
DRAFT STATUTORY INSTRUMENTS

2015 No.

The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015

PART 2

The Medical Practitioners Tribunal Service

Appeals by the General Medical Council

17.—(1) After section 40 of the Medical Act insert—

“Appeals by General Council

40A.—(1) This section applies to any of the following decisions by a Medical Practitioners Tribunal—

- (a) a decision under section 35D giving—
 - (i) a direction for suspension, including a direction extending a period of suspension;
 - (ii) a direction for conditional registration, including a direction extending a period of conditional registration;
 - (iii) a direction varying any of the conditions imposed by a direction for conditional registration;
 - (b) a decision under paragraph 5A(3D) or 5C(4) of Schedule 4 giving—
 - (i) a direction for suspension;
 - (ii) a direction for conditional registration;
 - (c) a decision under section 35D—
 - (i) giving a direction that a suspension be terminated;
 - (ii) revoking a direction for conditional registration or a condition imposed by such a direction;
 - (d) a decision not to give a direction under section 35D;
 - (e) a decision under section 41 giving a direction that a person’s name be restored to the register;
 - (f) a decision not to give a direction under paragraph 5A(3D) or 5C(4) of Schedule 4.
- (2) A decision to which this section applies is referred to below as a “relevant decision”.

(3) The General Council may appeal against a relevant decision to the relevant court if they consider that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

(4) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—

- (a) to protect the health, safety and well-being of the public;
- (b) to maintain public confidence in the medical profession; and
- (c) to maintain proper professional standards and conduct for members of that profession.

(5) The General Council may not bring an appeal under this section after the end of the period of 28 days beginning with the day on which notification of the relevant decision was served on the person to whom the decision relates.

(6) On an appeal under this section, the court may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the relevant decision;
- (c) substitute for the relevant decision any other decision which could have been made by the Tribunal; or
- (d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court,

and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

(7) In this section and section 40B, “relevant court” has the meaning given by section 40(5).

Appeal under section 40A: role of Professional Standards Authority for Health and Social Care

40B.—(1) If the General Council bring an appeal under section 40A—

- (a) the Registrar must without delay give notice of the appeal to the Professional Standards Authority for Health and Social Care (“the Authority”); and
- (b) the Authority may not refer the case to which the appeal relates under section 29 of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”).

(2) The Authority may, in spite of subsection (1)(b), become a party to the appeal by giving notice to that effect to the relevant court, the General Council and the person to whom the relevant decision relates; and—

- (a) the Authority does not require the permission of the relevant court to become a party to the appeal; and
- (b) accordingly, any provision of rules of court requiring an application for such permission does not apply to the Authority.

(3) Having become a party to an appeal under section 40A by virtue of subsection (2) of this section, the Authority may make representations or file evidence in the appeal at any time before the end of the hearing of the appeal; but where it does so at a time which would, but for this subsection, have been in breach of a time limit imposed by rules of court, the relevant court may impose such conditions as it thinks fit.

(4) The matters which the Authority may raise on an appeal under section 40A include any matter which it could have raised on a reference of the case under section 29 of the 2002 Act.

(5) Where the Authority raises matters on an appeal under section 40A, the General Council and the person to whom the relevant decision relates have the same opportunity to respond as they would have if the Authority had raised the matters on a reference of the case under section 29 of the 2002 Act (and the General Council and person concerned had accordingly been respondents by virtue of subsection (7) of that section).

(6) If the General Council wish to withdraw an appeal under section 40A or, having agreed the terms of a settlement of the appeal with the person concerned, wish the appeal to be disposed of on those terms, they must give notice of their wish to the Authority (whether or not the Authority is a party to the appeal).

(7) The Authority, having received a notice under subsection (6), must by notice inform the relevant court, the General Council and the person concerned whether it wishes the proceedings on the appeal to continue.

(8) Where the Authority gives notice under subsection (7) that it wishes the proceedings to continue, they are to continue but are, from the time when the Authority gives its notice to the relevant court under subsection (7), to be treated as proceedings on a reference made by the Authority to the court under section 29 of the 2002 Act.

(9) In a case within subsection (8), the Authority must give notice to the relevant court, the General Council and the person concerned specifying the grounds of its case; and the General Council and the person concerned (as respondents to the appeal by virtue of section 29(7) of the 2002 Act) have the opportunity to respond accordingly.

(10) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.”

(2) In paragraph 11 of Schedule 4 to the Medical Act (timing of suspension or conditional registration), at the end insert—

“(5) A reference in this paragraph to an appeal under this Act does not include a reference to an appeal under section 40A.”