

SCHEDULE 1

Regulation 10

RULES OF PROCEDURE OF SERVICE COMMITTEES

ARRANGEMENT OF PARAGRAPHS

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PART I GENERAL

Interpretation

- 1.—(1) In this Schedule, unless the context otherwise requires—
- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
 - (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in this Schedule, and any reference in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph;
 - (c) “professional member” means—
 - (i) in the case of a service committee (other than an ophthalmic service committee or a joint services committee), a member appointed by whichever of the area professional committees is the appropriate committee by virtue of regulation 2(2) to (4);
 - (ii) in the case of an ophthalmic service committee, a member appointed by the area medical committee or by the area optical committee; or
 - (iii) in the case of a joint services committee, a member appointed by the appropriate service committee in terms of regulation 2(8)(b)(ii) to (v).
- (2) For the purposes of a hearing in relation to an investigation which is arranged pursuant to paragraph 7(3), the parties shall consist of—
- (a) in the case of a complaint made in accordance with regulation 3—
 - (i) the complainer; and
 - (ii) the professional person concerned;
 - (b) in the case of a reference made under regulation 8(1)—
 - (i) the Health Board or the committee of the Health Board concerned; and
 - (ii) the professional person concerned,
- and “party” and “parties” shall be construed accordingly.

Application

2. Subject to such exceptions and qualifications as are mentioned, the provisions of this Schedule shall apply to the investigation by the appropriate service committee of—
- (a) any complaint made in accordance with regulation 3 which requires to be referred to that committee pursuant to regulation 4; and
 - (b) any matter which a Health Board or a committee of a Health Board may refer to that committee pursuant to regulation 8.

PART II

PRELIMINARY CONSIDERATION BY SERVICE COMMITTEES OF COMPLAINTS AND OTHER REFERENCES

Transmission of papers to chairman of service committee

3. The General Manager shall send to the chairman of the appropriate service committee as soon as practicable—

- (a) in the case of a complaint made in accordance with regulation 3, copies of—
 - (i) the complaint; and
 - (ii) where applicable, any statement of further information submitted for the purposes of regulation 3(5);
- (b) in the case of a matter referred under regulation 8(1), copies of the written terms of reference and any documents referred to by them.

Further statement in respect of complaints relating to terms of service

4.—(1) Where, in the case of a complaint made in accordance with regulation 3, the chairman of the appropriate service committee is of the opinion that the complaint discloses no reasonable grounds for believing that the professional person concerned has failed to comply with his terms of service, or is trivial or vexatious, he shall notify the General Manager of that opinion.

(2) In the event of receiving notification for the purposes of sub-paragraph (1), the General Manager shall send written notice to the complainer—

- (a) informing him of the chairman's opinion; and
 - (b) inviting him to submit within 2 weeks a further statement in amplification of his complaint.
- (3) Where after the expiry of the period referred to in the notice under sub-paragraph (2)—
- (a) no further statement has been submitted; or
 - (b) such a statement having been submitted, the chairman is of the opinion that it does not render a hearing of the case necessary,

the complaint shall be brought before a meeting of the service committee which shall have the power to dispense with a hearing and make a report on the complaint to the Health Board forthwith.

(4) The quorum at a meeting of a service committee at which a complaint is considered for the purposes of sub-paragraph (3) shall be the same as that specified in paragraph 14(1) in relation to a hearing of a service committee.

Comments and observations in respect of complaints

5.—(1) This paragraph applies to a complaint made in accordance with regulation 3 where either—

- (a) the chairman of the appropriate service committee is; or
- (b) notwithstanding any opinion of the chairman to the contrary, the service committee are,

of the opinion that the complaint discloses reasonable grounds for believing that the professional person may have failed to comply with his terms of service.

(2) In the case of a complaint to which this paragraph applies, the chairman of the service committee shall notify the General Manager of any provision of the terms of service which the chairman has, or where appropriate the service committee have, grounds for believing the

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professional person concerned may have failed to comply with and the General Manager shall thereafter send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3 and any further statement in terms of paragraph 4;
- (b) details of any provision of the terms of service identified by the chairman in accordance with this sub-paragraph;
- (c) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(3) The General Manager shall, following receipt of any comments submitted in terms of subparagraph (2)(c), send to the complainer—

- (a) a copy of the comments;
- (b) a notice informing the complainer—
 - (i) that he may submit observations on those comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow;
 - (ii) that a professional person belonging to the same category of a professional person as the person submitting the comments, but who has no interest, either directly or indirectly, in the complaint, is available to explain to the complainer, if he so requires, any technical terms used in those comments.

