

This is a version of The General Medical Council (Fitness to Practise) Rules which incorporates the 2004 Rules and amendments made to those rules in 2009, 2013, 2014, 2015 and 2017

**2004 No 2608**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**DOCTORS**

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

Made 4<sup>th</sup> October 2004  
Laid before Parliament 7<sup>th</sup> October 2004  
Coming into force 1<sup>st</sup> November 2004

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

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

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

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

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

*A K Galloway*

Clerk of the Privy Council

## **SCHEDULE**

### **THE GENERAL MEDICAL COUNCIL (FITNESS TO PRACTISE) RULES 2014**

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

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#### Part 1

#### Preliminaries

##### Citation and commencement

###### 1.

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

##### Interpretation

###### 2.

In these Rules-

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

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

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

**"assessment of knowledge of English"** means an assessment which is designed to evaluate whether the practitioner has the necessary knowledge of English;

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

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

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

**"Case Manager"** means a person appointed by the MPTS under paragraph 7A(1) of Schedule 4 to the Act;

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

**"costs"** includes fees, charges, disbursements or expenses;

**"interim order"** means an order made in accordance with section 41A of the Act (and includes an order made in accordance with section 41A and 41B of the Act prior to the coming into force of

articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002);

**"Interim Orders Tribunal"** means an Interim Orders Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

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

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

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

**"Medical Practitioners Tribunal"** means a Medical Practitioners Tribunal constituted under rules made under paragraph 19G of Schedule 1 to the Act;

**"MPTS"** means the Medical Practitioners Tribunal Service constituted under rules made under paragraph 19F of Schedule 1 to the Act;

**"non-compliance matter"** means a matter (including one in respect of which a direction has been made pursuant to paragraph 5A(3D) or 5C(4) of Schedule 4 to the Act or a matter being considered under section 35D that relates to such a direction) that has been referred to the MPTS for them to arrange for consideration by a Medical Practitioners Tribunal pursuant to any of section 35A(6C) of, paragraph 5A(3)(a) or (3A)(b), 5C(3)(a) or (3A)(b) of Schedule 4 to, the Act;

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

**"party"** means the practitioner or the General Council (or their representatives), and references to

**"the parties"** shall be construed accordingly;

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

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

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

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

**"representative for the GMC"** means a barrister, solicitor or other legal representative instructed by the Registrar to present the case on behalf of the General Council at any hearing before a Tribunal or Committee;

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

**"Tribunal"** means a Medical Practitioners Tribunal or an Interim Orders Tribunal;

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

### **Appointment of assessors and examiners**

#### **3.**

(1) The Registrar may appoint-

- (a) a panel of medical and lay performance assessors for the purposes of carrying out performance assessments in accordance with Schedule 1; and
  - (b) a panel of medical examiners for the purposes of carrying out health assessments in accordance with Schedule 2.
- (2) Members of the General Council are not eligible for appointment to a panel appointed under paragraph (1).

## **Part 2**

### **Investigation of Allegations**

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

#### **4.**

- (1) An allegation shall initially be considered by the Registrar.
- (2) Subject to paragraphs (3) to (5) and rule 5, where the Registrar considers that the allegation falls within section 35C(2) of the Act, he shall refer the matter to a medical and a lay Case Examiner for consideration under rule 8.
- (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.
- (3) Where-
- (a) . . .
  - (b) in the case of an allegation falling within paragraph (5), the Registrar does not consider it to be in the public interest for the allegation to proceed; or
  - (c) the Registrar considers that an allegation should not proceed on grounds that it is vexatious,
- he shall notify the practitioner and the maker of the allegation (if any) accordingly.
- (4) The Registrar may, before deciding whether to refer an allegation, carry out any investigations as in his opinion are appropriate to the consideration of-
- (a) whether or not the allegation falls within section 35C(2) of the Act;
  - (b) the practitioner's fitness to practise; or
  - (c) the matters outlined within paragraph (5) below.
- (5) No allegation shall proceed further if, at the time it is first made or first comes to the attention of the General Council, more than five years have elapsed since the most recent events giving rise to the allegation, unless the Registrar considers that it is in the public interest for it to proceed.

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

**5.**

(1) Subject to rule 4(5), the Registrar shall refer an allegation falling within section 35C(2)(c) of the Act relating to a conviction resulting in the imposition of a custodial sentence, whether immediate or suspended, directly to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal.

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

**Referral to Interim Orders Tribunal**

**6.**

If, at any stage, the Registrar is of the opinion that an Interim Orders Tribunal should consider making an interim order in relation to a practitioner, he shall refer the allegation to the MPTS for them to arrange for it to be considered by such a Tribunal accordingly.

**Investigation of allegations**

**7.**

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

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

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

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

(3A) The Registrar may direct that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.

(4) Where an assessment has been carried out in accordance with Schedule 1 or 2, the Registrar shall send a copy of the assessment report to the practitioner.

(5) Where an assessment has been carried out in accordance with Schedule 1, the Registrar shall send a copy of the assessment report to any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so.

**Consideration by Case Examiners**



## 8.

(1) An allegation referred by the Registrar under rule 4(2), 5(2), 12(6)(b) or 28(2)(b) shall be considered by the Case Examiners.

(2) Upon consideration of an allegation, the Case Examiners may unanimously decide-

- (a) that the allegation should not proceed further;
- (b) to issue a warning to the practitioner in accordance with rule 11(2);
- (c) to refer the allegation to the Committee under rule 11(3) for determination under rule 11(6); or
- (d) to refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal.

(3) The Case Examiners may unanimously decide to recommend that the practitioner be invited to comply with undertakings in accordance with rule 10(3) and, where they do so and the practitioner confirms he is prepared to comply with such undertakings in accordance with rule 10(4), they shall make no decision under paragraph (2) accordingly.

(4) As soon as reasonably practicable, the Case Examiners shall inform the Registrar of their decision, together with the reasons for that decision, and the Registrar shall notify the practitioner and the maker of the allegation (if any), in writing, accordingly.

(5) If the Case Examiners fail to agree as to the disposal of an allegation under paragraph (2), or whether to recommend that the practitioner be invited to comply with undertakings under paragraph (3), they shall notify the Registrar accordingly, and the Registrar shall refer the allegation for consideration by the Committee under rule 9.

(6) If, at any stage, one of the Case Examiners is of the opinion that an Interim Orders Tribunal should consider making an interim order in relation to a practitioner, he shall direct the Registrar accordingly.

### **Consideration by the Committee**

## 9.

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

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

### **Undertakings**

## 10.

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

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

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

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

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

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

(5) The Registrar shall not invite the practitioner to comply with any such undertakings where there is a realistic prospect that, if the allegation were referred to the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal, his name would be erased from the register.

(6) Where the Case Examiners have ceased consideration of an allegation in accordance with paragraph (4), the Registrar may carry out any investigations, which may include (but are not limited to) requesting the provision of reports or directing an assessment be carried out in accordance with Schedule 1 or 2, or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3, that are, in the Registrar's opinion, appropriate to the consideration of—

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

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

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

(8) Where the Registrar receives information that—

- (a) the practitioner has not within the period of 28 days from the date of the written invitation (or such further period as the Registrar may allow) agreed to comply with the undertakings with which the practitioner was invited to comply under paragraph (3) or (7)(a);
- (b) the practitioner has failed to observe an undertaking he has agreed to comply with under paragraph (4) or which has been varied following an invitation to comply with it under paragraph (7)(a); or

- (c) the practitioner's health, performance or knowledge of English has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise,

the Registrar may refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal.

