The future of adjudication: making changes to our fitness to practise rules and to our constitution of panels and Investigation Committee rules

A paper for consultation

General Medical Council

Regulating doctors
Ensuring good medical practice

Executive summary

1 This consultation is about making changes to the *General Medical Council (Fitness to Practise Rules) Order of Council 2004* (the Rules) and to the *General Medical Council (Constitution of Panels and Investigation Committee) Order of Council Rules 2004* (the Constitution Rules). Our Rules govern the procedures we follow when investigating concerns about doctors' fitness to practise and how cases are heard by fitness to practise panels.

2 Our aim is to make the pre-hearing and hearing procedure shorter, reducing the stress for all involved. We also want to make the Rules simpler and more flexible.

3 The major proposals for change include:

- a improving witness scheduling
- b removing the need to read out the written allegations at the start of a hearing
- c routinely using written witness statements as evidence-in-chief
- d clarifying the process for use of video-link and telephone-link evidence at hearings
- e allowing case managers to make a broader range of decisions relating to preliminary issues
- f enabling panel chairs to be involved in pre-hearing case management.

4 This is the first part of a larger piece of work to establish a committee in statute to adjudicate concerns about doctors' fitness to practise – the Medical Practitioners Tribunal Service (MPTS). Some of the proposals are designed to prepare for establishing the MPTS.

How to comment

5 This is a public consultation open to everyone. We are particularly interested to hear from people who have experience of fitness to practise or other regulatory or tribunal systems. You can take part in the online version of this consultation on our website at **www.gmc-uk.org/adjudication2012**.

6 Patients, patient groups and doctors may be particularly interested in the proposals to make hearings shorter on pages 9–12 and to clarify the process for use of video-link techonology on pages 13–14.

7 Doctors and professional bodies may be particularly interested in the proposals to introduce greater support for unrepresented doctors during the pre-hearing phase on pages 10, 12 and 18.

8 You can download a copy of the consultation documents at **www.gmc-uk.org/ftpreformconsultation**. Alternatively you can request a copy of the documents or respond to the consultation by emailing ftpconsultation@gmc-uk.org or by posting your request or response to:

Claire Kilner, Policy and Planning Manager, Fitness to Practise, General Medical Council, 350 Euston Road, London NW1 3JN.

9 This consultation runs from **14 May to 6 August 2012**.

Introduction

What is our role?

10 The General Medical Council (GMC) regulates doctors in the UK. Our purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. We do this in four ways:

- **a** keeping up-to-date registers of qualified doctors
- **b** fostering good medical practice
- **c** promoting high standards of medical education and training
- **d** dealing firmly and fairly with doctors whose fitness to practise is in doubt.

How do our fitness to practise procedures work?

11 Our fitness to practise procedures are split into two stages.

- **a** The investigation stage is where our investigation teams look into complaints we receive about doctors and gather evidence that indicates whether a doctor's fitness to practise may be impaired.
- **b** The adjudication stage is where fitness to practise panels consider the evidence that has been gathered and decide whether any action needs to be taken on a doctor's registration.

12 The fitness to practise procedures are set out in law. The main provisions regarding the procedures are contained in the *Medical Act 1983* (the Act) and in the Rules. The Constitution Rules also contain provisions governing the formation, voting and quorum of panels.

Investigation: dealing with complaints about doctors

13 If we receive an allegation that a doctor's fitness to practise may be impaired, the Act requires us to investigate.*

14 At the end of an investigation, we can deal with an allegation by:

- **a** closing a case with or without giving advice to the doctor
- **b** issuing a warning to the doctor
- **c** agreeing undertakings with the doctor
- **d** referring the case to a fitness to practise panel.

15 We can also refer a doctor to an interim orders panel if we think a doctor's registration should be restricted or suspended during our investigation. An order can be made if it is needed to protect the public or it is in the public interest or the doctor's interests.

* The Act (section 35C[2]) defines the reasons for impairment as: misconduct, deficient professional performance, adverse physical or mental health, a conviction or a determination by another regulatory body.

Adjudication: interim orders panel hearings

16 An interim orders panel does not decide whether the allegations have been proven (known as findings of fact). Instead it considers whether patients and the public would be at risk or public confidence would be damaged if a doctor continued working with unrestricted registration during our investigation. The doctor is entitled to come to the hearing and be represented. Most doctors come with legal representation. Neither party can call witnesses to give oral evidence unless the interim orders panel thinks it is desirable in order to reach a decision.

17 If an interim orders panel decides to impose an interim order, the panel can review the order at regular intervals. The reviewing panel may:

- **a** revoke an entire interim order or any condition imposed
- **b** vary any condition imposed
- **c** replace interim conditions with an interim suspension
- **d** replace an interim suspension with interim conditions.

Adjudication: fitness to practise panel hearings

18 If a case is referred to a fitness to practise panel hearing, a panel of three panellists will hear the case. The panel must include at least one doctor and one lay person. Panellists are appointed through a transparent appointment process overseen by an independent assessor.

19 The case against the doctor is presented by a lawyer representing the GMC. As with interim orders panel hearings, doctors are entitled to come to the hearing and be represented. Most doctors come with legal representation. At a fitness to practise panel hearing, both parties may call witnesses to give oral evidence. Any witness may be cross-examined by the other party and the panel may also ask questions.

20 Fitness to practise panels make their decisions independently on the basis of oral witness testimony and documentary evidence presented at the hearing. The burden of proof lies with the GMC – this means that the GMC has to prove that a doctor's fitness to practise is impaired. Once the panel has heard the evidence from both parties it must decide whether:

- **a** the alleged facts are more likely than not to have happened and so are proven (this is the civil standard of proof)
- **b** the proven facts show that the doctor's fitness to practise is impaired
- **c** to restrict or revoke the doctor's registration if their fitness to practise is impaired.

21 Before a fitness to practise panel decides whether the alleged facts are proven, the doctor can put forward their views about whether the GMC has presented sufficient evidence to prove the facts or to support a finding of impairment.

22 If the panel concludes that the doctor's fitness to practise is impaired, they may decide to:

- **a** impose conditions on a doctor's registration for up to three years
- **b** suspend the doctor's registration for up to a year
- **c** erase the doctor's name from the medical register.

23 A fitness to practise panel may also accept written undertakings offered by the doctor as an alternative to imposing a sanction.

