

# Fitness to Practise Rules

July 2015

## 1. Application

- 1.1 These rules shall apply whenever UKPHR receives information about the health, conduct or performance of a Registrant including information provided by a Registrant which raises concerns about his or her fitness to practise.
- 1.2 These Rules continue to apply to Registrants even where they have resigned from the Register.

## 2. Definitions

- 2.1 In these rules, unless the context otherwise requires, the following expressions shall have the following meanings:

**Administrator** means the person or persons appointed by UKPHR to administer complaints against registered specialists and to support the Appeals Panel;

**Appeals Panel** means the independent panel established under UKPHR's Articles of Association to hear appeals from decisions of the Registrar, Fitness to Practise Panel and Registration Approval Committee;

**Complainant** means the person or organisation making a Complaint against the Registrant;

**Complaint** means a complaint or information received by UKPHR which raises a question whether the fitness to practise of any Registrant is impaired by reason of health, conduct, professional performance or a conviction or caution in the UK or a conviction elsewhere that would amount to a criminal offence in the UK, or a determination by a regulatory body in the UK or elsewhere to the effect that the Registrant's fitness to practise is impaired;

**Fitness to Practise Panel** means the panel established under UKPHR's Articles of Association for the purpose set out in these Rules;

**Impact Statement** means a statement by or on behalf of any Complainant describing the effect of the matters underlying the Complaint on him or her or on the organisation in question;

**Party** means the Registrant who is the subject of a Complaint or UKPHR as the context requires and includes their respective representatives and references to 'the parties' shall be construed accordingly;

**Presenting Officer** means a person appointed to represent UKPHR at any hearing held in accordance with these rules;

**Registrant** means a registered public health specialist, specialty registrar or practitioner about whom a Complaint has been received by UKPHR, which raises a question whether her/his fitness to practise is impaired;

**Registrar** means the Registrar of UKPHR from time to time;

**Standing Orders** means the Standing Orders of UKPHR;

**Statement of remedial action** means a statement of proposed training, medical treatment or such other steps agreed by the registrant, compliance with which is a condition of her/his continued registration with UKPHR;

**UKPHR** means the UK Public Health Register.

### 3. Consideration by the Registrar

- 3.1 Upon receipt of a Complaint the Registrar shall:
- 3.1.1 acknowledge receipt of the Complaint and provide the Complainant (if any) with a named contact at UKPHR who will keep that person or organisation informed of the progress of the Complaint;
  - 3.1.2 provide the Registrant with details of the Complaint and invite the Registrant's response;
  - 3.1.3 make such further investigations and obtain such further information, documents or reports as are in the Registrar's opinion appropriate to enable proper consideration of the matter;
  - 3.1.4 if the Registrant is employed, inform his/her employer of the Complaint (unless the employer is the complainant);
  - 3.1.5 decide whether the complaint is frivolous, vexatious or obviously lacking in merit (in which case the Registrar may dismiss the Complaint);
  - 3.1.6 where the Complaint is not dismissed under rule 3.1.5, decide whether there is a realistic prospect that, if established, the facts would demonstrate that the Registrant's fitness to practise is impaired to a degree justifying action on registration and if so refer it the Fitness to Practise Panel for determination ;
- 3.2 Any determination under rules 3.1.5 or 3.1.6 shall be made within ten working days of receipt of any response from the Registrant under rule 3.1.2 or within 30 working days of receipt of the Complaint, whichever is the sooner.
- 3.3 The Registrar may where he/she considers it appropriate suspend a referral to the Fitness to Practise Panel and invite the Registrant to agree a Statement of remedial action.
- 3.4 Where the Registrant is invited to agree a Statement of remedial action and:
- 3.4.1 does not within ten working days of service reply to the invitation; or
  - 3.4.2 does not agree the Statement of remedial action; or
  - 3.4.3 having agreed the Statement of remedial action, refuses or, in the opinion of the Registrar, fails to comply with any action or time limit specified in it;
- the Registrar may refer the Complaint to the Fitness to Practise Panel for determination.
- 3.5 When referring a Complaint to the Fitness to Practise Panel, the Registrar shall briefly state the matters, which, in his/her opinion, should be determined by the Fitness to Practise Panel, provided that this shall not prevent the Presenting Officer producing any evidence, including evidence of additional matters touching on the Registrant's fitness to practise at any hearing, even though that evidence was not before the Registrar.
- 3.6 Where the Registrar has dismissed a Complaint under rules 3.1.5 or 3.1.6, he/she may nonetheless issue a letter of advice to the Registrant.
- 3.7 Having made a determination under rules 3.1.5 or 3.1.6, the Registrar shall inform the Complainant (if any) of the outcome and his or her reasons for that determination.
- 3.8 In making any determination under rule 3.1.6 or any invitation to the Registrant to agree a Statement of remedial action under rule 3.3, the Registrar will take into account any expressed views of the Complainant. If the Registrar is unclear what those views are, he or she may where it appears appropriate invite the Complainant (if any) to comment before making a decision.

