

SCHEDULE 4

regulations 6(7), 7(5) and 8(3)

PROCEDURE FOR INVESTIGATIONS BY APPROPRIATE COMMITTEES

Preliminary consideration of complaint

1.—(1) Where, on consideration of a complaint, it appears to the FHSA that—

(a) as respects any event or other matter which is the subject of the complaint, the notice of the complaint—

(i) was not given within the relevant period specified in regulation 5(2) or (3) in relation to that notice, and

(ii) does not include a statement of the complainant's reasons for the delay,

it shall as soon as practicable in writing request the complainant to provide his reasons in writing for the delay.

(b) where notice of the complaint was given in writing, the substance of the matter which the complainant wishes to have investigated is not sufficiently particularised in the statement, it shall as soon as practicable in writing request the complainant to provide such further particulars of the complaint as it may reasonably require.

(2) Where a complainant receives a request under sub-paragraph (1) he shall within 21 days of the date on which the request was sent to him, furnish the FHSA in writing with his reasons for the delay or with such further particulars as may be requested of him.

(3) Subject to sub-paragraph (4), the FHSA shall, as soon as practicable—

(a) where sub-paragraph (1) does not apply; or

(b) where that sub-paragraph applies, after the period allowed by sub-paragraph (2) has expired,

send to the chairman of the appropriate committee a copy of the statement and of any reasons or particulars furnished under sub-paragraph (2).

(4) Sub-paragraph (3) of this paragraph shall not apply where, and for so long as, the FHSA and the complainant agree that, pending conciliation of the matter giving rise to it, the complaint should not be investigated under these Regulations.

(5) If, in the opinion of the chairman, the statement does not disclose reasonable grounds for believing that the practitioner has failed to comply with his terms of service, he shall so inform the FHSA who shall notify the complainant of the chairman's opinion and invite him to submit a further statement in amplification of his complaint within 14 days of the date on which that notification was sent to him.

(6) Where—

(a) after consideration of any further statement which has been submitted pursuant to subparagraph (5), the chairman remains of the view that the complaint does not disclose reasonable grounds for believing that the practitioner has failed to comply with his terms of service; or

(b) such further statement has been invited but has not been submitted within the period specified in that sub-paragraph,

the chairman shall, as soon as practicable, bring the case before the appropriate committee who may report on the matter in accordance with paragraph 7 without holding a hearing.

(7) Where the chairman considers that the complaint discloses reasonable grounds for believing that the practitioner may have failed to comply with any provision of his terms of service, he shall identify each provision in question and notify the FHSA accordingly.

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Complaints in relation to deputies

2.—(1) Where a complaint—

- (a) against a doctor concerns the conduct of a deputy whose name is not included in the medical list;
- (b) against a dentist concerns the conduct of a deputy whose name is not included in the dental list, or an assistant;
- (c) against a chemist concerns the conduct of a pharmacist employed by him,

the FHSA shall give notice in writing in accordance with sub-paragraph (2) to the deputy, assistant or employed pharmacist.

(2) A notice given under sub-paragraph (1) shall—

- (a) invite the recipient of the notice—
 - (i) to so inform the FHSA in writing, within 30 days of the notice being sent to him, if he wishes to be treated as a party to the investigation notwithstanding that no action may be taken in relation to him under regulation 9, and
 - (ii) where he so informs the FHSA, to submit at the same time his comments in writing on the complaint;
- (b) include—
 - (i) a copy of the complainant's statement and any further statement; and
 - (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
- (c) inform the recipient of the notice that copies of any comments or other documents he may submit in connection with the investigation will be sent to the complainant and produced at any hearing.

(3) Where the recipient of a notice given under sub-paragraph (1) informs the FHSA, and submits comments as mentioned in sub-paragraph (2)(a), he shall be treated for the purposes of this Schedule as if he were a practitioner in relation to whom the complaint is made, though no action may be taken in relation to him under regulation 9, and the following paragraphs of this Schedule (except paragraph 3(1)) shall apply to him accordingly.

