

SCHEDULE

The General Pharmaceutical Council (Appeals Committee) Rules 2010

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Explanatory Note

The General Pharmaceutical Council makes these Rules in exercise of the powers conferred by articles 61(1) to (3) and (6), 63(4), 64(8) and 66(1) of, and paragraph 5(1)(e) and (3)(d) of Schedule 1 to, the Pharmacy Order 2010.

In accordance with article 66(3) of that Order, the General Pharmaceutical Council has, in relation to rules under Part 7 of that Order, consulted such persons or organisations as it considered appropriate including persons and organisations listed in paragraphs (a) to (h) of article 66(3) of that Order.

Citation and commencement

1. These Rules may be cited as the General Pharmaceutical Council (Appeals Committee) Rules 2010 and come into force on 27th September 2010.

Interpretation

2.—(1) In these Rules—
“the Order” means the Pharmacy Order 2010;

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“the Statutory Committees and their Advisers Rules” means the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010(1);

“appealable decision” means an appealable decision within the meaning of article 39 of the Order;

“appellant” means—

- (a) a person in respect of whom an appealable decision has been made (within the meaning of article 40 of the Order) who is appealing against that decision; or
- (b) in the case of an appealable decision to which article 47(6)(a) or (b) of the Order applies, an institution or other provider which is appealing against that decision,

(or, where appropriate, their representatives);

“case officer” means the person representing the Council in matters relating to the appeal other than at a hearing;

“the chair” means the chair of the Committee;

“the Committee” means the Appeals Committee established under article 4(6)(c) of the Order;

“Notice of Appeal” means a notice of an appeal against an appealable decision given in accordance with paragraph (1), (2) or (3) of article 40 of the Order;

“Notice of Hearing” is to be construed in accordance with rules 5(f) and 6;

“parties” means the Council and the appellant (or, where appropriate, their representatives) and “party” is to be construed accordingly;

“the presenter” means the representative of the Council presenting the case at a hearing (and includes employees of the Council);

“secretary” means the secretary to the Committee; and

“witness” means a person giving oral evidence at a hearing, including an appellant giving oral evidence.

(2) For the purposes of these Rules—

- (a) a meeting or hearing of the Committee, other than when it is deliberating in private, is considered to be “in private” if it is held in the presence of—
 - (i) the parties and any person present who is representing a party,
 - (ii) the person acting as secretary,
 - (iii) any witness giving evidence,
 - (iv) any legal, clinical or specialist adviser,
 - (v) any person responsible for the recording of the proceedings, or
 - (vi) any other person whose presence is deemed necessary by the chair of the Committee, but otherwise excluding everyone else; and
- (b) the private deliberations of the Committee are considered to be “in private” if they are held in the presence of—
 - (i) the person acting as secretary,
 - (ii) any legal adviser, or
 - (iii) any person responsible for the recording of the proceedings, but otherwise excluding everyone else.

(1) These Rules are scheduled to [S.I. 2010/1616](#).

Service of documents

3.—(1) For the purposes of these Rules any notice or document required to be served by the secretary must be in writing and must, subject to paragraphs (2) and (3), be served by sending it by a postal service or another delivery service to, or by leaving it at—

- (a) in the case of an individual who is a registrant, the registrant’s home address in the Register;
- (b) in the case of an individual who is not a registrant, the individual’s last known home address;
- (c) in the case of a partnership, the principal office of that partnership;
- (d) in the case of a body corporate, the registered or principal address of that body corporate; and
- (e) in the case of an institution or other provider which is appealing against a decision under article 47(6)(a) or (b) of the Order, the last known address of that institution or other provider.

(2) If a person to whom a notice or document is to be sent under these Rules so agrees, notices or documents may be sent by electronic mail to an electronic mail address notified by that person to the secretary as an address for communications.

(3) If a person to whom a notice or document is to be sent under these Rules so agrees, notices or documents may be sent to or left at—

- (a) where the person is represented by a solicitor, the solicitor’s practising or electronic mail address; or
- (b) where the person is represented by a defence organisation or trade union, the business or electronic mail address of that defence organisation or trade union.

(4) In paragraphs (2) and (3), references to “person” include references to a person representing an institution or other provider referred to in paragraph (1)(e).

(5) Where any notice or document is sent by the secretary by a postal service, unless sent by a service which records the date of delivery, it must be sent by first class post and is to be treated as having been served on the day after the day on which it was posted.