## Warnings

### 11.

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

(2) Subject to paragraph (3), if the Case Examiners are satisfied that the allegation ought not to be referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal and-

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

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

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

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

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

(4) Where the Committee-

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

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

(5) Where an allegation has been referred to the Committee for an oral hearing under paragraph (3) or (4), the Registrar shall give notice to the practitioner-

- (a) particularising the allegation against the practitioner and the facts upon which it is based;
- (b) specifying the date, time and venue of the hearing;
- (c) informing him of his right to attend the hearing and to be represented at a hearing in accordance with rule 33;
- (d) informing him of the power of the Committee to proceed in his absence under rule 31; and
- (e) informing him of the Committee's powers of disposal as set out in paragraph (6).

(6) The Committee shall consider any allegation referred to it under paragraph (3) or (4),

and shall-

- (a) determine that the matter should not proceed further;
- (b) dispose of the allegation by issuing a warning; or
- (c) where new information adduced into evidence at the hearing indicates that to do so would be appropriate, refer the allegation to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal.

(7) Where an allegation has been referred for an oral hearing under paragraph (3) or (4), the order of proceedings before the Committee shall be as follows-

- (a) the representative for the GMC must outline the allegation and the facts upon which it is based and may adduce any relevant—
  - (i) documentary evidence, or
  - (ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence; and
- (b) the practitioner may respond to the allegation and may adduce any relevant-
  - (i) documentary evidence, or
  - (ii) where the Committee considers such evidence is necessary to enable it to discharge its functions under paragraph (6), oral evidence;
- (c) the parties may make such further submissions as the Committee may allow;
- (d) before making its decision, the Committee may adjourn for further investigations to be carried out, including an assessment of the practitioner's performance or health under Schedule 1 or 2 or an assessment of knowledge of English in accordance with Schedule 3; and
- (e) the Committee shall announce its decision, and shall give its reasons for that decision.

(8) In making its decision, the Committee shall, where appropriate, take into account the practitioner's previous fitness to practise history with the General Council or any other regulatory body.

(9) The Registrar shall serve written notification of the Committee's decision upon the practitioner as soon as reasonably practicable.

(10) The notice of decision shall-

- (a) where the Committee decides that the matter should be referred to the MPTS for them to arrange for it to be determined by a Medical Practitioners Tribunal, particularise the allegation against the practitioner that is to be referred; and
- (b) where the Committee decides that the matter should be disposed of by issuing a warning, particularise the terms of the warning issued to the practitioner.

## **Review of decisions**

### **12.**

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

- (a) a decision not to refer an allegation to a medical and a lay Case Examiner or, for any other reason, that an allegation should not proceed beyond rule 4;

(b) a decision not to refer an allegation to the Committee or to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal;

(c) a decision to issue a warning in accordance with rule 11(2), (4) or (6); or

(d) a decision to cease consideration of an allegation upon receipt of undertakings from the practitioner in accordance with rule 10(4).

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

(a) the decision may be materially flawed (for any reason) wholly or partly; or

(b) there is new information which may have led, wholly or partly, to a different decision,

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

(3) Those grounds are that, in the opinion of the Registrar, a review is—

(a) necessary for the protection of the public;

(b) necessary for the prevention of injustice to the practitioner; or

(c) otherwise necessary in the public interest.

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

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

(a) notify the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision of the decision to review and give reasons for that decision;

(b) notify the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision of any new information and, where appropriate, provide them with that information; and

(c) seek representations from the practitioner, the maker of the allegation (if any) and any other person who, in the opinion of the Registrar, has an interest in the decision regarding the review of the decision,

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

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

(a) to substitute for all or part of the original decision any decision which he could have made under Part 2 of these Rules; or

(b) that an allegation should be referred for reconsideration by the Case Examiners under rule 8, 10 or 11.

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

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

he shall notify—

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

in writing, as soon as reasonably practicable, of the decision under paragraph (6) and the reasons for that decision.

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

#### **13.**

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

- (a) the decision of the Registrar to carry out investigations under rule 7(2);
- (b) the referral of an allegation to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal;
- (c) the referral of an allegation for consideration by the Case Examiners under rule 8;
- (d) the referral of an allegation to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal;
- (e) the making of a direction that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2 or that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.

## **Part 3**

### **Action Following Referral**

#### **Investigation following referral**

##### **13A.**

After an allegation has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, the Registrar may carry out such investigations as the Registrar considers appropriate including directing that an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2 or directing that the practitioner undertake an assessment of knowledge of English in accordance with Schedule 3.

#### **Appointment of specialist advisers**

##### **14...**

#### **Notice**

##### **15.**

(1) After an allegation or non-compliance matter has been referred to the MPTS for them to arrange for

it to be considered by a Medical Practitioners Tribunal under rule 17 or 17ZA (as the case may be)—

- (a) the Registrar shall give notice to the practitioner of—
  - (i) the allegation against the practitioner and the facts upon which it is based; or
  - (ii) the non-compliance matter; and
  
- (b) the MPTS shall serve a notice of hearing on the practitioner—
  - (i) specifying the date, time and venue of the hearing,
  - (ii) informing the practitioner of his right to attend the hearing and to be represented at it in accordance with rule 33,
  - (iii) informing the practitioner of the power of the Medical Practitioners Tribunal to proceed in his absence under rule 31,
  - (iv) informing the practitioner of his right to adduce evidence in accordance with rule 34 and to call and cross-examine witnesses, and
  - (v) informing the practitioner of the Medical Practitioner Tribunal's powers of disposal under section 35D, section 38, section 41A of, and paragraph 5A(3D) or 5C(4) of Schedule 4 to, the Act (as the case may be).

This is subject to rule 16.

(2) Unless the practitioner consents to a lesser period of notice being given or the Registrar or MPTS considers it in the public interest for there to be such a lesser period, a notice referred to in paragraph (1) shall be given by the Registrar or MPTS (as the case may be) at least 28 days before the hearing.

### **Case management**

#### **16.**

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

(1A) The power to give directions under the provisions of this rule may also be exercised by—

- (a) the Chair of a Medical Practitioners Tribunal, where the Chair is appointed as a Case Manager for proceedings before that Tribunal; or
- (b) the Medical Practitioners Tribunal itself,

and references to a Case Manager in these Rules are to be construed accordingly

(2) Following the referral of a case to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at-

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

the MPTS may list the matter for a pre-hearing meeting before a Case Manager.

(3) Unless the parties agree otherwise, the practitioner shall be given no less than 14 days' notice of any pre-hearing meeting.

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

(5)...