(4) Where a complaint against a doctor concerns the conduct of a deputy whose name is also included in the medical list, the deputy shall be a party to the investigation and the provisions of these Regulations shall apply to him accordingly.

(5) Where, in a case to which sub-paragraph (4) applies, the chairman of the medical service committee considers that—

- (a) the notice of complaint and other documents disclose no reasonable grounds for believing that the doctor personally has failed to comply with his terms of service; and
- (b) the doctor has complied with his obligations under the terms of service in relation to ensuring the provision of services for his patients,

the matter shall be brought as soon as practicable before the service committee who may, in accordance with paragraph 7, report on the matter as respects that doctor without holding a hearing, though the investigation may continue as respects the deputy.

Exchange of parties' statements etc.

3.—(1) On being notified as mentioned in paragraph 1(7) the FHSA shall—

- (a) send to the practitioner—
 - (i) a copy of the complainant's statement, and of any further statement, and

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- (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
- (b) in writing—
 - (i) invite the practitioner to submit his comments on the complaint in writing to the FHSA within 30 days from the date of the invitation, and
 - (ii) inform him that copies of any comments or other documents he may submit in connection with the investigation will be sent to the complainant and produced at any hearing.
- (2) Where, in response to the invitation made under sub-paragraph (1)(b), the FHSA receives from the practitioner comments with regard to the complaint, it shall—
 - (a) send to the complainant—
 - (i) a copy of those comments, and
 - (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
 - (b) in writing—
 - (i) invite the complainant to submit his observations on those comments in writing to the FHSA within 14 days of the date of the invitation, and
 - (ii) inform him that copies of any observations or other documents he may submit in connection with the investigation will be sent to the practitioner and produced at any hearing.
- (3) Where—
 - (a) the practitioner has not made comments within the period allowed under sub-paragraph (1)(b); or
 - (b) after consideration of any such comments, and of any observations, made pursuant to sub-paragraph (2)(b), the chairman is of the opinion that—
 - (i) there is a material difference between the parties with regard to the facts of the complaint, or
 - (ii) for some other reason a hearing of the complaint is necessary,the chairman shall specify every provision of the terms of service with which, in his opinion, the complaint discloses reasonable grounds for believing that there may have been a failure to comply, and shall inform the FHSA accordingly, and paragraph 4(1) shall apply.
- (4) Where sub-paragraph (3) does not apply, the complaint shall be brought before the appropriate committee who may then report on the matter in accordance with paragraph 7 without holding a hearing.

Preparation for the hearing

- 4.—(1) The FHSA shall in writing—
 - (a) inform the parties—
 - (i) that there will be a hearing,
 - (ii) of the names of the members and deputy members of the appropriate committee;
 - (b) send to the parties—
 - (i) details of all provisions of the terms of service specified by the chairman pursuant to paragraph 3(3), and

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- (ii) copies of all correspondence relevant to the complaint; and
 - (c) require each party to forward to the FHSA within 14 days from the date of the request, copies of any documentary evidence, and of the names of any witnesses, which the party proposes to produce or call at the hearing.
- (2) Except where, pursuant to paragraph 1(6), 2(5) or 3(4), a report is made without holding a hearing, the FHSA shall give to the parties and the Secretary of the relevant Local Representative Committee, not less than 21 days' notice in writing of the date, time and place of the meeting of the appropriate committee at which the matter will be heard, and shall include with the notice to each party—
- (a) a copy of any documents supplied by the other party under sub-paragraph (1)(c);
 - (b) a request to that party to signify in writing to the FHSA whether or not he intends to attend the hearing; and
 - (c) a statement of the effect of sub-paragraph (3).
- (3) Where the appropriate committee is satisfied that a complainant to whom notice has been sent pursuant to sub-paragraph (2)—
- (a) has failed, within 14 days of the date on which such notice was sent to him, to signify his intention to attend the hearing; or
 - (b) has, without reasonable cause, refused to attend the hearing,
- it may, subject to sub-paragraph (4), proceed to consider the complaint at its meeting and to report on the matter in accordance with paragraph 7 without holding a hearing.
- (4) A report made pursuant to sub-paragraph (3) shall not contain any recommendation which is adverse to the practitioner unless he shall have previously consented in writing to the matter being disposed of by the appropriate committee without a hearing.
- (5) The chairman of the appropriate committee may, upon the application of either party, postpone the hearing if he is satisfied that the attendance of the party or any witness on the date fixed for the hearing is not reasonably practicable or, for any other reason he thinks fit, in which case the provisions of sub-paragraph (2) shall apply as respects the postponed hearing.
- (6) The FHSA shall, not less than 7 days before the date fixed for the hearing, supply—
- (a) to each member of the appropriate committee; and
 - (b) to the relevant Local Representative Committee,
- copies of the statement and any further statement, of any comments or observations, and of any further correspondence between the FHSA and either party relating to the complaint.

