

SCHEDULE

ROYAL COLLEGE OF VETERINARY SURGEONS DISCIPLINARY COMMITTEE (PROCEDURE AND EVIDENCE) RULES 2003

The Council of the Royal College of Veterinary Surgeons, in exercise of their powers under paragraph 5(1) of Schedule 2 to the Veterinary Surgeons Act 1966 hereby make the following Rules—

PART I

Preliminary

Citation and commencement

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1.1. These Rules may be cited as the Disciplinary Committee (Procedure and Evidence) Rules 2003.

1.2. These Rules shall come into force on 1st June 2004.

Interpretation

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2.1. In these Rules, unless the context otherwise requires—

“the Act” means the Veterinary Surgeons Act 1966;

“the Chairman” means the chairman of the Committee elected pursuant to paragraph 2(1) of Schedule 2 to the Act, or a member of the Committee who presides in his absence pursuant to Rule 3 of these Rules;

“the Clerk” means the clerk to the Committee appointed in accordance with Rule 4 of these Rules;

“the College” means the Royal College of Veterinary Surgeons;

“the Committee” means the Disciplinary Committee provided for by section 15(2) of the Act;

“conduct case” means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee where it is alleged that the respondent has been guilty of disgraceful conduct in any professional respect;

“conviction case” means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee where it is alleged that the respondent has been convicted in the United Kingdom or elsewhere of a criminal offence rendering him unfit to practise veterinary surgery;

“the Council” means the Council of the Royal College of Veterinary Surgeons;

“disciplinary case” has the meaning given in section 15(1) of the Act;

“fraudulent entry case” means a case which has been referred by the Preliminary Investigation Committee to the Disciplinary Committee where it is alleged that the name of a person has been fraudulently entered on a register;

“Legal Assessor” means an assessor appointed by the Council or by the Committee in pursuance of paragraph 6(2) of Schedule 2 to the Act;

“party” in relation to proceedings before the Committee means—

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- (a) in any case the respondent;
- (b) in a fraudulent entry case, any person who is alleged to have been a party to the alleged fraud;

“Preliminary Investigation Committee” means the committee set up by the Council in pursuance of section 15(1) of the Act;

“register” means a register maintained under section 2 or section 8 of the Act;

“registrar” is the registrar appointed under section 9 of the Act;

“respondent”—

- (a) in a conduct case or a conviction case means the person against whom the allegation is made;
- (b) in a fraudulent entry case, means the person whose name it is alleged is fraudulently entered in the register;

“the Solicitor” means the solicitor nominated by the College to act as its Solicitor for the purpose of these Rules, and in relation to proceedings before the Committee shall include Counsel instructed by that solicitor.

2.2. In these Rules, any reference to a Rule is to a Rule contained in these Rules, and any reference to a Part is to a Part of these Rules.

2.3. The Interpretation Act 1978 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Chairman

3. At any meeting of the Committee the Chairman of the Committee shall preside or, in his absence, such member of the Committee as the Committee may choose or have chosen.

Clerk to the Committee

4. The registrar shall appoint a Clerk to the Committee, who may be an employee of the College but not a member of the Council.

PART II

Pre-Inquiry Procedure

Notice of inquiry

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5.1. As soon as may be after a disciplinary case has been referred to the Committee by the Preliminary Investigation Committee, the Clerk shall serve a notice of inquiry, together with a copy of these Rules, on the respondent in accordance with section 26 of the Act.

5.2. A notice of inquiry shall set out the following matters—

- (a) the charge(s) against the respondent;
- (b) the day, time and place at which the Committee will hold an inquiry into the charges;
- (c) the respondent’s right to attend the inquiry and be represented;
- (d) the requirement for the respondent to acknowledge receipt of the notice of inquiry;

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- (e) the requirement for the respondent to inform the Solicitor and the Clerk, at least seven days before the date fixed for the hearing, whether he intends to admit or deny each charge;
- (f) the manner in which the respondent may apply for the postponement of the hearing of the inquiry;
- (g) that the inquiry may proceed in the respondent's absence; and,
- (h) such further information as the nature of the case may require.