24 If a fitness to practise panel finds a doctor's fitness to practise is not impaired, it may issue a warning to the doctor about their behaviour or performance in future. The warning will say that a specific behaviour or practice is not in line with the standards that we expect of doctors and should not be repeated.

25 If a fitness to practise panel decides to impose conditions or suspend a doctor's registration, the panel may review the case before the end of the sanction period. The reviewing panel may consider whether the sanction should continue, be amended or be revoked.

26 The Rules also include the procedure for dealing with and hearing applications for a doctor to be restored to the medical register after they have been erased for fitness to practise or other reasons. Unlike other fitness to practise hearings, at restoration hearings the burden is not on the GMC to demonstrate impairment but is on the doctor to demonstrate that they are fit to practise.

27 More detailed information on how the Rules operate can be found in our *Guidance to the GMC's Fitness to Practise Rules 2004*.*

Why are we proposing to make changes to the fitness to practise procedures?

28 We are aiming to modernise our existing processes and to reinforce the autonomy of adjudication within the GMC. We are proposing these changes following the Government's decision not to transfer our adjudication function to a new independent body. The Government proposed to establish the Office of the Health Professions Adjudicator in a 2007 white paper,† but decided not to do so after consultation,‡ and is repealing the legislation.§

* General Medical Council (2009) *Guidance to the GMC's Fitness to Practise Rules 2004* London, General Medical Council, available at http://www.gmc-uk.org/Guidance_to_the_FtP_Rules__2_.pdf_35398575.pdf

† Secretary of State for Health (2007) *Trust, Assurance and Safety – the Regulation of the Health Professions in the 21st Century* (Cm 7013), London, The Stationery Office

‡ Department of Health (England) (2010) *Fitness to practise adjudication for health professionals: assessing different mechanisms for delivery*, Department of Health (England), available at http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_118460

§ The *Health and Social Care Act 2012* is available at http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted

29 We consulted last year on the principles for reforming our adjudication function.* We set out plans to establish a new statutory committee called the MPTS to be responsible for:

- **a** the quality of decision making by medical practitioner tribunals
- **b** the day-to-day operational management of the adjudication function
- **c** the appointment and removal of tribunal members and case managers
- **d** the appointment of specialist advisers and the appointment, training and assessment of legal assessors
- **e** the development of training, assessment and guidance for tribunal members.

30 We proposed that the MPTS should be headed by a chair appointed through an independently led process. The chair would provide an annual report to Parliament via the Privy Council. We also proposed that we would have a right of appeal against decisions made by fitness to practise panels.

31 In view of the Government's decision not to establish a separate body, the consultation responses strongly supported our proposals to establish the MPTS. A summary of the responses can be found on our website at **www.gmc-uk.org/concerns/fitness_to_practise_consultations.asp**.

32 We also consulted on proposals to modernise our hearing procedure, bringing it in line with best practice in other jurisdictions. After the consultation, Council agreed to establish the MPTS and to press ahead with proposals to modernise and streamline the hearing procedure.

33 Since then we have recruited His Honour Judge David Pearl to be the chair of the MPTS, and we are preparing to hand over operational responsibility for adjudication to him in June. However, many of the proposals outlined in our consultation last year will require amendments to the Act. We are working with the Department of Health (England) to develop a section 60 order† to make the necessary amendments. But these are unlikely to be made before the end of 2013.

* General Medical Council (2011) *The future of adjudication and the establishment of the Medical Practitioners Tribunal Service* London, General Medical Council, available at http://www.gmc-uk.org/concerns/fitness_to_practise_consultations.asp

† A section 60 order can modify and improve the laws that govern how we regulate healthcare professionals, according to section 60 of the *Health Act 1999* (http://www.legislation.gov.uk/ukpga/1999/8/section/60).

34 In the meantime, we are proposing to make improvements to our fitness to practise procedure that do not require a change to the primary legislation. This means we can start to modernise and streamline the pre-hearing and hearing procedure on a faster timescale.

What are we trying to achieve?

35 Although the current adjudication procedure is effective,* best practice in other jurisdictions has moved on since the Rules were introduced in 2004 and we have identified a number of areas where improvements can be made. These improvements are designed to:

- **a** make hearings shorter, reducing the stress for all involved
- **b** make the pre-hearing and hearing procedure simpler and more flexible
- **c** prepare for establishing the MPTS.

What happens next?

36 This consultation runs from 14 May to 6 August 2012. When the consultation has ended, we will report the outcome to our Council before seeking approval from the Privy Council for the amendment order. We anticipate that the amendments to the Rules and the Constitution Rules will come into force towards the end of 2012 or early in 2013.

* Council for Healthcare Regulatory Excellence (2011) *Performance review report: changing regulation in changing times 2010/11* London, Council for Healthcare Regulatory Excellence, available at http://www.official-documents.gov.uk/document/hc1012/hc10/1084/1084_ii.asp

Our proposed changes

37 This section covers the details of our proposed changes to the Rules and the Constitution Rules.

38 The draft amendment order is in annex A.

Making hearings shorter

39 Many people who responded to last year's consultation said that the length of hearings was a major factor contributing to stress for all involved. The proposals in this section are designed to make hearings shorter by making the procedure more efficient.

Better scheduling of witnesses

40 The doctor should specify whether they need a witness to give oral evidence at the hearing according to rule 34(9). But if they fail to do so, all witnesses have to be ready to give evidence in case the doctor calls a particular witness. We don't believe this is fair because witnesses may have far to travel or have difficulty travelling.

41 We want to amend rule 34(9) to make sure that witnesses who need to come to the hearing for cross-examination are told in advance. This will reduce the possibility of witnesses being asked to attend a hearing unnecessarily.

42 This will be beneficial for all witnesses, particularly those with disabilities or with caring responsibilities.

43 Rule 2 paragraph 12(d) of the amendment order contains the proposed change to rule 34(9).

Question 1: Do you agree with our proposal to ensure that witnesses who need to come to a hearing to give oral evidence are told in advance?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects* on groups with a protected characteristic†? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

* Effects on a specific group more or less than on other groups.

† The *Equality Act 2010* came into force on 1 October 2010. The Act covers nine protected characteristics on the basis of which discrimination is unlawful: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Available at http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

Removing the need to read out the written allegations at the start of the hearing

44 Reading out the allegations at the start of a hearing can be very time consuming, particularly in complex cases. In last year's consultation, we proposed to remove the need to read out the written allegations. 72% of people who commented on this proposal supported it. This would also help shorten hearings, which our equality analysis showed is likely to reduce stress for all involved, particularly vulnerable witnesses and doctors with physical or mental health conditions.