(6) Where any notice or document is sent by electronic mail or left at an address, it is to be treated as having been served on the day at which it was sent to or left at that address.

Notice of Appeal

4.—(1) Subject to paragraph (3), a Notice of Appeal will only be valid if it is in the format described in paragraph (2)(2).

(2) The Notice of Appeal must—

- (a) state that it is a Notice of Appeal;
- (b) provide the full name and address of the appellant;
- (c) provide a daytime telephone number at which the appellant can be contacted;
- (d) where the appeal relates to a registrant who has been entered in Part 1, 2, 4 or 5 of the Register, state the number of that entry;
- (e) where the appeal relates to a registered pharmacy which has been entered in Part 3 of the Register, state the number of that entry;
- (f) state whether the appellant is to be represented in the course of the proceedings, and if so, provide contact details for the representative;

(2) A template is available on the Council’s website: www.pharmacyregulation.org.

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- (g) state the date of the decision being appealed against;
 - (h) set out the decision being appealed against;
 - (i) set out the grounds on which the appeal is being brought;
 - (j) be accompanied by copies of any material—
 - (i) submitted by the appellant to the Registrar or the body that made the appealable decision prior to the appealable decision being taken, and
 - (ii) not so submitted, but on which the appellant intends to rely in the course of the appeal proceedings;
 - (k) be accompanied by a skeleton argument containing the submissions of the appellant;
 - (l) state whether the appellant wishes the appeal to be considered on the papers or at a hearing; and
 - (m) in a case where the appellant wishes a hearing to be held, state whether the appellant wishes to have a case management meeting, and if so, the issues that the appellant wishes to be considered at that meeting.
- (3) At a case management meeting, the chair may—
- (a) extend the time for delivery of the skeleton argument and any additional material necessary to determine the appeal; and
 - (b) allow the appellant to amend the details regarding representation provided under paragraph (2)(f).

Action following receipt of Notice of Appeal

5. Following receipt of the Notice of Appeal, the secretary must—
- (a) acknowledge receipt of the Notice of Appeal and the accompanying material submitted by the appellant;
 - (b) send copies of the Notice of Appeal and the accompanying material to a case officer;
 - (c) require the case officer to provide the secretary with copies of all documents on which the Council intends to rely in defending the appeal;
 - (d) send copies of any documents provided by the case officer under paragraph (c) to the appellant or (where applicable) the appellant's representative;
 - (e) as soon as possible, inform the parties of the date—
 - (i) of any case management meeting (if the chair decides that one should be held), and
 - (ii) on which the Committee will consider the appeal (which, in the case of a hearing, unless the parties agree otherwise, must be no less than 28 days after the date on which the secretary serves the Notice of Hearing); and
 - (f) where the appellant has stated that the appellant wishes the Committee to consider the appeal at a hearing, send a Notice of Hearing to any person to whom the proceedings relate, which must be in the format described in rule 6.

Notice of Hearing

6. The Notice of Hearing must—
- (a) state the date, time and venue of the hearing;
 - (b) inform the appellant of the appellant's right to attend the hearing and to be represented or accompanied at the hearing in accordance with rule 13(2) or (3);
 - (c) inform the appellant of the provisions relating to—

- (i) evidence set out in rule 8,
 - (ii) procedure at hearings set out in rule 12,
 - (iii) witness evidence set out in rule 14;
- (d) require the appellant to inform the secretary, within 14 days beginning with the day on which the Notice is served, whether the appellant intends to—
- (i) attend the hearing,
 - (ii) be represented at the hearing, and if so, by whom, and
 - (iii) seek to call any witnesses at the hearing, and if so, whom; and
- (e) inform the appellant that, if the appellant fails to attend the hearing, the Committee may proceed with the hearing in the appellant’s absence.

Case management meetings

7.—(1) Where a hearing is to be held a case management meeting(3) may be convened by the chair of the chair’s own motion or at the written request of one or both of the parties.

(2) Where a case management meeting is to be convened, the secretary must give the parties such notice of it as is reasonable (in the opinion of the chair) in all the circumstances of the case.

(3) A case management meeting may be conducted by teleconference or such other method as is determined by the chair, in consultation with the parties.

(4) A case management meeting must be held in private.

(5) At a case management meeting, the chair (in addition to the matters mentioned in rule 4(3)) may issue such directions as the chair considers necessary for the just and expeditious management of the case and may give preliminary rulings for the purpose of resolving questions of law and admissibility of evidence.

