

Guidance on the Bar Standard Board's Fitness to Practise Rules

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Introduction

1. The purpose of this guidance is to provide an overview of the procedures for determining whether a barrister's fitness to practise is impaired by reason of his or her health, and to provide guidance on the application of the Fitness to Practise Rules which are annexed to the Bar's Code of Conduct issued by the Bar Standards Board (BSB). The guidance has been prepared in liaison with the Council of the Inns of Court (COIC).
2. This guidance is primarily for members of Fitness to Practise and Review Panels ("Panels"), however it will also be of assistance to barristers and his or her representatives, complainants and members of the public.
3. This guidance is not exhaustive and will be reviewed in the light of experience and any relevant case law.

Public protection and proportionality

4. Fitness to Practise and Review Panels are responsible for determining whether or not a barrister is unfit to practise, and, if so, what restrictions should be imposed on his or her right to practise. The Fitness to Practise Rules should be read in conjunction with the Code of Conduct of the Bar of England and Wales and its Annexes, in particular the Complaints Rules and the Disciplinary Tribunal Regulations.
5. In every case a Panel must consider all the available evidence and must act to protect the public. Protection of the public, which is key, will require consideration of whether the barrister puts clients, or any other member of the public, at physical risk, or whether his or her judgment is impaired to such an extent that he or she is unable to adequately protect the client's interests.
6. Action may also be required in the public interest or in the interests of the barrister, where he or she puts him or herself at risk, either professionally or personally, for example as a result of a lack of insight into his or her condition or capabilities.
7. Panels must at all times have regard to the requirements of natural justice and the principles of proportionality, and must deal with cases before them fairly, justly and efficiently. This involves:
 - (a) dealing with a case in ways which are proportionate to the complexity of the issues and the resources of the parties;
 - (b) seeking flexibility in proceedings wherever possible;
 - (c) ensuring that all parties have been given an opportunity to participate fully in the proceedings;

- (d) using the Panel members' knowledge and experience effectively; and,
- (e) avoiding delay, as far as possible.

The Equality Duty and Duty to make reasonable adjustments

8. Panels need to be aware of their obligations under equality legislation. The following characteristics are protected under the Equality Act 2010:
 - Age
 - Disability
 - Gender re-assignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
 - Marriage and civil partnership
9. Issues relating to the protected characteristics of age, disability and pregnancy and maternity are more likely than other protected characteristics to arise in fitness to practise proceedings (for the purposes of the Equality Act the protected period for pregnancy and maternity is the period of pregnancy and six months after the baby is born).
10. A person is disabled if they have a physical or mental impairment, and that impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (Equality Act 2010, section 6).
11. Panels must, in the exercise of their functions as defined under section 149 of the Equality Act 2010:
 - (a) have due regard to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - (b) seek to advance equality of opportunity between people who share a protected characteristic and those who do not; and,
 - (c) foster good relations between people who share a protected characteristic and those who do not.

12. Panels also have an obligation under the Equality Act 2010 to make reasonable adjustments for disabled persons. The duty to make reasonable adjustments is anticipatory and is defined under the Equality Act s.20 as the duty to take reasonable steps to avoid substantial disadvantage to disabled people in relation to:
 - Provisions, criteria or practices
 - Physical features eg premises where tribunals are held
 - Provision of auxiliary aids eg induction loops
13. Where a barrister coming before a Panel has a disability, the Panel must consider whether the barrister is fit to practise, on the assumption that reasonable adjustments will be made. This is because barristers' chambers and courts (except in relation to the exercise of their judicial function) have a duty to make reasonable adjustments to meet the requirements of disabled barristers.
14. It should be borne in mind that even where reasonable adjustments have been made, an impairment may affect the ability of a barrister to undertake certain aspects of a role. However, the focus must be on his/her fitness to practise. For example, if a barrister is unable to travel long distances because of his/her impairment this may restrict him/her to practising in a smaller geographical area, but this is not in itself an issue relating to fitness to practise.

