
6c: Amendments to the Fitness to Practise Rules: Consultation Annex A

Consultation of Proposed Changes to the Fitness to Practise Rules 2004

Introduction

We are consulting on a package of proposed amendments to the Fitness to Practise Rules 2004 (the Rules). The consultation document explains why we are consulting and how you can comment on the proposed amendments to the Rules.

Rule 2 Interpretation

We propose to amend the definitions of 'lay' and 'practitioner' for the purposes of our rules to reflect the removal of the concept of limited registration. The definition of 'practitioner' in the current Rule 2 includes a reference to 'limited' registration. The proposed amendment reflects changes to the registration framework resulting from the abolition of limited registration in 2007.

We propose to remove the reference to 'President' in the Rules. As a result of other changes, the President no longer has any role under the GMC's Fitness to Practise procedures. In addition, as a result of constitutional changes, the role of President has been replaced by Chair of Council. The reference to 'the President' has been removed from Rules 12, 28 and 29.

Rule 3 Appointment of panels of advisers, assessors and examiners

We propose to remove the requirement under Rule 3(5)(a), when appointing a performance adviser, to have regard to the specialty to which the allegations relate. The Performance Adviser is appointed to advise the Fitness to Practise panel on matters regarding the doctor's performance.

This requirement has been found, in practice, to be restrictive. There are, for example, cases in which the specialist performance adviser is required to comment on performance issues globally, rather than in relation to the specialty to which the allegations relate. The proposed change is intended to provide for a more flexible approach. When specialist advice is required regarding the particular specialty of the practitioner, it will normally be provided by an expert witness, rather than by the Performance Adviser.

We are not, however, proposing to remove the right for panels to have regard to the specialty to which the allegations refer when appointing a Performance Adviser, in cases in which the panel considers that it would be appropriate to do so, only removing the requirement for them to do so.

Rule 4 Vexatious complaints

We propose to amend Rule 4 to provide the Registrar with powers to filter out vexatious complaints at the point of initial consideration. Our intention is that this power will be used only in exceptional circumstances and we will develop criteria to define the circumstances in which it would be appropriate to exercise the power.

The proposed new power is designed to deal with the circumstances in which a complainant may issue an unreasonable number of complaints about a single doctor, or more than one doctor; or may complain about a doctor other than in connection with a doctor's practice or conduct. Complaints of this kind are exceptional, but they can consume significant resources and cause undue stress for the doctors involved. Criteria will be developed to govern the use of the proposed new sub-rule.

Rule 4(4) and 4(5) Five year Rule

Rule 4(5) provides that complaints about alleged events that took place more than five years ago will not proceed unless it is in the public interest to do so. The proposal is to amend Rule 4(4) to include a new sub-clause (c) to provide an express power to investigate to establish whether or not to proceed under the five year rule. This would mean that, where appropriate, we would have an express power to carry out further investigations before a formal decision is made under 4(5). This is designed to improve the quality of decision making.

Rule 10 Undertakings

We propose to amend the framework for managing undertakings agreed at the adjudication stage, in order to bring them in line with undertakings agreed at the investigation stage. This will give the Registrar (in practice case examiners) powers under Rule 10 to lift or vary undertakings agreed by Fitness to Practise Panels which mirrors the Registrar's powers regarding undertakings agreed at the investigation stage.

Rule 11 Warnings

We are proposing to replace 'as reasonably practicable' for 'as practicable'. The proposed amendment is intended to ensure consistency with the wording used elsewhere in our regulations.

Rule 12: Review of decisions

We propose to amend our powers under Rule 12, to extend the circumstances in which a case may be reviewed and to provide that the Registrar may exercise the power to review investigation stage decisions instead of the President.

Rule 12 of the Rules introduced a new power for the President to review investigation stage decisions. The current Rule gives the President the power to review a decision not to refer a case to a Fitness to Practise Panel, including a decision to conclude a case with undertakings or a warning. This effectively means that, in specific circumstances, we are able to reconsider cases which have been concluded.

The review procedure requires the President to seek representations from the doctor and from any complainant; and then to determine whether the original decision should stand or to refer the case to be considered afresh by the case examiners. We have experienced a number of difficulties with Rule 12.

First, the current Rule, as drafted, requires the President to make all decisions personally. This includes a decision that the criteria for review are not met. This arrangement is inefficient and does not accord with our policy that Council members should not be involved in casework decisions. In addition, from 1 January 2009, the role of President has been replaced by Chair of Council.

