

Annexe O - Fitness to Practise Rules

These Rules dated [x 2012] commencing [x 2012] are made by the Bar Standards Board, in liaison with the Council of the Inns of Court, under section 21 (regulatory arrangements) Legal Services Act 2007, under authority delegated by the General Council of the Bar as the Approved Regulator of the Bar under Part 1 of Schedule 4 to the Legal Services Act 2007, and with the approval of the Legal Services Board under Paragraph 19 of Schedule 4 to the Legal Services Act 2007.

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Part 1 - Preliminaries

Commencement and application

1. These Rules will come into effect on [insert date] and shall apply to all cases referred to a Fitness to Practise Panel or Review Panel prior to that date under the Rules then applying, and any step taken in relation to any Fitness to Practise Panel or Review Panel pursuant to those Rules shall be regarded as having been taken pursuant to the equivalent provisions of these Rules.
2. Anything required by these Rules to be done or any discretion required to be exercised by, and any notice required to be given to, the President of the Council of the Inns of Court or the Professional Conduct Committee, may be done or exercised by, or given to, any person or body authorised by the President or by the Professional Conduct Committee as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

3. In these Rules:
 - (a) "Barrister" means the barrister whose case is referred to a Fitness to Practise Panel, pursuant to the procedure prescribed by these Rules
 - (b) "Bar Council" means The General Council of the Bar as constituted from time to time or a Committee thereto;
 - (c) "Bar Standards Board" or "BSB" means the Board established to exercise and oversee the regulatory functions of the Bar Council;
 - (d) "Disciplinary Tribunal" means a Disciplinary Tribunal as provided for in the Disciplinary Tribunal Regulations;
 - (e) "Fitness to Practise Panel" means a Fitness to Practise Panel constituted in accordance with Paragraph 3 of Schedule 1;
 - (f) "lay" in relation to any person means a person who is not and never has been a barrister and who has not completed the training required in order to be called to the Bar;
 - (g) "medical" in relation to any person means a registered medical practitioner;
 - (h) "Medical Examiner" means a registered medical practitioner nominated to carry out a medical examination of a barrister under Rule 12(a) or 22(b)(i) and provide medical advice to the Fitness to Practise Panel;

- (i) “member” means a person appointed by the President under Paragraph 1 of Schedule 1 as eligible to sit on a Fitness to Practise Panel or a Review Panel;
- (j) “notice” means notice in writing;
- (k) “PCC” means the Professional Conduct Committee of the Bar Standards Board;
- (l) “PCD” means the Professional Conduct Department of the Bar Standards Board;
- (m) “President” means the President of the Council of the Inns of Court and any reference to the President in these Rules includes a reference to a person authorised by the President to act on his or her behalf (either prospectively or retrospectively and either generally or for a particular purpose);
- (o) “prohibition” means prohibition on accepting or carrying out any public access instructions by a barrister;
- (p) “restriction” means a suspension, prohibition imposed, extended, varied or replaced by a Panel under Rule 15, 22, 27 or 28(c);
- (q) “Review Panel” means a Review Panel constituted in accordance with Paragraph 4 of Schedule 1;
- (r) “suspension” means suspension from practising as a barrister;
- (s) “unfit to practise” when used to describe a barrister means that he or she:
 - (i) is incapacitated due to his or her physical or mental condition (including any addiction);
 - (ii) as a result, the barrister’s fitness to practise is impaired; and,
 - (iii) the imposition of a restriction, or the acceptance of undertakings in lieu, is necessary for the protection of the public, is otherwise in the public interest or is in the barrister’s own interests;
- (t) except where these Rules provide otherwise, any term defined in Part X of the Code of Conduct shall carry the same meaning in these Rules.
- (u) any reference to a person includes any natural person, legal person and/or firm, and any reference to:
 - (i) the singular includes the plural; and,
 - (ii) in each case vice versa.

Part 2 – Constitution of Panels

4. The President shall constitute Fitness to Practise Panels and Review Panels to exercise the functions afforded to those Panels under these Rules, in accordance with the provisions set out Schedule 1.

