

Keeling Schedule

Showing how the proposals would amend existing rules for Fitness to Practise

The Nursing and Midwifery Council (Practice Committees) (Constitution) Rules 2008 (SI 2008/3148)

Interpretation

1. In these Rules—

“Appointments Board” means the committee of the Council of that name established pursuant to article 3(12) of the Order;

“licensing body” means—

- (a) any body, other than the Council, anywhere in the world that licenses or regulates any profession;
- (b) any body that regulated registered nurses or registered midwives before the Council;

“member”, unless the context otherwise requires, means a member of a Practice Committee and includes the chair, a deputy chair or a panel chair;

“non-registrant” means a person who is not and never has been a registered nurse, midwife or nursing associate and does not hold a qualification that would entitle them to apply for registration under the Order;

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

“panel chair”, unless the context otherwise requires, includes a chair appointed under rule 7(1A) to act as a legally qualified chair;

“spent conviction” means—

- (a) in relation to a conviction in a court in Great Britain, a conviction that is a spent conviction for the purpose of the Rehabilitation of Offenders Act 1974; or
- (b) in relation to a conviction by a court in Northern Ireland, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978

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PART 1

The Practice Committees

Chairing of the Practice Committees

7. —(1) The Council shall appoint, from amongst the members of each of the Practice Committees, persons to act as chairs of the committee of which they are a member (“panel chairs”).

(1A) The Council may appoint panel chairs who meet the qualification requirements for appointment as a legal assessor under article 34(5) of the Order, to act as legally qualified chairs of the committee of which they are a member.

(2) Of those persons, the Council shall designate one panel chair of each Practice Committee to act as the chair of that committee for a period determined by the Council on designation.

(3) If the Registrar or the person duly authorised on the Registrar’s behalf (“the inviter”) does not invite the chair to attend particular proceedings of the Practice Committee—

- (a) the inviter must invite another panel chair to those proceedings; and
- (b) subject to paragraph (4), that panel chair shall chair the proceedings in place of the chair of the committee.

(4) If at any proceedings of a Practice Committee, the panel chair invited to chair the proceedings is absent, the members of the committee at that meeting may nominate one of their number from amongst the members who are present to chair the proceedings.

(5) A person serving as a chair or panel chair of a Practice Committee shall cease to be a chair or panel chair—

- (a) if the member ceases to be a member of the Practice Committee in question;
- (b) if the member resigns as chair or panel chair (or both), which they may do at any time by a notice in writing to the Council;
- (c) if the Council votes (by a majority at a quorate meeting) to terminate the member’s appointment as chair or panel chair (or both).

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

Notice of fitness to practise allegations

6A.—(1) Where an allegation is referred to Case Examiners under rule 2A(2)(a), the Registrar must notify the registrant of that allegation and referral by serving a notice of referral on the registrant.

(2) The notice of referral must—

- (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) inform the registrant of the actions the Case Examiners could take under rule 6C and invite the registrant to make written representations, to be received by the Registrar **within a specified period** ~~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 the registrant 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 Case Examiners in carrying out their functions.

(3) The period specified under paragraph (2)(b) must be no less than 28 days after the date of the notice of referral.

Investigation of Fitness to Practise allegations

6B.—(1) The Registrar may carry out any investigations, whether or not any have been carried out under rule 2A(4), as in the Registrar's opinion are appropriate to the consideration of the allegation by the Case Examiners.

(2) The Registrar may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of lack of competence, invite the registrant to submit to an assessment.

(3) The Registrar may, in the case of an allegation that the registrant's fitness to practise is impaired by reason of the registrant's physical or mental health, invite the registrant to submit to a medical the registrant to submit to a medical examination by experts appointed by the Council.

(3A) Paragraphs (3B) to (3E) apply in the case of an allegation that the registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English.

(3B) The Registrar may direct the registrant to, within such period as the Registrar may specify in a notification referred to in paragraph (3D),—

- (a) undertake an examination or other assessment as specified in that notification; and

- (b) provide the Registrar with evidence of the result of that examination or other assessment in the form required by paragraph (3C).

(3C) The registrant must provide the evidence referred to in paragraph (3B)(b) in the form of a certificate or other document signed by an officer of the body providing that examination or other assessment.

(3D) Where the Registrar makes a direction pursuant to paragraph (3B), the Registrar must notify the registrant, in writing, of the direction and the notice must also inform the registrant of—

- (a) the name of the examination or other assessment that the registrant is directed to undertake;
- (b) the evidence to be provided in accordance with paragraph (3C); and
- (c) the provisions of rule 31(6A).

