

FITNESS TO PRACTICE PROCEDURES

Council's functions in respect of fitness to practise, ethics and other matters¹

1. The Council establishes and keeps under review the standards of conduct, performance and ethics expected of registrants and prospective registrants and gives them such guidance on these matters as it sees fit; and establishes and keeps under review effective arrangements to protect the public from persons whose fitness to practise is impaired.
2. The Council may also from time to time give guidance to registrants, employers and such other persons as it thinks appropriate in respect of standards for the education and training, supervision and performance of persons who provide services in connection with those provided by registrants.
3. The Council, before establishing any arrangements mentioned above, consults the persons mentioned in paragraph 13, document F² ; and the Professional Advisory Committee in addition to these persons.

Allegations

4. This section applies where any allegation is made against a registrant to the effect that—
 - (i) his fitness to practise is impaired by reason of—
 - (i) misconduct,
 - (ii) lack of competence,
 - (iii) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence,
 - (iv) his physical or mental health,
 - (v) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession or by the Office of the Health Professions Adjudicator³¹ to the effect that his fitness to practise is impaired, or a determination by a licensing body elsewhere to the same effect,
 - (vi) the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable groups (Northern Ireland) Order 2007), or

¹ In all these papers, use of the word 'he' should be taken also to include 'she'. Similarly, use of the word chaplain should be taken to include spiritual care-giver

² Representatives of registrants or classes of registrant; employers of registrants; users of the services of registrants; and persons providing, assessing or funding education or training for registrants or prospective registrants

- (vii) the Scottish Ministers including the person in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007).
 - (ii) an entry in the register relating to him has been fraudulently procured or incorrectly made.
- 5. For the purposes of this article references to a conviction include a conviction by a Court Martial.
- 6. This article is not prevented from applying because the allegation is based on a matter alleged to have occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered.
- 7. Rules may provide that where a Committee finds that a person has failed to comply with the standards, such failure shall not be taken of itself to establish that his fitness to practise is impaired, but may be taken into account in any proceedings under this section.
- 8. When an allegation is made to the Council or any of its committees, as soon as reasonably practicable after receipt of the allegation in the form required by the Council, the Council shall refer it where it is an allegation of the kind mentioned above, to the Investigating Committee.
- 9. If an allegation is not made under paragraph 4 but it appears to the Council that there should be an investigation into the fitness to practise of a registrant or into his entry in the register it may refer the matter as if it were an allegation made under that paragraph.
- 10. Hearings and preliminary meetings of Practice Committees at which the person concerned is entitled to be present or to be represented are to be held in—
 - (i) the United Kingdom country in which the registered address of the person concerned is situated; or
 - (ii) if he is not registered and resides in the United Kingdom, in the country in which he resides; and
 - (iii) in any other case, in England.
- 11. While the registration of a registrant is suspended by virtue of a suspension order or an interim suspension order he shall be treated as not being registered notwithstanding that his name still appears in the register but this does not prevent action being taken in respect of such a person as appropriate.
- 12. The Council shall publish as soon as reasonably practicable particulars of any orders and decisions made by a Practice Committee and of its reasons for them and of any decision given on appeal.

13. The Council may disclose to any person any information relating to a person's fitness to practise which it considers it to be in the public interest to disclose.
14. In this Part "the person concerned" means the person against whom an allegation has been made.

The Investigating Committee

15. The Investigating Committee shall investigate any allegation which is referred to it.
16. Where an allegation is referred to the Investigating Committee, it shall—
 - (i) notify without delay the person concerned of the allegation and invite him to submit written representations within a prescribed period;
 - (ii) where it sees fit, notify the person making the allegation of the representations mentioned and invite him to deal within a specified period with any points raised by the Committee in respect of those representations;
 - (iii) take such other steps as are reasonably practicable to obtain as much information as possible about the case;
 - (iv) consider, in the light of the information which it has been able to obtain and any representations or other observations made to it whether in its opinion—
 - (i) in respect of an allegation of the kind mentioned above, there is a case to answer, and
 - (ii) in respect of an allegation of the kind mentioned above, whether the entry concerned has been fraudulently procured or incorrectly made.
17. The Council shall by rules make provision as to the procedure to be followed by the Investigating Committee in any investigation carried out by it under this article.

18. When the Investigating Committee reaches a decision as to whether –
 - (i) there is a case to answer; or
 - (ii) an entry in the register has been fraudulently procured or incorrectly made,it shall notify in writing both the person concerned and the person making the allegation, if any, of its decision, giving its reasons.
19. If the Investigating Committee is satisfied that an entry in the register has been fraudulently procured or incorrectly made, it may make an order that the Registrar remove or amend the entry and shall notify the person concerned of his right of appeal.
20. If the Investigating Committee concludes that there is no case to answer or that the relevant entry was not fraudulently procured or incorrectly made—
 - (i) where requested to do so by the person concerned, it shall make a declaration to that effect, giving its reasons; and
 - (ii) in any other case and with the consent of the person concerned, may make such a declaration.
21. For the purposes of paragraph (8), the publication of the decision mentioned in this section together with the reasons for it may constitute such a declaration.
22. No order made under these paragraphs shall have effect—
 - (i) before the expiry of the period within which an appeal against the order may be made; or
 - (ii) where an appeal against the order has been made, before the appeal is withdrawn or otherwise finally disposed of.