(4) Where the General Manager sends a notice in terms of either sub-paragraph (2)(c) or (3)(b) he shall include a statement in the notice to the person that copies of any documents, including any comments or observations, submitted in connection with the complaint will be furnished to the other party and may be produced in evidence at a hearing where one is held in respect of the complaint.

Comments and observations in respect of other references

6.—(1) Except as otherwise provided, this paragraph applies to any reference made under regulation 8(1) whether or not the reference involves an allegation of a failure by a professional person to comply with his terms of service.

(2) In the case of a reference which involves an allegation of a failure by a professional person to comply with his terms of service, the chairman of the service committee shall notify the General Manager of any provision of the terms of service which the chairman has grounds for believing the professional person concerned may have failed to comply with and the General Manager shall thereafter send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3;
- (b) details of any provision of the terms of service identified by the chairman in accordance with this sub-paragraph;
- (c) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(3) In the case of a reference which does not involve an allegation of a failure by the professional person concerned to comply with his terms of service, the General Manager shall send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3;
- (b) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

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(4) The General Manager shall, following receipt of any comments submitted in terms of subparagraph (2)(c) or (3)(b), send to the officer of the Health Board or to the committee of the Health Board as appears to the General Manager to be concerned with the reference—

- (a) a copy of the comments;
- (b) a notice informing that officer or that committee that the Health Board or the committee may submit observations on those comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(5) Where the General Manager sends a notice in terms of sub-paragraph (2)(c) or (3)(b) or (4)(b) he shall include a statement in the notice to the person that copies of any documents, including any comments or observations, submitted in connection with the reference will be furnished to the other party and may be produced in evidence at a hearing where one is held in respect of the reference.

Preliminary consideration by service committee

7.—(1) Where following the submission of—

- (a) comments by a professional person in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b);
- (b) if any, observations by—
 - (i) a complainer in terms of paragraph 5(3)(b); or
 - (ii) a Health Board or a committee of a Health Board in terms of paragraph 6(4)(b),

the chairman of the service committee is of the opinion that a hearing of the complaint or matter referred is unnecessary, the case shall be brought before a meeting of the service committee which shall have power to dispense with a hearing and make a report on the case to the Health Board forthwith.

(2) The quorum at a meeting of a service committee at which a case is considered for the purposes of sub-paragraph (1) shall be the same as that specified in paragraph 14(1) in relation to a hearing of a service committee.

(3) Where the General Manager—

- (a) has received no comments within the period allowed in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b); or
- (b) is notified by the chairman of the service committee that, following the submission of comments by the professional person in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b) and, as the case may be, any observations by the complainer in terms of paragraph 5(3)(b) or by the Health Board or the committee of the Health Board in terms of paragraph 6(4)(b)—
 - (i) the chairman is; or
 - (ii) notwithstanding any opinion of the chairman to the contrary, the service committee are,

of the opinion that a hearing of the complaint or matter referred is necessary,

he shall arrange a hearing in respect of the complaint or matter referred.

PART III

ARRANGEMENTS FOR A HEARING

Notice of hearing

8. The General Manager shall, where he is required by virtue of paragraph 7(3) to arrange a hearing, give not less than 3 weeks' written notice to—

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- (a) in the case of a complaint made in accordance with regulation 3, the complainer;
- (b) in the case of a reference made under regulation 8(1), the officer of the Health Board as appears to him to be concerned with the reference;
- (c) in the case of a complaint or a reference—
 - (i) the professional person concerned; and
 - (ii) the secretary of the appropriate area professional committee,of the date when the service committee will hold a hearing.

Notice by complainer of intention to be present

9.—(1) In the case of a complaint made in accordance with regulation 3, the complainer shall within 2 weeks from the date of the written notice sent pursuant to paragraph 8 notify the General Manager of his intention to attend or be represented at the hearing.

(2) Where the service committee are satisfied that a complainer to whom notice has been sent pursuant to paragraph 8 has failed, within 2 weeks from the date on which such notice was sent to him, to notify his intention to attend or be represented at the hearing, they may, subject to sub-paragraph (3), proceed to consider the complaint and to make a report to the Health Board without holding a hearing.

(3) A report made pursuant to sub-paragraph (2) shall not contain any recommendation which is adverse to the professional person concerned unless he shall have previously consented in writing to the matter being disposed of by the service committee without a hearing.