Part 3 - The Fitness to Practise Procedure

Referral to a Fitness to Practise Panel

5. Where the Professional Conduct Department (PCD) receives information in writing suggesting that a barrister who holds a practising certificate is unfit to practise, it shall refer the matter to the Professional Conduct Committee (PCC) for consideration under Rule 7.
6. Investigation, appropriate to the consideration of whether the barrister may be unfit to practise, may be carried out, prior to referring a case to the PCC under Rule 5.
7. Where a matter is referred to the PCC under Rule 5, the Chair of the PCC shall, as soon as reasonably practicable, write to the barrister concerned:
 - (a) notifying him or her that information has been received which appears to raise a question of whether he or she is unfit to practise; and,
 - (b) providing him or her with copies of any information received under Rule 5 or obtained under Rule 6.
8. Where the PCC, following referral of a matter to it under Rule 5 or during its consideration of a complaint of professional misconduct under the Complaints Rules 2011, considers that a barrister may be unfit to practise, it shall refer the matter to a Fitness to Practise Panel for determination (Rule 11).
9. No decision to refer shall be taken under Rule 8 without the barrister having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.
10. In reaching a decision under Rule 8, the PCC shall take into account any information received under Rule 5 or obtained under Rule 6, and any representations submitted by the barrister.

Preliminary Hearings

11. As soon as reasonably practicable after referral of a matter by the PCC to a Fitness to Practise Panel, the Chair of the Panel shall send a notice of referral to the barrister which shall:
- (a) contain a summary of the case and the reasons why it has been referred to a Fitness to Practise Panel;
 - (b) inform the barrister of the time and date for a preliminary hearing before the Panel;
 - (c) inform the barrister of his or her right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Rules 37(b) and (c) below;
 - (d) inform the barrister of the Panel's powers at a preliminary hearing under Rules 12 and 15 to 18 below; and,
 - (e) inform the barrister of his or her right to appeal under Rule 30 below.

Directions

12. At a preliminary hearing, the Fitness to Practise Panel may give directions for the full hearing before the Panel, which may include that:
- (a) the barrister, within a specified period of time, submit to a relevant medical examination to be carried out by a Medical Examiner nominated by the Panel;
 - (b) the PCC instruct a Medical Examiner to conduct such examination and to provide a report setting out an opinion as to whether the barrister is unfit to practise and as to any other matters as may be specified by the Panel;
 - (c) the barrister authorise disclosure to the PCC and the Medical Examiner, of such of his or her relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and
 - (d) the PCC carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing,

and where it gives a direction under Paragraph (a) or (c) above, it shall inform the barrister that failure to comply with the direction may be taken into account by the Panel in accordance with Rule 21(1b).

Medical Examinations

13. Where a Medical Examiner is nominated by a Panel under Rule 12(a) or 22(b)(i), the Medical Examiner shall:
 - (a) within the period specified by the Panel, undertake a relevant medical examination of the barrister in accordance with any directions from the Panel;
 - (b) prepare a report which shall express an opinion as to:
 - (i) whether the barrister has a physical or mental condition;
 - (ii) whether the barrister is fit to practise either generally or on a restricted basis; and
 - (iii) any other matters which he or she has been instructed to address, in accordance with any directions of the Panel; and
 - (c) where requested by the PCC to do so, attend a hearing to present his or her findings.
14. A barrister's medical records and any report prepared by a Medical Examiner under these Rules shall not be used for any other purpose than is provided for in these Rules and shall not be disclosed to any other person or body without the consent in writing of the barrister.

Interim Restrictions

15. At a preliminary hearing, a Fitness to Practise Panel may, where it is satisfied that it is necessary to protect the public, is otherwise in the public interest or is in the barrister's own interests to do so, direct that the barrister is subject to an interim restriction.
16. An interim restriction may be imposed subject to such conditions as the Panel may consider appropriate, and shall have effect pending the determination of the matter at a full hearing before the Fitness to Practise Panel for a specified period, which shall not, save in exceptional circumstances, exceed 3 months.
17. In lieu of imposing an interim restriction under Rule 15 above, the Panel may accept from the barrister an undertaking in writing on terms satisfactory to the Panel:

