

Public Health Register

Fitness to Practise Rules

1 *Application*

1.1 These rules shall apply whenever UKPHR receives information about the health, conduct or performance of a registrant, or an applicant, who has applied for registration both as a new applicant or one who wishes to be restored or readmitted who declares a fitness for registration issue, which has raised concerns about his fitness to practise.

2. *Definitions*

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

- a) 'Appeal Panel' means the panel established for the purpose set out in rule 7 and constituted in accordance with the Standing Orders;
- b) 'complaint' means a complaint or information received by UKPHR which raises a question whether the fitness to practise of any registered registrant is impaired by reason of his health, conduct, professional performance or a conviction in the UK or elsewhere, or a determination by a regulatory body in the UK or elsewhere to the effect that his fitness to practise is impaired;
- c) UKPHR means the UK Public Health Register
- d) 'Fitness to Practise Panel' means the panel established for the purpose set out in rule 6 and constituted in accordance with Standing Orders;
- e) 'party' means the registrant or UKPHR or their respective representatives (but not the informant, if any), and references to 'the parties' should be construed accordingly;
- f) 'registrant' means a registered public health specialist or practitioner about whom information has been received by UKPHR, which raises a question whether his/her fitness to practise is impaired;
- g) 'Investigation Panel' means the panel established for the purposes set out in Rule 4 and constituted in accordance with Standing Orders;
- h) 'the Panel' means in Rule 8 the Fitness to Practise Panel or the Appeal Panel as the context demands;
- i) 'Presenting Officer' means a person appointed to represent UKPHR at any hearing held in accordance with these rules;
- j) 'the Secretary' means the person or persons appointed by UKPHR to administer complaints against registered specialists and to support the Panels established under Standing Orders;
- k) 'Standing Orders' refers to the Standing Orders of UKPHR;

l) '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 his continued registration with UKPHR.

m) The male gender is used to denote either gender throughout.

3. Consideration by the Registrar

3.1 Upon receipt of a complaint, or information, the Registrar shall:

- a) provide the registrant with a copy of the complaint received (if not on the applicants declaration) and seek his comments, if any;
- b) make such further investigations and obtain such further information, documents or reports as are in his opinion appropriate to enable the Investigation Committee to consider the matter; and
- c) if the registrant is employed, inform his employer of the complaint [unless the employer is the informant].
- d) if a minor complaint the Registrar can choose not to refer but deal with through appropriate correspondence advising that the issue is noted and will be held for future possible reference in the case of a future event

3.2 Within ten working days of receipt of any response from the registrant under Rule 3.1(a) or in any event within 30 working days of receipt of the complaint, the Registrar shall refer the complaint to the Investigation Panel (if appropriate).

3.3 The Registrar shall refer to the Chair of the Investigation Panel for consideration under Rule 4.2 any complaint:

- a) which appears to him to be irrational, vexatious or obviously lacking in merit; or
 - b) where the events giving rise to the complaint occurred more than three years before the date of the complaint;
- in which cases Rules 3.1 and 3.2 do not apply.

4. Determination by the Investigation Panel

4.1 The Investigation Panel shall consider any complaint referred to it by the Registrar and subject to Rule 4.3 may:

- a) dismiss the complaint; or
- b) postpone consideration of the complaint pending such further investigations (including obtaining expert reports) as it may direct, or pending the resolution of other legal or regulatory proceedings, or of disciplinary action against the registrant under the terms of his employment;
- c) issue a letter of advice to the registrant; or
- d) invite the registrant to agree a statement of remedial action; or
- e) refer the complaint for determination by the Fitness to Practise Panel.

4.2 The Chair of the Investigation Panel acting alone shall consider any complaint to him by the Registrar under Rule 3.3 and may:

- a) dismiss the complaint; or
- b) direct the Registrar to follow the procedure set out in rules 3.1 and 3.2 in respect of the complaint.

4.3 When referring a complaint to the Fitness to Practise Panel, the Investigation Panel shall briefly state the allegations, which, in its opinion, should be determined by the Fitness to Practise Panel, provided that this shall not prevent UKPHR presenting further allegations of a similar kind or further evidence that the registrant's fitness to practise is impaired at any hearing, even though such allegations were not before the Investigation Panel.