Intimation of particulars of witnesses and representatives

10. A party to an investigation shall, within 2 weeks from the date of the written notice sent to him pursuant to paragraph 8, send to the General Manager—

- (a) a note of the name of—
 - (i) each witness whom he intends calling to give evidence at the hearing;
 - (ii) if he intends to be represented at the hearing, the person who will so represent him;
- (b) in the case of a person whose evidence he intends to found upon but who will not be present at the hearing, a copy of a statement of that person in relation to the matter under investigation.

Application for postponement of a hearing

11.—(1) The chairman of the service committee may, upon the application of either party, postpone the date of the hearing if he is satisfied that the attendance on that date of the applicant or any witness he may intend calling is not reasonably practicable or if for any other reason he thinks fit.

(2) An application under sub-paragraph (1) shall be made in writing to the General Manager and shall state concisely the reasons for which it is made.

Provision of relevant papers

12. The General Manager shall, not less than 1 week before the hearing, supply copies of all relevant correspondence and papers to—

- (a) each member of the service committee;
- (b) the secretary of the appropriate area professional committee;
- (c) the Scottish Committee of the Council on Tribunals;

- (d) each of the parties.

PART IV

PROCEDURE IN RELATION TO HEARINGS

Determination of procedure by a service committee

13. Subject to the following provisions of this Part, the procedure at a hearing shall be such as the service committee may determine.

Quorum for a service committee

14.—(1) The quorum at a hearing of a service committee shall be—

- (a) except for a joint services committee, the chairman, 2 lay members and 2 professional members; and
- (b) in the case of a joint services committee, the chairman together with—
 - (i) 2 lay members; and
 - (ii) for each category of professional person concerned in the hearing, 1 professional member in the same category.

(2) Prior to the commencement of a hearing, the chairman shall ask the members of the service committee whether any of them has a personal interest, either directly or indirectly, in the complaint or reference which is the subject of the hearing and any such member who has, or considers that he might have, such an interest shall inform the chairman.

(3) If, having been informed by a member of the service committee in accordance with subparagraph (2), the chairman is of the opinion that the member has such an interest as mentioned in that subparagraph, he shall notify that member accordingly and that member shall take no part in the hearing but a deputy may act in his place.

(4) Where the chairman of a service committee is of the opinion that a hearing is likely to be concerned with the interests of a woman or of a child under the age of 16 years, he shall ensure that the service committee which hears the complaint or other matter includes at least 1 woman lay member.

Attendance at hearing by a complainer or professional person

15. Each party shall be entitled to be present at the hearing and may—

- (a) give and call such evidence as the service committee may think relevant to the matters in issue;
- (b) put questions relevant to the matters in issue to the other party or any witness called by that party either directly or, if the service committee so direct, through the chairman of the committee.

Failure to attend hearing

16.—(1) Subject to sub-paragraph (2), if a party fails to attend or be represented at a hearing of which he has been duly notified, the service committee may—

- (a) unless they are satisfied that his absence is due to illness or other reasonable cause, hold the hearing in the party's absence; or
- (b) adjourn the hearing.

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(2) Subject to sub-paragraph (3), if in the case of a complaint made in accordance with regulation 3—

- (a) the complainer fails to attend the hearing having sent notice of his intention to attend pursuant to paragraph 9(1); and
- (b) the service committee have not been informed of the reason for the failure to attend,

the service committee shall treat the complaint as abandoned with immediate effect.

(3) A complaint shall be deemed not to have been treated as abandoned pursuant to sub-paragraph (2) if, within a period of 2 days after the date on which the service committee determined that the complaint be treated as abandoned in terms of that sub-paragraph, the complainer has provided evidence which in the opinion of the chairman of the service committee shows that his failure to attend the hearing was due to illness or other reasonable cause.

(4) A complainer who intends to provide evidence in terms of sub-paragraph (3) shall submit that evidence within the period specified in sub-paragraph (3) to the General Manager who shall forthwith send the evidence to the chairman of the service committee.

(5) Where the chairman of the service committee is satisfied in terms of sub-paragraph (3) that the failure of the complainer to attend the hearing was due to illness or other reasonable cause, the General Manager shall arrange a new date for the hearing.

Assistance in presentation of case

17.—(1) A party may be accompanied at a hearing by some other person who may assist him in the presentation of his case, but, if that other person is legally qualified, he shall not address the committee or put questions to witnesses.

(2) For the purposes of sub-paragraph (1), a person who is legally qualified shall mean a person who is or has been—

- (a) a solicitor; or
- (b) an advocate or a barrister.

