

## SCHEDULE 1

### RULES OF PROCEDURE OF SERVICE COMMITTEES

#### 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—

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- (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.
- (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.

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### **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.

### **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.