

The Nursing and Midwifery Council (Fitness to Practise) Rules 2004 (SI 2004/1761)

Consolidated text

Effective from 6 February 2012

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Amended text is enclosed in [], a footnote identifies the amending legislation.

Text for an amendment, introduced by SI 2009/1182, which has yet to come into force, has been included for information. This is *italicised* and enclosed in { }, a footnote identifies the amending legislation and the date when it will come into force.

This text incorporates amendments made by:

- SI 2007/893 The Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2007
- SI 2008/3148 The Nursing and Midwifery Council (Midwifery and Practice Committees) (Constitution) Rules 2008
- SI 2009/1182 The Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009*
- SI 2012/17 The Nursing and Midwifery Council (Fitness to Practise) (Amendment) Rules 2011

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The Nursing and Midwifery Council (Fitness to Practise) Rules 2004

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The Nursing and Midwifery Council, in exercise of its powers under articles 22(4), 26(2), 26(3), 26(4), 30(9), 32, 33(4) and 47(2) of the Nursing and Midwifery Order 2001 and of all other powers enabling it in that behalf, and after consulting in accordance with article 47(3) of that Order, hereby makes the following Rules:

Part 1 Preliminaries

Citation and commencement

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

Interpretation

2. In these Rules—

“allegation” means any allegation of a kind mentioned in article 22(1)(a) or 22(1)(b) of the Order or any matter which is treated as an allegation by virtue of article 22(6) of the Order;

[. . .]¹

“the Code” means the code of professional conduct, which includes standards of conduct, performance and ethics, established by the Council under article 21(1)(a) of the Order;

“initial hearing” means the first substantive hearing of an allegation;

[“interim order” means an interim suspension order or an interim conditions of practice order;

“interim order notice” is the notice mentioned in rule 8(3);]²

“mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind;

“the Order” means the Nursing and Midwifery Order 2001;

“the presenter” means the representative of the Council presenting the case on its behalf (who may be a solicitor or Counsel);

“review hearing” means a hearing for the purpose of reviewing orders made by the Conduct and Competence Committee or the Health Committee; and

“restoration hearing” means a hearing to consider an application for restoration to the register.

¹ Omitted – SI 2008/3148, rule 12

² Inserted – SI 2012/17, rule 3

[“sanction” means either an order made by the Investigating Committee under article 26(7) of the Order or an order made by the Health or Conduct and Competence Committee under article 29(5) of the Order]³

Part 2 Investigating Committee

Notice provisions

3.—(1) The Investigating Committee shall, in accordance with article 26(2)(a) of the Order, notify the registrant of any allegation referred to it, by serving a notice of referral upon her.

[(2) The notice of referral shall—

- (a) be accompanied by any documents relating to the allegation that have not previously been disclosed to the registrant by the Council or a Practice Committee;
- (b) invite the registrant to make written representations, to be received by the Council no later than 28 days after the date of the notice;
- (c) unless the allegation is made by virtue of article 22(6) of the Order, inform the registrant that any representations or extracts of any representations received from her may be shown to the person making the allegation for comment; and
- (d) inform the registrant that further information may be sought from other persons in accordance with article 25(1) of the Order or investigations undertaken to assist the Investigating Committee in carrying out its functions.

] ⁴

Procedure of the Investigating Committee where the allegation relates to impairment of fitness to practise

4.—(1) The Investigating Committee shall meet in private to consider an allegation of a kind referred to in article 22(1)(a) of the Order.

(2) Before deciding whether or not there is a case to answer in respect of such an allegation, the Investigating Committee—

- [(a) shall send to the registrant any information or documents obtained by a person authorised by the Council under article 25(1) of the Order, or by the Committee under article 26(2)(c) of the Order;

³ Inserted – SI 2007/893, rule 3(1)

⁴ Substituted – SI 2012/17, rule 4

- (aa) shall invite the registrant to make written representations, to be received by the Committee no later than 28 days after the date of sending of the information or documents mentioned in sub-paragraph (a);
- (ab) shall inform the registrant that any representations received from her may be shown to the maker of the allegation for comment;]⁵
- (b) may, in the case of an allegation of lack of competence, invite the registrant to submit to an assessment; and
- (c) may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of her physical or mental health, invite her to submit to medical examination by experts appointed by the Council.

(3) The Investigating Committee may adjourn its consideration of such an allegation until such time as any further information has been obtained, or where the registrant has undertaken an assessment or medical examination, a report on her has been prepared.

Procedure of the Investigating Committee where the allegation relates to a fraudulent or incorrect entry in the register

5.—(1) The Investigating Committee shall meet in private for the initial consideration of an allegation of a kind referred to in article 22(1)(b) of the Order.

(2) Before deciding whether or not there is a case to answer in respect of such an allegation, the Investigating Committee shall send any information or documents obtained pursuant to article 26(2)(c) of the Order to the registrant for comment, and shall consider any comments subsequently received from her.

(3) The Registrar may, and at the direction of the Investigating Committee shall, be a party to any proceedings.

(4) The Investigating Committee may adjourn its consideration of such an allegation at any time.

(5) Where the Investigating Committee considers that there is a case to answer, it shall notify the registrant and require her to inform the Investigating Committee, no later than 28 days after service of the notification, if she wishes the allegation to be considered at a hearing.

