
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 6

Procedure at hearings

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

34.—(1) Unless the Statutory 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 Statutory Committee must hear and consider any preliminary legal arguments.

(3) The chair must—

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

(b) otherwise, require the presenter to confirm the registered person 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 registered person 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 Society and may adduce evidence and, subject to paragraph (19), call witnesses in support of it.

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

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

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

(11) The Statutory 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 registered person's fitness to practise is impaired.

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

(13) The Statutory 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 registered person'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 registered person concerned.

(14) The Statutory Committee must consider and announce its decision as to the appropriate course of action to be taken in respect of the registered person of those specified in paragraph 7(2) of Schedule 3 to the Order and give its reasons for that decision.

(15) Where the Statutory Committee considers that it might make an order under paragraph 12(2) or (4) of Schedule 3 to the Order in relation to the registered person'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 Statutory Committee must deal with any interim order in place in respect of the registered person.

(17) At any stage in the proceedings, before making a determination as to whether the registered person's fitness to practise is impaired, the Statutory 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 Statutory Committee under paragraph 18 of Schedule 3 to the Order.

(18) At any stage before making its decision as to a sanction, the Statutory 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 Statutory Committee may allow the parties to make additional submissions at any time.

Procedure at principal hearings before the Statutory Committee in disqualification proceedings

35.—(1) Unless the Statutory 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 Statutory 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 Society 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 Statutory 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 Statutory Committee must consider and announce its findings of fact.

(11) In a case falling within section 80(1)(b) or (4) of the Act, the Statutory 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 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.

(13) Where this paragraph applies, the Statutory 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 Statutory 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 given, including evidence as to any mitigating circumstances and any relevant matters in the previous history of the section 80 party.

(15) The Statutory 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 Statutory Committee may adjourn for further information or reports to be obtained in order to assist it in exercising its functions.

(18) Where the Society becomes aware that a section 80 party has failed to comply with any undertakings agreed under regulation 2 8(2)(a), the Statutory Committee must—

- (a) resume its consideration of the matter (the procedure at the hearing being for the Statutory 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 Statutory Committee may allow the parties to make additional submissions at any time.

(21) In this regulation “pharmacist” means registered person.

Procedure at review hearings

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

(2) The Statutory 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 Statutory Committee of the background to the case, and the sanction previously imposed or undertaking entered into;
 - (b) must direct the attention of the Statutory 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 Statutory Committee must receive further evidence and hear any further submissions from the parties—
- (a) where the Statutory Committee has given a direction under paragraph 7(2)(d) or (e) of Schedule 3 to the Order, as to what direction to give, if any, under paragraph 7(3) of that Schedule;
 - (b) where the person concerned has given an undertaking, as to whether the person concerned has breached the undertaking;
 - (c) where the Statutory Committee has given a direction under section 80(1) or (4) of the Act, as to whether that direction should be revoked.
- (7) The Statutory Committee must consider and announce its finding on the relevant question in paragraph (6) and give its reasons for that decision.
- (8) The Statutory Committee must consider and announce its decision as to—
- (a) the direction, if any, to be given under paragraph 7(3) of Schedule 3 to 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 Statutory Committee finds that an undertaking has not been complied with, it may—
- (a) in fitness to practise proceedings, determine that the registered person's fitness to practise is impaired on the basis of that failure to comply and make a determination under paragraph 7(2) of Schedule 3 to 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 Statutory Committee may allow the parties to make additional submissions at any time.

Procedure at restoration hearings

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

- (2) The Statutory 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 Statutory 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 Statutory 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.

(5) The applicant may address the Statutory 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 Statutory 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 Statutory 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 Statutory Committee may adjourn and give such directions as it sees fit.

- (9) Where the Statutory 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's name should be restored to the register.

(10) Where the Statutory Committee decides that a person's name should be restored to 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 Statutory Committee may allow the parties to make additional submissions at any time.

Procedure at interim order hearings

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

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

- (3) The chair must—
- (a) where the registered person concerned is present, require the registered person concerned to confirm their name; or
 - (b) otherwise, require the presenter to confirm the registered person concerned’s name.
- (4) The presenter must address the Statutory Committee regarding whether it is necessary to make or review an interim order in respect of the registered person concerned and, subject to paragraphs (9) to (11), may adduce evidence in this regard.
- (5) The registered person 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 Statutory Committee may put questions to any witness.
- (7) Subject to paragraph (10), where the registered person gives oral evidence, the presenter and members of the Statutory Committee may put questions to the registered person.
- (8) The Statutory Committee must announce its decision, and must give its reasons for that decision.
- (9) The Statutory Committee may, subject to paragraphs (10) and (11), receive any evidence which appears to it to be fair and relevant to its consideration under paragraph 8 of Schedule 3 to the Order.
- (10) No person may give oral evidence at the hearing unless the Statutory Committee considers such evidence is desirable to enable it to discharge its functions.
- (11) The Statutory Committee may, at any stage in the proceedings—
- (a) with the consent of the registered person; 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 Statutory 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 Statutory Committee; and
 - (b) the hearing is, or is likely to be, the last such hearing before the expiry of the interim order, the Statutory Committee may, after making its determination, advise the registrar that an application should be made to the High Court for the interim order to be extended, or if it has been extended, further extended, under paragraph 8(5) of Schedule 3 to 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 Statutory Committee may make an order in those terms without the need for a hearing.