4.4 The Investigation Panel shall take action under Rule 4.1(d) or (e) only if it is satisfied from the material available that there is a reasonable prospect of proving that the fitness to practise of the registrant is impaired by reason of his health, conduct, professional performance, a conviction or caution for a criminal offence in the UK or elsewhere, or a determination by a regulatory body in the UK or elsewhere, to the effect that his fitness to practise is impaired.

4.5 Where the registrant is invited to agree a statement of remedial action under Rule 4.1(d) and:

- a) does not within ten working days of receipt reply to the invitation; or
- b) does not agree the statement of remedial action; or
- c) having agreed the statement of remedial action, refuses or, in the opinion of the Investigation Panel, fails to comply with any action or time limit specified in it;

the Investigation Panel may refer the complaint to the Fitness to Practise Panel for determination.

4.6 The Investigation 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 hearing before the Fitness to Practise Panel.

4.7 The registrant may appeal against any direction of the Investigation Panel under Rule 4.6 to the Appeal Panel, by lodging a written notice of appeal stating the facts or matters relied upon in support of the appeal with the Registrar, within 28 days of the date of service of the notice of the direction upon him.

5 Notice of hearing

5.1 As soon as reasonably practicable following:

- a) referral of a complaint to the Fitness to Practise Panel under Rule 4.1 or Rule 4.5;
- or
- b) receipt of an appeal under Rule 4.6 or Rule 6.7

but not less than 28 days before the hearing, the Registrar shall send a notice of hearing to the registrant.

5.2 The notice of hearing shall:

- a) specify the date, time and venue of the hearing;
- b) inform the registrant of his right to attend and to be represented in accordance with Rule 8.11;
- c) inform the registrant of the power of the Fitness to Practise or the Appeal Panel to proceed in his absence under Rule 8.4;
- d) inform the registrant of the powers of disposal of the Fitness to Practise Panel or Appeal Panel, as appropriate; and
- e) in the case of a hearing before the Fitness to Practise Panel, set out brief details of the allegations constituting the complaint against the registrant.

5.3 Following service of a notice under this Rule, the Registrar may alter the precise time and venue, provided that he gives the registrant no less than 7 days' notice.

6 Fitness to Practise Panel

6.1 The Fitness to Practise Panel shall consider and determine any complaint referred to it by the Investigation Panel under Rule 4.1 or Rule 4.5.

6.2 The Chair of the Fitness to Practise Panel may at any time adjourn the proceedings, at his discretion and at the application of any party.

6.3 The Chair of the Fitness to Practise Panel may, taking account of the overriding requirement for fairness, at any time, order:

- a) that either party disclose copies of any document or evidence upon which they wish to rely;
- b) that either party submit a written statement of their case or a skeleton argument to the Fitness to Practise Panel and to the other party;
- c) that oral submissions by either party be time-limited;
- d) that the witness statement or report of any witness stand as his evidence-in-chief;
- e) that the allegations constituting the complaint against the registrant be amended.

6.4 In determining any alleged facts upon which a complaint is based, the Fitness to Practise Panel shall apply the civil standard of proof.

6.5 If the Fitness to Practise Panel finds the fitness to practise of a registrant is impaired, it may decide to:

- a) take no further action;
- b) invite the registrant to agree a statement of remedial action;
- c) issue a warning to the registrant regarding his repetition of the behaviour complained of;
- d) place conditions upon the registrant's practice;
- e) suspend the registrant's registration for a period not exceeding 12 months;
- f) erase the registrant's name from the Register

6.6 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 his name restored to the Register, earlier than five years from the date of erasure.

6.7 The registrant or complainant may appeal against any decision of the Fitness to Practise Panel by lodging a written notice of appeal with the Registrar, stating the matters relied upon in support of the appeal, within 28 days of the date of service of the notice of the direction upon him.

6.8 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.

7 Appeal Panel

7.1 The Appeal Panel shall consider and determine any appeal made in accordance with Rules 4.7 or 6.7.

7.2 The grounds upon which an appeal can be made are that:

- a) the determination of the Investigation Panel or Fitness to Practise Panel was wrong in that the Investigation Panel or Fitness to Practise Panel gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its determination;
- b) the determination was flawed because of a serious procedural or other irregularity in the proceedings before the Investigation Panel or Fitness to Practise Panel ;
- c) the registrant or complainant has acquired new evidence that could not have been submitted to the Investigation Panel or Fitness to Practise Panel and if submitted, would have been likely to influence its determination;
- d) the sanction imposed by the Fitness to Practise Panel under Rule 6.5 was disproportionate in light of the Fitness to Practise Panel's determination on the facts or the registrant's circumstances.