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

- (a) that each party disclose to the other in advance of the hearing—
  - (i) any documentary evidence in their possession or power relating to the allegation,
  - (ii) details of the witnesses (including the practitioner but not experts) on whom they intend to rely and signed witness statements setting out the substance of their evidence,
  - (iii) a curriculum vitae of any expert on whom they intend to rely, together with a written report setting out the substance of that expert's evidence, and
  - (iv) skeleton arguments;
- (b) that each party provide an estimate as to the likely length of the hearing and the date or dates on which they propose that the hearing should take place;
- (c) that the parties state whether or not the health of the practitioner is to be raised as an issue in the proceedings;
- (d) that the practitioner indicates, so far as is practicable-
  - (i) whether the allegation is admitted,
  - (ii) which facts are admitted and which facts remain in dispute,
  - (iii) which witness evidence is admitted and which witnesses are required for cross examination, and
  - (iv) whether any preliminary legal arguments are to be made;
- (e) where the allegation is admitted, a direction that the parties produce a statement of agreed facts;
- (f) that a witness of fact is to give evidence-in-chief by way of oral evidence pursuant to rule 34(11);
- (fa) that two or more allegations against the same practitioner or more than one practitioner are listed for consideration and determination together by the Tribunal 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;
- (g) a direction that a particular witness of fact should be treated as a vulnerable witness, and directions as to how the evidence of such a witness should be obtained or presented to the Medical Practitioners Tribunal;
- (h) a direction for an adjournment of the pre-hearing meeting or an additional pre-hearing meeting where the circumstances of the case require;
- (i) time limits for compliance with any of the directions listed above.
- (j) a direction determining any preliminary legal argument (where the direction is given by the Tribunal itself);
- (k) a direction that the Tribunal consider whether to admit such evidence as is specified in that direction.

(7) Within the period of 7 days beginning with the date of a pre-hearing meeting, the Case Manager shall serve on the parties a record of the directions issued by him.



(7A) Directions issued by the Case Manager shall be binding on the parties and on any subsequent Tribunal considering the case, unless the Tribunal considers that—

- (a) there has been a material change in circumstances; or
- (b) it is not in the interests of justice for that to be the case.

(8)...

## **Powers of Medical Practitioners Tribunal in respect of failure to comply with Rules or directions**

### **16A**

(1) Paragraph (2) applies where, in a matter referred to the MPTS for them to arrange for consideration by a Medical Practitioners Tribunal under rule 17, 22 or 24 (as the case may be) on or after the relevant date, a party fails to comply with—

- (a) these Rules, or
- (b) a direction which was issued on or after that date by the Tribunal or the Case Manager.

For these purposes, the “relevant date” is the date this provision comes into force.

(2) Where there is a failure referred to in paragraph (1), a Medical Practitioners Tribunal may in respect of that failure—

- (a) draw adverse inferences;
- (b) refuse to admit evidence where the failure relates to the admissibility of that evidence; and
- (c) award costs in accordance with rule 16B (a costs award).

## **Costs awards**

### **16B**

(1) A Medical Practitioners Tribunal may make a costs award under rule 16A(2)(c), following an application from either party or of its own initiative.

(2) A costs award is an order that one party or their representative (“the paying party”) pay the costs of the other party (“the receiving party”), where the paying party’s conduct of the proceedings has been unreasonable.

(3) Before making a costs award, a Medical Practitioners Tribunal shall receive any evidence and hear any submissions from the parties, in particular with regard to—

- (a) any rule, tribunal or case manager direction with which it is claimed a party has failed to comply; and
- (b) the conduct which it is claimed is unreasonable.

(4) Where a Medical Practitioners Tribunal makes a costs award, it shall announce its decision and give its reasons for it.

(5) Where a costs award is made, the amount of costs payable under it shall be assessed by a Case Manager after—

- (a) the receiving party has, within a period of 28 days commencing with the conclusion of the proceedings in which the costs award was made, served a schedule of costs on

both—

- (i) the Case Manager, and
  - (ii) the paying party;
- (b) the paying party has, within a period of 28 days commencing with receipt of the receiving party's schedule of costs, served their response in writing to that schedule and evidence of their ability to pay on both—
- (i) the Case Manager, and
  - (ii) the receiving party.

(6) Following receipt of the paying party's response and evidence referred to in sub-paragraph (b) of paragraph (5), the Case Manager shall, having regard to the paying party's ability to pay, make the assessment referred to in that paragraph. This is subject to paragraphs (7) and (8).

(7) Where the Case Manager considers it appropriate, he may—

- (a) postpone the assessment referred to in paragraph (5);
- (b) extend the period of 28 days referred to in sub-paragraph (a) or (b) (or as the case may be under both sub-paragraphs) of paragraph (5).

(8) The Case Manager may proceed with the assessment of the amount of costs payable regardless of any failure or delay by either party in serving their schedule of costs under sub-paragraph (a) of paragraph (5) or a response under sub-paragraph (b) of that paragraph.

(9) The MPTS shall serve notification of the Case Manager's assessment of the amount of costs payable upon the parties.

(10) A costs award shall be enforced in the same manner as if the award had been made by order of the county court (or, in Scotland, by decree of the sheriff court, or in Northern Ireland, by order of a county court).

(11) Unless the Case Manager directs otherwise, the paying party under a costs award shall pay the costs assessed under it within 14 days of service upon that party of the Case Manager's assessment of those costs.

## **Part 4**

### **Procedure of a Medical Practitioners Tribunal**

#### **Procedure before a Medical Practitioners Tribunal**

#### **17.**

(1) A Medical Practitioners Tribunal shall consider any allegations referred to it in accordance with these Rules, and shall dispose of the case in accordance with sections 35D, 38 and 41A of the Act.

(2) The order of proceedings at the hearing before a Medical Practitioners Tribunal shall be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to

confirm the practitioner's name and GMC Reference Number;

- (c) the Chair of the Medical Practitioners Tribunal shall enquire whether the representative for the GMC wishes to amend the particulars of the allegation, and if that representative so wishes, the Medical Practitioners Tribunal shall consider whether to amend the particulars under paragraph (6);
- (d) the Chair of the Medical Practitioners Tribunal shall enquire whether the practitioner wishes to make any admissions;
- (e) where facts have been admitted, the Chair of the Medical Practitioners Tribunal shall announce that such facts have been found proved;
- (f) where facts remain in dispute, the representative for the GMC shall open the case for the General Council and may adduce evidence and call witnesses in support of it;
- (g) the practitioner may make submissions as to whether sufficient evidence has been adduced to find some or all of the facts proved and whether the hearing should proceed no further as a result, and the Medical Practitioners Tribunal shall consider any such submissions and announce its decision as to whether they should be upheld;
- (h) the practitioner may open his case and may adduce evidence and call witnesses in support of it;
- (i) the Medical Practitioners Tribunal shall hear any submissions from the parties as to the facts to be found proven by the Medical Practitioners Tribunal in the light of the evidence adduced pursuant to sub-paragraphs (f) and (h);
- (j) the Medical Practitioners Tribunal shall consider and announce its findings of fact and shall give its reasons for those findings;
- (k) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the practitioner's fitness to practise is impaired;
- (l) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired, and shall give its reasons for that decision;
- (m) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to the appropriate sanction, if any, to be imposed or, where the practitioner's fitness to practise is not found to be impaired, the question of whether a warning should be imposed;
- (n) the Medical Practitioners Tribunal shall consider and announce its decision as to the sanction or warning, if any, to be imposed or undertakings to be taken into account (in accordance with paragraphs (3) to (5)) and shall give its reasons for that decision;
- (o) the Medical Practitioners Tribunal shall receive any further evidence and hear any further submissions from the parties as to whether an order for immediate suspension or immediate conditions should be imposed on the practitioner's registration, before considering and announcing whether it shall impose such an order and its reasons for that decision;
- (p) the Medical Practitioners Tribunal shall consider and announce whether to make an order under section 41A(3) of the Act in respect of any interim order in place in respect of the practitioner;
- (q) the Medical Practitioners Tribunal shall, if appropriate, consider whether to make a costs award under rule 16B.