#### **4. Notice of hearing**

- 4.1 As soon as reasonably practicable following referral of a complaint to the Fitness to Practise Panel but not less than 20 working days before the hearing, the Administrator shall send a notice of hearing to the parties.
- 4.2 The notice of hearing shall:
- 4.2.1 specify the date, time and venue of the hearing;
  - 4.2.2 inform the parties of their right to attend and to be represented;
  - 4.2.3 inform the parties of the power of the Fitness to Practise Panel to proceed in their absence;
  - 4.2.4 inform the parties of the powers of disposal of the Fitness to Practise Panel; and
  - 4.2.5 set out brief details of the allegations against the Registrant.
- 4.3 Following service of a notice under this rule, the Administrator may not alter the date, time and venue except by giving the parties no less than 5 working days' notice of the change.

#### **5. Fitness to Practise Panel**

- 5.1 The Fitness to Practise Panel shall have a quorum of three at least one of whom shall be a lay member.
- 5.2 The Fitness to Practise Panel shall consider and determine any complaint referred to it by the Registrar.
- 5.3 The Fitness to Practise Panel may at any time adjourn the proceedings, at its discretion and/or at the request of any party.
- 5.4 The Fitness to Practise Panel may, taking account of the overriding requirement for fairness, at any time, order that:
- 5.4.1 a party disclose copies of any document or evidence upon which they wish to rely;
  - 5.4.2 a party submit a written statement of case or a skeleton argument to the Fitness to Practise Panel and to the other parties;
  - 5.4.3 oral submissions by either party be time-limited;
  - 5.4.4 the witness statement or report of any witness stand as that witness' evidence-in-chief; or
  - 5.4.5 the allegations be amended.
- 5.5 In determining any fact or matter relevant to the issue or issues before it, the Fitness to Practise Panel shall apply the civil standard of proof.
- 5.6 If the Fitness to Practise Panel finds the fitness to practise of a Registrant is impaired, it may decide to:
- 5.6.1 take no further action;
  - 5.6.2 invite the Registrant to agree a statement of remedial action;
  - 5.6.3 issue a warning to the Registrant regarding the behaviour complained of;

- 5.6.4 place conditions upon the Registrant's practice;
  - 5.6.5 suspend the Registrant's registration for a period not exceeding 12 months; or
  - 5.6.6 erase the Registrant's name from the Register
- 5.7 In the event that the Fitness to Practise Panel erases the name of a registrant from the Register, the Registrant may not apply to have her/his name restored to the Register, earlier than five years from the date of erasure.
- 5.8 The Fitness to Practise Panel may at any time either at the invitation of the Registrar or of its own motion, consider whether it is necessary for the protection of the public or in the public interest or in the Registrant's own interests, to make his/her registration subject forthwith to compliance with such conditions, or to suspension, as it thinks appropriate, pending a final hearing before the Fitness to Practise Panel.
- 5.9 Any party may appeal against any decision of the Fitness to Practise Panel to the Appeals Panel by delivering to the Administrator a notice of appeal in writing, stating the matters relied upon in support of the appeal, within 20 working days of the date of the Fitness to Practise Panel's decision.
- 5.10 The Fitness to Practise Panel shall not have the power to order the payment of expenses to witnesses, nor the power to award costs to either party.

