

# PA's and AAs: Internal Appeals Framework

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## Introduction

- 1 This overarching framework explains our approach to how internal appeals to a General Medical Council (GMC) Appeal Panel will be considered and determined.
- 2 The Anaesthesia Associates and Physician Associates Order 2024 (the AAPAO) grants a right of appeal against certain decisions made in respect of fitness to practise, registration, re-entry, and removal.
- 3 [The General Medical Council \(Internal Appeals\) \(Anaesthesia Associates and Physician Associates\) Rules 2024](#) (the rules) set out the internal appeals process for appealing decisions<sup>1</sup>. Appeals to the relevant court<sup>2</sup> are beyond the scope of this framework.
- 4 An appeal is a safeguard allowing the appellant (person who may appeal a decision in accordance with article 16 of the AAPAO) an opportunity to challenge decisions. An appellant can be a physician associate (PA), an anaesthesia associate (AA), a PA or AA that has been removed from the register, or an applicant for first registration.
- 5 All decision makers, including an Appeal Panel, should have regard to our legal duty to protect the public<sup>3</sup>.
- 6 This is split into three distinct parts. We must act in a way that:
  - protects, promotes and maintains the health, safety and well-being of the public (patient safety)
  - promotes and maintains public confidence in the profession (public confidence), and
  - promotes and maintains proper professional standards and conduct for members of those professions (uphold professional standards).
- 7 This framework should be read alongside our accompanying guidance that sets out the factors that decision makers involved in internal appeals should consider as part of their decision-making.

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<sup>1</sup> Under article 16(1) of the AAPAO.

<sup>2</sup> Under article 17 of the AAPAO.

<sup>3</sup> Section 1(1A) and (1B)(a) of the Medical Act 1983 and Schedule 1 paragraph 3(1)(a)(i)-(ii) of the AAPAO.

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## Notice of Appeal

- 8** For an appellant to bring an appeal they must serve a Notice of Appeal<sup>4</sup> to seek permission from us within 28 days beginning with the date on which the appealable decision was notified to the appellant<sup>5</sup>.
- 9** If a Notice of Appeal is served outside the 28-day deadline, or any relevant fee is not paid within 28 days, it will not be considered further.
- 10** We may go back to the appellant for further information relating to administrative matters (eg contact details) but not to clarify or seek further information regarding the reasoning for a particular appeal.

## Permission to appeal

- 11** The permission to appeal decision will be allocated to a decision maker<sup>6</sup> who must grant or refuse permission to appeal, or revise a decision, within 28 days from the date on which the appellant's Notice of Appeal is treated as served<sup>7</sup>. If the decision maker refuses permission the appellant has a right of onward appeal to the court (see section on Appeal Panel decisions).
- 12** The decision maker will need to consider the Notice of Appeal, the reasons why the appellant is seeking to appeal the original decision, and any documents provided by the appellant in support.
- 13** The decision maker should first satisfy themselves that the Notice of Appeal meets the substantive requirements set out in the rules<sup>8</sup>. If not satisfied, the decision maker should refuse permission to appeal.

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<sup>4</sup> Rule 3.

<sup>5</sup> Article 16(2) of the AAPAO.

<sup>6</sup> Rule 2(2)(ii).

<sup>7</sup> Article 16(3)(a)&(b) of the AAPAO.

<sup>8</sup> Rule 3(1).

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- 14** To make the permission decision, the decision maker will need to decide whether, in their opinion, the appeal has a real prospect of success<sup>9</sup>. This means a realistic, as opposed to fanciful, prospect of success.

## Revising a decision under appeal

- 15** We may revise a decision under appeal at any time before the appeal is determined<sup>10</sup>. Where the decision or part of it, is revised before the appeal is determined, the appeal (or the part of the appeal which relates to the revised part of the decision) will lapse<sup>11</sup>.
- 16** Any revision should be made in accordance with [The General Medical Council \(Revision of Decisions\) \(Anaesthesia Associates and Physician Associates\) Rules 2024](#) and relevant guidance for decision makers.