23. The Investigating Committee may make an interim order and may review an order made if new evidence relevant to the order becomes available after the order has been made and may revoke that order if it considers that it should not have been made.
24. Where the Investigating Committee makes an order, or decides not to review such an order, the person concerned may appeal.
25. Any such appeal must be brought before the end of the period of 28 days beginning with the date on which notice of the order or decision appealed against is served on the person concerned.
26. On an appeal under this article, the Council shall be the respondent.
27. An entry which has been restored to the register on an application for readmission or restoration being granted may be treated for the purposes of this article as having been fraudulently procured or incorrectly made if any previous entry from which the restored entry is derived was fraudulently procured or incorrectly made.

The Fitness to Practice Committee

28. The Fitness to Practice Committee shall consider—
 - (i) any allegation referred to it by the Council or the Investigating Committee and
 - (ii) any application for restoration referred to it by the Registrar.

Orders of the Fitness to Practice Committee

29. If, having considered an allegation, the Fitness to Practice Committee concludes that it is not well founded—
 - (i) where requested to do so by the person concerned, it shall make a declaration to that effect giving its reasons; and
 - (ii) in any other case and with the consent of the person concerned, may make such a declaration.
30. The publication of the decision mentioned above and the reasons for it may constitute such a declaration.
31. If, having considered an allegation, the Fitness to Practice Committee concludes that it is well founded, it shall proceed in accordance with the remaining provisions of this article.

Investigation of allegations: procedural rules

32. The Council shall make rules as to the procedure to be followed by the Fitness to Practice Committee in considering any allegation and before making an order under article 29(5).
33. The rules shall, in particular, make provision—
- (i) empowering each Committee to refer to the other any allegation which it considers would be better dealt with by that other Committee;
 - (ii) empowering each Committee, before it holds any hearing to which sub-paragraph (f) applies, where it considers that it would assist it in performing its functions, to hold a preliminary meeting in private attended by the parties and their representatives and any other person it thinks appropriate;
 - (iii) requiring the person concerned to be given notice of the allegation without delay;
 - (iv) giving the person concerned an opportunity to submit written representations within a prescribed period;
 - (v) for the Committee, where it sees fit, to notify the person making the allegation of the representations provided under sub-paragraph (d) and to invite him to deal within a prescribed period with any points raised by the Committee in respect of those representations;
 - (vi) giving the person concerned an opportunity to put his case at a hearing if—
 - (i) before the end of the prescribed period, he asks for a hearing; or
 - (ii) the Committee considers that a hearing is desirable;
 - (vii) entitling the person concerned to be represented whether by a legally qualified person or otherwise at any such hearing;
 - (viii) where an allegation is referred by the Council, Screeners or the Investigating Committee to the Health Committee or the Conduct and Competence Committee, for the Council to give notice of that referral to specified persons who shall include 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, where they are known, to any person referred to in article 25 paragraph (2)(a) or (b);
 - (ix) giving any person, other than the person concerned, who, in the opinion of the relevant Committee, taking account of any criteria included in the rules, has an interest in proceedings before it, the opportunity to submit written representations;
 - (x) requiring a hearing before a Committee to be held in public except in so far as may be provided by the rules;

- (xi) requiring the Committee to notify the person concerned of its decision, its reasons for reaching that decision and of his right of appeal;
- (xii) requiring the person by whom the allegation was made to be notified by the Committee of its decision and of its reasons for reaching that decision;
- (xiii) empowering the Committee to require persons other than the person concerned to attend and give evidence or to produce documents;
- (xiv) about the admissibility of evidence;
- (xv) enabling the Committee to administer oaths;
- (xvi) where the person concerned has been convicted of a criminal offence, for the conviction to be proved by the production of a certified copy of the certificate of conviction, or, in Scotland, an extract conviction, relating to the offence and for the findings of fact upon which the conviction is based to be admissible as proof of those facts.

34. Each stage in proceedings shall be dealt with expeditiously and the Committee concerned may give directions as to the conduct of the case and for the consequences of failure to comply with such directions (which may include the making of an order or refusal of an application if the failure to comply was without reasonable excuse).

35. The Council may provide in the rules for the Chair of the Committee to hold the meeting referred to or to give the directions mentioned and, subject to the agreement of the parties to his acting on behalf of the Committee, to take such action as the Committee would be competent to take at such a meeting.

36. In this article "parties" means the Council and the person concerned.