(6) Any preliminary rulings mentioned in paragraph (5) are binding on the Committee hearing the appeal.

Evidence

8.—(1) All questions of admissibility of evidence and law before the Committee must be decided by the Committee.

(2) Subject only to the requirements of relevance and fairness, the Committee may receive—

- (a) subject to paragraph (3), any documentary evidence; and
- (b) where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in any subsequent civil proceedings if the decision of the Committee were appealed to the relevant court.

(3) Where a party wishes to adduce a witness statement in evidence, the Committee may only receive such evidence if the statement—

- (a) contains an attestation, in a format acceptable to the Committee, that the statement is true; and
- (b) is signed by the person making it.

(3) By virtue of rule 18(3) of the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 which are scheduled to S.I. 2010/1616, a case management meeting must be conducted by the chair. By virtue of rule 21(4) of those rules, if the chair is not legally qualified (as defined in rule 2 of those rules) a legal adviser must also be present at a case management meeting.

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(4) Where a person has been convicted of a criminal offence in the British Islands or a conviction elsewhere than in the British Islands which, if committed in England, Wales or Scotland, would constitute a criminal offence (and has not successfully appealed against the conviction), a copy of a certificate purporting to be under the hand of a competent officer of a court that the person has been convicted of a criminal offence (or in Scotland, an extract conviction) is admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence which may be adduced by a person in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that the person is not the person referred to in the certificate or extract.

(6) Where it is alleged that a person is included in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006(4) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(5)) by the Independent Barring Board—

- (a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 that attests to that inclusion is to be conclusive proof of that inclusion, unless the person concerned can prove that they are not the person referred to in the information provided; and
- (b) a document from the Board, authenticated in such manner as the Council may approve, that provides a statement of the findings of fact that led to that inclusion is conclusive proof of those facts.

(7) Where it is alleged that a person is included in the children's or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(6))—

- (a) information provided by the Scottish Ministers under the Protection of Vulnerable Groups (Scotland) Act 2007 that attests to that inclusion is conclusive proof of that inclusion, unless the person concerned can prove that they are not the person referred to in the information provided; and
- (b) a document from the Scottish Ministers, authenticated in such manner as the Council may approve, that provides a statement of the findings of fact that led to that inclusion is conclusive proof of those facts.

(8) A formal notification of a determination about a person's fitness to practise made by a body responsible under any enactment for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, is sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.

(9) The Committee may only allow a party to adduce written evidence at a hearing which has not been submitted in accordance with these Rules in such exceptional circumstances as it may determine.

Advice from clinical, specialist and legal advisers and the Fitness to Practise Committee

9.—(1) The Committee may, at any time in the course of proceedings before it (including during a hearing), seek advice from—

- (a) a clinical adviser, appointed under article 64(1) of the Order, on a health related issue;
- (b) a specialist adviser, appointed under article 64(2) of the Order, on issues falling within the specialty of the adviser or related to it;
- (c) a legal adviser appointed under article 63(1) of the Order; or

(4) 2006 c.47.

(5) S.I. 2007/1351 (N.I.11).

(6) 2007 asp 14.

(d) the Fitness to Practise Committee.

(2) The secretary must send the parties a record of any advice received by the Committee from the Fitness to Practise Committee as soon as practicable after it has been received⁽⁷⁾.

Burden and standard of proof

10.—(1) The appellant bears the burden of establishing that the appealable decision against which the appellant is appealing should be overturned.

(2) If the appeal is against a decision to refuse to enter the appellant or premises in the Register, the Committee may only decide to enter, or direct the Registrar to enter, the appellant or the premises in the Register if the appellant has proved that the appellant is, or the premises are, entitled to be so entered.

(3) Where facts are in dispute, the Committee must consider whether they have been established in accordance with the civil standard of proof.

Consideration of appeals on the papers

11.—(1) The Committee is to determine an appeal on the papers unless the appellant has requested a hearing in the Notice of Appeal.

(2) No later than 7 days before the day of a meeting for the purposes of determining an appeal on the papers, the secretary must provide the Committee with an agenda and the documents relevant to the consideration of the appeal.

Procedure at hearings

12.—(1) No later than 7 days before the day of the hearing, the secretary must provide the Committee with an agenda and the documents relevant to the consideration of the appeal.

