practitioner requests it to do so.
- (6) Subject to paragraph (5), the Committee or Panel may, where they are considering matters under paragraph (3)(a) or (b), hold a hearing in public where they consider that to do so would be appropriate, having regard to-
  - (a) the interests of the maker of the allegation (if any);
  - (b) the interests of any patient concerned;
  - (c) whether a public hearing would adversely affect the health of the practitioner; and
  - (d) all the circumstances, including the public interest.
- (7) The Committee or Panel may deliberate in camera, in the absence of the parties and of their representatives and of the public, at any time.

## **Exclusion from proceedings**

### **42.**

The Committee or Panel may exclude from any hearing any person whose conduct, in their opinion, is likely to disrupt the orderly conduct of the proceedings.

## **Consequential amendments**

### **43.**

In rule 3 of the General Medical Council (Suspension and Removal of Members from Office) Rules 2004-

- (a) in paragraphs (3)(1)(b) and (2), "section 38 or 41A of the Act" shall be substituted for "section 38, 41A or 41B of the Act"; and
- (b) in paragraph (3)(b)(ii), "section 35D of the Act" shall be substituted for "section 36, 36A or 37 of the Act".

**Revocation**

**44.**

The General Medical Council (Interim Orders Committee) (Transitional Provisions) Rules 2000 are hereby revoked.

Given under the official seal of the General Medical Council this 15th day of September 2004

*Professor Sir Graeme Catto*

President

## **SCHEDULE 1**

### **PERFORMANCE ASSESSMENTS**

**Rules 2, 3(1)(a), 7(3) to (6), 10(1),10(5)(b), 11(7)(d), 13(e), 17(4)(b),17(8), 19(b), 23(1)(b) and 24(2)(g)**

#### **Interpretation**

**1.**

In this Schedule "assessment" means an assessment of the standard of the practitioner's professional performance

#### **Assessment Teams**

**2.**

(1) An assessment shall be carried out by an Assessment Team.

(2) The Registrar shall select from the panel of performance assessors appointed under rule 3, an Assessment Team comprising-

- (a) a team leader, who shall be a medical performance assessor;
- (b) one or more other medical performance assessors; and
- (c) one or more lay performance assessors.

(3) A person shall not be selected as a member of an Assessment Team in any case where he has been selected to act as a specialist adviser at a previous hearing of the case.

(4) In selecting a medical performance assessor as a member of an Assessment Team, the Registrar shall have regard to the specialty to which the allegation relates.

#### **Proceedings and procedures of Assessment Teams**

**3.**

(1) Subject to sub-paragraphs (2) to (4), and having regard to the nature of the practitioner's employment, the Assessment Team shall adopt such procedures as appear to it to be necessary in order to assess the standard of the practitioner's professional performance.

(2) The Assessment Team may seek advice or information from any person who might, in the opinion of the Assessment Team, assist them in carrying out the assessment.

(3) The Assessment Team shall disclose to the practitioner any written information or opinion received by the Assessment Team which in their opinion may influence their assessment of the standard of his professional performance, and shall afford him a reasonable opportunity to respond.

(4) The Assessment Team shall produce a report on the standard of the practitioner's professional performance which shall express-

- (a) an opinion as to whether the practitioner is fit to practise either generally or on a limited basis; and
- (b) any recommendations as to the management of the case.

## **SCHEDULE 2**

### **HEALTH ASSESSMENTS**

**Rules 2, 3(1)(b), 7(3), 7(4), 7(6), 10(1), 10(5)(b), 11(7)(d), 13(e), 17(4)(b), 17(8), 19(b), 23(1)(b), 24(2)(g)**

**1.**

In this Schedule "assessment" means an assessment of the physical or mental condition of the practitioner.

**2.**

The Registrar shall invite the practitioner within 14 days to agree to attend before two medical examiners selected by the Registrar from the panel appointed under rule 3 for the purposes of assessing the practitioner's physical or mental condition.

**3.**

If the practitioner accepts the invitation under paragraph (2) within 14 days from the date of such invitation (or such further period as the Registrar may allow) the Registrar shall make arrangements for the assessments to be carried out.

**4.**

The medical examiners shall each be required to prepare a report on the practitioner's physical or mental condition which shall express-

- (a) an opinion as to whether the practitioner is fit to practise either generally or on limited basis; and
- (b) any recommendations as to the management of the case.

## **NOTES**

### **Initial Commencement**

***Specified date***

Specified date: 1 November 2004: see Preamble.