

Agenda Item 6

Enclosure 3

Paper RC 14 / 02

REGISTRATION COMMITTEE

DRAFT REGISTRATION APPEALS RULES

From : the Executive

FOR DISCUSSION AND AGREEMENT

**THE HEALTH PROFESSIONS COUNCIL
(REGISTRATION APPEAL) RULES 2002**

The Health Professions Council, in exercise of its powers under Article 37 the Health Professions Order 2001 hereby makes the following Rules:

Citation

1. These Rules may be cited as the Health Professions Council (Registration Appeals) Rules 2002.

Interpretation

2. (1) In these Rules:

"appellant" means a person who makes an appeal to the Council in accordance with Article 37(1) of the Order;

"an appeal" means an appeal against a decision of the committee;

"the Chairman" means the chairman of a panel or of the Council when considering an appeal;

"the Committee" means the Education and Training Committee of the Council;

"the Council" means the Health Professions Council;

"the Order" means the Health Professions Order 2001;

"panel" means a panel appointed to consider an appeal and includes the Council when acting in that capacity; and

"the Registrar" means the Registrar of the Council and includes a person exercising the functions of the Registrar in accordance with Article 4(5) of the Order.

(2) A reference:

(a) in these Rules to a numbered rule is a reference to the rule bearing the corresponding number in these Rules;

(b) in a rule in these Rules to a numbered paragraph is a reference to the paragraph bearing that number in that rule.

Service of Documents

3. (1) In these Rules a reference to the sending of a notice or other document to any person is a reference to it being sent:

(a) where the person is the Registrar, to the offices of the Council;

(b) where the person is the appellant, to the address identified in the appellant's notice of appeal;

(c) in all other cases, to the person's last known address;

and if the notice or other document is sent by post, it shall be treated as having been sent on the day that it was posted.

(2) Notices referred to in Rules 5 and 6 shall be sent by delivering them by hand or by posting by registered post or recorded delivery service.

(3) All other communications to be sent for the purposes of these Rules may be sent by post.

Time period in which an appeal must be made

4. An appellant who makes an appeal must do so within the period of [28] days beginning with the date on which the Committee gave the appellant notice of the disputed decision.

Notice of appeal

5. (1) An appellant shall appeal by giving notice in writing in accordance with the following paragraphs.

(2) The notice shall be addressed to the Registrar at the offices of the Council and state:

- (a) the name and address of the appellant;
- (b) the appellant's registration number (where applicable);
- (c) that the notice is a notice of appeal;
- (d) the disputed decision against which the appeal is brought,
- (e) a concise statement of the grounds of the appeal,
- (f) the name and address of the appellant's representative (if any) and whether the Council should correspond with that representative concerning the appeal instead of with the appellant.

(3) A notice of appeal must be signed by or on behalf of the appellant.

(4) The appellant shall attach to the notice of appeal a copy of any documents on which the appellant proposes to rely for the purposes of the appeal.

Acknowledgment by the Council

6. (1) Upon receiving a notice of appeal (and provided that the notice of appeal was given within the time described in rule 4) the Registrar shall send the appellant a notice acknowledging its receipt and informing the appellant:

- (a) of the appellant's right, within [14 days] of the date of the notice, to request that a hearing be held;

- (b) of the Council's right to hold such a hearing whether or not it is requested to do so by the appellant; and
- (c) of the appellant's right to be heard, and to be represented, at such a hearing.

Notice of hearing

7. (1) If the appellant has requested that a hearing be held or the Council determines that it would be desirable to hold such a hearing the Council shall fix a day on which it is to hear the case and notify the appellant of the day, time and venue for the hearing.

(2) The date fixed for a hearing shall not be on any day earlier than the end of the period of [28 days] beginning with the day on which the Council sent the notice referred to rule 6 to the appellant.

(3) Within [14] days of receipt of the notice of the time and place of hearing, the appellant shall inform the Council whether or not he or she intends to attend or be represented at the hearing and whether or not he or she intends to call any witnesses and, if so, shall provide their names and addresses to the Council.

(4) An appellant who does not intend to attend or be represented at a hearing may send to the Council additional written representations in support of his or her appeal.

Consideration by Council or panel

8. (1) An appeal shall be considered by the Council or by a panel appointed by the Council for that purpose.