(6) Where—

- (a) the registrant asks for a hearing within the period specified in paragraph (5); or
- (b) the Investigating Committee considers that a hearing is desirable,

⁵ Substituted – SI 2012/17, rule 5

the Investigating Committee shall refer the allegation to a differently constituted Investigating Committee for a hearing.

(7) The Council shall give notice of the referral to the Investigating Committee to the following—

- (a) where known, the employer of the registrant or any other person with whom she has an arrangement to provide professional services;
- (b) where known, any other body by which the registrant is authorised to practise a health or social care profession;
- (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland; and
- (d) where the registrant is a practising midwife, her local supervising authority.

(8) Where a hearing is to be held pursuant to paragraph (6), the Investigating Committee shall send a notice of hearing to the registrant no later than 28 days before the date fixed for the hearing.

(9) The notice of hearing shall—

- (a) inform the registrant of the date, time and venue of the hearing;
- (b) contain a charge particularising the allegation, and the alleged facts upon which the allegation is based;
- (c) inform the registrant of her right to attend, and to be represented at, the hearing in accordance with rule 20;
- (d) inform the registrant of the Committee's power to proceed with the hearing in her absence;
- (e) inform the registrant of her right to adduce evidence in accordance with rule 31;
- (f) inform the registrant of her right to call witnesses, and to cross examine any witnesses called by the Council or by the Committee;
- (g) require the registrant to inform the Council, within 14 days receipt of the notice, whether she intends to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing;

- (h) [. . .]⁶
- (i) inform the registrant of the Committee's power to impose an interim order under article 26(11) of the Order; and
- (j) inform the registrant of the action the Committee may take under article 26(2)(d)(ii), (7) and (8) of the Order.

(10) Where a hearing is to be held pursuant to paragraph (6), the differently constituted Investigating Committee—

- (a) may hold a preliminary meeting in accordance with rule 18; and
- (b) shall determine the matter in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

(11) Where the registrant has not requested a hearing, and the Investigating Committee considers that no hearing is necessary, it shall—

- (a) invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct; and
- (b) meet in private and, notwithstanding the absence of any representations invited in accordance with sub-paragraph (a), dispose of the matter in accordance with article 26(2)(d)(ii), (7), (8) and (11) of the Order.

Notice of decision

6.—(1) The notice of the Investigating Committee's decision to be sent under article 26(5) of the Order shall be sent without delay.

(2) Where the Investigating Committee has decided that there is no case to answer, the notice of decision [shall inform the registrant]⁷ that the allegation may be taken into account in the consideration of any further allegation about her, received by the Council within three years from the date of service of the notice.

Reconsideration of allegation after a finding of no case to answer

7.—(1) This rule applies where—

- (a) the Investigating Committee has considered an allegation that the registrant's fitness to practise is impaired and decided that there is no case to answer in respect of that allegation; and

⁶ Omitted – SI 2012/17, rule 6

⁷ Substituted – SI 2012/17, rule 7

- (b) at any time within three years from service of the notice of decision, the Council receives a fresh allegation about the registrant.
- (2) Where this rule applies, the Investigating Committee may—
- (a) when considering whether or not there is a case to answer in respect of a fresh allegation, take account of the original allegation; and
 - (b) may refer both the original allegation and the new allegation to the Conduct and Competence Committee or Health Committee.

Part 3 Interim Orders

Notice and procedure

8.— [(1) Subject to paragraphs (2) and (6), following referral by the Council under article 22(5), no interim order may be made, varied, replaced or, in a case where article 31(5)(b) of the Order applies, confirmed by a Practice Committee unless it is satisfied that an interim order notice has been served by the Council.

(2) No interim order notice shall be required where a Practice Committee has served notice in accordance with rule 5(8) and (9), 11 or 11A has made an order under article 26(7) or 29(5)(a) to (c) of the Order and subsequently proposes to make an interim order under article 31(1)(b) or (c).]⁸

(3) The interim order notice shall—

- (a) invite the registrant to attend a hearing before the Practice Committee;
- (b) invite the registrant, in the event that she does not wish to attend the hearing, to submit written representations to the Practice Committee before the date of the hearing;
- (c) contain the matters set out in rule [5(9)(a) and (c) to (f)]⁹; and
- (d) state the reasons why an interim order may be necessary for the protection of members of the public, or is otherwise in the public interest, or is in the interest of the registrant.

(4) The interim order notice shall be served on the registrant in such time in advance of the hearing as may be reasonable in all the circumstances of the case.

(5) [. . .]¹⁰

⁸ Substituted – SI 2012/17, rule 8(a)

⁹ Substituted – SI 2012/17, rule 8(b)

¹⁰ Omitted – SI 2012/17, rule 8(c)

[(6) The Practice Committee may make an interim order notwithstanding the absence of the registrant or the absence of any written representations from the registrant on whether or not an interim order should be made, if the Committee is satisfied that—

- (a) all reasonable efforts have been made, in accordance with these Rules, to serve the registrant with the interim order notice,
- (b) in the case that no interim order notice has been served in accordance with paragraph (2), that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of meeting or hearing under rule 11 or rule 11A; or
- (c) the registrant has informed the Council that she does not wish to appear and be heard on the question whether an interim order should be made.