45 However, a small proportion said that reading out the allegation marks the start of the hearing and shows that the panel is no longer considering preliminary matters. In future, the chair will ask the GMC representative if they wish to amend the allegations and then to formally confirm that the allegations, or amended allegations, have been accepted into the record.

46 A written copy of the allegation would be made available to any members of the public observing the meeting, incorporating any amendments, as soon as practical after the chair has confirmed and accepted them into the record.

47 In last year's consultation, groups representing Black and minority ethnic (BME) doctors were concerned that the proportion of doctors without legal representation might be higher for international medical graduates than for UK graduates. We want chairs and case managers in future to play a greater role at the pre-hearing stage in helping unrepresented doctors understand the allegations and to make reasonable adjustments where necessary.

48 These proposals may disadvantage people with a visual impairment. We intend to explore what reasonable adjustments this group may need, including having the allegation read out to them.

49 Rule 2 paragraph 6(a) of the amendment order contains the proposed change to rule 17(2)(c).

Question 2: Do you agree with our proposal to remove the need for written allegations to be read out at the start of a hearing?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Accepting written witness statements as evidence-in-chief

50 Evidence-in-chief is the evidence that a witness gives first and is introduced by the party that asked the witness to appear. In other jurisdictions, written witness statements are accepted as evidence-in-chief with witnesses only giving oral evidence when they are cross-examined. But at fitness to practise hearings, most evidence-in-chief is given orally even when there are no facts in dispute. This can mean that witnesses spend a long time giving evidence.

51 In last year's consultation, we proposed to move to routinely using written witness statements as evidence-in-chief. 89% of people who commented on this proposal supported it.

52 Written witness statements can only be accepted as evidence-in-chief when both parties agree. We want to amend rule 34(11) to make it clear that written witness statements will be accepted as evidence-in-chief unless:

- the parties agree otherwise
- the case manager directs otherwise
- one of the parties applies to the panel and the panel decides that oral evidence-in-chief is desirable.

To support this change, we also want to change rule 16(6)(f) so that the case manager can direct that evidence-in-chief should be given orally, where appropriate, instead of through a written witness statement.

53 These changes don't affect a doctor's right to cross-examine witnesses where facts are in dispute. The changes to rules 34(9)(c) and 34(9)(d), outlined below, mean that witnesses can still be called for cross-examination. These changes also don't affect the panel's ability to ask the witness questions under rule 35(2)(d).

54 We know from witness feedback* that giving evidence can be a very stressful experience, even if they aren't cross-examined. Our proposal should reduce the length of time witnesses need to appear to give oral evidence, thereby reducing stress for all witnesses, including those with a protected characteristic.

* Council for Healthcare Regulatory Excellence (2011) *Modern and efficient fitness to practise adjudication* London, Council for Healthcare Regulatory Excellence, chapter 6, available at https://www.chre.org.uk/_img/pics/library/1108_M_EFtPA_FINAL.pdf

55 In last year's consultation, groups representing BME doctors supported our proposals for greater use of written evidence. Although few individual BME doctors commented on this proposal, those that did were also supportive.

56 To support doctors without legal representation, we want chairs and case managers to play a greater role in helping these doctors understand what is expected in relation to evidence and to make reasonable adjustments where necessary.

57 In last year's consultation, doctors with health conditions welcomed measures to reduce the length of hearings and, in particular, to rely on written witness statements as evidence-in-chief.

58 Rule 2 paragraph 5(a) of the amendment order contains the proposed changes to rule 16(6)(f) and paragraph 12(c)–(f) contains the proposed change to rule 34(11).

Question 3: Do you agree with our proposal to routinely accept written witness statements as evidence-in-chief?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Making the procedure simpler and more flexible

59 Some parts of the Rules are not clear and others require a strict procedure, meaning that we don't have the flexibility to deal with issues effectively and resulting in unintended consequences. The proposals in this section are designed to make the Rules clearer, remove any ambiguity, and introduce greater flexibility.

Clarifying the process for use of telephone-link and video-link evidence

60 There are no provisions in the Rules about witnesses giving evidence by video or telephone, except in relation to vulnerable witnesses. Although we can and do arrange for witnesses to give evidence orally by video and telephone, most witnesses still appear in person, often requiring them to travel far for a very brief appearance. Our equality analysis showed that video is a key technology to help witnesses, including those with a protected characteristic, to give oral evidence. Video or telephone evidence is also helpful to enable witnesses to give evidence when travel to our hearing centre is not reasonably possible. This might include, for example, people located overseas or those who can't travel because of a significant health condition.

61 We want to amend rule 34 to set out the provisions for witnesses to give evidence by video, or in certain circumstances by telephone, when both parties agree. This would allow applications to a committee or panel for oral evidence to be given by video link or telephone link. To support this change, we also want to change the Rules so that the case manager can make a direction for oral evidence to be given by video or telephone link. This approach is similar to the civil courts, which may receive video or telephone link evidence under the Civil Procedure Rules.

62 Rule 2 paragraphs 12(g) and 5(b) of the amendment order contain the relevant provisions.

Question 4: Do you agree with our proposal to allow applications to a committee or panel for witnesses to give evidence by video or telephone when both parties agree?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Substituting panellists during a hearing

63 A hearing is valid even if some members of a committee or panel have not sat through the entire hearing, according to the Act and the Constitution Rules. Despite this, the Rules don't set out the process for substituting panellists if they become unavailable during a hearing, for example, through illness. In the past, we have substituted panellists on an ad-hoc basis with agreement from the doctor.

64 We propose that in future the committee or panel, in the interests of justice, should decide the appropriate stage for the hearing to re-start.

65 To increase flexibility with substituting panellists, we also want to amend paragraph 6 of the Constitution Rules. This says that there must be one medical panellist, one lay panellist and a chair, who may be medical or lay. This means that a committee or panel with a medical chair and two lay panellists or with a lay chair and two medical panellists would not meet the criteria. To rectify this, we want to amend paragraph 6 to clarify that a panel must include at least three panellists, with at least one lay and one medical, and one of the panellists must be the chair.