Attendance at hearing

5.—(1) Subject to the provisions of regulation 33 (attendance by representative of Council on Tribunals), the hearing before the appropriate committee shall be in private, and no person shall be admitted to it unless he is a person specified in sub-paragraph (2).

- (2) The persons specified for the purposes of sub-paragraph (1) are—
- (a) subject to sub-paragraph (3), any party;
 - (b) any person permitted under sub-paragraph (4) to accompany a party;
 - (c) not more than one person who is a member or officer of the relevant Local Representative Committee and who is authorised by that committee to attend the hearing on its behalf as an observer only;
 - (d) subject to sub-paragraph (6), any person whose attendance is required for the purpose of giving evidence to the appropriate committee;

- (e) not more than two officers of the FHSA who have been authorised by the FHSA to attend for the purpose of assisting the appropriate committee in the discharge of its functions.
- (3) Where an FHSA is a party, one member or officer of that FHSA may attend on its behalf.
- (4) Subject to sub-paragraph (5), a party may be accompanied at the hearing by one other person who may assist him in the presentation of his case, but, if that other person is a barrister or solicitor, he shall not address the committee or put questions to witnesses.
- (5) Except where the party in question is an FHSA, no officer or member of any FHSA or of any of its committees referred to in regulation 3(1) shall be permitted under sub-paragraph (4) to accompany a party at a hearing.
- (6) Any person permitted to attend the hearing under sub-paragraph (1)(d) for the purpose of giving evidence shall, unless the appropriate committee otherwise directs, be excluded from the hearing except while he is actually giving evidence.

Procedure at the hearing

- 6.—(1) At any hearing before the appropriate committee, any person mentioned in subparagraph (2)(a) or (b) of paragraph 5 may, subject to sub-paragraph (4) of that paragraph—
- (a) address the committee; and
 - (b) put questions to witnesses, either directly or, where the chairman of the committee so directs, through him.
- (2) If either party fails to appear at the hearing, and the appropriate committee is satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee thinks fit, it may, after considering the observations of any party who is present, adjourn the hearing, in which case the provisions of paragraph 4(2) shall apply as respects the resumed hearing.
- (3) Prior to the commencement of a hearing, the chairman shall ask the other members of the appropriate committee whether any of them is interested in a question referred to them, either directly or through association with a party, and if, in the opinion of the chairman, any member is so interested, that member shall take no part in the hearing, but a deputy appointed in the like manner may act in his place.
- (4) Where, in the course of a hearing, any issue arises in relation to an event or matter which, in the opinion of the chairman—
- (a) is the subject of the complaint but was not sufficiently disclosed to the practitioner prior to the hearing, the chairman may direct that the issue is to be excluded from the investigation of the complaint;
 - (b) is not the subject of the complaint, the issue shall be excluded from the investigation of the complaint.
- (5) Where no direction is made under sub-paragraph (4)(a) in relation to an issue to which that provision applies, the hearing shall be adjourned unless the practitioner and the chairman agree that the hearing may proceed.
- (6) Before being invited to give his agreement for the purposes of sub-paragraph (5), a practitioner who is not accompanied by a person mentioned in sub-paragraph (2)(b) of paragraph 5 shall be afforded an opportunity to consult any person who may be present at the hearing pursuant to sub-paragraph (2)(c) of that paragraph.
- (7) Subject to the provisions of this Schedule, the procedure at a hearing of an appropriate committee shall be such as the committee may determine.