5.3. Where a fraudulent entry case has been referred to the Committee, the Clerk shall send a copy of the notice of inquiry to any other party in the case.

5.4. On the application of any other person and payment of the proper charges, the Clerk shall send a copy of the charges(s) to that person no more than fourteen days before the date fixed for the inquiry.

5.5. The Committee shall not hold an inquiry unless it is satisfied that a notice of inquiry has been served upon the respondent in accordance with this Rule. Unless the respondent agrees otherwise, the inquiry shall not be held less than twenty-eight days after the date on which the notice of inquiry was served on the respondent.

5.6. Where it appears to the Chairman before the commencement of the inquiry that a notice of inquiry should be amended, he shall direct that the notice be amended, unless it appears to him that the required amendment cannot be made without injustice. The Clerk shall serve the amended notice of inquiry on the respondent and if the Chairman considers that the circumstances require it, the inquiry shall be postponed or adjourned in accordance with Rule 22.

Acknowledgement of notice of inquiry

6. Within 10 days of service of the notice of inquiry, or such longer period as may be specified by the Clerk in the notice of inquiry, the respondent shall send to the Clerk an acknowledgment of the notice of inquiry stating—

- (a) that he has received the notice of inquiry;
- (b) whether or not he intends to attend the hearing; and
- (c) whether or not he intends to be represented and, where applicable, the name of the solicitor representing him.

Service of College's evidence

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7.1. No less than 21 days before the date fixed for the inquiry, the Solicitor shall send the respondent and any other party in the case—

- (a) a copy of any documentary evidence on which the College intends to rely at the inquiry;
- (b) a list of the witnesses whom the College intends to call to give evidence against the respondent; and
- (c) for each witness whom the College intends to call, a witness statement, or in exceptional circumstances a summary of the matters on which the witness shall give evidence.

7.2. Where, after the Solicitor has served evidence in accordance with paragraph 7.1, the College acquires or identifies additional evidence relevant to the inquiry, or identifies additional witnesses whom it wishes to call in support of the disciplinary case against the respondent, the Solicitor shall forthwith send to the respondent and any other party in the case—

- (a) a copy of any additional documentary evidence;

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- (b) a witness statement for each additional witness, or in exceptional circumstances a summary of the matters on which the witness shall give evidence, and an amended list of witnesses.

Disclosure of documents

8. At the same time that he serves the College’s evidence in accordance with paragraph 7.1, the Solicitor shall send to the respondent and any other party in the case any—

- (a) formal complaint;
- (b) statement;
- (c) admission, explanation or similar document sent to the College by any party to the inquiry; and
- (d) evidence which may assist the respondent’s case or harm the College’s case,

acquired in the course of investigating and preparing the disciplinary case against the respondent, which has not already been disclosed under paragraph 7.1.

Bundles of evidence, skeleton arguments and respondent’s notification of intended plea

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9.1. The Solicitor and the parties may at any time agree that any evidence shall be placed before the Committee as agreed evidence. Any such agreed evidence shall be supplied to the Clerk not less than 7 days before the date fixed for the inquiry.

9.2. At any time before the date fixed for the inquiry, the Solicitor and the parties may, with the consent of the Chairman, agree to refer any legal issue arising between any of them to the Legal Assessor for him to advise the Committee on that issue.

9.3. Not less than seven days before the date fixed for the inquiry, the Respondent shall inform the Solicitor and the Clerk whether or not he intends to admit or deny each charge, and in relation to any charge which he intends to deny whether he intends to admit any fact or conviction alleged in the charge.

PART III

Procedure at Disciplinary Inquiry

The reading of the charge

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10.1. If the respondent appears at the hearing of the inquiry, each charge shall be read in the respondent’s presence.

10.2. As soon as a charge has been read the respondent may, if he so desires, object to the charge, or to any part of it, in point of law. The Solicitor may answer any such objection and the respondent shall have the right of final reply. If an objection to a charge is upheld, no further proceedings shall be taken on that charge or part of the charge to which the objection relates.