66 We don't think this proposal will have any differential effects on people with a protected characteristic.

67 Rule 3 of the amendment order contains the proposed changes to the Constitution Rules.

Question 5: Do you agree with our proposal for substituting panellists if they are unavailable to continue the hearing?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Reducing the detail about the allegation for an interim orders panel hearing

68 If we think a doctor's practice might need to be restricted while we investigate, either to protect the public or because it is in the public interest or the doctor's interests, we can arrange for an interim orders panel to consider this.

69 Interim orders panel hearings can be arranged on very short notice, but we have to send a notice of hearing to the doctor to:

a set out the allegation and the facts it is based on

b specify the date, time and venue of the hearing

c tell the doctor that they have the right to come to the hearing and be represented in accordance with the Rules.

70 Rule 26 says that we should set out the allegation in detail for an interim orders panel hearing in the same way as we do before a fitness to practise panel hearing. We can do this for a fitness to practise panel hearing because it takes place after we have finished our investigation, so we can explain the full extent of the case the doctor faces. But, because interim orders panel hearings often take place at the beginning of or during our investigation, we can't set out the allegation in the same detailed way. We propose to amend the Rules to clarify that we will notify the doctor without the same level of detail required for a fitness to practise panel hearing.

71 We have not identified any particular impact on groups with a protected characteristic from this change.

72 Rule 2 paragraph 7 of the amendment order contains the proposed change to rule 26.

Question 6: Do you agree with our proposal to give a doctor all the relevant information we have gathered so far for an interim orders panel hearing?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Allowing case examiners to cancel hearings

73 A single member of the Investigation Committee is responsible for deciding to cancel all or part of an allegation that has been referred to a hearing. They have to review case papers in detail to make this decision. This might occur, for example, because new evidence throws a different light on the issues or a key witness is no longer willing to give evidence.

74 We want to change rule 28 to make a case examiner responsible for deciding whether all or part of an allegation should be cancelled. This would be more proportionate than requiring the Investigation Committee to make this decision. Case examiners refer cases to fitness to practise panels and so we think it makes sense, for practical purposes, for a case examiner, who would be selected on a cab rank basis, to cancel referrals.

75 We don't think this proposal will have any differential effects on people with a protected characteristic.

76 Rule 2 paragraph 8 of the amendment order contains the proposed change to rule 28.

Question 7: Do you agree with our proposal to make a single case examiner responsible for deciding whether all or part of an allegation that has been referred to a hearing should be cancelled?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Clarifying when a preliminary legal argument is binding

77 Preliminary legal arguments can be made at the start of a hearing before the facts of the case are considered. They can cover a wide range of issues and vary from case to case. For example, they may deal with the way a hearing is run (such as whether all or part of the hearing takes place in private) or ask for the hearing to be rescheduled (adjourned) for some reason.

78 Preliminary legal arguments can be raised by either party and both sides can comment. The legal assessor will also advise the panel before they make a decision. Rule 30 says that any decision about a preliminary legal argument is binding on any subsequent committee or panel that considers the case, unless that committee or panel thinks it was wrongly decided. But the term 'wrongly decided' is difficult to define.

79 We want to amend rule 30 so that a decision is binding unless the circumstances of the case have materially changed since the decision was made.

80 We don't think this proposal will have any differential effects on groups with a protected characteristic. To support doctors without legal representation when preliminary legal arguments are being considered, chairs will need to play a role in helping these doctors understand the process.

81 Rule 2 paragraph 10 of the amendment order contains the proposed change to rule 30.

Question 8: Do you agree with our proposal to make decisions on preliminary legal arguments binding unless the circumstances of a case have materially changed?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Making the decision stages clearer

82 At a hearing, panels have to make three key decisions. These are whether:

a the alleged facts are more likely than not to have happened and so are proven

b the proven facts show that the doctor's fitness to practise is impaired

c to restrict or revoke the doctor's registration if their fitness to practise is impaired.

83 Rule 17(2)(g) says that before the panel makes it's first decision about which facts are proven, the doctor can make a submission about whether they think the evidence is sufficient to prove the facts or to support a finding of impairment. We think that making a submission about impairment at this stage could prejudge the panel's decision on which facts are proven. Such submissions would be more appropriate later in the hearing when the panel is considering whether the proven facts show that the doctor's fitness to practice is impaired, which is already allowed by rule 17(2)(j).

84 We want to amend rule 17(2)(g) so that doctors are not able make submissions about impairment before the panel has decided which facts are proven.

85 This proposal will help to reduce the length of hearings and the stress for all involved, which was particularly supported by doctors with health conditions in our equality analysis.

86 Rule 2 paragraph 6(b) of the amendment order contains the proposed change to rule 17(2)(g).

Question 9: Do you agree with our proposal that submissions about impairment should be made at the impairment stage of a hearing after the panel has decided which facts are proven?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Clarifying that the Investigation Committee will not usually receive oral evidence

87 The Investigation Committee gets involved in a case if the case examiners can't agree on a decision or if the case examiners have decided to give the doctor a warning and the doctor exercises their right to an oral hearing.

88 A doctor will be given a warning when the concerns indicate a significant departure from the principles set out in our guidance, *Good Medical Practice*, or if there is a cause for concern following assessment but it is not serious enough for a doctor's registration to be restricted or removed.

89 In deciding whether to issue a warning, the Investigation Committee are required to consider the information before them and decide whether a warning is appropriate. It was never intended that the Investigation Committee would make findings of fact based on oral evidence.

90 We want to amend rule 11 to clarify that the Investigation Committee will only receive oral evidence if it needs to do so to make a decision. We also propose to clarify that the committee can receive written evidence, removing the requirement to consider whether such evidence is desirable in order to enable it to make a decision.

91 As part of our equality analysis, we looked at the demographic breakdown of doctors appearing before the Investigation Committee. There are few Investigation Committee hearings – 29 in 2010 and 32 in 2011 – so it is difficult to identify clear trends in this small cohort. But we did find that more hearings were for male than for female doctors, which probably reflects the fact that we receive more enquiries about male than female doctors. Our analysis showed there was no reason to believe there would be a significant impact on other groups who share a protected characteristic.

92 Rule 2 paragraph 4 of the amendment order contains the proposed change to rule 11.

Question 10: Do you agree with our proposal to remove the current requirement for the Investigation Committee to consider desirability when receiving written evidence and to clarify that it will only receive oral evidence if this is necessary to make a decision?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Clarifying that we won't disclose complaints that we have closed at initial assessment

93 When we receive a complaint, we assess whether it raises a fitness to practise concern about a doctor. If we decide that the complaint does not raise a fitness to practise concern, we close it at the outset. When we close a complaint at this initial assessment stage, we don't disclose it to the doctor.