Initial consideration and referral of cases to a Fitness to Practise Panel

15. A case does not need to be referred to a Fitness to Practise Panel merely because a barrister is unwell, even if the illness is serious. However, a barrister's fitness to practise is brought into question if it appears that he/she has an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister's fitness to practise is impaired to such an extent that restrictions on practise are necessary (refer to Paragraph 40 below for further discussion of the meaning of "unfit to practise"). For example, a barrister who has an incapacity but does not appear to be following appropriate medical advice about modifying his or her practice as necessary in order to minimise risk to the public may be "unfit to practise".
16. Information raising a question regarding a barrister's fitness to practise may be received from a variety of sources, for example, from a judge, other barristers, a complaint, or as a result of a self-referral from the barrister or from the findings of the Disciplinary Tribunal. The fitness to practise issues may also come to the Professional Conduct Committee's (PCC) attention where it is considering a complaint of professional conduct.
17. The PCC must refer a case to a Fitness to Practise Panel if it considers that a barrister may be unfit to practise. The PCC may also refer a matter to a Fitness to Practise Panel where another Disciplinary Panel or Tribunal considering the

- matter considers a barrister may be unfit to practise, or where a barrister requests that the matter be referred (*Rule 18*).
18. The complaint or information must raise genuine concerns as to the barrister's fitness to practise for the PCC to refer it to the Fitness to Practise Panel. It must not be frivolous, vexatious, or without merit. In considering whether to refer a case, the PCC will apply the "realistic prospect" test, and will consider whether there is a realistic prospect of establishing that the barrister's fitness to practise is impaired by reason of incapacity due to his or her physical or mental condition, to a degree justifying restrictions on practise. It will reflect not a probability but rather a genuine (not remote or fanciful) possibility.
 19. No decision to refer shall be taken unless the barrister has had a reasonable opportunity to comment upon the matter (*see Rule 9*). In practice, unless the barrister has already had an opportunity to comment on the information, upon receipt of any written information or complaint, the Chair of the PCC shall notify the barrister of that information and invite him or her to submit written representations to the PCC, normally within 14 days. This period will vary depending on the nature of the case, the level of risk to the public, or the need to make reasonable adjustment (which may involve allowing the barrister more time to respond). Any such representations made by the barrister will be taken into consideration by the PCC when deciding whether to refer the matter to a Fitness to Practise Panel. The PCC has a duty to act quickly to protect members of the public and the wider public interest and it is important for cases presenting the most risk to be referred to a Preliminary Hearing in short order after information suggesting that interim restrictions on a barrister's practice are required. It will therefore not always be possible to gather all the evidence that might potentially be available before referring the matter to a Preliminary Hearing, particularly in the most serious cases.
 20. In addition, in reaching a decision regarding referral, the PCC should have regard to:
 - (a) the standard of proof which will apply before the Panel when considering facts in dispute (i.e. the civil standard of proof);
 - (b) the weight of the evidence (and any finding of fact); and,
 - (c) the Bar Standard Board's duty to act in the public interest, which includes the protection of the public and maintaining public confidence in the profession.
 21. If in doubt, the PCC should lean in favour of allowing the case to proceed to a Fitness to Practise Panel, and should be slower to halt a case concerning a barrister who continues to practise than one who does not.

Preliminary Hearing of a Fitness to Practise Panel

22. Once a matter is referred to a Fitness to Practise Panel, a preliminary hearing will be held.
23. At the preliminary hearing the Fitness to Practise Panel will consider:
 - (a) whether to give directions for a full hearing of the Panel (see Paragraphs 25 to 29 below);
 - (b) whether the barrister should be suspended or prohibited from accepting or carrying out any public access instructions pending the conclusion of the matter; and,
 - (c) any undertakings as to the barrister's conduct or behaviour pending the conclusion of the full hearing.

Directions for the full hearing

24. At a preliminary hearing the Fitness to Practise Panel may direct that the barrister undergo an examination by a Medical Examiner nominated by the Panel (*Rule 12(a)*). On nominating the Examiner, the Panel will take into account the available information about the barrister's condition and have regard to any reasonable objections to the nominated Medical Examiner raised by the barrister.
25. The examination will involve an assessment of the barrister's physical and/or mental condition by a Medical Examiner who is a registered medical practitioner appointed by the Panel. The Medical Examiner will then prepare a report which shall be disclosed to the Panel and the barrister in accordance with Rule 13(b).
26. The barrister may also be asked to authorise disclosure of his or her relevant medical records to such Medical Examiner for the purpose of the examination and producing the report. Such disclosure will only be required to the extent that is reasonably necessary to enable the Medical Examiner to perform the examination to the appropriate standard and to report to the Fitness to Practise Panel on any relevant matters.
27. While the Fitness to Practise Panel cannot compel a barrister to submit to an examination or agree to disclosure of his or her medical records, it shall be entitled to take any refusal to supply relevant medical records into consideration when deciding if the barrister is unfit to practise.
28. The Fitness to Practise Panel may also direct the PCC to carry out such other investigations as the Panel considers appropriate to the matters for consideration at the full hearing. The nature of any further investigations required will depend on the circumstances of the case, but may include obtaining documentary evidence and taking statements from witnesses.