(7) In paragraph (6), reference to the Practice Committee making an interim order includes reference to that Committee revoking, varying, confirming or replacing an interim order in accordance with article 31(7) of the Order.]¹¹

Part 4

Conduct and Competence Committee and Health Committee

Action upon referral of an allegation

9.— [(1) Upon referral of an allegation to the Conduct and Competence Committee or to the Health Committee, that Committee shall notify the registrant of the allegation by serving a notice of referral upon her.]¹²

(2) The notice of referral shall—

- [(a) be accompanied by any documents relating to the allegation that have not previously been disclosed to the registrant by the Council or a Practice Committee;]¹³
- (b) invite the registrant to submit written representations to the Conduct and Competence Committee or the Health Committee and inform her that any such representations must be sent to the Committee no later than 28 days after service of the notice;
- (c) inform the registrant that any representations received from her may be shown to the maker of the allegation, for comment; [. . .]¹⁴

¹¹ Substituted – SI 2012/17, rule 8(d)

¹² Substituted – SI 2012/17, rule 9(a)

¹³ Substituted – SI 2012/17, rule 9(b)(i)

¹⁴ Omitted – SI 2012/17, rule 9(b)(ii)

- (d) require the registrant to inform the Committee no later than 28 days after service of the notice, if she would like the allegation to be considered at a hearing;
 - [(e) inform the registrant that further information or documents may be sought from other persons in accordance with article 25(1) of the Order to assist the Committee in carrying out its functions; and
 - (f) inform the registrant of the Committee's power to make an interim order under article 31(1)(c) of the Order, and require the registrant to confirm, no later than 28 days after service of the notice, whether she wishes to appear and be heard on the question whether such an order should be made]¹⁵.
- (3) The Council shall give notice of the referral to—
- (a) where known, the employer of the registrant or any other person with whom she has an arrangement to provide professional services;
 - (b) where known, any other body by which the registrant is authorised to practise a health or social care profession;
 - (c) the Secretary of State, the Scottish Ministers, the National Assembly for Wales and the Department of Health, Social Services and Public Safety in Northern Ireland; and
 - (d) where the registrant is a practising midwife, her local supervising authority.
- (4) Upon referral of an allegation to the Conduct and Competence Committee or the Health Committee—
- (a) in the case of an allegation of lack of competence, the Conduct and Competence Committee, may invite the registrant to submit to assessment; and
 - (b) in the case of an allegation that the practitioner's fitness to practise is impaired by reason of physical or mental health, the Health Committee may invite the registrant to submit to medical examination by a registered medical practitioner nominated by the Council.
- (5) Where any written representations are made to the Conduct and Competence Committee or the Health Committee under paragraph (2)(b), that Committee—
- (a) may, if it sees fit, send a notice to the maker of the allegation—
 - (i) notifying her of such representations,
 - (ii) inviting her to deal with any points raised by the Committee in respect of those representations, and

¹⁵ Inserted – SI 2012/17, rule 9(b)(iii)

- (iii) requiring her to send any response to the Committee no later than 28 days after service of the notice upon her; and
- (b) shall take into account all representations received before making its decision in respect of the allegation.

Meetings and hearings

10.—(1) Where the Conduct and Competence Committee or Health Committee is to—

- (a) consider an allegation that a registrant's fitness to practise is impaired;
- (b) review any order previously made by it; or
- (c) consider an application for restoration to the register,

it shall decide whether to hold a hearing in accordance with paragraph (2).

(2) The Conduct and Competence Committee or Health Committee shall hold a hearing where—

- (a) the registrant asks for a hearing within the period specified in rule 9(2)(d); or
- (b) the Committee considers that a hearing would be desirable.

(3) Where no hearing is to be held, the Conduct and Competence Committee or the Health Committee shall—

- (a) consider an allegation that the registrant's fitness to practise is impaired;
- (b) review any order previously made by it; or
- (c) consider an application for restoration to the register,

[and may consider whether to make, vary, replace, revoke or confirm an interim order at a meeting.

(4) The Conduct and Competence Committee or the Health Committee shall determine the procedure to be employed at any meeting before it **]**¹⁶.

Notice of hearing

11.—(1) Where a hearing is to be held in accordance with rule 10(2), the Conduct and Competence Committee or Health Committee shall send a notice of hearing to the registrant.

(2) The notice of hearing shall be sent to the registrant—

¹⁶ Substituted – SI 2012/17, rule 10

- (a) where a preliminary meeting has been held in accordance with rule 18, as soon as practicable after that meeting; and
 - (b) in every case, no later than 28 days before the date fixed for the hearing.
- (3) The notice of hearing shall—
- (a) inform the registrant of the date, time and venue of the hearing;
 - [(b) where the Committee is to consider an allegation at an initial hearing, contain a charge particularising the allegation, which shall set out any alleged facts on which it is based, and be accompanied by copies of any documents in support that have not previously been disclosed to the registrant by the Council or a Practice Committee;]¹⁷
 - (c) where the Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee's reasons for making that order;
 - (d) inform the registrant of her right to attend, and to be represented at, the hearing in accordance with rule 20;
 - (e) inform the registrant of the Committee's power to proceed with the hearing in her absence;
 - (f) inform the registrant of her right to adduce evidence in accordance with rule 31;
 - (g) inform the registrant of her right to call witnesses, and to cross examine any witnesses called by the Council or by the Committee;
 - (h) require the registrant to inform the Council, within 14 days of receipt of the notice, whether she intends to—
 - (i) attend the hearing,
 - (ii) be represented at the hearing;
 - (i) [. . .]¹⁸
 - (j) inform the registrant of the Committee's power to make an interim order under article 31(2) of the Order;
 - (k) where the Committee is to consider an allegation at an initial hearing, inform the registrant of the action the Committee may take under article 29 of the Order;

¹⁷ Substituted – SI 2012/17, rule 11(a)

¹⁸ Omitted – SI 2012/17, rule 11(b)

- [(l) where the Committee is to consider an allegation at an initial hearing, invite the registrant to state in writing, no later than 28 days after service of the notice, whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Committee; and]¹⁹
- (m) where the allegation, previous order or application for restoration is to be considered by the Health Committee, invite the registrant to inform the Committee if she wishes the hearing to be conducted in public.