(3) Paragraph (4) applies where a Medical Practitioners Tribunal finds that a practitioner's fitness to practise is impaired and the practitioner has agreed with the General Council to comply with such written undertakings (including any limitations on his practice) as the General Council considers appropriate.

(4) In the circumstances referred to in paragraph (3), a Medical Practitioners Tribunal may, provided the conditions in paragraph (5) are satisfied, take any undertakings referred to in paragraph (3) into account in deciding how to dispose of a case.

(5) Those conditions are—

- (a) the Medical Practitioners Tribunal considers the undertakings referred to in paragraph (3) are sufficient to protect patients and protect the public interest; and
- (b) the practitioner has expressly agreed to the Registrar disclosing details of those undertakings (save those relating exclusively to the health of the practitioner) to—

- (i) any person by whom the practitioner is employed to provide medical services or with whom he has an arrangement to do so,
- (ii) any person from whom the practitioner is seeking such employment or with whom the practitioner is seeking to enter into such an arrangement, and
- (iii) any other person who requests information about the practitioner's registration status.

(6) Where, at any time, it appears to the Medical Practitioners Tribunal that—

- (a) the allegation or the facts upon which it is based and of which the practitioner has been notified under rule 15, should be amended; and
- (b) the amendment can be made without injustice,

it may, after hearing the parties, amend the allegation in appropriate terms.

(7) At any stage in the proceedings before making a determination that a practitioner's fitness to practise is impaired, the Medical Practitioners Tribunal may, having regard to the nature of the allegation under consideration, adjourn and direct that—

- (a) an assessment of the practitioner's performance or health be carried out in accordance with Schedule 1 or 2; or
- (b) the practitioner undertakes an assessment of knowledge of English in accordance with Schedule 3.

(8) On receipt of an assessment report produced further to a direction under paragraph (7)(a) or (b), the Medical Practitioners Tribunal may—

- (a) proceed to consider and determine the allegation in accordance with paragraph (2); or
- (b) refer the allegation to the Registrar for consideration by the Case Examiners in accordance with rule 10(2).

(9) At any stage before making its decision as to sanction or warning, the Medical Practitioners Tribunal may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

### **Procedure at a non-compliance hearing**

#### **17ZA.**

The order of proceedings at a hearing to consider a non-compliance matter is to be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence, and may adduce evidence and call witnesses in relation to the question of whether—
- (aa) the practitioner has failed to submit to, or comply with, an assessment under Schedule 1 or 2;
- (bb) having submitted to an assessment under Schedule 1, the practitioner has failed to comply with requirements imposed in respect of that assessment;
- (cc) the practitioner has failed to undertake an assessment of knowledge of English in accordance with Schedule 3 or has undertaken such an assessment but has failed to provide the information requested in accordance with that Schedule;
- (dd) the practitioner has failed to provide information required from him under section

35A(1A) of the Act;

- (d) the practitioner may, in response, adduce evidence and call witnesses in relation to any question addressed by the representative for the GMC under sub-paragraph (ii) of paragraph (c);
- (e) in respect of any question referred to in sub-paragraph (ii) of paragraph (c), the Medical Practitioners Tribunal must consider any evidence referred to in that sub-paragraph and paragraph (d) and announce its finding on that question and shall give its reasons for that finding;
- (f) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Act;
- (g) the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraph (f) and announce its decision (with reasons) as to the making, or otherwise, of a direction referred to in that paragraph;
- (h) the Medical Practitioners Tribunal shall, before announcing (with reasons) its decision whether or not to impose an order for immediate suspension or immediate conditions on the practitioner's registration, receive and consider any further evidence in that regard from the parties;
- (i) the Medical Practitioners Tribunal may consider whether to make an order under section 41A of the Act and announce its decision in that regard.

## **Notification of determination of Medical Practitioners Tribunal**

### **17A**

The Registrar shall notify the maker of the allegation (if any) of the Medical Practitioners Tribunal's determination in respect of a case, and the manner in which it disposed of that case.

## **Part 5**

### **Review Hearings**

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

#### **18.**

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

(2) For the purposes of paragraph (1), where a referral is made to the MPTS for them to arrange for a consideration by a Medical Practitioners Tribunal at a review hearing under rule 37A(5), the requirements contained in undertakings taken into account by the Medical Practitioners Tribunal under rule 17(4) or rule 22(3) are to be treated as if they were requirements specified in a direction under section 35D(2)(c).

#### **Functions of Registrar**

#### **19.**

Prior to the opening of a review hearing, the Registrar shall consider the directions made by a Medical Practitioners Tribunal at any previous hearing in respect of the practitioner, and may—

- (a) make such enquiry or procure the production of such expert or other report as he considers necessary;

- (b) direct that the practitioner undergo an assessment of his—
  - (i) performance or health in accordance with Schedule 1 or 2, or
  - (ii) knowledge of English in accordance with Schedule 3.

## **Notice**

### **20.**

(1) No later than 28 days before the hearing under rule 22 or 22A (as the case may be)—

- (a) the MPTS shall serve on the practitioner notice of the review hearing—
  - (i) specifying the direction made at the previous hearing and the grounds for the same,
  - (ii) stating the matters set out at rule 15(1)(b)(i) to (iv),
  - (iii) indicating the subsection of section 35D of the Act under which the Medical Practitioners Tribunal is proposing to act, and the powers available to the Medical Practitioners Tribunal under that section,
  - (iv) requesting that the practitioner notify the MPTS, within 14 days of the date of the notice, whether he wishes to attend the hearing, and
  - (v) inviting the practitioner, if he chooses not to attend the hearing, to make written representations to be received by the MPTS no later than 14 days before the hearing; and
- (b) the Registrar shall provide the practitioner with—
  - (i) a copy of any statement, report or other document which has not previously been sent to the practitioner or his representative and which is relevant to the question whether a direction should be made under this Part or the terms on which it should be made,
  - (ii) where an early review hearing is to be held, the information that makes such an early review desirable.

(3) If any statement, report or other document is subsequently obtained by the General Council which is relevant to the question whether a direction should be made under this Part or the terms on which it should be made, the practitioner shall be given a reasonable opportunity of responding before the Medical Practitioners Tribunal makes such direction.

## **Early review hearing**

### **21.**

The Registrar may refer a case to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at an early review hearing, where information is received that, in the opinion of the Registrar, makes an early review hearing desirable.

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

### **21A.**

(1) If, since the previous hearing, a new allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal, it shall first proceed with that allegation in accordance with rule 17(2)(a) to (j).

(2) The Medical Practitioners Tribunal shall thereafter proceed in accordance with rule 22 except that, when determining whether the fitness to practise of the practitioner is impaired and what direction (if any) to impose under section 35D(5), (6), (8) or (12) of the Act, it shall

additionally have regard to its findings in relation to the new allegation.

### **Review on the papers**

#### **21B.**

(1) A matter must be considered on the papers where it has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal at a review hearing and the MPTS receives confirmation in writing from the practitioner and the Registrar that the parties agree to the terms of a direction, revocation or variation which that Tribunal could make under section 35D(5), (6), (8), (10) or (12) of the Act.

(2) Consideration on the papers under paragraph (1) may be carried out by the Chair of the Medical Practitioners Tribunal, or the Tribunal itself.

(3) Where the Chair of the Medical Practitioners Tribunal or the Tribunal itself determines that the Tribunal should hold a hearing to consider the matter and the MPTS arrange a hearing for that purpose in accordance with section 35D(13), the other provisions of this Part are to apply for the purposes of that hearing.