94 This has been our policy for many years, even before the introduction of the Rules in 2004. Disclosing such complaints is likely to undermine our relationships with complainants who may be deterred from making a complaint. This could impact on our public protection role. In addition, disclosing these complaints is likely to cause unnecessary anxiety for doctors given that these complaints are less serious and will not be investigated. However, the Rules contain wording that could suggest we should disclose such complaints, although this was never the intention when the Rules were implemented.

95 We want to amend the Rules to clarify that such complaints don't need to be disclosed.

96 We don't think this proposal will have any differential effects on people with a protected characteristic.

97 Rule 2 paragraph 3 of the amendment order contains the proposed change to rule 4.

Question 11: Do you agree with our proposal to clarify that we won't disclose complaints that we have closed following our initial assessment because we have decided they do not raise a fitness to practise concern?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Establishing the MPTS

98 Before we can make many of the changes to modernise the Rules, the Act will need to be changed. But there are a few changes that we can make now to strengthen separation between our investigation and adjudication roles, and to allow the MPTS to explore how case management can be improved.

Enabling chairs to be involved in pre-hearing case management

99 We want to amend the Rules to allow (but not require) chairs to be involved at the case management stage.

100 This will mean we can either:

- pilot the future use of legally qualified chairs as case managers
- give non-legally qualified chairs experience of sitting with the case manager so they gain more understanding of the directions being issued in a case.

This may help chairs to manage hearings more effectively. With this amendment, the MPTS will be able to explore and develop the role of chairs in case management before primary legislative changes make further provision for a more robust approach to case management.

101 In last year's consultation, 54% of people who commented said they supported this proposal, including doctors from BME groups and those with health conditions. This change could help international medical graduates better navigate the hearing procedure, and it could improve case management and shorten hearings, which would significantly benefit doctors with health conditions or disabilities.

102 But some doctors from BME groups were concerned that the chair may be prejudiced if they were involved in pre-hearing case management. Case management hearings deal with administrative matters rather than the facts of the case so prejudice shouldn't arise. In other jurisdictions, such as the Courts and Tribunals Service, judges are routinely involved in pre-hearing case management and we are not aware of any evidence of prejudice. However, we intend to discuss this issue further with doctors who have this protected characteristic.

103 Rule 3 of the amendment order contains the proposed change to the Constitution Rules.

Question 12: Do you agree with our proposal for chairs to be involved in case management of hearings?

a Do you agree with the proposal?
☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Allowing case managers to issue a joinder direction

104 If we are investigating a matter about a doctor and receive a further complaint about the same doctor, we will investigate the new matter separately but look to join the two matters at the hearing stage. Similarly, for a single matter relating to two doctors, we would investigate the matter separately for each doctor, but may look to join the investigations to consider both doctors' cases at the same hearing. This is known as joinder and is usually a relatively simple matter.

105 We want case managers to be able to issue a joinder direction to strengthen pre-hearing case management. This would allow cases to be listed together and assist with better management of the hearing.

106 We don't think this proposal will have any differential effects on people with a protected characteristic.

107 Rule 2 paragraphs 5(b) and 11 of the amendment order contain the proposed new rule 16(fa).

Question 13: Do you agree with our proposal to allow case managers to issue a direction on joinder to strengthen pre-hearing case management?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Changing who can postpone a hearing

108 A member of the Investigation Committee is currently responsible for deciding to postpone a fitness to practise panel hearing if one of the parties requests it. But, because we are separating our investigation and adjudication roles and establishing the MPTS, we think the case manager should make this decision in future. A member of the Investigation Committee will still have to decide to postpone an Investigation Committee hearing.

109 We don't think this proposal will have any differential effects on people with a protected characteristic, but it helps to reinforce the separation between our investigation and adjudication functions. This should increase doctors', patients' and the public's confidence in our fitness to practise procedures.

110 Rule 2 paragraphs 2 and 9(a) of the amendment order contain the proposed change to rule 29.

Question 14: Do you agree with our proposal to make case managers responsible for deciding when to postpone a fitness to practise panel hearing when the MPTS has been established?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

Clarifying the type of evidence we will admit

111 The Rules currently say that a committee or panel may admit evidence that is fair and relevant to the case. This is similar to the approach taken by other regulators of health care professionals. However, the Rules also say that evidence that is not admissible in criminal proceedings in England can only be admitted where the committee or panel is satisfied, on the advice of the legal assessor, that admission of the evidence is desirable in accordance with their duty of making due inquiry. We believe that referring to criminal proceedings is unhelpful because we are a civil jurisdiction and we apply the civil standard of proof. We propose to delete reference to criminal proceedings. This will mean that all evidence will be admitted if it is fair and relevant to the case.

112 Rule 2 paragraph 12(a) and (b) of the amendment order contains the proposed change to rule 34(2).

Question 15: Do you agree that our committees and panels should admit evidence that is fair and relevant to the case?

a Do you agree with the proposal?

☐ Yes ☐ No

b Do you have any comments on the proposal?

c Do you believe there are any differential effects on groups with a protected characteristic? Please outline why you think these groups will be affected and whether there are any steps we could take to mitigate these effects.

About you

Finally, we would appreciate you providing the following information about yourself to help us analyse the consultation responses.

Your details

Name

Job title (if responding as an organisation)

Organisation (if responding as an organisation)

Address (optional)

Email

Contact tel (optional)

Would you like to be contacted about GMC consultations in the future?

☐ Yes ☐ No

If you would like to know about upcoming GMC consultations, please let us know which of the areas of our work interest you.

☐ Education ☐ Standards and ethics ☐ Fitness to practise

☐ Registration ☐ Licensing and revalidation

Data protection

The information you supply will be stored and processed by the GMC in accordance with the *Data Protection Act 1998* and will be used to analyse the consultation responses, check the analysis is fair and accurate, and help us to consult more effectively in the future. Any reports published using this information will not contain any personally identifiable information. We may provide anonymised responses to the consultation to third parties for quality assurance or approved research projects on request.

Responding as an individual

Are you are responding as an individual?

☐ Yes ☐ No

If yes, please complete the following questions. **If not, please complete the 'responding as an organisation' section on the inside back page.**

Which of the following categories best describes you?