## The test on appeal

- 17** In most cases an appeal is limited to a review of the decision appealed<sup>12</sup> (see exception in Annex A - table 2) and whether that decision was wrong or unjust because of a serious procedural or other irregularity in the making of the decision. This is known as the test on appeal. Annex A sets out the test on appeal for the different appealable decisions.

## Withdrawing an appeal

- 18** The appellant may withdraw their appeal at any time before it is determined by giving us notice in writing<sup>13</sup>.

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<sup>9</sup> Rule 4(2).

<sup>10</sup> Rule 3(5)(b) The General Medical Council (Revision of Decisions) (Anaesthesia Associates and Physician Associates) Rules 2024.

<sup>11</sup> Article 15(5) of the AAPAO.

<sup>12</sup> Rule 5(1).

<sup>13</sup> Rule 6(1).

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**19** Once the appellant has withdrawn their appeal, a new appeal cannot be made in respect of the same decision<sup>14</sup>.

## Format of an appeal

**20** The appellant has the option of a written or oral appeal<sup>15</sup>, and their choice must be specified as part of their Notice of Appeal.

**21** A written appeal is decided on the papers and will be conducted in private<sup>16</sup>.

**22** An oral appeal hearing will be held remotely unless the appellant requests an in-person oral hearing.

**23** All hearings are held in public unless they relate to an interim measure<sup>17</sup>, the appellant's health<sup>18</sup>, or the Internal Appeal Manager or the Appeal Panel has determined that parts, or all, of the hearing should be in private following an application<sup>19</sup>.

## Constitution of Appeals Panels

**24** An Appeal Panel will be made up of three members, with one member normally being a legally qualified chair<sup>20</sup>.

**25** For fitness to practise appealable decisions, an Appeal Panel must include at least:

- a** one person who:
  - has been registered;
  - has an approved qualification; or

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<sup>14</sup> Rule 6(2).

<sup>15</sup> Rules 12&13.

<sup>16</sup> Rule 12(7)(a).

<sup>17</sup> Rule 13(7).

<sup>18</sup> Rule 13(6).

<sup>19</sup> Rules 13(5)&13(6).

<sup>20</sup> Rule 22(2).

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- is a registrant member<sup>21</sup>; and
  - b** one person who does not satisfy the above.
- 26** For all other appeals, panels should be constituted according to availability of panel members and the just and expeditious management of the appeal.

## Legally qualified persons

- 27** Where the chair of an Appeal Panel is not a legally qualified person<sup>22</sup>, the Regulator must appoint a legally qualified person for the purpose of advising the Appeal Panel on:
- questions of law arising in proceedings before them; and
  - the drafting of decisions of the Appeal Panel.
- 28** Where a legally qualified person has been appointed, they do not count towards the quorum of the Appeal Panel<sup>23</sup>.

## Representation at an oral appeal hearing

- 29** An appellant may be represented by:
- a solicitor or counsel<sup>24</sup>; or
  - at the discretion of an Internal Appeal Manager or the Appeal Panel, an individual whom the Internal Appeal Manager or Appeal Panel allows to represent the appellant (including, but not limited to, a representative of a professional organisation of which the appellant is a member<sup>25</sup>).
- 30** A witness may not represent the appellant at an oral appeal hearing<sup>26</sup>.

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<sup>21</sup> Within the meaning of paragraph 1A(1)(a) of Schedule 1 to the Medical Act 1983).

<sup>22</sup> Rule 23.

<sup>23</sup> Rule 25(2).

<sup>24</sup> Rule 16(1)(a).

<sup>25</sup> Rule 16(1)(b).

<sup>26</sup> Rule 16(2).