### **Procedure at review hearing**

#### **22.**

(1) The order of proceedings at a review hearing shall be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case, and the sanction previously imposed,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence and may adduce evidence and call witnesses in relation to the practitioner's fitness to practise or his failure to comply with any requirement imposed upon him as a condition of registration;
- (d) the practitioner may present his case and may adduce evidence and call witnesses in support of it;
- (e) the Medical Practitioners Tribunal shall receive further evidence and hear any further submissions from the parties as to whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration;
- (f) the Medical Practitioners Tribunal shall consider and announce its finding on the question of whether the fitness to practise of the practitioner is impaired or whether the practitioner has failed to comply with any requirement imposed upon him as a condition of registration, and shall give its reasons for that decision;
- (g) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to make a direction under section 35D(5), (6), (8), (10) or (12) of the Act;
- (h) the Medical Practitioners Tribunal shall consider and announce its decision as to the direction, if any, to be made or undertakings to be taken into account (in accordance with paragraphs (2) to (4)) and shall give its reasons for that decision;

- (i) the Medical Practitioners Tribunal shall, if appropriate, consider whether to make a costs award under rule 16B.

(2) Paragraph (3) applies where a Medical Practitioners Tribunal finds that a practitioner's fitness to practise is impaired and the practitioner has agreed with the General Council to comply with such written undertakings (including any limitations on his practice) as the General Council considers appropriate.

(3) In the circumstances referred to in paragraph (2), a Medical Practitioners Tribunal may, provided the conditions in paragraph (4) are satisfied, take any undertakings referred to in paragraph (2) into account in deciding how to dispose of a case.

(4) Those conditions are—

- (a) the Medical Practitioners Tribunal considers the undertakings referred to in paragraph (2) to be sufficient to protect patients and protect the public interest; and
- (b) the practitioner has expressly agreed to the Registrar disclosing details of those undertakings (save those relating exclusively to the health of the practitioner) to—
  - (i) any person from whom the practitioner is seeking such employment or with whom the practitioner is seeking to enter into such an arrangement, and
  - (ii) any person from whom the practitioner is seeking such employment or such an arrangement, and
  - (iii) any other person who requests information about the practitioner's registration status.

(5) Where, prior to the Medical Practitioners Tribunal making a finding under rule 22(1)(f), a review hearing is adjourned under rule 29(2), the Medical Practitioners Tribunal—

- (a) must consider whether to make a direction under section 35D(5)(a), (8)(a), or (12)(c) of the Act and announce its decision in that regard; and
- (b) may consider whether to make an order under section 41A of the Act and announce its decision in that regard.

### **Procedure at a non-compliance review hearing**

#### **22A.**

The order of proceedings at a review hearing to consider a non-compliance matter is to be as follows—

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioner Tribunal shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) inform the Medical Practitioners Tribunal of the background to the case, and the sanction previously imposed,
  - (ii) direct the attention of the Medical Practitioners Tribunal to any relevant evidence in accordance with paragraph (d);
- (d) the representative for the GMC may adduce evidence and call witnesses in relation to the practitioner's compliance or otherwise with an assessment under Schedule 1, 2 or 3, or with a request for information under Schedule 3, or under section 35A(1A) of the Act or with any requirement imposed upon him as a condition of registration;
- (e) the practitioner may, in response, adduce evidence and call witnesses in relation to any matter addressed by the representative for the GMC under paragraph (c)(ii) or (d);
- (f) in respect of any matter referred to in paragraph (d), the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraphs (d) and (e) and announce its finding on that matter and give reasons for that finding;
- (g) the Medical Practitioners Tribunal may receive further evidence and hear further



submissions from the parties as to its decision whether to make a direction under section 35D(5), (6), (8), (10), or (12) of the Act;;

- (h) the Medical Practitioners Tribunal shall consider any evidence and submissions referred to in paragraph (g) and announce its decision (with reasons) as to the making, or otherwise, of a direction referred to in that paragraph.
- (i) the Medical Practitioners Tribunal may consider and announce whether to make an order under section 41A of the Act.

## **Part 6**

### **Restoration to the Register**

#### **Action on receipt of a restoration application**

#### **23.**

(1) Upon receipt of an application for restoration made under section 41 of the Act—

- (a) the Registrar shall refer the matter to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal; and
- (b) the Registrar may—
  - (i) make such investigations, and obtain such information, documents or reports as he considers appropriate,
  - (ii) direct that the applicant undergo an assessment of his performance or health in accordance with Schedule 1 or 2,
  - (iii) direct that the applicant undertake an assessment of knowledge of English in accordance with Schedule 3.

(2) At least 28 days before the hearing before a Medical Practitioners Tribunal to consider his application—

- (a) the MPTS shall serve upon the applicant a notice of the hearing complying with paragraph (4); and
- (b) the Registrar shall provide to the applicant a copy of any statement, report or other document the General Council has obtained which has not previously been sent to the applicant or his representative and which is relevant to the question whether the applicant's name should be restored to the register.

(3) If any statement, report or other document is subsequently obtained by the General Council which is relevant to the Medical Practitioners Tribunal's decision whether to direct that the applicant's name be restored to the register, the applicant shall be given a reasonable opportunity of responding before the Medical Practitioners Tribunal makes a decision.

(4) The notice referred to in paragraph (2)(a) shall—

- (a) specify the matters set out at rule 15(1)(b)(i) to (iv);
- (b) request that the applicant notify the MPTS, within 14 days of the date of the notice, whether he wishes to attend the hearing;
- (c) invite the applicant, if he chooses not to attend the hearing, to make written representations to be received by the MPTS no later than 14 days before the hearing;
- (d) where the applicant has made a previous unsuccessful application, inform him of the Medical Practitioners Tribunal's power to suspend indefinitely his right to make further applications for restoration under section 41(9) of the Act; and

- (e) where the applicant has made a previous unsuccessful application and chooses not to attend the hearing, invite him to make written representations on the issue of indefinite suspension of his right to make further applications, to be received by the MPTS no later than 14 days before the hearing.

### **Procedure at a restoration hearing**

#### **24.**

(1) The Medical Practitioners Tribunal shall consider an application in accordance with the procedure set out in this rule.

(2) The order of proceedings at a hearing to determine an application shall be as follows-

- (a) the Medical Practitioners Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Medical Practitioners Tribunal shall—
  - (i) where the applicant is present, require the applicant to confirm his name and GMC Reference Number,
  - (ii) where the applicant is not present, require the representative for the GMC to confirm the applicant's name and GMC Reference Number;
- (c) the representative for the GMC shall—
  - (i) address the Medical Practitioners Tribunal as to the background of the case and the circumstances in which the applicant's name was erased from the register,
  - (ii) direct the attention of that Tribunal to any relevant evidence and may adduce evidence and call witnesses in relation to the practitioner's fitness to practise;
- (d) the applicant may address the Medical Practitioners Tribunal and adduce evidence and call witnesses in relation to any relevant matter, including his suitability for restoration to the register;
- (e) the Medical Practitioners Tribunal may receive further evidence and hear any further submissions from the parties as to its decision whether to grant or refuse the application;
- (f) the Medical Practitioners Tribunal shall then consider and announce whether to grant or refuse the application, and shall give its reasons for that decision;
- (g) before reaching a decision under sub-paragraph (f), the Medical Practitioners Tribunal may adjourn and give such directions as it sees fit, including that the applicant should undergo an assessment of his performance or health in accordance with Schedule 1 or 2 or undertake an assessment of knowledge of English in accordance with Schedule 3;
- (h) where the Medical Practitioners Tribunal adjourns under sub-paragraph (g), it shall—
  - (i) consider any assessment reports produced further to a direction under sub-paragraph (g), together with any other relevant evidence and reports, and
  - (ii) invite further representations and evidence from the parties,

before reaching a decision as to whether the applicant should be restored to the register; and

- (i) before deciding whether or not to make a direction to suspend indefinitely the applicant's right to make further applications for restoration under section 41(9) of the Act, the Medical Practitioners Tribunal shall-

- (i) consider any representations made and evidence received, and

- (ii) where the applicant is present, invite further representations and evidence from him specifically upon this issue.