(2) The order of proceedings at the hearing is to be as follows—

- (a) the chair must declare the hearing open;
- (b) where the appellant is not present and is not represented either at the hearing, the chair—
 - (i) must require the secretary to adduce evidence that all reasonable efforts have been made to serve the Notice of Hearing on the appellant, and
 - (ii) having consulted the Committee, may—
 - (aa) if the chair is satisfied that the Notice of Hearing has been duly served, proceed with the hearing in the absence of the appellant, or
 - (bb) adjourn the hearing and issue appropriate directions;
- (c) the Committee must hear and consider any preliminary legal arguments;
- (d) the presenter must make an opening statement, outlining what the presenter considers to be the relevant circumstances of the case;
- (e) subject to paragraph (4), the appellant may adduce evidence in support of the appellant's appeal, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony);
- (f) subject to paragraph (4), the presenter may adduce evidence in rebuttal of the position of the appellant and in support of the position of the Council, and may call witnesses

(7) By virtue of rule 25(3) of the General Pharmaceutical Council (Statutory Committees and their Advisers) Rules 2010 which are scheduled to [S.I. 2010/1616](#), a record of any advice tendered by a legal, clinical or specialist adviser must be sent to the parties to the proceedings or their representatives, as appropriate, as soon as practicable after it has been tendered.

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(provided that the chair is satisfied that the witness is in a position to provide relevant testimony);

- (g) the appellant may make a closing statement;
- (h) the Committee must deliberate in private and must then announce its decision on the appeal in the presence of the parties (where present), together with the reasons for its decision.

(3) Otherwise the conduct of the hearing is to be at the discretion of the chair, who may (amongst other matters) invite the parties to make additional submissions to those outlined in paragraph (2).

(4) The Committee may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter, if the Committee is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.

Representation

13.—(1) The presenter must be a person who is—

- (a) a barrister, advocate or solicitor who falls within subparagraphs (i) or (ii) of article 61(2) (c) of the Order;
- (b) a solicitor in Scotland who does not fall within paragraph (a); or
- (c) an employee of the Council.

(2) The appellant may be represented by a person who is—

- (a) a barrister, advocate or solicitor who falls within subparagraphs (i) or (ii) of article 61(2) (c) of the Order;
- (b) a solicitor in Scotland who does not fall within paragraph (a); or
- (c) a representative from the appellant’s defence organisation or the appellant’s trade union.

(3) Where the appellant is not represented, the appellant may be accompanied and advised by a supporter, but the supporter—

- (a) may not be—
 - (i) a member of the Council or of one of its statutory committees,
 - (ii) an employee of the Council, or
 - (iii) a witness at the hearing; and
- (b) will be entitled to address the Committee only with the permission of the chair.

Witness evidence

14.—(1) Witnesses must be required to take an oath, or to affirm, before giving their oral evidence.

(2) The Committee may not compel the appellant to be a witness.

(3) A party may not call a person to be a witness unless—

- (a) that party has provided to the other party a written statement of evidence to be provided by the witness at least 7 days before the day of the hearing (which meets the requirements of rule 8); or
- (b) the chair determines otherwise.

(4) The Committee may, upon the application of the party calling a witness, direct that any details which may identify that witness should not be revealed in public.

(5) Where a witness's first language is not English, the Committee may direct that their evidence be given through an interpreter.

(6) Witnesses other than an unrepresented party—

- (a) must first be examined by the party calling them;
- (b) may be cross examined;
- (c) may then be re-examined by the party calling them; and
- (d) may then be questioned by the Committee through the chair and, with the leave of the chair in accordance with rule 27 of the Statutory Committees and their Advisers Rules, by a legal, clinical or specialist adviser.

(7) If witnesses are questioned under paragraph (6)(d) the parties may then question the witnesses on matters arising out of the questions of the Committee or the legal, clinical or specialist adviser (as the case may be) with the party calling the witness being given the last opportunity to do so (as between the parties).

(8) Where the witness is an unrepresented party, the witness—

- (a) must first be questioned by the Committee through the chair;
- (b) may then be cross examined; and
- (c) may then be questioned again by the Committee through the chair and, with the leave of the chair in accordance with rule 27 of the Statutory Committees and their Advisers Rules, by a legal, clinical or specialist adviser.

(9) Any further questioning of witnesses is to be at the discretion of the chair.

(10) Except for expert witnesses and the appellant, witnesses must not be allowed to attend the proceedings until after they have completed giving their evidence and been formally released by the chair.