[Notice of meeting

11A.—(1) Where a meeting is to be held in accordance with rule 10(3), the Conduct and Competence Committee or the Health Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held.

(2) The notice of meeting shall—

- (a) contain a charge particularising the allegation, which shall set out any alleged facts on which it is based, and be accompanied by copies of any documents in support that have not previously been disclosed to the registrant by the Council or a Practice Committee;
- (b) where the Committee is to review an order previously made or consider an application for restoration to the register, contain a copy of the order or striking-off order previously made, and the Committee's reasons for making that order;
- (c) inform the registrant of the Committee's power to make an interim order under article 31(2) of the Order;
- (d) inform the registrant of the action the Committee may take under article 29 or 30 of the Order, as applicable; and
- (e) invite the registrant to state in writing, no later than 28 days after service of the notice, whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Committee.]²⁰

Procedure of the Conduct and Competence Committee and the Health Committee

12.—(1) When considering any allegation referred to it at a hearing, the Conduct and Competence Committee or the Health Committee shall act in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the allegation in accordance with articles 22(4) and 29(4) to (8) of the Order.

¹⁹ Substituted – SI 2012/17, rule 11(c)

²⁰ Inserted – SI 2012/17, rule 12

(2) When reviewing an order made by it at a previous hearing, or considering an application for restoration to the register, the Conduct and Competence Committee shall act in accordance with the procedure set out in Part 5 of these Rules, and shall dispose of the matter in accordance with article 30 or 33(5) to (7) of the Order.

Notice of decision

13.—(1) As soon as practicable after the conclusion of [the meeting or hearing] ²¹, the Conduct and Competence Committee or the Health Committee, shall give notice of its decision to—

- (a) the registrant; and
- (b) the maker of the allegation (if any).

(2) The notice of decision shall—

- (a) set out the decision of the Committee;
- (b) set out the reasons for the Committee's decision; and
- (c) inform the registrant of her rights of appeal under article 38 of the Order.

Referral of allegation from the Conduct and Competence Committee to the Health Committee

14.—(1) Where an allegation is being considered by the Conduct and Competence Committee and—

- (a) at a preliminary meeting held in accordance with rule 18;
- (b) at the commencement of [the meeting or hearing] ²² of the allegation by the Committee; or
- (c) during the course of [the meeting or hearing] ²³ of the allegation by the Committee,

it appears that the allegation would be better dealt with by the Health Committee, the Conduct and Competence Committee may refer the allegation to the Health Committee and shall suspend its consideration of the allegation.

(2) The Conduct and Competence Committee shall not transfer an allegation to the Health Committee unless it is satisfied that, if the registrant's fitness to practise were found to be impaired, it would not make a striking-off order.

²¹ Substituted – SI 2012/17, rule 13

²² Substituted – SI 2012/17, rule 13

²³ Substituted – SI 2012/17, rule 13

(3) Where—

- (a) the Conduct and Competence Committee refers an allegation to the Health Committee under paragraph (1); and
- (b) the Health Committee certifies to the Conduct and Competence Committee that the registrant's fitness to practise is not impaired by reason of her physical or mental health,

the Conduct and Competence Committee shall resume its consideration of the allegation.

(4) Where—

- (a) the Conduct and Competence Committee refers an allegation to the Health Committee under paragraph (1); and
- (b) the Health Committee certifies that the registrant's fitness to practise is impaired by reason of her physical or mental health,

the Conduct and Competence Committee shall have no further function in relation to the allegation.

Referral of allegation from the Health Committee to the Conduct and Competence Committee

15.—(1) Where an allegation is being considered by the Health Committee and—

- (a) at a preliminary meeting held in accordance with rule 18;
- (b) at the commencement of [the meeting or hearing]²⁴ of the allegation by the Committee; or
- (c) during the course of [the meeting or hearing]²⁵ of the allegation by the Committee,

it appears that the allegation would be better dealt with by the Conduct and Competence Committee, the Health Committee may refer the allegation to the Conduct and Competence Committee, and shall suspend its consideration of the allegation.

(2) Where—

- (a) the Health Committee refers an allegation to the Conduct and Competence Committee under paragraph (1); and

²⁴ Substituted – SI 2012/17, rule 13

²⁵ Substituted – SI 2012/17, rule 13

- (b) the Conduct and Competence Committee determines, after the close of the Council's case, that the allegation is not well founded, or that the allegation has not been proved to the requisite standard,

the Health Committee may resume its consideration of the allegation.

(3) Subject to paragraph (2), where—

- (a) the Health Committee refers an allegation to the Conduct and Competence Committee under paragraph (1); and
- (b) the Conduct and Competence Committee—
 - (i) makes an order in accordance with article 29(5) of the Order, or
 - (ii) determines that the registrant's fitness to practise is not impaired,

the Health Committee shall have no further function in relation to the allegation.

