STATUTORY INSTRUMENTS

2016 No. 902

HEALTH CARE AND ASSOCIATED PROFESSIONS

DENTISTS

PROFESSIONS COMPLEMENTARY TO DENTISTRY

The General Dental Council (Fitness to Practise) (Amendment) Rules Order of Council 2016

Made - - - -	*9th September 2016*
Laid before Parliament	*13th September 2016*
Laid before the Scottish Parliament - - - -	*13th September 2016*
Coming into force - -	*1st November 2016*

At the Council Chamber, the 9th day of September 2016

By the Lords of Her Majesty's Most Honourable Privy Council

The General Dental Council has made the General Dental Council (Fitness to Practise) (Amendment) Rules 2016 as set out in the Schedule to this Order.

In accordance with sections 50C(2) and (3) of the Dentists Act 1984(**1**) the Rules shall not come into force until approved by order of the Privy Council.

Citation and commencement

1. This Order may be cited as the General Dental Council (Fitness to Practise) (Amendment) Rules Order of Council 2016 and comes into force on 1st November 2016.

Privy Council approval

2. Their Lordships, having taken the Rules contained in the Schedule into consideration, are pleased to, and do approve them.

(**1**) 1984 c. 24. Section 50C was inserted by S.I. 2005/2011 and amended by S.I. 2009/1182.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE Article 2

The General Dental Council (Fitness to Practise) (Amendment) Rules 2016

The General Dental Council, having consulted in accordance with section 50D of the Dentists Act 1984(**2**), make the following Rules in exercise of their powers conferred by sections 27(6A), 27A(13), 27AA, 27AB(1), 36N(6A), 36O(13), 36OA, 36OB(1), 50C(5) and (6) of, and paragraph 2(1)(b) of Schedule 3 and paragraph 2(1)(b) of Schedule 4B to that Act(**3**).

Citation and commencement

1. These Rules may be cited as the General Dental Council (Fitness to Practise) (Amendment) Rules 2016 and shall come into force on 1st November 2016.

Amendment of the General Dental Council (Fitness to Practise) Rules 2006

2. The General Dental Council (Fitness to Practise) Rules 2006(**4**) are amended as follows.

Amendment of rule 2

3. In rule 2 (interpretation)—

(a) after the definition of "allegation" insert—

> ""Case Examiner" means an officer of the Council appointed by the registrar on the Council's behalf (whether as a replacement for another Case Examiner or otherwise) for the purposes of exercising the functions of the Investigating Committee in accordance with these rules, being a registered dentist, registered dental care professional, or lay person;
>
> "Case Examiners" means, in relation to any allegation, the two Case Examiners to whom an allegation is referred under rule 3(2)(a), one of whom must be a lay person and the other either a registered dentist or a registered dental care professional;"; and

(b) after the definition of "interim orders hearing" insert—

> ""lay person" means a person who—
>
> (a) is not and never has been registered in a register maintained by the Council,
>
> (b) is not a director of a body corporate registered in a register maintained by the Council, and
>
> (c) does not hold qualifications which would entitle the holder to apply for registration in a register maintained by the Council;".

Renaming of Part 2

4. For the heading of Part 2, substitute "Referral and notification of allegations".

Substitution of rule 3

5. For rule 3 (initial consideration by the registrar), substitute—

(**2**) 1984 c. 24. Section 50D was inserted by S.I. 2005/2011.

(**3**) Sections 27(6A), 27A(13), 27AA, 27AB, 36N(6A), 36O(13), 36OA and 36OB(1) were inserted by S.I. 2016/496, section 50C was inserted by SI 2005/2011 and amended by SI 2009/1182, Schedule 3 was substituted by S.I. 2005/2011, Schedule 4B was inserted by S.I. 2005/2011.

(**4**) These rules are scheduled to S.I. 2006/1663.

"**Initial consideration and referral of allegations**

3.—(1) The registrar must investigate a complaint or other information received in relation to a registered dentist or a registered dental care professional, including a dentist or dental care professional whose registration is suspended, and must determine whether a complaint or information amounts to an allegation.