☐ Doctor ☐ Medical educator (teaching, delivering or administering)

☐ Medical student ☐ Member of the public

☐ Other healthcare professional

☐ Other (please give details) _____

Doctors

For the purposes of analysis, it would be helpful for us to know a bit more about the doctors who respond to the consultation. If you are responding as an individual doctor, please could you tick the box below that most closely reflects your role?

☐ General practitioner ☐ Consultant

☐ Other hospital doctor ☐ Trainee doctor

☐ Medical director ☐ Other medical manager

☐ Staff grade and associate specialist (SAS) doctor

☐ Sessional or locum doctor ☐ Medical student

☐ Other (please give details)_____

If you are a doctor, do you work: ☐ full-time ☐ part-time

What is your country of residence?

☐ England ☐ Northern Ireland ☐ Scotland ☐ Wales

☐ Other – European Economic Area

☐ Other – rest of the world (please say where) _____

To help ensure that our consultations reflect the views of the diverse UK population, we aim to monitor the types of responses we receive to each consultation and over a series of consultations. Although we will use this information in the analysis of the consultation response, it will not be linked to your response in the reporting process.

What is your age? (years)

☐ <25 ☐ 25–34 ☐ 35–44 ☐ 45–54 ☐ 55–64 ☐ ≥65

Are you:

☐ female ☐ male

Would you describe yourself as having a disability?

☐ Yes ☐ No

What is your ethnic origin? (Please tick one)

Asian or Asian British

☐ Asian or Asian British ☐ Bangladeshi ☐ Indian ☐ Pakistani

☐ Any other Asian background, please specify _____

Black or Black British

☐ Black or Black British ☐ African ☐ Caribbean

☐ Any other Black background, please specify _____

Chinese or other ethnic group

☐ Chinese

☐ Any other background, please specify _____

Mixed

☐ White and Asian ☐ White and Black African ☐ White and Black Caribbean

☐ Any other mixed background, please specify _____

White

☐ British ☐ Irish

☐ Any other white background, please specify _____

Responding as an organisation

Are you responding on behalf of an organisation?

☐ Yes ☐ No

If yes, please complete the following questions. **If not, please complete the 'responding as an individual' section on page 30.**

Which of the following categories best describes your organisation?

☐ Body representing doctors

☐ Body representing patients or public

☐ Government department

☐ Independent healthcare provider

☐ Medical school (undergraduate)

☐ Postgraduate medical institution

☐ NHS or HSC organisation

☐ Regulatory body

☐ Other (please give details) _____

In which country is your organisation based?

☐ UK wide ☐ England ☐ Scotland

☐ Northern Ireland ☐ Wales ☐ Other (European Economic Area)

☐ Other (rest of the world)

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General Medical Council

Regulating doctors
Ensuring good medical practice

STATUTORY INSTRUMENTS

2012 No. ****

HEALTH CARE AND ASSOCIATED PROFESSIONS

DOCTORS

The General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules Order of Council 2012

Made - - - -	**** 2012*
Laid before Parliament	**** 2012*
Coming into force - -	**** 2012*

At the Council Chamber, Whitehall the *** day of *** 2012

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

The General Medical Council has made the General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules 2012 which are set out in the Schedule to this Order, in exercise of the powers conferred by section 35CC(1), paragraph 19A to 19E and 23B of Schedule 1 to, and paragraphs 1(1), (2) and (4) of Schedule 4 to, the Medical Act 1983(**a**).

In accordance with paragraph 1(6) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

By virtue of paragraph 24 of Schedule 1 and paragraph 1(7) of Schedule 4 to that Act such Rules shall not have effect until approved by order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules Order of Council 2012 and comes into force on *** 2012.

Privy Council approval

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

(**a**) 1983 c.54. Section 35CC and paragraphs 19A to 19E, 23B and 24 of Schedule 1 were inserted, and paragraph 1 of Schedule 4 was substituted, by S.I. 2002/3135.

[Name]
Clerk of the Privy Council

SCHEDULE

The General Medical Council (Fitness to Practise and Constitution of Panels and Investigation Committee) (Amendment) Rules 2012

These Rules are made by the General Medical Council in exercise of the powers conferred by section 35CC(1), paragraph 19A to 19E and 23B of Schedule 1 to, and paragraphs 1(1), (2) and (4) of Schedule 4 to, the Medical Act 1983.

In accordance with paragraph 1(6) of Schedule 4 to that Act, the General Medical Council has consulted with such bodies of persons representing medical practitioners, and such medical practitioners, as appeared to the General Medical Council requisite to be consulted.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the General Medical Council (Fitness to Practise, Constitution of Panels and Investigation Committee) (Amendment) Rules 2012 and come into force on *** 2012.

(2) In these Rules—

"the Fitness to Practise Rules" means the General Medical Council (Fitness to Practise) Rules 2004(**a**); and

"the Constitution of Panels and Investigation Committee Rules" means the General Medical Council (Constitution of Panels and Investigation Committee) Rules 2004(**b**).

Amendments to the Fitness to Practise Rules

2.—(1) The Fitness to Practise Rules are amended as follows.

(2) In Rule 2 (interpretation), in the definition of "Case Manager", after "rule 16" insert "and 29(1)".

(3) In Rule 4 (initial consideration and referral of allegations)—

(a) after paragraph (2), insert—

"(2A) Where the Registrar considers that an allegation does not fall within section 35C(2) of the Act the Registrar must notify the maker of the allegation (if any) accordingly."; and

(b) in paragraph (3), omit sub-paragraph (a).

(4) In Rule 11 (warnings)—

(a) in paragraph (7), for paragraphs (a) and (b), substitute—

ì(a) the Presenting Officer must outline the allegation and the facts upon which it is based and may adduce any relevant—

(i) written evidence; or

(ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence; and

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(**a**) Scheduled to S.I. 2004/2608, which has been amended by S.I. 2007/3101, S.I. 2007/3168, S.I. 2008/1256, S.I. 2009/1182 and S.I. 2009/1913.

(**b**) Scheduled to S.I. 2004/2611, which has been amended by S.I. 2005/402, S.I. 2009/2751 and S.I. 2010/474.

(b) the practitioner may respond to the allegation and may adduce any relevant—

(i) written evidence; or

(ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence;".