## **Part 7**

### **Interim Orders**

#### **Initial consideration**

#### **25.**

(1) This Part applies where an allegation has been referred by the Registrar to the MPTS for them to arrange for an Interim Orders Tribunal to consider whether to make or review an interim order.

(2) Where an interim order has previously been made in respect of a practitioner the Registrar-

(a) shall refer the case to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal for the purposes of subsection (2)(a) or (9) of section 41A of the Act; or

(b) may refer the case to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal where new information is received by the General Council which, in his opinion, suggests that the interim order imposed on the practitioner's registration ought to be reviewed.

#### **Notice**

#### **26.**

Prior to the initial or any review hearing relating to an interim order, and within such time before the hearing as is reasonable in the circumstances of the case—

- (a) the Registrar shall—
  - (i) set out the reasons why it is necessary to make or review an interim order,
  - (ii) provide a copy of any written evidence obtained by the General Council which is relevant to the question of whether or not an interim order should be made or reviewed, and
  - (iii) in relation to a review hearing, provide a copy of the order to be reviewed; and
- (b) the MPTS shall serve a notice of hearing on the practitioner—
  - (i) specifying the date, time and venue of the hearing,
  - (ii) informing the practitioner of the practitioner's right to appear before the Interim Orders Tribunal and be heard, and to be represented in accordance with rule 33,
  - (iii) informing the practitioner of the power of the Interim Orders Tribunal to proceed in his absence under rule 31,
  - (iv) informing the practitioner of the Interim Orders Tribunal's powers of disposal under section 41A of the Act,
  - (v) requesting the practitioner to notify the MPTS as soon as possible whether he intends to attend the hearing, and

- (vi) inviting the practitioner, if he chooses not to attend the hearing, to submit any written representations, within such period as is reasonable in the circumstances and as is specified in the notice, to the MPTS.

### **Interim order review on the papers**

#### **26A.**

(1) A matter shall be considered on the papers where it has been referred to the MPTS for them to arrange for it to be considered by an Interim Orders Tribunal at a review hearing and the MPTS receives confirmation in writing from the practitioner and the Registrar that the parties agree to the terms of an order which that Tribunal could make under section 41A(3) of the Act.

(2) The terms referred to in paragraph (1) may include the maintenance, revocation or variation of an existing order.

(3) Consideration on the papers under paragraph (1) may be carried out by the Chair of the Interim Orders Tribunal or the Tribunal itself.

(4) Where, the Chair of the Interim Orders Tribunal or the Tribunal itself determines that the Tribunal should hold a hearing to consider the matter and the MPTS arrange a hearing for that purpose in accordance with section 41(3A)(b), the other provisions of this Part are to apply for the purposes of that hearing.

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

#### **27.**

(1) At the hearing, the Interim Orders Tribunal may, subject to paragraphs (2) and (3), receive any evidence which appears to it to be fair and relevant to its consideration under section 41A(1), (2) or (3) of the Act.

(2) No person shall give oral evidence at a hearing unless the Interim Orders Tribunal considers such evidence is necessary to enable it to discharge its functions.

(3) The Interim Orders Tribunal may, at any stage in the proceedings-

- (a) with the consent of the practitioner; or
- (b) where it is satisfied that to do so would be desirable to enable it to discharge its functions,

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

(4) At an interim orders hearing-

- (a) the Interim Orders Tribunal shall hear and determine any preliminary legal arguments;
- (b) the Chair of the Interim Orders Tribunal shall announce that the hearing has commenced and shall—
  - (i) where the practitioner is present, require the practitioner to confirm his name and the GMC Reference Number,
  - (ii) where the practitioner is not present, require the representative for the GMC to confirm the practitioner's name and GMC Reference Number;
- (c) the representative for the GMC shall address the Interim Orders Tribunal regarding

whether it is necessary to make or review an interim order in respect of the practitioner and, subject to paragraphs (1) to (3), may adduce evidence in this regard;

(d) the practitioner may present his case and, subject to paragraphs (1) to (3), may adduce evidence in support of it;

(e) the parties and members of the Interim Orders Tribunal may put questions to any witness;

(f) where where the practitioner gives oral evidence, the representative for the GMC and the members of the Interim Orders Tribunal may put questions to him; and

(g) the Interim Orders Tribunal shall announce its decision, and shall give its reasons for that decision.

(5) The Interim Orders Tribunal may vary the order of proceedings under paragraph (4) where it is in the interests of justice to do so.

(6)...

## **Part 8**

### **General**

#### **Withdrawal of a matter**

#### **28.**

(1) Where, after an allegation has been referred to the Committee and before the opening of the hearing before the Committee—

(a) a practitioner who has requested an oral hearing withdraws that request; or

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

the Registrar may refer the matter to a medical or lay Case Examiner for a decision as to whether or not the matter (of part of it) should be withdrawn.

(2) Where after a matter has been referred to a Medical Practitioners Tribunal or Interim Orders Tribunal and before the opening of the hearing before the Tribunal, it appears to the Registrar that a matter (or part of it) should not be considered by a Medical Practitioners Tribunal or that an Interim Orders Tribunal should not consider making an order, the Registrar may refer the matter to a medical or lay Case Examiner for a decision as to whether the matter (or part of it) should be withdrawn.

(3) Where paragraph (1) or (2) applies, a Case Examiner may decide that—

(a) all or part of the matter referred to in that paragraph should be withdrawn; or

(b) in the case of a matter that has been referred to a Medical Practitioners Tribunal, other than a non-compliance matter, the matter should be referred for consideration by a medical and lay Case Examiner under rule 10 or 11.

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

#### **Postponements and adjournments**

#### **29.**

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

- (a) 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 Tribunal 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.

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

(3) Where a hearing before a Committee has been adjourned under paragraph (2), a member of the Committee may, upon the application of a party to the proceedings, further adjourn the hearing until such time and date as the member thinks fit.

(3A) Where a hearing before a Tribunal, other than a review hearing under rule 22 or 22A, has been adjourned under paragraph (2), the Case Manager may, upon the application of a party to the proceedings, further adjourn the hearing until such time and date as the Case Manager thinks fit.

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

(3C) On consideration of an adjournment application under paragraph (3) or (3A), the member of the Committee or Case Manager (as the case may be), may, where he considers it appropriate, direct that the matter be dealt with by the Committee or Tribunal considering the matter.

(4) Where a hearing has been postponed or adjourned under paragraphs (1) to (3A)—

- (a) the Registrar, in the case of a Committee hearing;
- (b) the MPTS, in the case of a Tribunal hearing,

shall, as soon as practicable, notify the parties of the time, date and place at which the hearing is to take place or to resume.