10.3. The respondent shall be asked whether he admits each charge. In relation to any charge that is denied, the respondent shall be asked whether each conviction or fact within the charge is admitted.

10.4. If the respondent does not appear, the Committee may decide to proceed in the respondent’s absence if it is satisfied that the notice of inquiry was properly served and that it is in the interests of justice to do so.

Presentation of the case against the respondent

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11.1. The Solicitor may make an opening speech and—

- (a) if the respondent has not admitted every conviction or fact alleged, shall adduce evidence of any conviction or fact not admitted;
- (b) in a conviction case, shall address the Committee and may adduce evidence and make submissions, to show that if the conviction alleged is proved or admitted, the nature and circumstances of the offence are such as to render the respondent unfit to practise veterinary surgery;
- (c) in a conduct case, shall address the Committee and may adduce evidence and make submissions, to show that if the facts alleged are proved or admitted, the respondent is guilty of disgraceful conduct in a professional respect;
- (d) in a fraudulent entry case, shall address the Committee and may adduce evidence and make submissions, to show that if the facts alleged are proved or admitted, the name of the respondent was fraudulently entered on a register.

11.2. The respondent shall have the opportunity to cross-examine any witness whom the College calls to give evidence in support of the charges against him.

11.3. If no evidence is adduced concerning any particular charge, and the respondent has made no admission of the relevant conviction or facts, the Committee shall make a finding on that charge in favour of the respondent and the Chairman shall announce that finding.

11.4. If the respondent does not appear, the Committee may accept an admission made in writing by the respondent.

Presentation of the case for the respondent

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12.1. In relation to any charge concerning which evidence has been adduced, the respondent may submit that the Solicitor has not adduced sufficient evidence upon which the Committee could find—

- (a) the conviction or facts in the charge proved; or
- (b) that a conviction renders the respondent unfit to practise veterinary surgery; or
- (c) that the facts alleged are such as to constitute disgraceful conduct in a professional respect;
- (d) that the facts alleged are such as to establish that the name of the respondent was fraudulently entered on a register.

12.2. The respondent may adduce evidence concerning any conviction or fact which he has not admitted, and may address the Committee.

12.3. In a conviction case, the respondent may adduce evidence as to the nature and circumstances of the offence, to show that they do not render him unfit to practise veterinary surgery, and may address the Committee.

12.4. In a conduct case, the respondent may adduce evidence to show that the facts alleged are not such as to constitute disgraceful conduct in any professional respect, and may address the Committee.

12.5. In a fraudulent entry case, the respondent may adduce evidence to show that the facts alleged are not such as to establish that his name was fraudulently entered on a register, and may address the Committee.

12.6. The Solicitor shall have the opportunity to cross-examine any witness whom the respondent calls in support of his case.

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Further submissions and general matters

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13.1. The Solicitor may address the Committee by way of reply to the respondent's case.

13.2. At the conclusion of the Solicitor's address, if any, the respondent may address the Committee by way of final reply.

13.3. Without prejudice to paragraph 13.2, if, at any stage, the respondent has made a submission to the Committee on a point of law the Solicitor shall have the right of reply limited to that submission, and the respondent shall have the right of final reply.

Supplementary powers of the Chairman and Committee

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14.1. The disciplinary proceedings to which these Rules apply are in the nature of civil proceedings, and the Committee may allow such further evidence, amendments and submissions and give such further directions as it considers appropriate in all the circumstances.

14.2. Members of the Committee or the Legal Assessor may put questions to the Solicitor, any party in the case or any witness.

Decision of the Committee

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15.1. At the close of the evidence and submissions, the Committee shall consider each charge separately and shall decide whether or not each fact or conviction alleged in each charge has been proved, and the Chairman shall announce the Committee's findings.