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## Appeal case management

**31** Case management is the process of managing the appeal once permission to appeal has been granted.

## Failure to comply with rules or case management directions

**32** Standard practice directions will apply<sup>27</sup> unless the power to vary or give new directions is exercised<sup>28</sup>. They are case management directions that apply to every case or type of case, for example, a direction covering the preparation of evidence bundles for the hearing.

**33** If standard directions aren't going to apply to the case, an Internal Appeal Manager will serve directions to the parties<sup>29</sup> ie the appellant or the GMC (or their representatives) about the approach to take when getting an appeal ready for hearing. This is to support the just and expeditious management of an appeal to ensure that the hearing runs fairly and efficiently.

**34** If a party to the appeal fails to comply with a rule or case management direction an Appeal Panel can<sup>30</sup> either:

- draw an adverse inference; or
- refuse to admit evidence, where the failure relates to that evidence.

## Draw an adverse inference

**35** An adverse inference is where, because of the absence of requested evidence that would have been available to the Appeal Panel had the party complied with a specific rule or case management direction, it is open to the Appeal Panel to reach a conclusion which is to the detriment of, or unfavourable to, the party who did not comply.

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<sup>27</sup> Rule 7(1)(a).

<sup>28</sup> Rule 7(5).

<sup>29</sup> Rule 2(1).

<sup>30</sup> Rule 8(1).

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- 36** If the Appeal Panel does draw an adverse inference, it will form only one part of the overall evidential picture to be considered in assessing the appeal. An adverse inference should not on its own be relied on to determine the appeal.
- 37** Where an Appeal Panel concludes that they will draw an adverse inference they should clearly state what adverse inference has been drawn and why.

## Refuse to admit evidence

- 38** The Appeal Panel may refuse to allow a party to rely on evidence where that party has failed to comply with a relevant rule or direction relating to the production of that evidence.

## Postponements and adjournments

- 39** An Internal Appeal Manager may, on their own initiative or on the application of a party to the proceedings, postpone the hearing of an appeal<sup>31</sup>. The hearing of an appeal includes both the meeting of an Appeal Panel for the purpose of determining a written appeal and an oral hearing.
- 40** Where an oral hearing has commenced, or an Appeal Panel has met to determine a written appeal, the Appeal Panel considering the appeal may, at any stage, whether on its own initiative or on the application of a party to the proceedings, adjourn the hearing or meeting<sup>32</sup>.
- 41** An application by a party to the proceedings to postpone or adjourn a meeting or hearing should include full reasons about why the application has been made and copies of any supporting evidence. The Internal Appeals Manager or Appeal Panel can decide to postpone or adjourn if they consider it appropriate.



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## Admission of new evidence

- 42** The Appeal Panel must not admit evidence which was not available to the maker of the decision that is the subject of the appeal unless:
- such evidence is relevant to the issues in the appeal; and
  - it is fair to do so.
- 43** Whether or not evidence is relevant will be fact specific and will need to be assessed against the nature and circumstances of the appeal, the reasons for the appeal and the test on appeal.
- 44** Whether or not it would be fair to admit new evidence will require consideration of fairness to both parties and the overall fairness of the proceedings.
- 45** When deciding whether to admit new evidence, an Appeal Panel should have regard at all times to the specific purpose of appeal proceedings ie a safeguard allowing an appellant to challenge our decisions (paragraph 4). All decision makers, including an Appeal Panel, should also have regard to our legal role to protect the public (paragraph 5).

## Witnesses

- 46** When considering an oral appeal the right to call witness evidence is limited to the issues on appeal<sup>33</sup>.
- 47** No person is to give oral evidence at the hearing unless the Appeal Panel considers such evidence is desirable to enable it to discharge its functions<sup>34</sup>.

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<sup>33</sup> Rule 13(1)(f).

<sup>34</sup> Rule 15(2)(i).

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## Appeal Panel decisions

**48** Having considered the appeal, an Appeal Panel may<sup>35</sup>:

- dismiss the appeal
- quash the decision under appeal
- substitute for the decision under appeal a decision that could have been made
- remit the matter to be disposed of in accordance with directions.