Part 5

Procedure at hearings

Application of Part 5

16. This part shall apply to—

- (a) the Investigating Committee, when considering [at a hearing]²⁶ —
 - (i) an allegation which relates to a fraudulent or incorrect entry in the register [. . .]²⁷, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order; and
- (b) the Conduct and Competence Committee or the Health Committee when considering [at a hearing]²⁸ —
 - (i) an allegation that the registrant's fitness to practise is impaired [. . .]²⁹,
 - (ii) whether to make, revoke, confirm, vary or replace an interim order,
 - (iii) an order previously made by it, at a review hearing, or
 - (iv) an application for restoration to the register.

²⁶ Inserted – SI 2012/17, rule 14(a)

²⁷ Omitted – SI 2012/17, rule 14(b)

²⁸ Inserted – SI 2012/17, rule 14(a)

²⁹ Omitted – SI 2012/17, rule 14(b)

Interpretation

17. In this part, “Committee” means—

- (a) the Investigating Committee considering an allegation which relates to a fraudulent or incorrect entry in the register, or considering whether to make, revoke, confirm, vary or replace an interim order;
- (b) the Conduct and Competence Committee; or
- (c) the Health Committee.

Preliminary meetings

18.—(1) Before any allegation is considered by a Committee at a hearing in accordance with the provisions of this Part, that Committee or the Chair of the Committee may hold a preliminary meeting if such a meeting would, in its or her opinion, assist the Committee to perform its functions.

(2) A preliminary meeting referred to in paragraph (1) shall be—

- (a) chaired by the Chair of the Committee considering the allegation;
- (b) held with a legal assessor in attendance; and
- (c) held in private with the parties, their representatives and any person the Chair or Committee considers appropriate.

(3) The Chair of the preliminary meeting may give the directions mentioned in article 32(3) of the Order.

(4) The Chair of the preliminary meeting shall give the parties not less than 14 days notice of any preliminary meeting.

(5) Directions given by the Chair of the preliminary meeting may include, but shall not be limited to—

- (a) time limits for the service of evidence and disclosure of expert evidence (if any);
- (b) a requirement that each party provide an estimate as to the length of the hearing and any dates on which they or any witnesses would not be able to attend the hearing;
- (c) where facts are not in dispute, or the issue of misconduct is admitted, a requirement that the parties produce a statement of agreed facts;
- (d) save in the case of an allegation of a kind referred to in article 22(1)(a)(iv) of the Order, a requirement that the parties state whether or not the health of the practitioner will be raised as an issue in the proceedings, and if so,

whether, in their view, medical reports should be obtained and the case considered by the Health Committee;

- (e) a requirement that a party call the author of any expert report;
- (f) where agreed between the parties, a direction that the witness statement of a witness shall stand as the evidence in chief of that witness;
- (g) where the Committee is considering—
 - (i) an allegation that the registrant's fitness to practise is impaired by reason of her physical or mental health, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order,whether the proceedings should be held in public or private;
- (h) special measures to be put in place at the hearing for vulnerable witnesses; and
- (i) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held.

(6) At the preliminary meeting, the legal assessor may give a preliminary opinion for the purpose of resolving questions of law or admissibility of evidence.

(7) Notwithstanding paragraph (6), decisions as to whether or not any evidence is to be admitted at the hearing shall be taken by the Committee considering the allegation.

(8) The Chair of the preliminary meeting shall keep a record of the directions given and shall send written confirmation of such directions to the parties promptly.

Public and private hearings

19.—(1) Subject to paragraphs (2) and (3) below, hearings shall be conducted in public.

(2) A hearing before the Health Committee shall be conducted in private unless the Committee is satisfied—

- (a) having given the parties, and any third party from whom the Health Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) having obtained the advice of the legal assessor,

that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant, and require all or part of the hearing to be held in public.

(3) Hearings other than those referred to in paragraph (2) above may be held, wholly or partly, in private if the Committee is satisfied—

- (a) having given the parties, and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) having obtained the advice of the legal assessor,

that this is justified (and outweighs any prejudice) by the interests of any party or of any third party (including a complainant, witness or patient) or by the public interest.

(4) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

Representation and entitlement to be heard

20.—(1) The presenter and the registrant shall be entitled to be heard by the Committee.

(2) The registrant may be represented by—

- (a) solicitor or Counsel;
- (b) a representative from her professional body or trade union; or
- (c) subject to paragraph (4), any other person.

(3) Where the registrant is not represented, she may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without its permission.

(4) A person who represents or accompanies the registrant shall not be called as a witness at the hearing.

(5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.

Absence of the practitioner

21.—(1) This rule shall not apply to hearings at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Where the registrant fails to attend and is not represented at the hearing, the Committee—

- (a) shall require the presenter to adduce evidence that all reasonable efforts have been made, in accordance with these Rules, to serve the notice of hearing on the registrant;

- (b) may, where the Committee is satisfied that the notice of hearing has been duly served, direct that the allegation should be heard and determined notwithstanding the absence of the registrant; or
- (c) may adjourn the hearing and issue directions.

Witnesses

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

(2) The Committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public.

(3) Witnesses—

- (a) shall first be examined by the party calling them;
- (b) subject to rule 23(4) and (5), may then be cross examined by the opposing party;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by the Committee.