(5) Where, on the resumption of an adjourned Committee or Tribunal hearing, a panellist or tribunal member will not be present who was present prior to the adjournment or a panellist or tribunal member will be present who was not present prior to the adjournment, the Committee or Tribunal (as the case may be) may, having taken into account any representations made by or on behalf of the parties, 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).

### **Preliminary legal arguments**

#### **30.**

Where the Committee or a Tribunal considers and determines any preliminary legal argument, such determination is to bind any subsequent Committee or Tribunal considering the case notwithstanding that any panelist or tribunal member present at the original hearing is not present at the subsequent hearing, or that any panellist or tribunal member present at the subsequent hearing was not present at the original hearing, unless the subsequent Committee or Tribunal considers that—

- (a) there has been a material change in circumstances and that it is in the interests of justice to reconsider the matter; or
- (b) it is otherwise in the interests of justice to do so.

## **Absence of the practitioner**

### **31.**

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

## **Joinder**

### **32.**

The Committee or Tribunal may, after having regard to any relevant directions given by a Case Manager, consider and determine together-

(a) two or more allegations against the same practitioner which fall within-

(i) the same category; or

(ii) separate categories,

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

(b) allegations against two or more practitioners,

where it would be just to do so.

## **Representation**

### **33.**

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

(a) a solicitor or counsel;

(b) a representative from any professional organisation of which he is a member; or

(c) at the discretion of the Committee or Tribunal, a member of his family or other suitable person.

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

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

## **Evidence**

### **34.**

(1) The Committee or a Tribunal may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

(2) ...

(3) Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland,

an extract conviction, shall be conclusive evidence of the offence committed.

(4) Production of a certificate signed by an officer of a regulatory body that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.

(5) The only evidence which may be adduced by the practitioner in rebuttal of a conviction or determination certified in the manner specified in paragraph (3) or (4) is evidence for the purposes of proving that he is not the person referred to in the certificate or extract.

(6) The practitioner may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved.

(7) A copy of a document of which the original is admissible may be received by the Committee or a Tribunal without strict proof.

(8) A party may, at any time, serve notice on the other party to produce the original or a copy of any document that is-

(a) relevant to the proceedings; and

(b) alleged to be in the possession, ownership or control of that party,

and such notice may be admitted into evidence by the Committee or Tribunal.

(9) In relation to proceedings before the Committee or a Medical Practitioners Tribunal, unless otherwise agreed between the parties or directed by a Case Manager, each party shall not less than 28 days before the date of a hearing-

(a) provide to the other party a list of every document which he proposes to introduce as evidence; and

(b) provide to the other party a copy of every document listed in paragraph (a) which the other party has not previously received.

(c) ...

(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 Tribunal 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.

(10) Where one party notifies the other under paragraph (9A) that he requires a relevant person to attend to give oral evidence in relation to the subject matter of or making of a document other than a signed witness statement containing a statement of truth, the document concerned may nonetheless be received into evidence without such oral evidence where the Committee or Medical Practitioners Tribunal is of the view that, having regard to all the circumstances (including the difficulty or expense of obtaining such attendance) and the justice of the case, it is proper to do so.

(11) A Committee or Tribunal 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 Tribunal decides, upon the application of a party or of its own

motion, that the witness concerned, including the practitioner, is to give evidence-in-chief by way of oral evidence;



(12) The standard of proof in any proceedings before the Committee or a Medical Practitioners Tribunal is that applicable to civil proceedings.

- (a) ...
- (b) ...

(13) A party may, at any time during a hearing, make an application to the Committee or Tribunal 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 Tribunal must—

- (a) give the other party an opportunity to make representations;
- (b) have regard to—
  - (i) any agreement between the parties, or
  - (ii) in the case of a Tribunal hearing, any relevant direction given by a Case Manager; and
- (c) only grant the application if the Committee or Tribunal consider that it is in the interests of justice to do so.

## **Witnesses**

### **35.**

(1) Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

(2) Subject to rule 36, witnesses-

- (a) if giving oral evidence-in-chief, shall first be examined by the party calling them;
- (b) may be cross-examined by the opposing party;
- (c) may be re-examined by the party calling them; and
- (d) may at any time be questioned by the Committee or Tribunal.

(3) Any further questioning of the witnesses by the parties shall be at the discretion of the Committee or Tribunal.

(4) The Committee or Tribunal may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

(5) The Committee or Tribunal may, on the application of a party or of its own motion, require a witness to attend a hearing and the relevant party shall exercise its power to compel attendance under paragraph 2 of Schedule 4 to the Act accordingly.

(6) A witness of fact shall not, without leave of the Committee or Tribunal, be entitled to give evidence at a hearing unless he has been excluded from the proceedings until such time as he is called.

## Vulnerable witnesses

### 36.

(1) In proceedings before the Committee or a Tribunal, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness-

- (a) any witness under the age of 18 at the time of the hearing;
- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- (c) any witness who is significantly impaired in relation to intelligence and social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
- (f) any witness who complains of intimidation.

(2) Upon hearing representations from the parties, the Committee or Tribunal shall adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee or Tribunal may include, but shall not be limited to-

- (a) use of video links;
- (b) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the Committee or Tribunal;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee or Tribunal consider necessary in the circumstances, in order to prevent-
  - (i) the identity of the witness being revealed to the press or the general public; or
  - (ii) access to the witness by the practitioner; and
- (e) the hearing of evidence by the Committee or Tribunal in private.

(4) Where-

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

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

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

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

### **37.**

The Committee or Tribunal must—

- (a) record in writing their decision and the reasons for their decision; and
- (b) provide a copy of the decision and reasons to the Registrar.
- (c) ...

## **Tribunal undertakings**

### **37A.**

(1) Where undertakings have been taken into account by a Medical Practitioners Tribunal under rule 17(4) or 22(3), the Registrar may carry out any investigation that is, in the Registrar's opinion, appropriate to the consideration of—

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

(2) For the purposes of an investigation referred to in paragraph (1), the Registrar may in particular—

- (a) request the provision of reports;
- (b) make a relevant direction.

(3) A relevant direction is one directing that the practitioner—

- (a) undergo an assessment of his performance or health in accordance with Schedule 1 or Schedule 2; or
- (b) undertake an assessment of knowledge of English in accordance with Schedule 3.

(4) Where, as a result of information received by the General Council, it appears to the Case Examiners that any undertakings taken into account under rule 17(4) or 22(3) should be varied or cease to apply, they shall inform the Registrar accordingly and the Registrar shall—

- (a) write to the practitioner inviting them to comply with such varied undertakings as appear to the Case Examiners to be appropriate; or
- (b) direct that the undertakings should no longer apply.

(5) The Registrar may refer the matter to the MPTS for them to arrange for determination by a Medical Practitioners Tribunal under Part 5 of these Rules where the Registrar receives information that—

- (a) the practitioner has not, within the period of 28 days from the date of the written invitation (or such further period as the Registrar may allow), agreed to comply with the undertakings with which the practitioner was invited to comply under paragraph (4)(a);
- (b) the practitioner has failed to observe an undertaking taken into account by a Medical Practitioners Tribunal under rule 17(4) or 22(3) or which, having been taken into account under rule 17(4) or 22(3) has been varied following an invitation to comply with it under paragraph (4)(a); or
- (c) the practitioner's health, performance or knowledge of English has deteriorated, or otherwise gives rise to further concern regarding his fitness to practise

## **Voting**

### **38.**

- (1) Decisions of the Committee or of a Tribunal shall be taken by simple majority.
- (2) No Chair of the Committee or Tribunal may exercise a casting vote.
- (3) No member of the Committee or Tribunal may abstain from voting.