Second, the Rule arguably applies to a limited range of investigation decisions. We are seeking to clarify in the revised Rule the categories of decisions which may be reviewed under Rule 12.

Third, the current Rule does not provide a general power to take action when a decision, which was wrongly decided, leaves the public at risk. The current criteria include only cases in which an 'administrative' error has been identified, namely an error of process rather than of judgement, or where new evidence emerges that was not available to the original decision-maker.

We propose to expand the categories of case that may be subject to review to include preliminary decisions made by the Registrar at the initial assessment stage of the fitness to practise procedures, including decisions to conclude a case at the early stages or to allocate it to be dealt with under 'stream 2' of our procedures. ('Stream 2' relates to cases that do not meet the threshold for GMC and which we refer to the doctor's employer to consider whether any further action may be required.) Under the proposed revised Rule 12, the Registrar would be able to refer the case back to the relevant stage of the procedures, as appropriate, for further consideration or where the original decision was made by the Registrar, substitute that with his own decision.

The grounds that may trigger a review will be extended to cover any case in which there is reason to believe the decision is, or may be, "flawed" either procedurally, legally or factually: This is wide enough to cover cases in which the administrative handling has resulted in a flawed decision, as well as cases in which there has been an error of judgement or reasoning on behalf of the decision-maker. The existing ground of "new evidence or information" would survive; and it would remain the case that the review must be necessary for the protection of the public, prevention of injustice to the practitioner, or otherwise in the public interest.

We propose to introduce a time limit: a decision would not be reviewed more than two years after it was made except in exceptional circumstances. We believe that this is a proportionate response, providing fairness and a degree of certainty to doctors undergoing the fitness to practise procedures, while allowing us to take action, where necessary, in the public interest.

Under the proposed revised rule, the power to review decisions would be vested in the Registrar, rather than the President. This is in line with our general policy on casework decisions.

Rule 13: Action following Referral

We propose to make explicit reference to the power to require a doctor to undergo a health or performance assessment following referral to a Fitness to Practise panel. While we have an inherent power to do so, it would be preferable, for the sake of clarity, to make the power explicit.

Rule 17: Procedure before a Fitness to Practise Panel

We propose to make a number of amendments to Rule 17 (Procedure before a Fitness to Practise Panel). These are intended to address a number of loopholes in the current framework and to ensure the effective management of cases within our procedures. In particular, we propose to:

- a. Clarify that written undertakings can only be taken into account at the sanctions stage of a panel hearing, following a finding of impairment.
- b. Include provisions for a procedure for combining new and review allegations.
- c. Include a power for panels to hear submissions on imposition of immediate order.

Rule 17(2)(m) provides that a panel may take account of any written undertakings entered into by the practitioner. We wish to make it clear in the rules that panels can only take account of written undertakings at stage three of the adjudication process, following a finding of impairment.

We propose to include provisions for a procedure for combining new and review allegations. The current rules do not provide a clear process for hearings which combine both a review hearing and the hearing of new allegations. It is proposed to amend the Rules to ensure there is explicit provision for this situation.

We propose to include a provision to clarify that the panel should hear submissions on the imposition of an immediate order following a finding of impairment and decision to impose a sanction.

Rule 28: Cancellation of a hearing

We wish to include an express provision to cancel an Investigation Committee hearing, when a doctor who initially declined to accept a warning, subsequently confirms that he is willing to accept one. This will remove the requirement for unnecessary Investigation Committee hearings.

We propose to amend the provisions of Rule 28, so that on cancellation of a referral to a Fitness to Practise panel, the case may be remitted to the case examiners, who in addition to the power to conclude the case, may invite the doctor to accept a warning, invite the doctor to agree undertakings or reconsider the allegations about the doctor's fitness to practise.

Rule 40(2): Service

We propose to amend the rule so that notice may be served on a practitioner's solicitor as well as on the practitioner's registered address when the doctor is represented. This would facilitate the effective service of documents on doctors in certain circumstances.

The proposed amendment will reduce the burden of proving to the Panel that such service has been effective. This in turn increases the responsibility (quite properly) on the solicitors to liaise with their client over the content of the Notice.

General: Reference to GMC Unique Identifier

We propose to replace reference in the various sets of rules to 'GMC registration number' with the term 'GMC reference number' which is the official GMC terminology for a doctor's unique identifier. This amendment would bring the terminology in the Rules in line with other rules and regulations and guidance produced by the GMC.