(4) Any further questioning of the witnesses shall be at the discretion of the Committee.

(5) The Committee may of its own motion require a person to attend the hearing to give evidence, or to produce relevant documents.

(6) No witness as to fact may observe the proceedings until she has given evidence or been formally released by the Committee.

Vulnerable witnesses

23.—(1) In proceedings before the Conduct and Competence Committee or the Health Committee, the following may be treated as vulnerable witnesses—

- (a) any witness under the age of 18;
- (b) any witness with a mental disorder;
- (c) any witness who is significantly impaired in relation to intelligence or social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim; or

(f) any witness who complains of intimidation.

(2) After seeking the advice of the legal assessor, and upon hearing representations from the parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.

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

(a) use of video links;

(b) subject to paragraph (4), 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;

(c) use of interpreters (including signers and translators); and

(d) the hearing of evidence by the Committee in private.

(4) Where—

(a) the allegation against a registrant is sexual in nature;

(b) a witness is the alleged victim; and

(c) the registrant is not represented,

she shall not be allowed to cross-examine the witness directly in person.

(5) In the circumstances set out in paragraph (4), any questioning of the witness shall be undertaken by such person as the Committee considers appropriate.

(6) In this rule, “in private” means conducted in the presence of every party and any person representing a party, but otherwise excluding the public.

[Order of proceedings at initial hearing

24.—(1) Unless the Committee determines otherwise, the initial hearing of an allegation shall be conducted in the following stages—

(a) the preliminary stage (paragraphs (2)-(5));

(b) the factual stage (paragraphs (6)-(11));

(c) where the allegation is of a kind referred to in article 22(1)(a) of the Order, the impairment stage (paragraph (12));

(d) the sanction stage (paragraphs (13) and (14)).

(2) The Chair shall—

- (a) ask the registrant (if present) to confirm her name and personal identification number;
 - (b) ask for the charge to be read out; and
 - (c) ask whether the registrant wishes to make an objection to the charge on a point of law.
- (3) Where the registrant makes an objection to the charge the Committee—
- (a) may hear representations from the parties (if present);
 - (b) shall deliberate in private and announce its decision to those parties present as to whether it will uphold the objection; and
 - (c) shall give reasons for its decision.
- (4) Once any objections to the charge have been considered, the Chair shall enquire whether the registrant wishes to make any admissions—
- (a) as to the alleged facts; and
 - (b) where the allegation is of a kind referred to in article 22(1)(a) of the Order, as to whether her fitness to practise is impaired.
- (5) Where facts have been admitted by the registrant, the Chair shall announce that such facts have been found proved.
- (6) The presenter shall open the Council's case and may present evidence in support of any alleged facts in the allegation, including those admitted by the registrant.
- (7) Except where all the facts have been admitted and found proved under paragraph (5), at the close of the Council's case, and—
- (i) either upon the application of the registrant, or
 - (ii) of its own volition,

the Committee may hear submissions from the parties as to whether sufficient evidence has been presented to find the facts proved and shall make a determination as to whether the registrant has a case to answer.

- (8) Where an allegation is of a kind referred to in article 22(1)(a) of the Order, the Committee may decide,—
- (i) either upon the application of the registrant, or
 - (ii) of its own volition,

to hear submissions from the parties as to whether sufficient evidence has been presented to support a finding of impairment, and shall make a determination as to whether the registrant has a case to answer as to her alleged impairment.

(9) Unless the Committee has determined that there is no case to answer under paragraphs (7) or (8), the registrant may present her case to the Committee and present evidence in support of her case.

(10) The Committee may hear final argument from the parties.

(11) The Committee shall deliberate in private in order to make its findings on the facts and then shall announce to those parties present the findings it has made.

(12) Where the allegation is of a kind referred to in article 22(1)(a) of the Order, notwithstanding any admissions made for the purposes of paragraph (4)(b), the Committee shall—

- (a) invite representations and may hear evidence from the parties as to whether the registrant's fitness to practise is impaired;
- (b) deliberate in private; and
- (c) then announce its decision to those parties present as to whether the registrant's fitness to practise is impaired and give reasons for its decision.

(13) When making its decision on sanction the Committee—

- (a) may invite any person who, in its opinion, has an interest in the proceedings to submit written representations within such time as the Committee may direct;
- (b) shall invite representations from the parties as to any relevant factors which may affect the Committee's decision on the sanction, if any, to be imposed;
- (c) where the allegation is of a kind referred to in article 22(1)(a) of the Order, may hear evidence from the parties as to any previous history or mitigating circumstances or other relevant factors which may affect the Committee's decision on the sanction, if any, to be imposed;
- (d) shall deliberate in private; and
- (e) then announce its decision on sanction to those parties present and give reasons for its decision.

(14) Where the Committee considers that it may be appropriate to make an interim order pending the outcome of any appeal following its decision on sanction, it shall—

- (a) invite representation from the parties on whether or not an interim order should be made;

- (b) take any representations received into account before deciding whether or not to make an interim order;
- (c) deliberate in private; and
- (d) then announce its decision to those parties present and give reasons for its decision.]³⁰

Order of proceedings at a review or restoration hearing

25.—(1) This rule shall not apply to an interim orders hearing.