(2) Where an appeal is considered by the Council the quorum shall be [five] members and of the members present the number of registrant members may not exceed the number of lay members by more than one.

(3) Where an appeal is considered by a panel, it shall comprise not fewer than three persons selected with due regard to the matter under consideration and shall include:

- (a) a person who is registered in the same part of the register established and maintained under Article 5 of the Order as the one in which the appellant is, or is applying to be, registered
- (b) a person who is not and never has been on the registered (or any register kept under the Professions Supplementary to Medicine Act 1960) and who is not a registered medical practitioner; and
- (c) where the health of the appellant is in issue, ~~a~~ a registered medical practitioner

(4) A member of the Council shall be appointed as the Chairman of a panel.

(5) A person who has been involved in any other capacity in a case which is to be considered by a panel shall not be appointed as a member of that panel.

(6) Decisions by a panel or the Council shall be made by a majority vote of those present and, in the event of a tie, the Chairman shall have an additional casting vote which shall be exercised in favour of the appellant.

Conduct of hearing

9. (1) The Education & Training Committee shall be the respondent in any proceedings.

(2) The appellant may be represented in any proceedings by any person (who may but need not be legally qualified) but may not be represented by a member of the Council or the Committee or by a person employed by the Council.

(3) The panel or the Chairman may hold a preliminary meeting with the parties, their representatives and any other persons it may consider appropriate if such a meeting would, in its opinion, assist the panel to perform its functions.

(4) The panel may require any person (other than the appellant) to attend and give evidence or produce documents and may permit any person who, in its opinion, has an interest in the proceedings to make written representations.

Powers to determine an appeal without a hearing

10. The panel may determine an appeal without an oral hearing on the basis of any documents provided by the appellant under rules 5 and 7(4) with the written consent of the parties or if no reply is received from the appellant by the Council within the time appointed under rule 7(3).

Postponement or adjournment of hearing

11. (1) The panel, either of its motion or at the request of a party to the hearing, may postpone a hearing at any time before it begins and may adjourn the proceedings from time to time as it thinks fit.

(2) Where a hearing is postponed or proceedings are adjourned the Registrar shall send the appellant notice of the date on which the panel is to hold the postponed hearing or to resume the hearing that has been adjourned.

(3) The date for a postponed or resumed hearing shall not be fixed for any date earlier than the end of the period of [14] days beginning with the date upon which notice of the postponed or resumed hearing is sent.

Absence of the appellant

12. Where the appellant is neither present nor represented at a hearing, the panel may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the notice of the hearing on the appellant.

Procedure at hearing

13. (1) The proceedings shall be held in public unless the panel determines otherwise.

(2) At the beginning of the hearing the Chairman shall explain to the parties the order of proceedings which the panel proposes to adopt.

(3) The panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties shall be heard in such order as the panel shall determine having regard to the following:

- (a) the appellant presenting his or her appeal and any case in support of it;
- (b) the appellant or any person called on his or her behalf being cross-examined by the Committee and re-examined by the appellant;
- (c) the Committee presenting its case in favour of the decision appealed against;
- (d) the Committee and any person called on its behalf being cross-examined by the appellant and re-examined by the Committee;
- (e) the Committee addressing the panel concerning the decision appealed against;
- (f) the appellant addressing the panel concerning the decision appealed against.

(4) The parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the panel both on the evidence and generally on the subject matter of the appeal.

(5) Where the appellant or the Committee are represented, references in paragraphs (3) and (4) to the Committee or the appellant presenting the case, calling, questioning cross-examining or re-examining witnesses or addressing the panel shall be read as references to the representative of the Committee or the appellant as the case may be.

(6) Members of the panel may with the consent of the Chairman question any person giving evidence at the hearing.

(7) The panel may receive evidence of any fact which appears to it to be relevant, notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(8) Where the appellant has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based.

(9) At any hearing the panel may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in the notice of appeal or to adduce any

evidence not presented to the Committee before or at the time it took the disputed decision.

(10) The panel may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Disposal of cases

14. (1) The panel shall notify the appellant of its decision and the reasons for reaching that decision and shall inform the appellant of his or her right to appeal to the courts under Article 37(10) of the Order..

(2) The decision shall be recorded in writing and, as soon as is practicable after the hearing, the panel shall send a copy of the decision and the reasons for the decision to the appellant.