- (a) agreeing to an immediate interim restriction for such period as may be agreed; or,
 - (b) as to the barrister's conduct or behaviour pending the conclusion of the full hearing.
18. Where it has directed an interim restriction under Rule 15 or accepted undertakings under Rule 17, a Panel may:
- (a) direct that the interim restriction or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the barrister is served with no less than 14 days' notice of the hearing;
 - (b) at the request of the barrister, direct an expedited full hearing of the Fitness to Practise Panel;
- and, shall:
- (a) inform the barrister of his or her right to request a Fitness to Practise Panel to review the interim restriction or undertaking under Rule 26 below;
 - (b) inform the barrister of his or her right of appeal under Rule 30 below.
19. The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim restriction imposed or undertakings accepted.

Full Hearings before a Fitness to Practise Panel

20. As soon as reasonably practicable after receipt of any report prepared by a Medical Examiner or, where no report has been prepared, the PCC considers that the case is ready for hearing, the Chair of the Panel shall send a notice of hearing to the barrister which shall:
- (a) contain a summary of the case and a copy of the report, where applicable;
 - (b) inform the barrister of the time and date of the full hearing;
 - (c) inform the barrister of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Rules 37(b) and (c) below;
 - (d) inform the barrister of the Panel's powers at a full hearing under Rules 21 to 23 below; and,
 - (e) inform the barrister of his or her right to appeal under Rule 30 below.

Decisions of a Fitness to Practise Panel

21. At a full hearing, the Fitness to Practise Panel shall decide whether the barrister is unfit to practise and, in reaching its decision, shall be entitled to take into account:
 - (a) the barrister's current physical or mental condition, any continuing or episodic condition experienced by the barrister, or any condition experienced by the barrister which, although currently in remission, may be expected to cause impairment if it recurs; and
 - (b) any failure by the barrister to comply with a direction to undergo a relevant medical examination made under Rule 13 (a).

22. Where a Fitness to Practise Panel has decided that a barrister is unfit to practise, the Panel may direct:
 - (a) that the barrister is subject to a restriction, which may be subject to such conditions as the Panel may consider appropriate, and which may be imposed indefinitely or for such period, not exceeding six months, as shall be specified in the direction;
 - (b) that the barrister's right to continue to practise, or to resume practice after any period of restriction shall be subject to such conditions as the Panel may think fit, including that the barrister:
 - (i) submit for regular examination before one or more Medical Examiners nominated by the Panel,
 - (ii) authorise disclosure to the PCC and the Medical Examiner such of his or her medical records as may be reasonably required for the purposes of the medical examination and subsequent report,
 - (iii) is reviewed by a medical practitioner and shall follow the treatment they recommend in respect of any physical or mental condition which the Panel consider may be a cause of the barrister's unfitness to practise.

23. In lieu of imposing any direction under Rule 22 above, the Panel may accept from the barrister one or more undertakings in writing in which the barrister agrees to such period of restriction, or such conditions, as the Panel would otherwise have imposed.

24. Where it has made a direction under Rule 22 or agreed undertakings under Rule 23, the Panel shall inform the barrister:
 - (a) of his or her right to request a Fitness to Practise Panel to review any direction made, or undertakings agreed, under Rule 26 below;

- (b) of his or her right of appeal under Rule 30 below; and
 - (c) that a failure to comply with the direction or undertakings would be likely to result in a charge of professional misconduct being brought against the barrister before a Disciplinary Tribunal.
25. The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made or undertakings accepted.

