

## SCHEDULE

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

### PART 6

#### Procedure at hearings

##### **Procedure at principal hearings before the Committee in fitness to practise proceedings**

**31.**—(1) Unless the Committee determines otherwise, the order of proceedings at a principal hearing in fitness to practise proceedings is to be in accordance with paragraphs (2) to (18).

(2) The Committee must hear and consider any preliminary legal arguments.

(3) The chair must—

(a) where the registrant concerned is present, require the registrant to confirm their name, or

(b) otherwise, require the presenter to confirm the registrant concerned's name.

(4) The person acting as secretary must read out the allegation and the alleged facts upon which it is based.

(5) The chair must inquire whether the registrant wishes to make any admissions.

(6) Where facts are admitted, the chair must announce that such facts have been found proved.

(7) Where facts remain in dispute, the presenter is to open the case for the Council and may adduce evidence and, subject to paragraph (19), call witnesses in support of it.

(8) The registrant may make submissions regarding whether sufficient evidence has been adduced to find the facts proved or to support a finding of impairment, and the Committee must consider and announce its decision as to whether any such submissions should be upheld.

(9) The registrant may open their case and may adduce evidence and, subject to paragraph (19), call witnesses in support of it.

(10) The Committee must consider and announce its findings of fact.

(11) The Committee must receive further evidence and hear any further submissions from the parties as to whether, on the basis of any facts found proved, the registrant's fitness to practise is impaired.

(12) The Committee must consider and announce its finding on the question of whether the fitness to practise of the registrant is impaired, and give its reasons for that decision.

(13) The Committee may receive further evidence and hear any further submissions from the parties or from any other person who has a direct interest in the proceedings where the registrant's fitness to practise is found to be impaired, as to the appropriate sanction, if any, to be imposed, including evidence as to any mitigating circumstances and any relevant matters in the previous history of the registrant concerned.

(14) The Committee must consider and announce its decision as to the appropriate course of action to be taken in respect of the registrant of those specified in article 54(2) of the Order and give its reasons for that decision.

(15) Where the Committee considers that it might make an order under article 60(2) or (4) of the Order in relation to the registrant's registration (interim measures pending a direction taking effect), it must invite representations from the parties before considering and announcing whether it is to impose such an order, together with its reasons for that decision.

(16) The Committee must deal with any interim order in place in respect of the registrant.

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(17) At any stage in the proceedings, before making a determination as to whether the registrant's fitness to practise is impaired, the Committee may, having regard to the nature of the allegation under consideration, adjourn and direct that a clinical adviser or a specialist adviser be appointed to assist the Committee under article 64 of the Order.

(18) At any stage before making its decision as to a sanction, the Committee may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

(19) The chair may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter—

- (a) if not satisfied that the witness is in a position to provide relevant testimony; or
- (b) if 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.

(20) Notwithstanding the procedure set out in paragraphs (2) to (18), the Committee may allow the parties to make additional submissions at any time.

#### **Procedure at principal hearings before the Committee in disqualification proceedings**

**32.**—(1) Unless the Committee determines otherwise, the order of proceedings at a principal hearing in disqualification proceedings is to be in accordance with paragraphs (2) to (17).

(2) The Committee must hear and consider any preliminary legal arguments.

(3) The chair must—

- (a) where the section 80 party or a representative of the party is present, require the party or representative to confirm the party's name, or
- (b) otherwise, require the presenter to confirm the section 80 party's name.

(4) The person acting as secretary must read out the allegation, and the alleged facts upon which it is based.

(5) The chair must inquire whether the section 80 party wishes to make any admissions.

(6) Where facts have been admitted, the chair must announce that such facts have been found proved.

(7) Where facts remain in dispute, the presenter is to open the case for the Council and may adduce evidence and, subject to paragraph (19), call witnesses in support of it.

(8) The section 80 party may make submissions regarding whether sufficient evidence has been adduced to find the facts proved and the Committee must consider and announce its decision as to whether any such submissions should be upheld.

(9) The section 80 party may open their case and may adduce evidence and, subject to paragraph (19), call witnesses in support of it.

(10) The Committee must consider and announce its findings of fact.

(11) In a case falling within section 80(1)(b) or (4)(b) of the Act, the Committee must consider and announce its finding on the question of whether, in its opinion, the offence or misconduct renders the section 80 party unfit to be a pharmacist or would so render the party if the party were a pharmacist and give its reasons for that decision.

(12) Paragraph (13) applies where—

- (a) the decision under paragraph (11) is that the offence or misconduct renders the party unfit to be a pharmacist or would so render the party if the party were a pharmacist; or
- (b) in a case falling within section 80(1)(c) of the Act, the failure in question is by a member of the board or any officer of, or person employed by, the body in question.

(13) Where this paragraph applies, the Committee must—

- (a) receive evidence about the facts specified in section 81(2) of the Act; and
- (b) consider whether, having regard to those facts, the board of the body corporate or, as the case may be, the representative, is to be regarded as responsible for the offence, misconduct or failure in question.