7.3 In disposing of an appeal under these Rules, the Appeal Panel may determine to:

- a) dismiss the appeal;
- b) allow the appeal and quash the direction appealed against;

- c) substitute for the sanction or direction appealed against any other sanction or direction that could have been made by the Investigation Panel or Fitness to Practise Panel;
- d) remit the complaint back to the Fitness to Practise Panel to dispose of in accordance with the directions of the Appeal Panel.

7.4 The Chair of the Appeal Panel may at any time, exercise his discretion to adjourn the proceedings at the request of any party.

8. Procedure at hearings before the Fitness to Practise Panel or Appeal Panel

8.1 The Panel shall determine its own procedure in accordance with these Rules and the overriding requirement of fairness.

8.2 The 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.

8.3 The following shall be considered as conclusive evidence of the offence committed or of the facts proved in relation to the determination of the case concerned:

- a) 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;
- b) a caution form or similar record produced by a competent officer of a UK police force demonstrating that a person has accepted a caution;
- c) 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.

8.4 The Panel may proceed in the absence of a 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 registrant;

- 8.5
- a) The hearing shall normally be open to the public, except for consideration of matters concerning the personal health of the registrant;
 - b) the Panel 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;
 - d) Where a hearing is open to the public, the Panel may exclude the public for any part of the proceedings where it is felt by the Panel appropriate to do so.

8.6 Both parties shall be given reasonable opportunity to present their case or to present and resist any appeal.

8.7 At hearings before the Fitness to Practise Panel or where so ordered by the Appeal Panel, either party may call witnesses and cross-examine witnesses called by the other party.

8.8 The Panel members may put questions to any witnesses and to the parties presenting.

8.9 At the conclusion of the hearing, the Panel should proceed as follows:

- a) Fitness to Practise Panel:
 - (i) it shall consider and announce the findings on the facts;
 - (ii) the Panel may then receive further submissions from either party as to whether the findings on the facts amount to impairment of fitness to practise;
 - (iii) the 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 will make this determination, with reasons; it will then invite further submissions from both parties as to the appropriate sanction, if any;

- (iv) In the case of fitness to practise being found to be impaired, the Panel shall then call the parties back to announce the sanction to be imposed, if any, with reasons;
 - (v) The Panel will then invite submissions from both parties as to whether the sanction should be imposed immediately, in the public interest or in the interest of the registrant.
 - (vi) The Panel shall then announce whether or not the sanction is to be imposed immediately, or whether the appeal period of 28 days should elapse prior to the imposition of the sanction. If immediate sanction is not imposed and the registrant lodges an appeal, the sanction will not come into effect until the appeal has been heard.
- b) In the case of an Appeal Panel hearing, the Panel shall consider and announce its determination of the appeal and give reasons.

8.10 The registrant may be represented at any hearing by a solicitor or counsel, a representative of any professional organisation of which he is a member, or, at the discretion of the Panel, a member of his family or any other person.

8.11 Decisions of the Fitness to Practise Panel shall be taken by a simple majority. The Chair will have no casting vote and any Panel member may abstain from voting.

9 Duties of the Registrar

9.1 The Registrar shall arrange to serve notice of the determination of the Investigation Panel, Fitness to Practise Panel or Appeal Panel on the registrant and any other interested persons as soon as reasonably practicable.

9.2 Any sanction imposed by the Fitness to Practise Panel shall not take effect until the expiry of 28 days from the date of service of the notice of the determination on the registrant, unless this period has been waived by decision of the Panel as in Rule 8(a) (vi).

9.3 The Registrar shall arrange for a full record of the proceedings to be made. In camera discussions of the Panel shall be excluded from this record.

10 Service

10.1 Any notice or other document required to be given under these Rules may be given personally to the registrant or any other interested person or by sending it by guaranteed post, special delivery or courier to his last known address.

10.2 The service of any notice under these rules may be proved by:

- a) documented confirmation of delivery by postal or courier service; or
- b) signed statement by recipient of notice.

UKPHR Aug 2010

Amended rules March 2014