15.2. The Committee may at its discretion allow further submissions to ascertain whether there is any evidence not already before it upon which the Respondent would wish to rely to support any submission that a conviction does not render him unfit to practise veterinary surgery, or that the facts found do not constitute disgraceful conduct in a professional respect or do not establish that his name was fraudulently entered on a register. Where the Respondent is allowed to make such submissions, the Solicitor may address the Committee by way of reply, and the Respondent shall have the right of final reply.

15.3. On the conclusion of the proceedings, the Committee shall consider all of the evidence and submissions and shall determine whether each charge against the respondent has been established, and the Chairman shall announce the Committee's findings.

15.4. In a conduct case, where the Committee finds that the charge has been proved, the finding of the Committee shall be that the respondent is guilty of disgraceful conduct in a professional respect.

15.5. In a conduct case, where the Committee finds that the charge has not been proved, the finding of the Committee shall be that the respondent is not guilty of disgraceful conduct in a professional respect.

Procedure where there is more than one respondent

16. Nothing in this Part shall prevent one inquiry being held into charges against two or more respondents. Where such an inquiry is held, these Rules shall apply with the necessary adaptations, and subject to any directions given by the Committee as to the order in which proceedings shall be taken by or in relation to the several respondents. Any such direction shall ensure that any right of a respondent under these Rules shall be exercised separately by each of the respondents who desire to invoke that right.

PART IV

Procedure where Charges are Established

Fraudulent entry cases

17. In a fraudulent entry case, if the respondent admits or the Committee determines that the entry was fraudulently made, it shall make a direction in writing, signed by the Chairman, that the entry shall be removed from the Register.

Conduct and conviction cases

18

18.1. In a conduct or conviction case, where the respondent has admitted the charge or the Committee has found that the charge has been established—

- (a) The Solicitor may address the Committee, and may adduce evidence and make submissions, as to the character and previous history of the respondent;
- (b) The respondent may then address the Committee, and may adduce evidence and make submissions, by way of mitigation;
- (c) If the respondent does not attend the inquiry, the Committee shall take into consideration any written plea in mitigation submitted by the respondent.

18.2. The Committee shall next consider and determine whether to give its judgment concerning the respondent forthwith or to postpone judgment for a period not exceeding 2 years. The Chairman shall announce the Committee's determination.

18.3. If the Committee postpones its judgment, it may do so subject to undertakings from the respondent. Any such undertakings must be accepted by the respondent at the hearing before the Committee, and shall be set out in the written record of the Committee's determination and in the notice of direction served on the respondent in accordance with section 16(2) of the Act.

18.4. If the Committee gives its judgment forthwith, it may—

- (a) direct the Registrar to remove the respondent's name from the register;
- (b) direct that the respondent's registration be suspended for a specified period;
- (c) reprimand the respondent and/or warn the respondent as to his future conduct, and the Chairman shall announce the Committee's judgment accordingly.

18.5. If the Committee reserves reasons for its judgment, the Clerk shall serve those reasons with the notice of direction under Section 16(2) of the Act.

Procedure where judgment stands postponed

19

19.1. Where the judgment of the Committee stands postponed, and it appears to the Chairman from information received since the inquiry that the respondent has failed to comply with any undertaking given to the Committee or that the proceedings should be resumed for any other reason, the Chairman may direct that the proceedings shall be resumed.

19.2. Where the judgment of the Committee stands postponed and the Committee is to resume the hearing of an inquiry—

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- (a) Not later than 28 days before the day fixed for the resumption of the proceedings, the Clerk shall send to the respondent and the Solicitor a notice of resumption and a copy of the information received since the inquiry.
- (b) The notice of resumption shall—
 - (i) state the day, time and place at which the proceedings are to be resumed and invite the respondent to appear;
 - (ii) invite the respondent and the Solicitor to send to the Clerk, not later than 10 days before the day fixed for the resumption of proceedings, any written evidence or statement relating to the respondent's conduct or to any relevant facts or matters since the first hearing of the inquiry.