(14) The Committee may receive further evidence and hear any further submissions from the parties or from any other person who has a direct interest in the proceedings as to whether a direction under section 80(1) or (4) of the Act should be imposed, including evidence as to any mitigating circumstances and any relevant matters in the previous history of the section 80 party.

(15) The Committee must consider and announce its decision as to whether or not a direction under section 80(1) or (4) of the Act should be given and must give its reasons for that decision.

(16) Where the decision under paragraph (15) is that the direction should be given, the chair must agree to that decision.

(17) At any stage before making its decision as to disqualification, the Committee may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

(18) Where the Council becomes aware that a section 80 party has failed to comply with any undertakings agreed under rule 26(2)(a), the Committee must—

- (a) resume its consideration of the matter (the procedure at the hearing being for the Committee to determine); and
- (b) reconsider the sanction imposed, and may instead issue a direction under section 80(1) or, as the case may be, (4), of the Act.

(19) The chair may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter—

- (a) if not satisfied that the witness is in a position to provide relevant testimony; or
- (b) if 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.

(20) Notwithstanding the procedure set out in paragraphs (2) to (17), the Committee may allow the parties to make additional submissions at any time.

### **Procedure in relation to hearings of registration cases before the Committee**

**33.—**(1) Unless the Committee determines otherwise, the order of proceedings where the Registrar is seeking the advice of the Committee—

- (a) under rule 10(8) of the Registration Rules (which relates to whether the fitness to practise of an applicant for registration may be impaired for reasons other than adverse physical or mental health);
- (b) under rule 10(10) of the Registration Rules (which relates to whether the fitness to practise of an applicant for registration may be impaired because of adverse physical or mental health);
- (c) under rule 20(2)(a) of the Registration Rules (which relates to proceedings in respect of fraud or error or fitness to practise matters prior to registration); or
- (d) under rule 9(1)(d) of the Appeals Committee Rules (which relates to where the Appeals Committee seeks the advice of the Committee),

is to be in accordance with paragraphs (2) to (10).

- (2) The Committee must hear and consider any preliminary legal arguments.

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- (3) The chair must—
  - (a) where the applicant or registrant concerned is present, require the applicant or registrant concerned to confirm their name; or
  - (b) otherwise, require the presenter to confirm the applicant or registrant concerned's name.
- (4) The chair must inquire whether the applicant or registrant concerned wishes to make any admissions.
- (5) Where facts have been admitted, the chair must announce that such facts have been found proved.
- (6) Where facts remain in dispute, the presenter must open the case for the Council and may adduce evidence and, subject to paragraph (11), call witnesses in support of it.
- (7) The applicant or registrant concerned may open their case, adduce evidence and, subject to paragraph (11), call witnesses in support of it.
- (8) The presenter may adduce evidence in rebuttal of the position of the applicant or registrant concerned and in support of the position of the Council including, subject to paragraph (11), the calling of witnesses.
- (9) The applicant or registrant concerned may make a closing statement.
- (10) The Committee must announce its advice and, where appropriate, the reasons for its advice.
- (11) The chair may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter—
  - (a) if not satisfied that the witness is in a position to provide relevant testimony; or
  - (b) if 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.
- (12) Notwithstanding the procedure set out in paragraphs (2) to (10), the Committee may allow the parties to make additional submissions at any time.

### **Procedure at review hearings**

- 34.**—(1) Unless the Committee determines otherwise, the order of proceedings at a review hearing is to be in accordance with paragraphs (2) to (9).
- (2) The Committee must hear and consider any preliminary legal arguments.
  - (3) The chair must—
    - (a) where the person concerned is present or represented, require the person concerned to confirm their name; or
    - (b) otherwise, require the presenter to confirm the person concerned's name.
  - (4) The presenter —
    - (a) must inform the Committee of the background to the case, and the sanction previously imposed or undertaking entered into;
    - (b) must direct the attention of the Committee to any relevant evidence, including transcripts of previous hearings; and
    - (c) may adduce evidence and, subject to paragraph (10), call witnesses in relation to the person concerned's fitness to practise or, as the case may be, their failure to comply with an undertaking or with any requirement imposed as a condition of registration.
  - (5) The person concerned may present their case, adduce evidence and, subject to paragraph (10), call witnesses in support of it.