**49** The Appeal Panel's decision takes effect on the date on which notice of the decision is served on the appellant<sup>36</sup>.

**50** The right of onward appeal to a court is only engaged once the internal appeal has reached a conclusion. The appeal may have concluded at an early stage because permission to appeal was refused<sup>37</sup>, or after the appeal has been determined by the Appeal Panel<sup>38</sup>. However, it should be noted that if the appeal is simply withdrawn there is no onward right of appeal.

**51** An appeal to the court<sup>39</sup> must be commenced within 28 days of the day of the decision of the Appeal Panel being notified to the appellant.

## Publication and disclosure

**52** We will publish certain information about internal appeal decisions. Our Publication and Disclosure policies set out what information we publish about an internal appeal, how long we publish and where the information is published.

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<sup>35</sup> Article 16(5) of the AAPAO.

<sup>36</sup> Rules 18(8).

<sup>37</sup> Article 17(4)(a) of the AAPAO.

<sup>38</sup> Article 17(4)(b) of the AAPAO.

<sup>39</sup> Article 17(5)(d) of the AAPAO.

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## Annex A – Test on appeal

### Table 1 – Appeals under Rule 5(3)

- 1 This table applies where the decision appealed was made by a case examiner (or, where it has been revised, was originally made by a case examiner) under a provision listed in column 1 and in the circumstances set out in the corresponding entry in column 2. The Appeal Panel may allow an appeal only where it determines that the condition listed in the corresponding entry in column 3 is met<sup>40</sup>:

[1] Article of the AAPAO	[2] Circumstances	[3] Condition
10(3)(b)(i) and 13(1)	The appellant agreed to the Final Measure being imposed in accordance with article 10(8)(a).	The imposition of the Final Measure is unjust having regard to the circumstances under which agreement was given.
10(3)(b)(i) and 13(1)	The Final Measure was imposed in the absence of a reasoned response being received by the case examiner in accordance with article 10(8)(b).	The imposition of the Final Measure is unjust having regard to the reasons why a response was not received.
12(4) or 14(3)	The appellant agreed to the measure which was proposed.	The decision appealed is unjust having regard to the circumstances under which agreement was given.
12(4) or 14(3)	The decision appealed was made in the absence of a response being received from the appellant.	The decision appealed is unjust having regard to the reasons why submissions were not received.

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<sup>40</sup> Rule 5(3).

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## Table 2 – Appeals under Rule 5(4)

Provision	Test
<b>Registration</b> Article 6(1) (where the applicant relies on a specified state qualification)	Whether our failure to notify the appellant of our decision under article 6(1) within four months of a completed application, was unreasonable in all the circumstances.

## Table 3 - Other appealable decisions

Provision	Test
<b>Registration</b> Article 6(1)(a)-(c) Article 6(3)(a) and (b)	The decision was wrong; or unjust because of a serious procedural or other irregularity in the making of that decision
<b>Periodic assessment</b> Article 7	The decision was wrong; or unjust because of a serious procedural or other irregularity in the making of that decision
<b>Conditions on practice as an associate<sup>41</sup></b> Article 8	The decision was wrong; or unjust because of a serious procedural or other irregularity in the making of that decision
<b>Removal of an entry</b> Article 9(2)(a) and (b) Article 9(2)(c)(i) Article 9(2)(c)(ii)(aa) – (ff)	The decision was wrong; or unjust because of a serious procedural or other irregularity in the making of that decision
<b>Case examiner issues a warning</b> Article 10(3)(a)(ii)	The decision was wrong; or unjust because of a serious procedural or other irregularity in the making of that decision

Published 13 December 2024

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<sup>41</sup> PA and AA registration won't be subject to any conditions at the beginning of regulation; we'll update this framework accordingly when conditions are introduced.