(2) Where the registrar determines that a complaint or other information amounts to an allegation the registrar—

(a) must refer the allegation to the Case Examiners for consideration under rule 5; and

(b) may at any time before the Case Examiners have begun to consider the allegation, refer the allegation to the Interim Orders Committee.".

Amendment of rule 4

6. In rule 4(2) (notification of allegation)—

(a) in sub-paragraph (b) for "rule 7(3)" substitute "rule 6(8)"; and

(b) in sub-paragraph (c) for "Investigating Committee" substitute "Case Examiners".

New Parts 2A, 2B and 2C

7. For rules 5 to 10, substitute—

"PART 2A

Case Examiners

Consideration of allegations

5.—(1) Where an allegation is referred by the registrar under rule 3(2)(a) or 9(8)(b), the Case Examiners must, for the purpose of making a determination referred to in rule 6(1), consider that allegation.

(2) In carrying out that consideration, the Case Examiners may, subject only to the requirements of relevance and fairness, consider any documentary evidence, whether or not that evidence would be admissible in any proceedings in a court.

(3) Where the Case Examiners consider it necessary for the purposes of their consideration, they may adjourn their consideration of an allegation and direct the registrar to carry out such enquiries as they may specify.

(4) Where one or both of the Case Examiners consider it appropriate, the Case Examiners may refer the allegation to the Interim Orders Committee in accordance with section 27A(4A) or section 36O(4A) of the Act.

Determination

6.—(1) A determination by the Case Examiners that—

(a) an allegation ought not to be considered by a Practice Committee; or

(b) an allegation ought to be considered by a Practice Committee,

must be unanimous.

(2) If the Case Examiners fail to agree as to a determination under paragraph (1), they must refer the allegation for consideration by the Investigating Committee under rule 7.

(3) The Case Examiners must not make a determination under paragraph (1) unless they are satisfied that the respondent and the maker of the allegation (if any) have been provided with a reasonable opportunity to submit written representations commenting on the allegation and, subject to paragraph (8), the evidence relating to the allegation.

(4) Where the Case Examiners determine that the allegation ought not to be considered by a Practice Committee they may also do one or more of the following—

(a) issue to the respondent a warning or give advice regarding the respondent's future conduct, performance and practice;

(b) issue advice on any issue arising in the course of the investigation to any other person involved in that investigation.

(5) Where the Case Examiners determine that an allegation ought not to be considered by a Practice Committee, they must at the same time as making that determination revoke with immediate effect any interim order which has been made under section 32 or section 36V of the Act in respect of the respondent in consequence of that allegation.

(6) Where the Case Examiners determine that the allegation ought to be considered by a Practice Committee, the Case Examiners must either—

(a) refer the allegation—

(i) to the Professional Performance Committee, in the case of an allegation based on the ground mentioned in section 27(2)(b) or 36N(2)(b) of the Act (deficient professional performance),

(ii) to the Health Committee, in the case of an allegation based on the ground mentioned in section 27(2)(c) or 36N(2)(c) of the Act (adverse physical or mental health),

(iii) to the Professional Conduct Committee, in any other case, or

(iv) where paragraph (9) applies, to whichever of the Practice Committees they consider most appropriate; or

(b) in accordance with rule 6A, invite the respondent to comply with such undertakings as the Case Examiners consider appropriate: this is subject to paragraph (7).

(7) The Case Examiners must not invite the respondent to comply with undertakings under paragraph (6)(b) where there is a realistic prospect that, if the allegation were referred for consideration by a Practice Committee, the respondent's name would be erased from the register.

(8) Any evidence which the respondent or a third party has provided relating to the health or private and family life of the respondent or a third party must not be disclosed by the registrar to the maker of the allegation.

(9) This paragraph applies where the Case Examiners make a determination under paragraph (1)(b) in respect of two or more allegations relating to the same respondent and those allegations are any of the following—

(a) an allegation based on the ground mentioned in section 27(2)(b) of the Act and an allegation or allegations based on any other ground mentioned in section 27(2) of the Act;

(b) an allegation based on the ground mentioned in section 27(2)(c) of the Act and an allegation or allegations based on any other ground mentioned in section 27(2) of the Act;