(3E) The Registrar must provide the Case Examiners with the evidence provided by the registrant pursuant to paragraph (3C).

~~(4) — Before any decision is made by the Case Examiners as to whether or not there is a case to answer in respect of an allegation that the registrant's fitness to practise is impaired, the Registrar must send any information or documents obtained pursuant to this rule to the registrant and invite the registrant to make written representations to be received by the Registrar no later than 28 days after the date on which such documents are sent.~~

Consideration of fitness to practise allegations by Case Examiners

6C. —(1) Where an allegation is referred under rule 2A(2)(a), the Case Examiners must consider, ~~in the light of the information which the Council has been able to obtain and any representations or other observations made to it under rule 6A(2) or under rule 6B(4),~~ whether there is a case to answer.

(1A) The Case Examiners shall not decide that there is a case to answer under paragraph (2), give advice or issue a warning under paragraph (2B) or refer the case to the Investigation Committee under paragraph (4) unless satisfied that—

- (a) information or documents obtained pursuant to rule 6B have been sent to the registrant;
- (b) the registrant has been invited to make representations within a specified period, which must be a period expiring no less than 28 days starting on the day on which the information or documents are served; and
- (c) the registrant has been informed that after the expiry of the period specified under paragraph (b) the Case Examiners can proceed to make a decision in the absence of any representations.

(1B) Before making a decision, the Case Examiners must consider the information the Registrar has been able to obtain and any representations or other observations made under these Rules.

(2) Where the Case Examiners agree that there is a case to answer—

- (a) the Case Examiners must either—
 - (i) refer the case to the Fitness to Practise Committee, or
 - (ii) recommend undertakings to be agreed with the registrant pursuant to rule 6E; and
- (b) the Registrar must notify in writing both the registrant and the person making the allegation (if any) of the Case Examiners' decision and their reasons for it.

(2A) Paragraph (2)(a)(ii) does not apply where the Case Examiners consider that, if the allegation were referred to the Fitness to Practise Committee, there is a realistic prospect of that Committee making an order directing the Registrar to strike the registrant off the register.

(2B) Where the Case Examiners agree that there is no case to answer, they may give advice to the registrant or issue the registrant with a warning.

(3) Where the Case Examiners agree that there is no case to answer, the Registrar must notify in writing –

- (a) The person making the allegation (if any) of the Case Examiners' decision together with their reasons, including whether the registrant has been issued with a warning or given advice; and
- (b) the registrant—
 - (i) of the Case Examiners' decision together with the reasons for it,
 - (ii) of the details of any warning issued or advice given,
 - (iii) of the period during which any warning issued will be published under article 22(9) of the Order, and
 - (iv) that the allegation may be taken into account in the consideration of any further allegation about the registrant received by the Council within three years from the date of the Case Examiners' decision that there is no case to answer.

(4) Where the Case Examiners fail to agree whether there is a case to answer, they must notify the Registrar accordingly, and the Registrar must refer the allegation to the Investigating Committee for consideration under rule 6D.

(5) If, during their consideration of the allegation, one or both of the Case Examiners is of the opinion that a Practice Committee should consider making an interim order in relation to the registrant, the Case Examiners must direct the Registrar accordingly.

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Notice of hearing

11. — (1) Where a hearing is to be held in accordance with rule 10(2), the Fitness to Practise Committee shall send a notice of hearing to the registrant.

(2) The notice of hearing shall be sent to the registrant **no later than 28 days before the date fixed for the hearing, unless—**

- (a) **the registrant consents to a shorter period being given; or**
- (b) **the Registrar or the Fitness to Practise Committee considers it is in the public interest for there be a shorter period.**

~~(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 Fitness to Practise 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;
- (c) where the Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise Committee;
- (h) require the registrant to inform the Council, within ~~14 days of receipt of the notice~~ **a specified period**, whether she intends to^{3/4}
 - (i) attend the hearing,
 - (ii) be represented at the hearing;

- (i) ...¹
- (j) inform the registrant of the Fitness to Practise Committee's power to make an interim order under article 31(2) of the Order;
- (k) where the Fitness to Practise Committee is to consider an allegation at an initial hearing, inform the registrant of the action the Fitness to Practise Committee may take under article 29 of the Order;
- (l) where the Fitness to Practise 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~~ **direct the registrant to state in writing within a specified period**, whether any admissions are made in respect of the allegation, and inform her that any admissions made will be taken into account by the Fitness to Practise Committee; and
- (m) where the allegation, previous order or application for restoration to be considered by the Fitness to Practise Committee relates solely to the registrant's physical or mental health, invite the registrant to inform the Fitness to Practise Committee if the registrant wishes the hearing, or part of the hearing, to be conducted in public.

