

Chair's guide for a panel of the Conduct and Competence Committee and Health Committee holding a meeting (rather than a hearing)

Background

The 2004 Rules set out the statutory basis for panels of the Conduct and Competence Committee and Health Committee to conclude cases either at meetings or at hearings¹.

Before an allegation is scheduled for a meeting it is a mandatory requirement² to:

- 1 Invite the registrant to submit written submissions no later than 28 days after service of the notice of referral to the CCC or HC;
- 2 Require the registrant to inform the Committee if she would like the allegation to be considered at a hearing.

Hearings

- 3 May or may not be in public.
- 4 The registrant and case presenter can call witnesses and test the evidence of witnesses through cross examination;
- 5 The registrant and case presenter can make submissions on the evidence and at each stage of the process.

Meetings

- 1 Are in private.
- 2 Neither the registrant nor the case presenter attend the meeting;
- 3 The Committee do not take any oral evidence
- 4 The panel makes its decisions based on the bundle of documentary evidence;
- 5 The bundle of documentary evidence will include the response(s) and written submissions of the registrant to the allegations.

There must be a hearing if³:

- 1 The registrant asks for a hearing or
- 2 The relevant Committee considers that a hearing is desirable.

Otherwise, the case can be considered at a meeting.

¹ Rule 10(1), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

² Rule 9(2)(b)/(d), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

³ Rule 10(2), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

Decision to deal with an allegation at a meeting

On the expiry of 28 days and subject to a registrant not requesting a hearing, the case is reviewed by a RLT lawyer who recommends whether the case is suitable for disposal at a meeting. In reaching their recommendations the lawyer will have considered and addressed the following matters:

- 3 The extent to which the registrant has made admissions to facts and/or impairment;
- 4 The extent to which the registrant has engaged with the proceedings;
- 5 Whether or not the registrant has been contactable;
- 6 The complexity of the case including the nature of the allegations/evidence and the size of the bundle of papers;
- 7 Whether or not the assistance of a case presenter is required in light of its complexity;
- 8 Whether or not the case raises a public interest issue that requires a hearing
- 9 Whether the interests of the registrant require the matter to be dealt with by way of a hearing.

The recommendation is then considered by a Chair of the CCC/HC who directs whether the case can be dealt with at a meeting or a hearing.

In light of the factors that have already been considered by the Chair of the CCC/HC in directing a meeting, it will be rare or exceptional for a Panel at a meeting to subsequently determine that the matter should be dealt with at a hearing in the absence of a change of circumstances.

The bundle of documents

The bundle is made up of:

- 1 CCC notice of substantive meeting
- 2 Charge
- 3 Statements and exhibits
- 4 Registrant's response to the IC notice of referral
- 5 Registrant's further response to the IC
- 6 Registrant's response to the CCC notice of referral

- 7 Registrant's further response to the CCC
- 8 Registrant's completed CCC case management form

The registrant receives a copy of the bundle when the NMC informs them of the date of the meeting.

Sanctions

All the sanctions available at a hearing remain available at a meeting including the power to impose an Interim Order to cover the appeal period of the substantive decision⁴. Panels should use the indicative sanctions guidance attached to this guide. All registrants receive a copy of the indicative sanctions guidance on referral to the Conduct and Competence Committee.

Orders and reasons are published on the NMC website in the usual way.

⁴ Rule 10(3), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

The guide

The fitness to practise rules do not set out any rules of procedure for how the panel should conduct the meeting other than to place an obligation on the panel to determine the procedure⁵.

The meeting is a private, closed meeting. The Chair and panel are supported by a panel secretary and a legal assessor.

Although hearings and pre-meetings are attended by a shorthand writer as there is a statutory obligation⁶ to record them, there is no such requirement for meetings.

The panel must give reasons for. As there is no shorthand writer in attendance, it is of critical importance that a full record is made of the panel's final decision:

- 1 It findings on facts
- 2 Its findings on impairment
- 3 Sanction, including the imposition of any interim order

The legal assessor

Will assist the panel by giving advice on questions of law or the appropriate procedure or approach the panel should take in its consideration of facts, impairment and sanction.