- (6) The Committee must receive further evidence and hear any further submissions from the parties—
- (a) where the Committee has given a direction under article 54(2)(d) or (e) of the Order, as to what direction to give, if any, under article 54(3) of that Order;
  - (b) where the person concerned has given an undertaking, as to whether the person concerned has breached the undertaking;
  - (c) where the Committee has given a direction under section 80(1) or (4) of the Act, as to whether that direction should be revoked.
- (7) The Committee must consider and announce its finding on the relevant question in paragraph (6) and give its reasons for that decision.
- (8) The Committee must consider and announce its decision as to—
- (a) the direction, if any, to be given under article 54(3) of the Order; or
  - (b) the revocation of the direction under section 80(1) or (4) of the Act,
- and give its reasons for that decision.
- (9) Where the Committee finds that an undertaking has not been complied with, it may—
- (a) in fitness to practise proceedings, determine that the registrant's fitness to practise is impaired on the basis of that failure to comply and make a determination under article 54(2) of the Order;
  - (b) in disqualification proceedings, treat the failure as misconduct and give a direction under section 80(1) or (4) of the Act.
- (10) The chair may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter—
- (a) if not satisfied that the witness is in a position to provide relevant testimony; or
  - (b) if 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.
- (11) Notwithstanding the procedure set out in paragraphs (2) to (9), the Committee may allow the parties to make additional submissions at any time.

### **Procedure at restoration hearings**

**35.**—(1) Unless the Committee determines otherwise, the order of proceedings at a restoration hearing is to be in accordance with paragraphs (2) to (9).

- (2) The Committee must hear and consider any preliminary legal arguments.
- (3) The chair must—
  - (a) where the applicant concerned is present, require the applicant concerned to confirm their name; or
  - (b) otherwise, require the presenter to confirm the applicant concerned's name.
- (4) The presenter—
  - (a) must address the Committee as to the background to the case and the circumstances in which the applicant's name was removed from the register,
  - (b) must direct the attention of the Committee to any relevant evidence, including transcripts of previous hearings; and
  - (c) may adduce evidence and, subject to paragraph (11), call witnesses in relation to the applicant's fitness to practise.

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(5) The applicant may address the Committee, adduce evidence and, subject to paragraph (11), call witnesses in relation to any relevant matter, including their suitability for restoration to the register.

(6) The Committee may receive further evidence and hear any further submissions from the parties as to its decision whether to grant or refuse the application.

(7) The Committee must then consider and announce whether to grant or refuse the application and give its reasons for that decision.

(8) Before reaching a decision under paragraph (7), the Committee may adjourn and give such directions as it sees fit.

(9) Where the Committee adjourns under paragraph (8), it must—

(a) consider any assessment reports produced further to a direction under paragraph (8), together with any other relevant evidence and reports; and

(b) invite further representations and evidence from the parties,

before reaching a decision as to whether the applicant should be restored to the register.

(10) Where the Committee decides that a person should be restored to Part 1 or, as the case may be, Part 2 of the Register, the secretary must notify the Registrar accordingly.

(11) The chair may refuse to allow a witness to give oral evidence, or to give oral evidence on a particular matter—

(a) if not satisfied that the witness is in a position to provide relevant testimony; or

(b) if 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.

(12) Notwithstanding the procedure set out in paragraphs (2) to (9), the Committee may allow the parties to make additional submissions at any time.

### **Procedure at interim order hearings**

**36.—**(1) The order of proceedings at an interim order hearing is to be in accordance with paragraphs (2) to (8).

(2) The Committee must hear and consider any preliminary legal arguments.

(3) The chair must—

(a) where the registrant concerned is present, require the registrant concerned to confirm their name; or

(b) otherwise, require the presenter to confirm the registrant concerned's name.

(4) The presenter must address the Committee regarding whether it is necessary to make or review an interim order in respect of the registrant concerned and, subject to paragraphs (9) to (11), may adduce evidence in this regard.

(5) The registrant may present their case and, subject to paragraphs (9) to (11), may adduce evidence in support of it.

(6) The parties and members of the Committee may put questions to any witness.

(7) Where the registrant gives oral evidence, the presenter and members of the Committee may put questions to the registrant.

(8) The Committee must announce its decision and give its reasons for that decision.

(9) The Committee may, subject to paragraphs (10) and (11), receive any evidence which appears to it to be fair and relevant to its consideration under article 56 of the Order.

(10) No person may give oral evidence at the hearing unless the Committee considers such evidence is desirable to enable it to discharge its functions.

(11) The Committee may, at any stage in the proceedings—

(a) with the consent of the registrant; or

(b) where it is satisfied that to do so would be desirable to enable it to discharge its functions, allow a party to produce at the hearing any written evidence, notwithstanding that a copy has not been provided to the other party before the hearing or that its author is not being called as a witness.

(12) The Committee may vary the order of proceedings under paragraphs (2) to (8) where it is in the interests of justice to do so.

(13) Where—

(a) an interim order is being reviewed by the Committee; and

(b) the hearing is, or is likely to be, the last such hearing before the expiry of the interim order, the Committee may, after making its determination, advise the Registrar that an application should be made to the relevant court for the interim order to be extended, or if it has been extended, further extended, under article 56(5) of the Order.

(14) Where the terms of the order to be made or continued, or the terms of the variation to the order, or its revocation, are agreed between the parties, the Committee may make an order in those terms without the need for a hearing.