## **6. Procedure at hearings before the Fitness to Practise Panel**

- 6.1 The Fitness to Practise Panel shall determine its own procedure in accordance with these rules and the overriding requirement of fairness.
- 6.2 The Fitness to Practise Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a Court of Law.
- 6.3 The following shall be considered as conclusive proof of the offence committed or of the facts proved in relation to the determination of the case concerned:
- 6.3.1 a certificate/document signed by a competent officer of a Court in the UK or overseas that a person has been convicted of a criminal offence;
  - 6.3.2 a caution form or similar record produced by a competent officer of a UK police force demonstrating that a person has accepted a caution;
  - 6.3.3 a certificate/document signed by a competent officer of a regulatory body that has made a determination about the fitness to practise of a registrant.
- 6.4 The Fitness to Practise Panel may proceed in the absence of a party, including the Registrant, if it is satisfied that all reasonable efforts have been made in accordance with these rules to serve notice of the hearing on the party;
- 6.5 All hearings of the Fitness to Practise Panel shall be in public, except where the Panel considers that the particular circumstances of the case outweigh the public interest in holding the hearing or any part of the hearing in public.
- 6.6 The parties shall be given a reasonable opportunity to present their case.
- 6.7 Parties may call witnesses and cross-examine witnesses called by other parties.
- 6.8 The Fitness to Practise Panel members may put questions to witnesses and parties.

- 6.9 The Fitness to Practise Panel may exclude from the whole or part of the hearing any person, including any party, whose conduct, in its opinion, has disrupted or is likely to disrupt the proceedings.
- 6.10 At the conclusion of the hearing, the Fitness to Practise Panel shall proceed as follows:
- 6.10.1 it shall consider and announce its findings on the facts;
  - 6.10.2 it may then receive further submissions from either party as to whether the findings on the facts amount to impairment of fitness to practise;
  - 6.10.3 the Fitness to Practise Panel shall consider and announce its findings as to whether or not the Registrant's fitness to practise is impaired. If it finds that fitness to practise is impaired, it shall give this determination, with reasons; it shall then invite further submissions (including where appropriate an Impact Statement, if the Complainant has not been a witness in the hearing) from the parties as to the appropriate sanction, if any;
  - 6.10.4 if it finds the Registrant's fitness to practise is impaired, the Fitness to Practise Panel shall announce the sanction to be imposed, if any, with reasons;
  - 6.10.5 the Fitness to Practise Panel shall then invite submissions from parties as to whether the sanction should be imposed immediately, in the public interest or in the interest of Registrant;
  - 6.10.6 the Fitness to Practise Panel shall then announce whether or not the sanction is to be imposed immediately, or whether the appeal period of 20 working days should elapse prior to the imposition of the sanction. If the sanction is not imposed immediately and a party lodges an appeal, the sanction will not come into effect until the appeal has been heard;
  - 6.10.7 at each and every stage the Fitness to Practise Panel may withdraw and deliberate in private before making its announcement.
- 6.10 Parties may be represented at any hearing by a solicitor or counsel, (or in the case of the Registrant, a representative of any professional organisation of which he or she is a member, or, at the discretion of the Fitness to Practise Panel, a member of his or her family or any other person).
- 6.11 Decisions of the Fitness to Practise Panel shall be taken by a simple majority. The Chair will have no casting vote and no Fitness to Practise Panel member may abstain from voting.

## **7. Duties of the Registrar**

- 7.1 The Registrar shall arrange to serve notice of the determination of the Fitness to Practise Panel on the Registrant and any other interested persons including the Complainant (if any) as soon as reasonably practicable.
- 7.2 Any sanction imposed by the Fitness to Practise Panel shall not take effect until the expiry of 20 working days from the date of the decision except where the Fitness to Practise Panel decides otherwise.
- 7.3 The Registrar shall arrange for a record of the proceedings to be made and reported to UKPHR. UKPHR may publish the record provided that the record of any part of the proceedings held in private shall be excluded from this publication.
- 7.4 The Registrar shall cause the outcome of any such proceedings to be published in the register.
- 7.5 The Registrar shall decide whether and if so what information arising out of the proceedings should be shared with other regulators in accordance with UKPHR's public protection policies.

## 8. Service

- 8.1 Any notice or other document required to be given under these rules may be given:
- 8.1.1 personally to the Registrant; or
  - 8.1.2 by ordinary post to the Registrant's last known address; or
  - 8.1.3 by electronic mail to an electronic mail address that the Registrant has notified to the Registrar as an address for communications; or
  - 8.1.4 where the Registrant is represented, by sending or delivering to the place of business or usual address of that representative, or by electronic mail to the electronic mail address of that representative.
- 8.2 The service of any notice under these rules may be proved by:
- 8.2.1 a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or
  - 9.2.2 a confirmation of receipt of the notice or document sent by electronic mail; or
  - 9.2.3 a signed statement from any person serving the notice or document confirming that the notice or document was delivered to, sent to or left at the Registrant's address or electronic mail address or the address or electronic mail address of the Registrant's representative.

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