Interim Restrictions

29. When considering whether to direct an interim suspension or prohibition, the Panel should bear in mind that its primary duty is to protect members of the public and the wider public interest, and not to assume responsibility for, or give priority to, the treatment or rehabilitation of the barrister.
30. If the Panel is satisfied that:
- (a) in all the circumstances there may be impairment of a barrister's fitness to practise which poses a real risk to members of the public (as discussed at Paragraph 5), or is otherwise in the public interest or the interests of the barrister; and,
 - (b) after balancing this against the impact on the barrister, the Panel considers that an interim order is a proportionate response;
- the appropriate order should be made.
31. In reaching a decision whether to direct an interim order, the Panel should consider the following issues:
- (a) The seriousness of the risk to members of the public if the barrister continues to practise pending conclusion of the full hearing. In assessing this risk the Panel should consider the seriousness of the allegations, and the weight of the information, including information about the likelihood of a further incident(s) occurring during the relevant period. For this purpose the Panel should pay no regard to the complexity of the legal work generally undertaken by the barrister;
 - (b) Whether public confidence in the profession is likely to be seriously damaged if the barrister continues to practise during the relevant period;
 - (c) Whether it is in the barrister's interests to practise unrestricted. For example, the barrister may clearly lack insight as to the impact of his or her health condition or ability to practise;
 - (d) Whether the public can be sufficiently protected by accepting any undertakings as to practise, and the barrister's willingness to make such undertakings (discussed below).
32. The period of any interim suspension or prohibition must be specified. Except in exceptional circumstances, the period shall not exceed 3 months (*Rule 16*). In considering the period for which an interim suspension or prohibition should be imposed, the Panel should bear in mind the time that is likely to be needed before the matter is resolved (for example, the time needed to complete any investigation into allegations regarding the barrister's fitness to practise, including obtaining assessments of the barrister's health and for the case to be listed for a full hearing of the Fitness to Practise Panel).

33. For a period of interim suspension or prohibition to exceed 3 months, there must be “exceptional circumstances”. To be “exceptional”, the circumstances must be out of the ordinary course, unusual, special, or uncommon. To be exceptional a circumstance need not be unique or unprecedented or even very rare, but it cannot be one that is regularly, routinely, or normally encountered (Lord Bingham CJ in *R v Kelly (Edward)* [2000] QB 198 at page 208). The Panel will need to decide what is exceptional on a case by case basis. When the Panel decides to direct an interim restriction, it must give reasons for that decision, including reasons for the period of time for which it is directed, particularly where the period exceeds 3 months. The reasons do not need to be long or detailed but must be clear and explain how the decisions were reached, including identifying the reasons for which the order is considered necessary.

Reviewing Interim Restrictions

34. The Panel may direct that a review of the interim restriction is held, before the period expires (*Rule 18(a)*). The barrister may also request a review in the event of a significant change in circumstances or other good reason, in accordance with *Rule 26* (see Paragraph 71 below in relation to the meaning of “significant change in circumstances”).
35. A review shall be by way of rehearing of the case by the Fitness to Practise Panel in accordance with *Rule 27*.
36. When reviewing an interim order or undertakings, the Panel must fully consider all the circumstances relating to the case, including any new information and may exercise any of the powers of the Fitness to Practise Panel under *Rule 28* confirm, extend, vary or replace the previous direction. In doing so, the Panel should apply the same test and take account of the same factors as set out in Paragraph 32 above.

Full Hearing of the Fitness to Practise Panel

37. At the end of the investigation period, once any relevant medical reports have been received, the PCC will prepare a summary of the case. Once this has been prepared, the barrister shall be notified of the arrangements for a full hearing of the Fitness to Practise Panel.
38. At the conclusion of a full hearing of the Fitness to Practise Panel it shall determine whether the barrister is unfit to practise, and if so, what restrictions to impose.