(3A) In paragraph (3) "venue" includes details of audio or video conferencing arrangements.

(3B) Unless the notice of hearing is sent less than 28 days before the date fixed for the hearing (in accordance with paragraph (2)(a) or (b))—

- (a) the period specified under paragraph (3)(h) shall be no less than 14 days starting on the day on which the notice is served; and**
- (b) the period specified under paragraph (3)(l) shall be no less than 28 days starting on the day on which the notice is served.**

Notice of meeting

11A. — (1) Where a meeting is to be held in accordance with rule 10(3), the Fitness to Practise Committee shall send notice of the meeting to the registrant no later than 28 days before the date the meeting is to be held **unless—**

- (a) the registrant consents to a shorter period being given; or**
- (b) the Registrar or the Fitness to Practise Committee considers it is in the public interest for there to be a shorter period.**

(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

¹ Omitted – SI 2012/17, rule 11(b)

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~~ **direct** the registrant to state in writing, ~~no later than 28 days after service of the notice~~ **within a specified period starting on the day on which notice is served**, 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.

(3) Unless the notice of meeting is sent less than 28 days before the date of the meeting (in accordance with paragraph (1)(a) or (b)), the period specified under paragraph (2)(e) shall be no less than 14 days starting on the day on which notice is served.

...

Part 5

Procedure at hearings

Application of Part 5

16. —This part shall apply to—

- (a) the Investigating Committee, when considering at a hearing —
 - (i) an allegation which relates to a fraudulent or incorrect entry in the register, or
 - (ii) whether to make, revoke, confirm, vary or replace an interim order; and
- (b) the Fitness to Practise Committee when considering at a hearing —
 - (i) an allegation that the registrant's fitness to practise is impaired,
 - (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.

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; or
- (b) the Fitness to Practise Committee.

Case management directions

17A — (1) A Committee or the Chair of the Committee may give case management directions referred to in article 32(3) of the Order (directions as to the conduct of the case and for the consequences of failure to comply with such directions).

(2) Case management directions may be given—

- (a) by the Committee at any hearing or meeting held in accordance with these Rules;
- (b) by the Chair holding a preliminary meeting in accordance with rule 18; or
- (c) by the Committee, or a legally qualified chair of the Committee, acting on the request of a party or on their own initiative, without a preliminary meeting.

(3) Where a Committee or Chair of the Committee gives directions under these Rules, they must—

- (a) keep a record of the directions given; and
- (b) send written confirmation of such directions to the parties promptly

(4) Case management directions are binding on the parties and on any subsequent Committee considering the case, unless that Committee 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.

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, **unless the hearing is being conducted by a legally qualified chair**; 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~~ such notice of the preliminary meeting as is reasonable in the particular circumstances of the case.

(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;
- (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;
- (i) a direction for an adjournment of the preliminary meeting or that a further preliminary meeting should be held; ~~and~~
- (j) a direction that the registrant, within such period as the Chair may specify in the written confirmation referred to in paragraph (8),—
 - (i) undertake an examination or other assessment of the registrant's knowledge of English as specified in the written confirmation referred to in paragraph (8), and

- (ii) provide the Fitness to Practise Committee with evidence of the result of that examination or other assessment in the form required by rule 6B(3C); and

(k) where the meeting is conducted by the Committee—

- (i) a direction determining any legal argument; and
- (ii) a direction as to the admissibility of evidence.

~~(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) Where a direction is made pursuant to paragraph (5)(j) the Chair of the preliminary meeting must inform the registrant of the matters set out in rule 6B(3D).

~~(a) keep a record of the directions given;~~

~~(b) send written confirmation of such directions to the parties promptly; and~~

~~(c) where a direction is made pursuant to paragraph (5)(j), inform the registrant of the matters set out in rule 6B(3D).~~

Legal advice

18A — (1) In the absence of a legally qualified chair, a legal assessor shall be in attendance to advise the Committee and shall give their advice in accordance with the Nursing and Midwifery Order 2001 (Legal Assessors) Order of Council 2004.