(5) In Rule 16(6) (case management)—

(a) for paragraph (f) substitute—

"(f) that a witness is to give evidence-in-chief by way of oral evidence;"; and

(b) after paragraph (f), insert—

"(fa) that two or more allegations against the same practitioner or more than one practitioner are listed for consideration and determination together by the Panel in accordance with rule 32;

(fb) where the parties agree, that the oral evidence of a witness is to be given by means of a video link or a telephone link;".

(6) In Rule 17(2) (procedure before a FTP Panel)—

(a) for paragraph (c) substitute—

"(c) the Chair of the FTP Panel must enquire whether the Presenting Officer wishes to amend the particulars of the allegation, and if the Presenting Officer so wishes the FTP Panel must consider whether to amend the particulars under paragraph (3);"; and

(b) in paragraph (g), omit "or to support a finding of impairment".

(7) For Rule 26(2)(a) (notice of hearing), substitute —

"(a) inform the practitioner of the allegation and the facts upon which it is based;

(ab) specify the date, time and venue of the hearing;

(ac) inform the practitioner of the practitioner's right to be heard and to be represented in accordance with rule 33;".

(8) In Rule 28 (cancellation of a hearing)—

(a) in paragraphs (1) and (2), for "a member of the Committee" substitute "a medical or a lay Case Examiner"; and

(b) in paragraph (3)—

(i) for "person making the decision" substitute "the Case Examiner"; and

(ii) in sub-paragraph (c), for "by the Case Examiners in accordance with rule 10 or 11" substitute "by a medical and a lay Case Examiner under rule 10 or 11".

(9) In rule 29 (postponements and adjournments) —

(a) for paragraph (1) substitute—

"(1) Before the opening of any hearing of which notice has been served on the practitioner in accordance with these rules—

(a) in the case of a Committee hearing, a member of the Committee may, of the member's own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as the member thinks fit; or

(b) in the case of a Panel hearing, the Case Manager may, of the Case Manager's own motion or upon the application of a party to the proceedings, postpone the hearing until such time and date as the Case Manager thinks fit."; and

(b) after paragraph (4), insert—

"(5) Where, on the resumption of an adjourned Committee or Panel hearing, a panellist will not be present who was present prior to the adjournment or a panellist will be present who was not present prior to the adjournment, the Committee or Panel (as the case may be) may issue such directions as they consider necessary in the interests of justice about the following—

(a) the stage at which the hearing is to be resumed; and

(b) any special procedure which must be followed (including varying an existing direction or the order of proceedings under these Rules).".

(10) In Rule 30 (preliminary legal arguments), for "unless the subsequent Committee or Panel, on the advice of the Legal Assessor, considers such determination to have been wrongly decided", substitute "unless the subsequent Committee or Panel considers that there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter".

(11) In Rule 32 (joinder), after "The Committee or Panel may", insert ", after having regard to any relevant directions given by a Case Manager,".

(12) In Rule 34 (evidence)—

(a) in paragraph (1), omit "Subject to paragraph (2),";

(b) omit paragraph (2);

(c) in paragraph (9)—

(i) in paragraph (a), at the end, insert "and";

(ii) in paragraph (b),omit "and"; and

(iii) omit paragraph (c);

(d) after paragraph (9), insert—

"(9A) Within 14 days of a list or document being provided under paragraph (9), the party to whom it is provided ("the receiving party") must notify the other party if the receiving party requires any relevant person to attend to give oral evidence or to be available for cross-examination in relation to the subject matter of or making of any document.

(9B) Where a document that is the subject of a notification under paragraph (9A) is a witness statement and the receiving party intends to apply to the Committee or Panel under paragraph (11)(c) for the witness concerned to give evidence-in-chief by way of oral evidence, the notification must include a notice to that effect and give reasons for the intended application.";

(e) in rule 34(10) for "(9)(c)" substitute "(9A)";

(f) for paragraph (11) substitute—

"(11) A Committee or Panel must receive into evidence a signed witness statement containing a statement of truth as the evidence-in-chief of the witness concerned, unless—

(a) the parties have agreed;

(b) a Case Manager has directed; or

(c) the Committee or Panel decides, upon the application of a party or of its own motion,

that the witness concerned is to give evidence-in-chief by way of oral evidence;î;

(g) for paragraph (12) substitute—

ì(12) The standard of proof in any proceedings is that applicable to civil proceedings."; and

(h) after paragraph (12), insert—

"(13) A party may, at any time during a hearing, make an application to the Committee or Panel for the oral evidence of a witness to be given by means of a video link or a telephone link.

(14) When considering whether to grant an application by a party under paragraph (13), the Committee or Panel must—

(a) give the other party an opportunity to make representations;

(b) have regard to—

(i) any agreement between the parties; or

(i) in the case of a Panel hearing, any relevant direction given by a Case Manager; and

(c) only grant the application if the Committee or Panel consider that it is in the interests of justice to do so.".

(13) In Rule 35(2)(a) (witnesses), at the beginning, insert "if giving oral evidence-in-chief,".

(14) For Rule 37 (record of decisions of the Committee or Panel) substitute—

"**37.** The Committee or Panel must—

(a) record in writing its decision and the reasons for its decision; and

(b) provide a copy of the decision and reasons to the Registrar.".

Amendments to the Constitution of Panels and Investigation Committee Rules

3.—(1) The Constitution of Panels and Investigation Committee Rules are amended as follows.

(2) In rule 2 (Interpretation), in the appropriate place, insert—

""the Act" means the Medical Act 1983î.

(3) In Rule 4 (constitution of panels), for paragraph (4) substitute—

"(4) Nothing in paragraph (3) is to prevent—

(a) a panellist who sat on a Fitness to Practise Panel in proceedings relating to the fitness to practise of any person from acting as a panellist on a subsequent Fitness to Practise Panel—

(i) in proceedings in which the Panel is to determine whether or not to make a direction under section 35(D)(5), (6), (8), (10) or (12) of the Act relating to that person; or

(ii) in proceedings relating to an application for restoration of that person's name to the register;

(b) a panellist who sat on an Interim Orders Panel in proceedings relating to a person from acting as a panellist on a subsequent Interim Orders Panel in proceedings in which the Panel is to review an order under section 41A(2) or (9) of the Act in respect of that person; or

(c) a person who acted as Case Manager in accordance with Rule 16 of the General Medical Council (Fitness to Practise) Rules 2004 in any proceedings from acting as Chair of the Panel at the substantive hearing in the same proceedings.".

(3) For Rule 6 (quorum) substitute—

"6. The quorum of a Panel or the Committee is to be three panellists, including the Chair, of whom—

(a) at least one must be a medical panellist; and

(b) at least one must be a lay panellist.".