Proceedings to be in private

18. The proceedings at the hearing shall be private and no person shall be admitted to those proceedings except—

- (a) the parties and any persons assisting them in the presentation of their case;
- (b) a professional person authorised by the appropriate area professional committee;
- (c) any person whose attendance is required for the purpose of giving evidence, but such a person shall, unless the service committee otherwise direct, be excluded from the hearing except while he is actually giving evidence;
- (d) such officers of the Health Board as may be appointed for the purpose; and
- (e) any member of the Council on Tribunals or the Scottish Committee thereof.

Introduction of issues not previously disclosed

19.—(1) Subject to sub-paragraph (2), if—

- (a) in the course of a hearing in relation to a complaint, the complainer introduces any issue which in the opinion of the chairman was not sufficiently disclosed in the complaint or any further statement or observations submitted pursuant to paragraphs 4(2) and 5(3) respectively; or

(b) in the course of a hearing in relation to a matter referred under regulation 8(1), the Health Board or the committee of the Health Board concerned introduce any issue which in the opinion of the chairman was not sufficiently disclosed in the written terms of reference or any observations submitted pursuant to paragraph 6(4),
the chairman may as he thinks fit exclude or admit such issue.

(2) Where the chairman of the service committee intends to admit an issue pursuant to sub-paragraph (1), the hearing shall be adjourned for such period as the service committee consider necessary unless the professional person concerned requests that the hearing should proceed and the chairman agrees to do so.

Withdrawal from a hearing

20.—(1) Subject to sub-paragraph (2), when all the evidence has been heard and any closing submissions have been made, all persons entitled to be admitted in terms of paragraph 18, other than those referred to in sub-paragraph (d), shall withdraw.

(2) If the service committee and parties agree, any member of the Council on Tribunals or the Scottish Committee thereof who was admitted in terms of paragraph 18 may remain during consideration of the report required to be made by the service committee in terms of paragraph 21.

Submission of report by service committee to Health Board

21.—(1) The service committee shall prepare a report after the hearing in accordance with the following sub-paragraphs.

(2) The report, which shall be submitted to the Health Board, shall—

- (a) state such relevant facts as appear to the service committee to be established by the evidence placed before them;
- (b) in respect of each provision of the terms of service identified by the chairman pursuant to paragraph 5(2) or 6(2), state such inferences which, whether of a failure to comply with the terms of service or otherwise, in their opinion may properly be drawn from the facts and their reasons for reaching that opinion; and
- (c) make a recommendation as to the action, if any, which should be taken and state their reasons for making that recommendation.

(3) Subject to sub-paragraph (4), in presenting their report to the Health Board, where it relates to a complaint or reference in which they infer a failure by the professional person concerned to comply with his terms of service, the service committee may—

- (a) draw the attention of the Health Board to any previous reports based on a finding of a failure to comply with the terms of service applicable to that professional person and to any action taken by the Secretary of State on such reports; and
- (b) recommend that account should be taken thereof by the Health Board in reaching their decision.

(4) In sub-paragraph (3), the expression “previous reports” shall not include—

- (a) any report made more than 5 years prior to the date of the complaint or reference; or
- (b) any report in connection with which an appeal is pending under regulation 12.

Chairman’s vote

22. The chairman of a service committee shall have a vote in the case of equality of votes but otherwise shall not be entitled to vote.

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Adjourned hearings

23. Where the hearing of a service committee is adjourned for the purpose of—

- (a) hearing further evidence; or
- (b) preparing or considering the report,

a member of the service committee who was not present at the hearing shall not be entitled to be present at, or take part in, the proceedings at the adjourned hearing and it shall not be necessary for the General Manager to send him notice of such hearing.

Alternative procedure in certain circumstances

24.—(1) The following provisions of this paragraph shall apply where a service committee are of the opinion that the hearing in respect of a complaint or reference should be held at a place other than the locality in which the office of the Health Board is situated because—

- (a) there are in the opinion of the service committee difficulties in securing the attendance of witnesses owing to distance or inadequacy of means of communication; or
- (b) other special circumstances exist.

(2) Where a service committee are of the opinion as mentioned in sub-paragraph (1), they may delegate—

- (a) except where sub-paragraph (2)(b) may apply, to the chairman together with—
 - (i) in the case of a service committee other than a joint services committee, 1 lay member and 1 professional member; or
 - (ii) in the case of a joint services committee, 1 lay member and for each category of professional person concerned in the hearing, 1 professional member in the same category; or
- (b) where there are special circumstances and the Secretary of State consents, to the chairman acting on his own,

to hold a hearing at a suitable alternative locality and make a report to the service committee.

(3) Where a hearing is held and a report made to the service committee pursuant to a delegation made under sub-paragraph (2), the service committee shall accept as conclusive any findings of fact and shall otherwise deal with the complaint or reference as if they themselves had conducted the hearing.