

SCHEDULE

The General Pharmaceutical Council (Fitness to Practise and Disqualification etc.) Rules 2010

PART 3

Consideration by the Investigating Committee

Procedures of the Investigating Committee

- 9.—(1) The Investigating Committee is to meet in private.
- (2) The Investigating Committee may not hear oral evidence.
- (3) Before disposing of any allegation before it, the Investigating Committee—
- (a) must—
 - (i) consider all documents and recommendations placed before it by the Registrar, and
 - (ii) have regard to its own published referral criteria;
 - (b) may—
 - (i) direct that further investigations should be undertaken,
 - (ii) obtain advice from a legal, clinical or other specialist adviser, and
 - (iii) adjourn its consideration of an allegation until such time as any further information has been obtained, any comments from the informant, if any, are received, or where the person concerned has undergone a medical examination, a report on the person concerned has been prepared.
- (4) In fitness to practise or disqualification proceedings (whether or not a criminal conduct allegation is also being considered in relation to the person concerned), the Investigating Committee—
- (a) must in all cases—
 - (i) consider any written representations received from the person concerned, and
 - (ii) have regard to any relevant practice directions issued by the chair; and
 - (b) may send any written representations received from the person concerned to the informant, if any, for comment.
- (5) In relation to a health allegation, the Investigating Committee may—
- (a) require the person concerned to agree to be medically examined by a registered medical practitioner nominated by the Council; and
 - (b) where it receives information that the person concerned has refused to co-operate fully with a medical examination, refer that matter to the Committee as a separate allegation.
- (6) Where the Investigating Committee decides to refer an allegation to the Committee and is of the view that—
- (a) case management directions should be issued; or
 - (b) an interim order should be made,
- it must notify the Committee accordingly.
- (7) The Investigating Committee must not refer any—

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- (a) fitness to practise allegation to the Committee unless it is satisfied that there is a real prospect that the Committee will make a finding that the registrant's fitness to practise is impaired; or
- (b) disqualification allegation to the Committee unless it is satisfied that there is a real prospect that the Committee will make a direction for disqualification.

Agreement of undertakings by the Investigating Committee

10.—(1) Where the registrant concerned admits that their fitness to practise is impaired, the Investigating Committee may, if it thinks fit, dispose of fitness to practise proceedings by agreeing undertakings with the registrant concerned (that is, that the registrant concerned will comply with such undertakings as the Committee considers appropriate), instead of referring the allegation to the Committee.

(2) Where the Investigating Committee has disposed of a case in accordance with paragraph (1) and it subsequently receives information that those undertakings have not been complied with, it may—

- (a) refer the original allegation to the Committee and treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Committee; or
- (b) determine not to refer the original allegation to the Committee but treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Committee.

(3) Where the Investigating Committee has disposed of a case in accordance with paragraph (1) and it subsequently receives information that those undertakings may no longer be appropriate, it may—

- (a) with the agreement of the registrant concerned, vary those undertakings; or
- (b) determine that those undertakings no longer apply.

Notices

11.—(1) In the case of a fitness to practise allegation, the information to be provided by the Registrar under article 53(2)(b) or (3)(c) of the Order or under rule 6(8) must be in a notice which is to be sent to the registrant concerned and the informant, if any, no later than 10 days after the date on which the relevant decision was made or, as the case may be, the allegation was referred.

(2) In the case of a disqualification allegation, the secretary to the Investigating Committee must inform the section 80 party of the decision of the Investigating Committee to refer, or not to refer, the allegation, and must do so in a notice of decision which is to be sent to the party no later than 10 days after the date on which the relevant decision was made.

(3) The notice under paragraph (1) or (2) must include the reasons for the decision or the referral and be accompanied by any legal advice considered by the Investigating Committee or the Registrar.

(4) Where the Investigating Committee has decided not to refer an allegation to the Committee, the notice under paragraph (1) or (2) must inform the person concerned that the Investigating Committee may nevertheless reconsider the allegation in the circumstances set out in rule 12.

(5) Where the Investigating Committee has decided to dispose of the allegation by agreeing undertakings or issuing a warning, the notice under paragraph (1) or (2) must, subject to paragraph (6), be accompanied by a statement setting out the undertakings or the warning.

(6) The statement referred to in paragraph (5) must not be sent to the informant if it includes undertakings relating to the health of a person concerned.

(7) If the statement relates to undertakings, it must also state, in terms, that if the Investigating Committee subsequently receives information that those undertakings have not been complied with, it may—

- (a) refer the original allegation to the Committee and treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Committee; or
- (b) determine not to refer the original allegation to the Committee but treat the failure to comply with the undertakings as a separate allegation of misconduct and refer that allegation to the Committee.

(8) Where the Investigating Committee or the Registrar has referred the matter to the Committee, the notice under paragraph (1) or (2)—

- (a) must particularise the matters to be referred; and
- (b) where the Investigating Committee or the Registrar is of the view that the Committee should consider making an interim order, state the reasons for its view.

Reconsideration of allegations

12.—(1) Where—

- (a) the Investigating Committee has considered a fitness to practise or a disqualification allegation and decided not to refer it to the Committee; and
- (b) within five years from the date of service of the notice given under rule 11, the Council receives a new allegation about the person concerned,

the Investigating Committee may take the action specified in paragraph (2).

(2) The Investigating Committee may—

- (a) when considering whether or not to refer the new allegation to the Committee, have regard to the original allegation; and
- (b) may refer both the original allegation and the new allegation to the Committee.

(3) Where the Investigating Committee has disposed of a fitness to practise or disqualification allegation, and within five years of that decision receives new evidence or information which makes the reconsideration of that decision—

- (a) necessary for the protection of the public;
- (b) necessary for the prevention of injustice to the person concerned; or
- (c) otherwise necessary in the public interest,

it may reconsider the allegation.

(4) The Investigating Committee may reconsider an allegation where it receives information that the Council has erred in its administrative handling of the case and it is satisfied that it is necessary in the public interest to do so.

(5) Where the Investigating Committee has decided to reconsider a fitness to practise or disqualification allegation, the secretary to the Investigating Committee must—

- (a) inform the person concerned and the informant, if any, of the decision to reconsider the allegation;
- (b) inform the person concerned and, where appropriate, the informant, if any, of any new evidence or information;
- (c) provide the person concerned and, where appropriate, the informant, if any, with copies of any new evidence and summaries of any new information received;

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- (d) seek written representations from the person concerned and the informant, if any, on—
 - (i) the decision to reconsider the allegation, and
 - (ii) any new evidence or information received (unless, in the case of the informant, if any, this has not been sent to the informant).
- (6) Following reconsideration of the original allegation, the original decision not to refer the allegation to the Committee may be rescinded in appropriate circumstances.
- (7) Following reconsideration of the allegation, a new notice must be sent as provided for in rule 11.