(2) Unless the Committee determines otherwise, the order of proceedings at a review hearing or a restoration hearing shall be as follows—

- (a) the presenter shall—
 - (i) inform the Committee of the background to the case, and the sanctions previously imposed on the registrant, and
 - (ii) direct the attention of the Committee to any relevant evidence including transcripts of previous hearings;
- (b) the registrant may adduce any relevant evidence on which she intends to rely;
- (c) the Committee shall deliberate in private and shall dispose of the case in accordance with article 30 or 33(5) to (7) of the Order; and
- (d) the Committee shall give reasons for its decision.

Order of proceedings at an interim orders hearing

26.—(1) Except where [rule 24(14)]³¹ applies, this rule shall apply to any hearing at which the Committee is considering whether to make, revoke, confirm, vary or replace an interim order.

(2) Unless the Committee determines otherwise, the order of proceedings at an interim orders hearing shall be as follows—

- (a) the presenter shall inform the Committee of the reasons why it may be necessary to make an interim order on the registrant, or to revoke, confirm, vary or replace any order previously made, and may adduce any relevant evidence in this regard;
- (b) the registrant may make representations as to why an interim order should not be made, or should be revoked or not confirmed, varied or replaced, and

³⁰ Substituted – SI 2007/893, rule 3(2)

³¹ Substituted – SI 2007/893, rule 3(3)

may adduce any relevant evidence, including oral testimony, in support of her case; and

- (c) the Committee shall deliberate in private and shall then announce its decision, together with the reasons for its decision, in the presence of the parties (where present).

Notes and transcript of proceedings

27.—(1) The Council shall arrange for all hearings and preliminary meetings held by a Practice Committee, to be recorded in writing or electronic form.

(2) Any party to the proceedings shall, on application to the Council, be furnished with a transcript of the record of any part of the hearing or preliminary meeting at which she was entitled to be present.

(3) Paragraphs (1) and (2) shall not apply to the private deliberations of any Practice Committee.

[Initial hearings commenced before but not concluded by 5th May 2007

27A. Where, prior to 5th May 2007—

- (a) the initial hearing of an allegation has commenced; and
- (b) the charge has been read out,

then rule 24 shall continue to apply as in force immediately before 5th May 2007 for the purposes of that initial hearing.]³²

Part 6 General

Amendment of the charge

28.—(1) At any stage before making its findings of fact, in accordance with [rule 24(5) or (11)]³³, the Investigating Committee (where the allegation relates to a fraudulent or incorrect entry in the register) [, the Health Committee]³⁴ or the Conduct and Competence Committee, may amend—

- (a) the charge set out in the notice of hearing; or
- (b) the facts set out in the charge, on which the allegation is based,

unless, having regard to the merits of the case and the fairness of the proceedings, the required amendment cannot be made without injustice.

³² Inserted – SI 2007/893, rule 3(4)

³³ Substituted – SI 2007/893, rule 3(5)

³⁴ Inserted – SI 2012/17, rule 15

(2) Before making any amendment under paragraph (1), the Committee shall consider any representations from the parties on this issue.

Joinder

29.—(1) Unless of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal assessor, the Conduct and Competence Committee may consider an allegation against two or more registrants at the same hearing where—

- (a) the allegation against each registrant arises out of the same circumstances;
or
- (b) in the view of the Committee, a joint hearing is necessary.

(2) The Conduct and Competence Committee may consider one or more categories of allegation against a registrant provided always that an allegation relating to a conviction or caution is heard after any allegation of misconduct has been heard and determined.

(3) Where—

- (a) an allegation has been referred to the Conduct and Competence Committee;
- (b) that allegation has not yet been heard; and
- (c) a new allegation which is of a similar kind or is founded on the same facts is received by the Council,

that Committee may consider the new allegation at the same time as the original allegation, notwithstanding that such new allegation has not been included in the notice of hearing.

(4) Where it is proposed that a new allegation should be heard by the Conduct and Competence Committee, it shall—

- (a) inform the registrant of the new allegation, and the alleged facts on which is based; and
- (b) afford her the opportunity to make written representations on the new allegation and require any such representations to be received within 28 days of notification of the new allegations or within such period of time as is otherwise agreed by the parties.

Burden of proof

30. Where facts relating to an allegation are in dispute, the burden of proving such facts shall rest on the Council.

Evidence

31.—(1) Upon receiving the advice of the legal assessor, and subject only to the requirements of relevance and fairness, a Practice Committee considering an allegation may admit oral, documentary or other evidence, whether or not such evidence would be admissible in civil proceedings (in the appropriate Court in that part of the United Kingdom in which the hearing takes place).

(2) Where a registrant has been convicted of a criminal offence—

- (a) a copy of the certificate of conviction, certified by a competent officer of a Court in the United Kingdom (or, in Scotland, an extract conviction) shall be conclusive proof of the conviction; and
- (b) the findings of fact upon which the conviction is based shall be admissible as proof of those facts.

(3) The only evidence which may be adduced by the registrant in rebuttal of a conviction certified or extracted in accordance with paragraph (2)(a) is evidence for the purpose of proving that she is not the person referred to in the certificate or extract.

