
STATUTORY RULES OF NORTHERN IRELAND

2012 No. 311

The Council of the Pharmaceutical Society
of Northern Ireland (Fitness to Practise and
Disqualification) Regulations (Northern Ireland) 2012

PART 5

Matters arising both before and during hearings

Practice directions

24. The chair may give practice directions of general application to any proceedings of the Statutory Committee.

Clinical and other specialist advice

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

- (a) a clinical adviser, appointed under paragraph 18(1) of Schedule 3 to the Order, on a health related issue; or
- (b) another specialist adviser, appointed under paragraph 18(2) of Schedule 3 to the Order, on issues falling within their speciality or related to it.

Evidence

26.—(1) All questions of admissibility of evidence and law before the Statutory Committee are to be decided by the Statutory Committee (after having obtained the advice of the legal adviser, where appropriate).

(2) Subject only to the requirements of relevance and fairness, the Statutory 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 Statutory Committee were appealed to the High Court.

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

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

(4) Where a person concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), a copy of the certificate of conviction

certified by a competent officer of the court or for a conviction 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 the person concerned in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that the person concerned is not the person referred to in the certificate or extract.

(6) Where it is alleged that an applicant or registered person has been included in a barred list (within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 or the Safeguarding Vulnerable Groups Act 2006 by the Independent Safeguarding Authority (“the Authority”)—

- (a) information provided by the Secretary of State under the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 or the Safeguarding Vulnerable Groups Act 2006 that attests to that inclusion is to be conclusive proof of that inclusion, unless the applicant or registered person concerned can prove that they are not the person referred to in the information provided; and
- (b) a document from the Authority, authenticated in whatever way the Society 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 an applicant or registered person is included in the children’s or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007⁽¹⁾)—

- (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 applicant or registered 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 whatever way the Society 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 statutory provision 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 to be sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.

(9) The Statutory Committee may only allow a party to adduce written evidence at a hearing which has not been served in accordance with these regulations (or these regulations as modified by case management directions) in such exceptional circumstances as it may determine.

(10) In determining whether a registered person’s fitness to practise is impaired by reason of physical or mental health, or when giving advice to the registrar in relation to an applicant’s physical or mental health, the Statutory Committee may take into account, amongst other matters—

- (a) a refusal by the person concerned to submit to medical examination;
- (b) the current physical or mental condition of the person concerned;
- (c) any continuing or episodic condition suffered by the person concerned; and
- (d) any underlying condition suffered by the person concerned which, although in remission, is capable of causing impairment of fitness to practise if it recurs.

(11) Where the Statutory Committee finds that a registered person concerned has failed to comply with the standards, that failure—

- (a) may be taken into account by the Statutory Committee in determining whether or not the registered person concerned’s fitness to practise is impaired; and

(1) 2007 asp 14.

- (b) is not, of itself, to be taken to establish that the registered person's fitness to practise is impaired.

Absence of the person concerned

27. Where the person concerned is neither present nor represented at any hearing and the Statutory Committee is satisfied that—

- (a) service of the Notice of Hearing or the Interim Order Notice has been properly effected; or
- (b) all reasonable efforts have been made to serve the person concerned with the Notice of Hearing or the Interim Order Notice,

the Statutory Committee may nevertheless proceed to consider and determine the matter or allegation.

Agreement of undertakings and giving of advice and warnings

28.—(1) The Statutory Committee may, if it thinks fit, dispose of fitness to practise proceedings by agreeing undertakings with the registered person concerned (that is, that the registered person will comply with such undertakings as the Statutory Committee considers appropriate) where they admit that their fitness to practise is impaired.

(2) The Statutory Committee may, if it thinks fit, dispose of disqualification proceedings by—

- (a) agreeing undertakings with the section 80 party (that is, that the section 80 party will comply with such undertakings as the Statutory Committee considers appropriate); or
- (b) giving advice or a warning,

instead of giving a direction under section 80 of the Act.

Recording in the register of decisions by the Statutory Committee

29.—(1) Where the Statutory Committee—

- (a) gives a warning to a registered person;
- (b) agrees undertakings with a registered person that relates to the registered person's fitness to practise;

the Registrar must ensure that an appropriate alteration to that registered person's entry in the register is made to record that warning or undertaking.

(2) Where, in the case of a registered person, the Statutory Committee determines that the registered person's fitness to practise is impaired, the Registrar must ensure that an appropriate alteration is made to that registered person's entry in the register to record the determination.

Joinder of allegations for a joint hearing

30.—(1) Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the Statutory Committee may consider and determine a fitness to practise or a disqualification allegation against two or more persons concerned at the same hearing where—

- (a) the allegation against each person concerned arises out of the same circumstances; or
- (b) in the view of the Statutory Committee, a joint hearing is necessary or desirable.

(2) Where a joint hearing is held—

- (a) these regulations are to have effect in relation to the hearing with the necessary modifications directed by the chair; and

- (b) each person concerned is to be able to exercise any of the rights granted to that person under these regulations whether or not any other person concerned wishes to exercise that right.

Consideration of allegations that relate to more than one category of impairment

31.—(1) As regards any fitness to practise allegation before the Statutory Committee, if—

- (a) the particulars of the allegation in the Notice of Hearing relate to more than one category of impairment of fitness to practise; and
- (b) those particulars include a conviction or caution,

the chair must ensure (by adapting the procedure for the hearing, where necessary) that at the principal hearing, the Statutory Committee makes its findings of facts in relation to the allegations that do not relate to the conviction or caution before it hears and makes its findings of fact in relation to the conviction or caution.

(2) In the circumstances set out in paragraph (1), the chair must also ensure (by adapting the procedure for the hearing, where necessary), that the Statutory Committee only makes its decision as regards impairment of fitness to practise once it has made its finding of fact in relation to all the allegations set out in the Notice of Hearing.

Consideration of additional allegations

32. Where, before a principal hearing, the Society becomes aware of an additional allegation against a person concerned—

- (a) the Society may request case management directions; and
- (b) the chair may, where they consider it just to do so, direct that the new allegation be considered at the same hearing as the allegation that has already been referred, and that these regulations are to apply as modified to take into account the particular circumstances of the case.

Additional evidence for review hearings

33. Where, before a review hearing, the Society becomes aware of new evidence which it wishes to bring to the attention of the Statutory Committee (for example, evidence of a failure to comply with conditions)—

- (a) the Society may request case management directions; and
- (b) the chair may direct that the new evidence be considered at the review hearing, and that these regulations are to apply as modified to take into account the particular circumstances of the case.