Any advice the legal assessor gives must be referenced in detail in the panel's final decision. The reference should be to both the advice given and to what extent the panel have accepted it and how they have used it to reach their decision. This is particularly critical as there is no record or transcript of the proceedings.

The panel secretary

Will assist the panel in drafting its reasons on any findings it makes in relation to facts, impairment, sanction and any interim order.

Identifying the registrant under consideration and the notice of the meeting

- 1 Announce the name and registration details of the registrant under consideration.
- 2 Confirm that the notice of meeting has been served in accordance with the rules⁷

⁵ Rule 10(4), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

⁶ Rule 27, The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

As the registrant does not have a right to attend a meeting there is no need to consider proceeding in absence.

Identifying the allegation

- 3 With reference to the notice of meeting identify the allegations.
- 4 Having identified the allegations the registrant is to answer, identify and take note of any responses that have been submitted.

Considering facts

- 5 If the registrant has admitted any facts, then announce those facts as being found proved.
- 6 Where there are facts that are not admitted the panel will go on to consider those facts and make findings.

The allegations and the supporting documentation have already been the subject of review by lawyers and considered by the Investigating Committee. Each allegation will be supported by the statements of witnesses and any exhibits referred to in the statements.

Therefore, even where the bundle of papers is extensive, the panel will in the ordinary course of its enquiry of the bundle be able to make the appropriate findings.

- 7 Regardless of whether or not any admissions are made to the facts, the Panel should also consider the evidence to establish the background or context in which the alleged failings, omissions or acts took place.
- 8 Announce its finding on facts including any relevant background,

The panel must give reasons for its findings on facts.

Considering impairment of fitness to practise and sanction

- 9 Note whether the registrant has admitted that their fitness to practise is impaired.
- 10 The issue of impairment is decided on the exercise of the panel's professional judgment. Any admission and/or comments on impairment can be taken into account by the panel but it must, nevertheless, make its own finding.
- 11 The panel must adopt a two stage process when considering allegations of misconduct and lack of competence: it should first determine if the facts found

⁷ Rule 11A and 34(3), The Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004

approved amount to misconduct/lack of competence and then determine if there is continuing impairment.

- 12 Impairment has been defined by the Council as the suitability to remain on the register without restriction. The panel are required to determine if there is *current impairment*.
- 13 The courts have set out guidance on how panels should approach the question of impairment. In considering the question of impairment the panel may find it assists to have in mind the following guidance:

“Do our findings of fact in respect of the doctor's [nurse's] misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
- b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
- c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
- d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.⁸”

- 14 In considering impairment the panel may consider any evidence of the following:
 - 14.1 Any re-training or evidence of clinical practice specifically related to the subject of the factual allegations.
 - 14.2 Evidence demonstrating a lack of remediation.
 - 14.3 Professional references addressing areas of practice relevant to the factual allegations.
- 15 Announce its findings on impairment.

The panel must give reasons for its findings on impairment.

- 16 Where the panel has found impairment it must go on to consider what if any sanction should be imposed.
- 17 Record that the panel will consider all the information in the bundle to make its decisions. In considering the sanction, the panel will also refer to the indicative sanctions guidance.

⁸ CHRE v Nursing and Midwifery Council, Paula Grant [2011] EWHC 927 Admin, para 76, citing Dame Janet Smith, 5th Report from Shipman.

18 Announce its finding on sanction.

The panel must give reasons for its findings on sanction.

Consideration of an interim order to cover the period of any appeal

- 19 A decision on sanction does not come into effect until 28 days after the notice of decision has been sent. If an appeal is lodged in that time, the sanction does not come into effect until the determination of the appeal.
- 20 Therefore, at this stage the panel **must always** consider whether it is appropriate to make an interim order to cover the appeal period and the outcome of any appeal. Any interim order imposed should be consistent with the substantive order.
- 21 The panel should seek the advice of the legal assessor on what they must consider before making an interim order;
- 22 Announce its decision on the interim order.

The panel must give reasons for its decision on the interim order.