(4) Subject to paragraph (5), where the votes are equal, the Committee or Tribunal shall decide the issue under consideration in favour of the practitioner.

(5) Where a Medical Practitioners Tribunal is considering—

- (a) an application to restore a person's name to the register; or
- (b) submissions made by a practitioner under rule 17(2)(g),

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

### **Notes and transcript of proceedings**

#### **39.**

(1) The Registrar shall arrange for the proceedings of the Committee to be recorded by electronic or other means.

(2) The MPTS shall arrange for the proceedings of the Tribunal to be recorded by electronic or other means.

(3) Any party to the proceedings shall, on application to the Registrar or MPTS (as the case may be), be furnished with a copy of the written transcript of any part of the proceedings at which he was entitled to be present.

(4) Paragraphs (1) to (3) shall not apply to the deliberations of the Committee or Tribunal.

### **Service of notices and documents**

#### **40.**

(1) Any notice of hearing required to be served upon the practitioner under these Rules shall be served in accordance with paragraph 8 of Schedule 4 to the Act.

(2) Subject to paragraph (1), any notice or document required to be served upon the practitioner under these Rules may be served—

- (a) by ordinary post; or
- (b) by electronic mail to an electronic mail address that the practitioner has notified to the Registrar as an address for communications.

(3) If the practitioner is represented by—

- (a) a solicitor, the notice or document may also be—
  - (i) sent or delivered to the solicitor's practising address, or
  - (ii) sent by electronic mail to an electronic mail address of the solicitor; or
- (b) a trade union or defence organisation, the notice or document may also be—
  - (i) sent or delivered to the trade union or defence organisation's business address;  
or
  - (ii) sent by electronic mail to an electronic mail address of the trade union or defence organisation,

where the address has been notified to the Registrar as an address for communications.

- (4) The service of any notice or document under these Rules may be proved by—
- (a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service;
  - (b) a confirmation of receipt of the notice or document sent by electronic mail; or
  - (c) a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at—
    - (i) the practitioner's proper address;
    - (ii) the practising address or electronic mail address of the practitioner's solicitor; or
    - (iii) the business address or electronic mail address of the practitioner's trade union or defence organisation.

### **Attendance of the public**

#### **41.**

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

### **Exclusion from proceedings**

#### **42.**

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

### **Consequential amendments**

#### **43.**

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

(a) in paragraphs (3)(1)(b) and (2), "section 38 or 41A of the Act" shall be substituted for "section 38, 41A or 41B of the Act"; and

(b) in paragraph (3)(b)(ii), "section 35D of the Act" shall be substituted for "section 36, 36A or 37 of the Act".

### **Revocation**

#### **44.**

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

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

*Professor Sir Graeme Catto*

President

## SCHEDULE

### 1

#### PERFORMANCE ASSESSMENTS

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

#### Interpretation

##### 1.

(1) In this Schedule “assessment” means—

- (a) in the case of a practitioner, an assessment of the standard of a practitioner’s professional performance;
- (b) in the case of a person applying for restoration to the register by virtue of section 31(8) or 31A(1)(c) or under section 41 of the Act, an assessment of the standard of professional performance of which the person would be capable if the person’s name were to be restored to the register.

(2) References to a “practitioner” in this Schedule include, unless otherwise specified, a person referred to in sub-paragraph (1)(b).

##### 1A.

In this Schedule a reference to the standard of the practitioner’s professional performance includes the standard of the practitioner’s knowledge of English, in particular, whether the practitioner has the necessary knowledge of English.

#### Assessment teams

##### 2...

#### Proceedings and procedures of the assessment

##### 3.

(1) The Assessment Team or, as the case may be, the individual performance assessor shall, having regard to the nature of the practitioner’s employment or as appropriate previous employment, adopt such procedures as appear necessary in order to assess the standard of the practitioner’s professional performance. This is subject to sub-paragraphs (2) to (4) and any directions given by the Registrar under paragraph 5A(2) of Schedule 4 to the Act.

(2) The Assessment Team or the individual performance assessor (as the case may be) may seek advice or information from any person who might, in the opinion of the Assessment Team, assist them in carrying out that assessment.

(3) The Assessment Team or the individual performance assessor (as the case may be) shall disclose to the practitioner any written information or opinion received by the Assessment Team or the individual performance assessor (as the case may be) which in their opinion may influence their assessment of the standard of that practitioner’s professional performance, and shall afford that practitioner a reasonable opportunity to respond.

(4) The Assessment Team or individual performance assessor (as the case may be) shall produce a report on the standard of the practitioner’s performance which shall, where the Registrar so requires, express—

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

(5) Where the practitioner has undertaken an assessment of knowledge of English, following a

direction given by the Registrar as part of an assessment of that practitioner's professional performance under this Schedule, the results of that assessment shall be included in the report referred to in sub-paragraph (4).

(6) An assessment of a practitioner's knowledge of English, directed by the Registrar as part of an assessment of that practitioner's professional performance under this Schedule is to be undertaken in accordance with the provisions set out in Schedule 3.

## **SCHEDULE 2**

### **HEALTH ASSESSMENTS**

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

#### **1.**

- (1) In this Schedule "assessment" means an assessment of the physical or mental condition of the practitioner.
- (2) Reference to a "practitioner" in this schedule include, unless otherwise stated, a person applying for restoration by virtue of section 31(8) or 31A(1)(c) or under section 41 of the Act.

#### **2.**

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

#### **3.**

The Registrar shall make arrangements for any assessment directed under paragraph 2 to be carried out.

#### **4.**

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

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



## SCHEDULE 3

### KNOWLEDGE OF ENGLISH ASSESSMENTS

#### 1.

- (1) The Registrar, Assessment Team or Medical Practitioners Tribunal (as the case may be) may direct the practitioner to—
- (a) undertake an assessment of knowledge of English and;
  - (b) provide information in respect of that assessment as specified in the direction.
- (2) References to a “practitioner” in this Schedule include, unless otherwise stated, a person applying for restoration by virtue of section 31(8) or 31A(1)(c), or under section 41, of the Act.

#### 2.

Where a direction is made under paragraph 1, the Registrar, Assessment Team or Medical Practitioners Tribunal (as the case may be), must without delay serve a notice on the practitioner—

- (a) requiring the practitioner to undertake an assessment of knowledge of English within such period as shall be specified in the notice, which period shall be no shorter than 30 days, and no longer than 90 days, beginning with the date of the notice, and
- (b) specifying any information which the practitioner is required to provide in respect of that assessment.

#### 3.

Where a practitioner has undertaken an assessment under this Schedule and informed the relevant person of the information requested under paragraph 2(b), the Registrar, Assessment Team or Medical Practitioners Tribunal (as the case may be) may make a request to the relevant person for disclosure of that information.

#### 4.

Where a request is made under paragraph 3 the relevant person shall disclose the information requested to the person making the request.

#### 5.

In this Schedule “relevant person” means the Registrar, Assessment Team or Medical Practitioners Tribunal (as the case may be).

## NOTES

### Initial Commencement

#### *Specified date*

Specified date: 1 November 2004: see Preamble.