Transitional provisions

4.—(1) The amendments made by rule 2(4) do not apply to proceedings before the Investigation Committee where the Presenting Officer begins to outline the allegation and facts in accordance with rule 11(7) of the Fitness to Practise Rules before [*28 days after the coming into force of these Rules*].

(2) The amendments made by rule 2(12) do not apply to proceedings before the Investigation Committee where the Presenting Officer begins to outline the allegation and facts in accordance with rule 11(7) of the Fitness to Practise Rules before [*56 days after the coming into force of these Rules*].

(3) The amendments made by rule 2(12) do not apply to proceedings before a Panel (within the meaning of rule 2 of the Fitness to Practise Rules) where the hearing has commenced before [*56 days after the coming into force of these Rules*].

Given under the official seal of the General Medical Council this xx day of xx 2012

[Name]
Chair

[Name]
Chief Executive and Registrar

EXPLANATORY NOTE

(This note is not part of the Order)

The Rules amended by this Order amend the General Medical Council (Fitness to Practise) Rules 2004 (scheduled to SI 2004/2608) ("the Fitness to Practise Rules") and the General Medical Council (Constitution of Panels and Investigation Committee) Rules (scheduled to SI 2004/2611) ("the Constitution Rules").

Rule 1 makes provision for the citation, commencement and interpretation of these Rules.

Rule 2 amends the Fitness to Practise Rules.

Paragraphs (2) and (9)(a) make amendments to the procedure for postponing fitness to practise hearings under Rule 29 of the Fitness to Practise Rules so that decisions to postpone Fitness to Practise Panel hearings may be made by a Case Manager appointed under Rule 16.

Paragraph (3) amends Rule 4 of the Fitness to Practise Rules to remove the requirement to notify a practitioner when a complaint is closed on the ground that it does not raise a question of impairment under section 35C(2) of the Medical Act 1983.

Paragraph (4) amends Rule 11(7) of the Fitness to Practise Rules to provide that written evidence may be admitted before the Investigation Committee ("the Committee") when considering whether to issue a warning without a requirement for the Committee to consider whether such evidence is desirable to enable it to discharge its functions. It makes a further change so that oral evidence shall not be admitted unless the Committee considers that such evidence is necessary, rather than desirable, to enable it to discharge its functions.

Paragraphs (5)(a), (12)(c) to (f) and (13) make amendments to introduce a presumption that witness statements shall stand as a witness' evidence-in-chief. The amendment to Rule 34(11) requires the Committee or a Fitness to Practise or Interim Orders Panel ("a Panel") to accept witness statements as evidence-in-chief unless the parties agree, a Case Manager directs, or the Committee or Panel decide otherwise. Rule 16 is amended to introduce an express power for a Case Manager to issue a direction to permit evidence-in-chief by way of oral evidence. Amendment is made to Rule 34(9), and a new Rule 34(9A) and (9B) introduced, to provide that notice must be given where a party intends to apply to the Committee or Panel for a witness to give evidence-in-chief orally.

Paragraphs (5)(b) and (11) make express provision in rule 16(6)(f) permitting a Case Manager to issue a direction for two or more allegations against one or more pracititoner to be listed for consideration together at the same hearing, and that any such direction shall be taken into

account by the Committee or Panel when considering the exercise of their power of joinder under Rule 32.

Paragraph (6) amends the procedure before a Fitness to Practise Panel set out in Rule 17 of the Fitness to Practise Rules. Paragraph (6)(a) removes the requirement, at the start of a hearing, for the particulars of the allegation against the practitioner to be read out, and introduces a requirement for the Chair of the panel to seek submissions as to whether the Presenting Officer wishes to apply for the particulars to be amended, and to consider any such application accordingly. Paragraph (6)(b) removes the power for the practitioner to make submissions after the Council has presented its evidence that there is insufficient evidence to enable a finding of impaired fitness to practise to be made.

Paragraph (7) amends the formal requirements for notices of hearing before an Interim Orders Panel in rule 26(2)(a). The requirement to particularise the allegation and the facts upon which it is based is substituted with a requirement to inform the practitioner of the allegation and the facts upon which it is based.

Paragraph (8) amends the procedure for cancellation of fitness to practise hearings in rule 28 to provide that cancellation decisions are to be made by a Case Examiner in place of a member of the Committee.

Paragraph (9)(b) amends rule 29 to provide that, on the resumption of an adjourned Committee or Panel hearing, if a panellist will not be present who was present prior to the adjournment or a panellist will be present who was not present prior to the adjournment, the Committee or Panel (as the case may be) may issue such directions as they consider necessary in the interests of justice about: the stage at which the hearing is to be resumed; any special procedure which must be followed (including varying an existing direction or the order of proceedings under these Rules)

Paragraph (10) amends rule 30 which provides that determinations in respect of preliminary legal arguments are binding on subsequent panels considering the case subject to a proviso. The proviso for circumstances in which the subsequent panel considers, on legal advice, that the preliminary legal issue has been wrongly decided is substituted with a proviso that reconsideration of the issue can take place in circumstances in which the Committee or Panel consider that there has been a material change in circumstances and it is in the interest of justice to do so.

Paragraph (12) (a) and (b) removes the rule in rule 34(2) which prohibits a Committee or Panel from admitting evidence which would not be admissible in criminal proceedings in England, unless the Committee or Panel are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

Paragraph (12)(g) makes provision for applications to a Committee or Panel for oral evidence to be given by means of video link or telephone link.

Paragraph (14) removes the requirement for the secretary to a Committee or Panel to record and publish the panel's decision, and places the obligation on the panel to record the decision itself.

Rule 3 amends the Constitution Rules.

Paragraph (2) inserts a new definition.

Paragraph (3) makes provision enabling panellists to sit on review hearings before a Panel, or to act both as a Case Manager and Chair in a case, notwithstanding the provisions of Rule 4(3) of the Constitution Rules which provides that no panellist shall sit on a substantive hearing of a case in which he has previously considered or adjudicated on in another capacity.

Paragraph (4) amends the provisions in rule 6 relating to quorum to clarify that a quorum of a Panel or the Committee is to be three panellists, including the Chair, of whom at least one must be a medical panellist and at least one must be a lay panellist.

Rule 4 makes transitional provisions in relation to the amendments made by rules 2(4) and (12).