19.3. At any hearing at which the proceedings are resumed—

- (a) the Solicitor shall set out for the Committee the position in which the case stands;
- (b) the Committee may receive oral or documentary evidence in relation to the case, or in relation to the conduct or any convictions of the respondent since the hearing of the inquiry;
- (c) the Solicitor and the respondent shall be entitled to address the Committee;
- (d) the Committee shall consider and determine whether it should further postpone its judgment, and—
 - (i) if the Committee determines to postpone its judgment again, it shall stand further postponed for a second and final period not exceeding 2 years, and paragraph 18.3 shall apply;
 - (ii) if the Committee determines that judgment shall not be postponed again, paragraph 18.4 shall apply;
 - (iii) the Chairman shall announce the Committee's determination and, where it is not further postponed, its judgment.

19.4. At any resumed proceedings, any new charge alleged against the respondent under these Rules shall be dealt with in accordance with Part III of these Rules. Nothing in this paragraph shall prevent the Committee from receiving evidence of any conduct of the respondent or conviction recorded against the respondent which has not been made the subject of a charge under these Rules.

19.5. So far as is reasonably practicable, proceedings resumed under this Rule shall take place before a Committee having the same constitution as the Committee which heard the inquiry. Nevertheless, subject to the provisions of the Act, the validity of resumed proceedings shall not be called in question by reason only of the fact that the Committee is differently constituted.

PART V

Restoration of Names after Removal

Procedure

20

20.1. An application to the Committee under section 18 of the Act, for the restoration of a name to the register or the early removal of a suspension of registration, shall be made in writing to the Clerk and shall set out the grounds for the application.

20.2. The applicant may submit with his application any documentary evidence which he wishes to have drawn to the attention of the Committee in support of his application, including references.

20.3. On receipt of an application to which this Rule applies, the application shall be listed for hearing within 3 months.

20.4. The Clerk shall provide a copy of the application and supporting documentary evidence to the Solicitor.

20.5. The Chairman and the Solicitor may invite the applicant to provide any further evidence, including evidence concerning the applicant's identity, character and conduct since his name was removed from the register.

20.6. At the hearing of an application to which this Rule applies—

- (a) The applicant shall be entitled to address the Committee, and to adduce evidence and make submissions, in support of the application;
- (b) The Solicitor shall be entitled to address the Committee, and to adduce evidence and make submissions, in opposition to the application.

20.7. Subject to the foregoing provisions of this Rule, and to Part VI of these Rules, the procedure of the Committee in connection with the application shall be such as they may determine.

PART VI

Proceedings before the Committee: General

Public hearing

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21.1. Subject to paragraphs 21.2 and 21.3, all proceedings before the Committee shall take place in the presence of all parties who appear and shall be held in public.

21.2. The Committee may direct that the public shall be excluded from any proceedings or any part of any proceedings, where it appears to the Committee that this would be in the interests of justice. The Committee shall not make any direction under this paragraph excluding the public from the announcement of a finding, determination or judgment of the Committee under these Rules.

21.3. Subject to the provisions of paragraph 6 of Schedule 2 to the Act and of any rules made thereunder, the Committee may deliberate in private (with or without the Legal Assessor) at any time and for any purpose during or after the hearing of any proceedings.

Time limits and postponement or adjournment of proceedings

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22.1. The Committee or Chairman may, on their own initiative or on the application of any party or the Solicitor, postpone or adjourn any hearing of the Committee for such period as appears to either the Committee or Chairman to be reasonable.

22.2. Any application for the postponement of a hearing of the Committee must be made in writing to the Clerk.

22.3. Where the respondent applies for the postponement or adjournment of any hearing of the Committee on grounds of ill health—

- (a) The application for postponement or adjournment should be accompanied by appropriate medical certification;
- (b) The Committee may, if it is not satisfied that the medical certification accompanying the application is sufficient, direct that the respondent should provide further evidence of his

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ill health or should submit to examination by a medical practitioner appointed for that purpose by the Committee;

22.4. In deciding whether to postpone or adjourn a hearing, the Committee shall have regard to all of the circumstances and to the interests of justice.