Vulnerable witnesses at hearings

15.—(1) In proceedings before the Committee, the following may, if the quality of their evidence is otherwise likely to be adversely affected, be treated as vulnerable witnesses—

- (a) any witness under the age of 18;
- (b) any witness with a mental disorder (within the meaning of the Mental Health Act 1983⁽⁸⁾);
- (c) any witness who is significantly impaired in relation to intelligence or social functioning;
- (d) any witness with a physical disability who requires assistance to give evidence;
- (e) any witness, where an allegation against any person is of a sexual nature and the witness was the alleged victim; or
- (f) any witness who complains of intimidation.

(2) 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.

(3) Measures adopted by the Committee may include, but are not to 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 the witness is present at the hearing for cross-examination and questioning; and
- (c) use of interpreters (including signers and translators).

(8) 1983 c.20. "Mental disorder" is defined in section 1(2) as any disorder or disability of the mind.

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(4) Where—

- (a) there is an allegation against any person of a sexual nature;
- (b) a witness is the alleged victim; and
- (c) the person against whom the allegation is made is not represented,

that person is not to be allowed to cross-examine the witness directly in person.

(5) In the circumstances set out in paragraph (4), any questioning of the witness is to be undertaken by such person as the Committee considers appropriate.

Attendance of the public at hearings

16.—(1) Except as provided for by this rule, hearings before the Committee must be conducted in public.

(2) Where an issue under consideration relates to the health of the appellant or a third party, the hearing, or the relevant part of the hearing, that relates to that issue must be conducted in private if the Committee is satisfied—

- (a) having given the parties (where present), 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 a clinical adviser,

that the interest of the appellant or the third party in maintaining their privacy as regards that issue outweighs the public interest in holding the hearing, or the relevant part of the hearing, in public.

(3) Where an issue under consideration does not relate to the health of the appellant or a third party, the hearing, or the relevant part of the hearing, that relates to that issue may be conducted in private if the Committee—

- (a) has given the parties (where present), and any third party from whom the Committee considers it appropriate to hear, an opportunity to make representations; and
- (b) is satisfied that the interest of any person in maintaining their privacy as regards that issue outweighs the public interest in holding the hearing, or the relevant part of the hearing, in public.

(4) The Committee may exclude from the whole or any part of a hearing any person whose conduct, in the opinion of the Committee, has disrupted or is likely to disrupt the hearing.

Postponements and adjournments

17.—(1) The chair may, of the chair's 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) The Committee 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 to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair or Committee must, in particular, 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 a party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the appellant.

(4) Where the proceedings have been postponed or adjourned, the secretary must, as soon as practicable, notify the parties of the date, time and venue of the re-listed or resumed hearing.

Decision of the Committee

18.—(1) The written statement under article 40(8) of the Order, must be given, in addition to the appellant, to—

- (a) the case officer; and
- (b) any other person whom the secretary considers, in the public interest, ought to be informed of the Committee’s decision.

(2) The written statement given to the appellant must be accompanied by a record of any rulings on questions of law or admissibility of evidence made by the chair or the Committee.

Costs of the hearing

19.—(1) Where a hearing is to be held and a party is seeking or intends to seek an order for payment of its costs, the party must serve on the other party, and on the secretary, a schedule of costs or expenses relating to the hearing no less than 24 hours before the date of the hearing.

(2) After announcing the Committee’s decision on the appeal, the chair may invite representations as to whether costs or expenses should be assessed against either party.

(3) After hearing any representations from the parties, the Committee may, if it thinks fit and having regard to the ability of any party to pay, order that a party pay by a specified date all or part of the costs or expenses relating to the hearing incurred by the other party.

(4) Where the Committee orders a party to pay costs or expenses, the chair may—

- (a) summarily assess the costs or expenses to be paid; or
- (b) require the parties either to agree the figure for the costs or expenses to be awarded or to submit to taxation before a person appointed by the secretary.

(5) Where a person is appointed by the secretary in accordance with paragraph (4)(b), that person must also determine how the costs of the assessment are to be apportioned.

Notes and transcripts of hearings

20.—(1) Subject to paragraph (3), the Committee must arrange for all hearings to be recorded in writing or electronic form.

(2) Any party to the proceedings must, on application to the Committee and on payment of any fee determined by the Council under article 65(1) of the Order, be furnished with a transcript of the record of any part of the hearing at which that party was entitled to be present.

(3) The private deliberations of the Committee must not be recorded.