Part 4 – Reviews and Appeals

Review of decisions made by a Fitness to Practise Panel

26. At any time during which a barrister is subject to a period of restriction or conditions, directed or undertaken pursuant to these Rules, the Chair of the PCC may, of his or her own motion, or at the request of the PCC or of the barrister, may refer the matter to be reviewed before a Fitness to Practise Panel, where he or she considers there has been a significant change in the barrister's circumstances or that there is some other good reason for a review to be undertaken.
27. Where a case has been referred to a Fitness to Practise Panel for a review hearing under Rule 26, Rules 11 to 25 and 37 shall apply, save that the Chair of the Panel and the barrister may agree in writing that no preliminary hearing shall be held.
28. At the conclusion of a review hearing, the Fitness to Practise Panel may:
- (a) confirm or revoke the direction made or undertakings agreed;
 - (b) extend or vary (or further extend or vary) the period for which the direction has effect, or agree with the barrister concerned an extension or variation of the period for which an undertaking has been agreed;
 - (c) replace the direction or undertakings, exercising any of the powers of a Fitness to Practise Panel under Rules 15, 17, 22 or 23 above.
29. Where a case has been referred to a Fitness to Practise Panel for a review hearing under Rule 26 above and the review hearing cannot be concluded before the expiry of any period of restriction imposed under Rule 15 or 22(a), or agreed under Rule 17(a) or 23, the Panel may extend the restriction for such period as it considers necessary to allow for the conclusion of the review hearing.

Appeals before a Review Panel

30. A barrister may appeal a decision of a Fitness to Practise Panel to impose, extend, vary or replace a period of restriction by notifying the President in writing that he or she wishes to do so, no more than 14 days after the date of the decision subject to appeal.
31. As soon as reasonably practicable after receipt of an appeal under Rule 30, the Chair of the Review Panel shall send a notice of the appeal hearing to the barrister, which shall:
- (a) inform the barrister of the time and date of the appeal hearing;
 - (b) inform the barrister of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Rules 37(b) and (c) below; and
 - (c) inform the barrister of the Panel's powers under Rule 33 below.
32. A pending appeal to a Review Panel shall not operate as a stay of the decision subject to appeal.

Decisions of a Review Panel

33. At the conclusion of an appeal hearing, the Review Panel may:
- (a) allow the appeal;
 - (b) confirm the decision that is subject to appeal;
 - (c) exercise any of the powers of a Fitness to Practise Panel under Rules 22 or 23 above;
34. The Review Panel shall inform the barrister:
- (a) of his or her right to request a Fitness to Practise Panel to review any direction made, or undertakings agreed, under Rule 26 above; and
 - (b) that failure to comply with a penalty or condition imposed under Rule 33(c) above would be likely to result in a charge of professional misconduct being brought before a Disciplinary Tribunal.
35. The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons, and the terms of any restriction imposed or undertakings accepted.
36. There shall be no right of appeal from a decision of a Review Panel.

Part 5 – Conduct of Fitness to Practise and Review Panel hearings

Procedure before a Panel

37. At any hearing before a Fitness to Practise or Review Panel, the proceedings shall be governed by the Rules of natural justice, subject to which:
- (a) the procedure shall be informal, the details being at the discretion of the Chair of the Panel;
 - (b) the barrister shall attend the hearing and may be represented by another member of the bar or a solicitor, save that where the barrister does not attend and is not represented, the hearing may nevertheless proceed if the Panel is satisfied that it is appropriate to do so and that all reasonable efforts have been made to serve the barrister with notice of the hearing in accordance with these Rules;
 - (c) the barrister may, on his or her own behalf or through his or her representative:
 - (i) make representations in writing or orally,
 - (ii) produce evidence, provided (but subject to the discretion of the Chair) that a proof of such evidence has been submitted no less than 24 hours prior to the hearing, and
 - (iii) put questions to any Medical Examiner whose report is in evidence before the Panel;
 - (d) the hearing shall be in private, unless the barrister requests a public hearing, and shall be recorded electronically;
 - (e) decisions shall be taken by simple majority;
 - (f) where the votes are equal the issue shall be decided, at a hearing before a Fitness to Practise Panel, in the barrister's favour and, in an appeal case, against the barrister.
38. If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the PCC for consideration of whether to refer any matter for a hearing before a Disciplinary Tribunal.
39. Where it considers it necessary, a Panel may appoint a barrister to assist it on any question of law or interpretation of these Rules, by providing an independent advice either orally or in writing, such advice to be tendered in the presence of the parties, or, where the parties are not present at the hearing, copied to the parties as soon as reasonably practicable.