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The committee's report

7.—(1) The appropriate committee shall present to the FHSA a report in writing which shall contain—

- (a) details of the material evidence given to it;
- (b) its findings on all relevant questions of fact;
- (c) the inferences which, in the view of the committee, may properly be drawn from such findings of fact as to—
 - (i) in the case of a denture conciliation committee, whether or not the respondent has failed to secure and maintain the oral health of any person, or
 - (ii) in any other case, whether or not the respondent has failed to comply with his terms of service;
- (d) its reasons for drawing such inferences; and
- (e) its recommendations as to the action which should be taken by the FHSA under regulation 9.

(2) Where a committee is aware of any earlier determination of the FHSA that the respondent has on some other occasion failed to comply with his terms of service, it may—

- (a) draw the attention of the FHSA to—
 - (i) any previous report of a service committee on which such determination was based, and
 - (ii) any action taken by an FHSA or the Secretary of State in connection with that determination; and
- (b) recommend that account should be taken by the FHSA of such previous report when determining what, if any, action should be taken under regulation 9(5).

(3) In this paragraph, the expression “previous report” shall not include—

- (a) any report made more than six years prior to the date of the complaint; or
- (b) any report in connection with which an appeal is pending under regulation 10(1).

Provisions as to, quorum, composition and voting

8.—(1) At any meeting of a service committee, the quorum shall consist of a chairman, two lay members and two members who are professional persons.

(2) At any meeting of a joint services committee, the quorum shall consist of the chairman, two lay members and two other members—

- (a) who are professional persons; and
- (b) in relation to—
 - (i) one of whom one of the practitioners is a relevant practitioner, and
 - (ii) the other of whom the other of the practitioners is a relevant practitioner.

(3) The proceedings at any meeting of a service committee or joint services committee shall be suspended if, and for so long as—

- (a) the number of members present falls below the quorum specified in sub-paragraph (1) or (2); or
- (b) the number of lay members who are present exceeds, or is exceeded by, the number of other members (apart from the chairman) who are present.

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(4) Where, after the commencement of a hearing before a service committee or joint services committee, the meeting is adjourned for the purposes of hearing further evidence or for preparing or considering the report, no member of the committee who was not present at the earlier meeting shall be present at the proceedings at the resumed meeting.

(5) Where there is an equality of votes among members of an appropriate committee, the chairman shall have a casting vote, but shall not otherwise be entitled to vote.

Modification in respect of matters referred under regulation 7 or 8

9.—(1) The provisions of this Schedule shall, subject to any necessary modifications, apply to the investigation of any matter which is referred to an appropriate committee under regulation 7 or 8 as they apply to the investigation of a complaint.

(2) Where the FHSA, in connection with a reference, or a possible reference, of a matter under regulation 7 or 8, seeks the comments of the practitioner concerned, it shall inform him of—

- (a) its reason for requesting the comments;
- (b) the nature of any alleged breach of the terms of service; and
- (c) unless it decides otherwise, the source of the information before it as to the matter in question.

Interpretation

10. In this Schedule, unless the context otherwise requires—

- (a) “lay member” and “professional person” have the meanings given to them in paragraph 11 of Schedule 2;
- (b) “relevant practitioner” has the meaning given to it in paragraph 3(4) of that Schedule;
- (c) “statement” means the statement, included in the notice given pursuant to regulation 5(1), of the substance of the matter which a complainant wishes to have investigated, and includes—
 - (i) where the notice was given orally, both the tape on which it was recorded and the transcript of it, and
 - (ii) where the notice was given in writing, any further particulars of it submitted under paragraph 1(2).