{ (3A) *Where it is alleged that a registrant has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007) by the Independent Barring Board—*

- (a) *information provided by the Secretary of State under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the registrant can prove that they are not the person referred to in the information provided; and*
- (b) *a document from the Board, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made by the Board that led to that inclusion shall be conclusive proof of the facts found proved by the Board.*

(3B) *Where it is alleged that the Scottish Ministers have included a registrant in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007)—*

- (a) *information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to that inclusion shall be conclusive proof of that inclusion, unless the registrant can prove that they are not the person referred to in the information provided; and*
- (b) *a document from the Scottish Ministers, authenticated in whatever way the Council may approve, that provides a statement of the findings of fact made*

by the Scottish Ministers that led to that inclusion shall be conclusive proof of the facts found proved by the Scottish Ministers. } ³⁵

(4) A certificate as to a determination about a registrant's fitness to practise made by—

- (a) a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession; or
- (b) a licensing body elsewhere,

signed by an officer authorised by the body to sign such certificates shall be admissible as prima facie evidence of the facts referred to in the determination.

(5) In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the Health Committee may take into account, amongst other matters—

- (a) a refusal by the registrant to submit to medical examination;
- (b) the registrant's current physical or mental condition;
- (c) any continuing or episodic condition suffered by the registrant; and
- (d) a condition suffered by the registrant which, although currently in remission, may be expected to cause a recurrence of the impairment of the practitioner's fitness to practise.

(6) In determining whether a registrant's fitness to practise is impaired by reason of lack of competence, the Conduct and Competence Committee may take into account any refusal by the registrant to submit to an assessment.

(7) Where the Conduct and Competence Committee finds that a registrant has failed to comply with the standards established by the Council under article 21(1)(a) of the Order and set out in the Code, such failure—

- (a) may be taken into account by the Committee in determining whether or not that registrant's fitness to practise is impaired; and
- (b) shall not, of itself, be taken to establish that the registrant's fitness to practise is impaired.

(8) Where a party has—

- (a) failed to comply with any directions for service of evidence given at a preliminary meeting under rule 18, including service of expert reports;

³⁵ Inserted – SI 2009/1182, schedule 4, part 2, paragraph 22. Comes into force on the coming into force of section 44(1) of the Safeguarding Vulnerable Groups Act 2006.

- (b) shown no good cause for failure to comply with the directions given; and
- (c) seeks to adduce such evidence at the hearing,

a Practice Committee may refuse to allow that party to admit the evidence in question.

Postponements and adjournments

32.—(1) The Chair of the Practice Committee may, of her own motion, or upon the application of a party, postpone any hearing of which notice has been given under these Rules before the hearing begins.

(2) A Practice Committee considering an allegation may, of its own motion or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision is made after hearing representations from the parties (where present) and taking advice from the legal assessor.

(3) Where the proceedings have been adjourned, the Practice Committee shall, as soon as practicable, notify the parties of the date, time and venue of the resumed hearing.

(4) In considering whether or not to grant a request for postponement or adjournment, the Chair or Practice Committee shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the case;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
- (c) fairness to the registrant.

(5) [Save where the proceedings relate to the consideration of an interim order, before adjourning the proceedings]³⁶, the Practice Committee shall consider whether or not to make an interim order and shall—

- (a) invite representations from the parties (where present) on this issue;
- (b) deliberate in private;
- (c) announce its decision in the presence of the parties (where present);
- (d) give reasons for its decision; and
- (e) notify the registrant of its decision in accordance with article 31(14) of the Order.

³⁶ Substituted – SI 2012/17, rule 16

Cancellation of hearing

33.—(1) Where—

- (a) an allegation has been referred to a Practice Committee for consideration at a hearing; and
- (b) the presenter considers that, on the evidence available, the hearing should not be held,

the presenter shall inform the Practice Committee of his opinion, forthwith, and of the reasons for such opinion.

(2) Upon receipt of the presenter's reasoned opinion, pursuant to paragraph (1), the Practice Committee shall convene a preliminary meeting in accordance with article 32(2)(b) of the Order.

(3) At the preliminary meeting referred to in paragraph (2), the Chair of the Practice Committee may, in accordance with articles 32(3) and 32(4) of the Order, give a direction that the hearing should not be held and that the matter should be closed.

(4) Notwithstanding paragraph (3), the Chair of the Practice Committee shall not give a direction to cancel a hearing without first giving the maker of the allegation (if any) a reasonable opportunity to comment, and taking into account any comments received from her.

[Service of documents

34.—(1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at—

- (a) her address in the register; or
- (b) where this differs from, and it appears to the Council more likely to reach her at, her last known address, the registrant's last known address.

(2) If the registrant is represented by a solicitor, professional body or trade union, a copy of the notice served in accordance with paragraph (1) may also be—

- (a) sent or delivered to the solicitor's practising address;
- (b) sent or delivered to the professional body or trade union's business address;
or
- (c) sent by electronic mail to an electronic mail address of the solicitor, professional body or trade union, where the address has been notified to the Council as an address for communications.

(3) Any other notice or document to be served on a person under these Rules may be sent by—

- (a) ordinary post; or
- (b) electronic mail to an electronic mail address that the person has notified to the Council 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 the person sending by ordinary post or delivering the notice in accordance with this rule.

(5) Where any notice or document is sent or otherwise served under these Rules, it shall be treated as having been served—

- (a) on the day after it was sent by delivery service; or
- (b) where the notice has been left at an address or sent by electronic mail, on the day on which it was left or sent.

Protection of third party information

35. Nothing in these Rules shall prevent the Council from taking such steps as it thinks fit in order to prevent the disclosure of personal data within the meaning of section 1 of the Data Protection Act 1998 which relates to individuals who are not a party to the proceedings.]³⁷

End of rules

³⁷ Substituted – SI 2012/17, rule 17