22.5. The Clerk shall, as soon as possible, notify the respondent, any other party in the case and the Solicitor of any decision to postpone or adjourn an inquiry and of the date fixed for the hearing of the postponed or adjourned inquiry.

Evidence

23

23.1. The Committee may receive oral evidence whether or not under oath, documentary evidence, or other evidence of any fact which appears to it relevant to the inquiry into the case before it. Subject to any other provision of these Rules, the Committee may receive evidential material prior to the hearing of an inquiry.

23.2. All documents put before the Committee shall be deemed to be authentic unless proved otherwise to the satisfaction of the Committee.

23.3. Where the decision of any court or tribunal is relevant to an issue which arises before the Committee—

- (a) the fact that a person has been convicted of a criminal offence may be proved by the production of a certified copy of the certificate of conviction or an extract conviction;
- (b) the judgment or order of any civil court may be proved by producing a certified copy of that judgment or order; and
- (c) the finding and judgment of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and judgment.

23.4. Unless proved otherwise to the satisfaction of the Committee—

- (a) The findings of fact of any court or tribunal shall be admissible as conclusive evidence of those facts;
- (b) The records of proceedings before the Committee under paragraph 26.1 of the Rules shall be conclusive as to the proceedings before the Committee;
- (c) Certificates of birth, marriage and death shall be conclusive evidence of the births, marriages or deaths to which they refer;
- (d) The records (including the registers) of the College shall be conclusive as to the professional qualifications, the registration, the address and the identity of the respondent and of any other veterinary surgeon or practitioner.

23.5. The Committee may accept admissions made by any party and may in such case dispense with proof of the matters admitted.

23.6. Subject to paragraph 23.5, any charge which may result in a direction by the Committee that a respondent be removed from the register, shall be proved so that the Committee is satisfied to the highest civil standard of proof; so that it is sure.

23.7. The Committee may require any person to be called as a witness in any proceedings before it, whether or not the parties consent thereto. Any witness summons requiring the attendance of a witness or the production of documents before the Committee pursuant to paragraph 4(1) or (2) of Schedule 2 to the Act shall be issued out of the High Court or the High Court of Justice in Northern Ireland, as the case may be.

Representation

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24.1. An individual party may appear before the Committee in person.

24.2. A party which is a body corporate or an unincorporated body of persons may be represented before the Committee by its secretary or another officer appointed for the purpose.

24.3. Any party may be represented before the Committee by counsel or a solicitor. A respondent may be represented by a friend.

Voting

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25.1. All acts of the Committee shall be decided by a majority of the members present.

25.2. Any questions put to the vote shall be put in the form of a motion. The Chairman himself may vote for or against the motion.

25.3. Where on any question the votes are equal, the Chairman shall not have a casting vote but the question shall be deemed to have been resolved in favour of the respondent, except under Rule 20. For the purposes of this paragraph, a decision to postpone judgment shall be taken to be a decision in favour of the respondent or applicant unless he has indicated to the Committee that he is opposed to postponement.

Records of proceedings

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26.1. The Clerk shall arrange for all public hearings of the Committee to be recorded.

26.2. Any party to the proceedings shall, on applying to the Clerk and paying the proper charges, be provided with a copy of the record of any part of the proceedings at which he was entitled to be present.

26.3. Paragraphs 26.1 and 26.2 do not apply to the deliberations of the Committee.

Records of decisions

27

27.1. Every decision, determination, direction, finding and judgment of the Committee or Chairman shall be recorded in writing.

27.2. Written notification of every decision, determination, direction, finding and judgment of the Committee or Chairman shall be sent to the respondent or applicant under Rule 20. Subject to any provision in the Act or these Rules, the Chairman may dispense with this requirement.

Supplementary powers of the Chairman and Committee

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28.1. The Committee or Chairman may waive any procedural requirement of these Rules, where the parties consent or the interests of justice so require.

28.2. The Committee or Chairman shall determine the procedure for any aspect of the proceedings for which there is no specific provision in these Rules.