40. A Panel shall have no power to award costs.
41. The proceedings before a Review Panel shall be by way of a rehearing.
42. At any review hearing before a Fitness to Practise Panel or appeal hearing before a Review Panel, copies of the report of any expert or any proof of evidence referred to at any previous hearing of the Panel in respect of the same case may be referred to by the Panel.
43. In the arrangements that it makes to perform its functions, and in undertaking its functions, in particular, in reaching any decision concerning a barrister's fitness to practise, a Panel shall:
 - (a) take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and
 - (b) have due regard to the need to:
 - (i) eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and
 - (ii) advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

Postponement, adjournment and cancellation

44. Before the opening of any hearing in which notice has been served in accordance with these Rules, the Chair of the Panel may, of his or her own motion or on the application of the PCC or the barrister, postpone the hearing until such time and date as he or she thinks fit.
45. Where any hearing under these Rules has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the PCC or the barrister, adjourn the hearing until such time and date as it thinks fit.
46. No hearing shall be postponed or adjourned under Rules 44 or 45 unless the barrister has been given reasonable opportunity to make representations on the matter.
47. Where a hearing has been postponed or adjourned, the parties shall be notified as soon as reasonably practicable of the time, of the date and place at which the hearing is to take place or to resume.
48. Where notice of hearing has been served under these Rules, the Chair of the Panel may, on application of the PCC or the barrister, cancel the hearing where

the Chair considers that there are no reasonable grounds for questioning whether the barrister is unfit to practise.

Notice and publication of Decisions

49. Where a decision has been taken by Fitness to Practise Panel or a Review Panel under these Rules, the Chair of the Panel shall, as soon as reasonably practicable, serve notice of the decision on the barrister concerned.
50. Where a decision is taken at a full hearing of a Fitness to Practise Panel or at a Review Panel hearing, unless the decision is to take no action and the barrister is permitted to continue to practise without restriction, the Chair shall provide notice of the decision to any person to whom he or she considers it to be in the public interest to do so.

Service of documents

51. Regulation 32 of the Disciplinary Tribunals Regulations shall apply for the purposes of the service of any notices or documents under these Rules save that, for the reference in Regulation 32(1)(d) to the "Directions Judge or the Chairman of the Disciplinary Tribunal", there shall be substituted the "Chair of the Panel".

Schedule 1

Constitution of Fitness to Practise and Review Panels

1. The President shall appoint and maintain:
 - (a) a list of barristers, medical and lay persons eligible to be members of Fitness to Practise Panel;
 - (b) a list of barristers, medical and lay persons eligible to be members of a Review Panel; and
 - (c) from the lists at (a) and (b), lists of Queen's Counsel eligible to act as Chairs of a Fitness to Practise Panel and a Review Panel respectively.

2. The President shall remove from the lists at Paragraph 1 persons:
 - (a) whose term of appointment has come to an end, unless that term is renewed;
 - (b) who resign from the relevant list by giving notice in writing to that effect to the President; or
 - (c) who in the opinion of the President have ceased to be eligible for appointment.

3. A Fitness to Practise Panel shall consist of five members selected by the President from the list of persons under Paragraph 1(a) being:
 - (a) a Chair whose name appears on the relevant list at Paragraph 1(c);
 - (b) two barristers;
 - (c) a medical member; and
 - (d) a lay member.

4. A Review Panel shall consist of four members selected by the President from the list of persons under Paragraph 1(b) being:
 - (a) two barristers, including a Chair whose name appears on the relevant list at Paragraph 1(c), and who shall, unless the Review Panel decide otherwise, be the most senior of the barrister members;
 - (b) a medical member; and
 - (c) a lay member.

5. No person shall be selected to sit on a Fitness to Practise Panel or a Review Panel if:
 - (a) they are a member of the PCC or of the PCC or any of its other Committees; or
 - (b) they were a member of the PCC when the matter being dealt with by the Panel was considered by the PCC.
6. No person shall sit on a Fitness to Practise Panel or a Review Panel for the hearing of a case that they have previously considered or adjudicated upon in any other capacity.
7. The proceedings of a Fitness to Practise Panel or a Review Panel shall be valid notwithstanding that one or more members of the Panel become unable to or disqualified from sitting on the Panel, or are replaced by another member from the appropriate list, subject to there being a minimum of three Members which shall include a Chair from the relevant list held under Paragraph 1(c), a medical member and a lay member.
8. The validity of the proceedings of a Panel shall not be affected by any defect in the appointment of a member.