(2) Where the Committee is chaired by a legally qualified chair, legal advice shall be given by the chair and must be given in the presence of every party in attendance at the hearing unless paragraph (3) applies.

(3) The legally qualified chair may advise in the absence of the parties where the Committee—

(a) has begun to deliberate on its decision; and

(b) considers that it would be prejudicial to the discharge of its functions for that advice to be given in the presence of the parties.

(4) Where the legally qualified chair gives advice in the absence of the parties under paragraph (3), the chair must—

(a) as soon as reasonably practicable after completion of the deliberations inform each party (or their representatives) who attended the hearing of the advice given, together with any questions which led to that advice; and

- (b) subsequently record those matters in writing and give a copy to those parties or their representative.

(5) Copies of written advice, made for the purposes of paragraph (4) shall be available, on application, to every party to the proceedings who does not attend, and is not represented at, the hearing before the Committee.

Public and private hearings

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

(2) Subject to paragraph (2A), a hearing before the Fitness to Practise Committee which relates solely to an allegation concerning the registrant's physical or mental health must be conducted in private.

(2A) All or part of the hearing referred to in paragraph (2) may be held in public where the Fitness to Practise Committee—

- (a) having given the parties, and any third party whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) having ~~obtained the advice of the legal assessor~~ **taken legal advice in accordance with rule 18A.**

is satisfied that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the registrant.

(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~~ **taken legal advice in accordance with rule 18A.**

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.

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Vulnerable witnesses

23. — (1) **The Committee, or the Chair acting under rule 17A or 18, may direct that a witness be treated as a vulnerable witness, taking into account the interests of the witness and all the circumstances of a case or matter to be determined.**

~~In proceedings before the Fitness to Practise 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.~~ After taking legal advice in accordance with rule 18A, and upon hearing representations from the parties, the Chair or Committee may adopt such measures as they consider desirable to enable a vulnerable witness to give their evidence.

(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.

...

Part 6

General

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~~ **legal advice in accordance with rule 18A**, the Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise 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 Fitness to Practise 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.

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Evidence

31. — (1) ~~Upon receiving the advice of the legal assessor,~~ **Having taken legal advice in accordance with rule 18A** 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.

(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.

(4A) Where under these Rules the registrant is directed by the Registrar or the Fitness to Practise Committee to undertake an examination or other assessment of the registrant's knowledge of English, a certificate or other document stating the result achieved by the registrant in that examination or other assessment that is signed by an officer of the body providing the examination or other assessment shall be conclusive proof of the result achieved by the registrant in that examination or other assessment.

(5) In determining whether a registrant's fitness to practise is impaired by reason of physical or mental health, the Fitness to Practise 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 Fitness to Practise Committee may take into account any refusal by the registrant to submit to an assessment.

(6A) In determining whether a registrant's fitness to practise is impaired by reason of not having the necessary knowledge of English, the Fitness to Practise Committee may draw such inferences as seem appropriate to it if a registrant fails to undertake an examination or other assessment or to provide evidence of the result of that examination or other assessment in accordance with a direction made pursuant to these Rules.

(7) Where the Fitness to Practise 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, without good reason, fails to comply with a case management direction issued under article 32(3) of the Order or rule 17A, a Practice Committee may—

- (a) draw adverse inferences; and
- (b) refuse to admit evidence, where the failure is a failure to comply with a direction for service of that evidence, or otherwise relates to the admissibility of evidence.

~~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;~~
- ~~(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~~ legal advice in accordance with rule 18A.

(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.

(3A) In paragraph (3) “venue” includes details of audio or video conferencing arrangements.

(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, 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.

...

Service of documents

34. — (1) Any notice of hearing required to be served upon the registrant shall be delivered by sending it by—

- (a) a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at, the registrant's address in the register; or
- (b) a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at, where this differs from, and it appears to the Council more likely to reach the registrant at, the registrant's last known address; or
- (c) electronic mail to an electronic mail address that the registrant has notified to the Council as an address for communications.

(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; **or**
- (c) **being placed on an online account with the Council where the recipient has agreed to accept communications via the account.**

(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; **or**
- (d) **a confirmation showing the notice or document has been placed on the online account with the Council**

(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; **or**
- (c) **on the day it was placed on the online account with the Council.**

(6) **Where these Rules require a notice to include any documents, the requirement will be met if—**

- (a) **the recipient has agreed to accept communications via the account with the Council**
- (b) **the documents are placed on an online account with the Council; and**
- (c) **the notice confirms that the documents have been placed on the online account with the Council.**

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