Determining whether the barrister is unfit to practise

39. Under *Rule 3*, a barrister is unfit to practise where he or she:
- (a) is incapacitated due to his physical or mental condition (including any addiction); and,

- (b) as a result, the barrister's fitness to practise is impaired; and,
 - (c) his or her suspension or the imposition of conditions is necessary for the protection of the public.
40. "Incapacity" means that the barrister is unable or incapable of functioning as normal. The incapacity must have a material effect on his or her ability to function on a day-to-day basis. The incapacity must impair the barrister's fitness to practise, in that, his or her ability to practise must be damaged or harmed by reason of his or her incapacity. Finally, it must be necessary to restrict the barrister's ability to practise either in the public interest or in the barrister's own interests.
41. The Panel must first determine whether any facts in dispute are proved, and shall apply the civil standard of proof. This is the balance of probabilities; in other words, the Panel must be satisfied that it is more likely than not that an event occurred. It is then for the Panel to decide, exercising its judgment, whether, on the basis of the facts proved, the barrister is unfit to practise.
42. The following evidence may be taken into account when considering if a barrister is unfit to practise:
- (a) any evidence of actual self-harm or a risk of self-harm;
 - (b) any evidence of actual harm, or a risk of harm to clients, colleagues or to the public;
 - (c) the barrister's current physical or mental condition;
 - (d) whether the barrister's condition is episodic, recurrent, or in remission, if it is likely to recur, and whether it is capable of causing impairment if it recurs;
 - (e) whether the barrister's condition has been sustained over a long period;
 - (f) whether there has been a failure by the barrister to seek relevant help, treatment or support for the condition;
 - (g) whether there has been a failure by the barrister to comply with reasonable undertakings which were intended to assist him or her to work effectively within the constraints of his or her condition;
 - (h) whether there has been a failure by the barrister to comply with a drug regime, treatment regime or medical supervision relating to the condition;
 - (i) whether there has been a failure by the barrister to comply with instructions from a health professional about relevant testing, investigations and medical assessment relating to the condition;

- (j) the barrister's insight in relation to the condition and his or her ability to practise as a result;
 - (k) any previous findings that the barrister was unfit to practise or otherwise impaired by reason of his or her health by any other regulatory body. However, in such cases the Panel should bear in mind that the findings may have been made at a time when equality legislation such as the Equality Act 2010 or Disability Discrimination Act 2010 did not exist; or,
 - (l) any refusal to comply with reasonable requests in relation to a medical examination or the disclosure of relevant medical records.
43. If the barrister's fitness to practise is not impaired by any incapacity, or if restricting practise is not necessary for the protection of the public or in the barrister's own interests, the Panel must conclude that a barrister is *not* unfit to practise, and no action needs to be taken.
44. The Panel must give reasons for its determination as to whether the barrister is unfit to practise. Where facts are disputed, the Panel must also give reasons as to why a barrister's evidence was not preferred. Such reasons need not be detailed and need only refer to, for example, the barrister's demeanour, attitude or approach to specific questions (*Southall v General Medical Council* [2009] EWHC 1155). However, the demeanour of an individual may be directly related to a disability or impairment and Panels should ensure they take this into account when assessing the evidence.

Restrictions

45. If the Fitness to Practise Panel is satisfied that the barrister is unfit to practise, the Panel will then consider what directions to make in relation to the barrister's practice. The directions available to the Panel are set out at *Rule 22*.
46. In deciding what restriction to impose, the Panel should weigh the interests of the public against the interests of the barrister, and should have regard to any mitigating factors, which may include, but are not limited to:
- (a) evidence of the barrister's insight and understanding of his or her condition, and his or her attempts to address it, which may include seeking and undergoing relevant treatment for his or her condition, and expressions of regret and apology;
 - (b) evidence of the barrister's overall adherence to important principles of good practice. Mitigation could relate to the circumstances leading up to the incidents as well as the character and previous medical history of the barrister;
 - (c) matters of personal and professional mitigation, such as testimonials, or evidence of personal hardship and work related stress. However, features such as these should be considered and balanced carefully against the

central aim of restrictions, that being the protection of the public and the maintenance of standards and public confidence in the profession.

47. When assessing whether a barrister has insight, the Panel will need to take into account whether he or she has demonstrated insight consistently throughout the hearing, eg the barrister has not given any untruthful evidence to the Panel or falsified documents. But the Panel should be aware that there may be differences in the way that insight is expressed, for example, whether or how an apology or expression of regret is framed and delivered and the process of communication, and that this may be affected by the barrister's circumstances, for example, his or her ill health.
48. The Panel should also have regard to any aggravating factors, such as any previous findings and restrictions imposed by a Fitness to Practise Panel at a full hearing or by any other regulator. The Panel must not, however, give undue weight to any decision to impose an interim suspension or prohibition pending full hearing, as the Panel, when considering whether to direct an interim restriction at a preliminary hearing applies a lower test. That decision will also have been reached without making a finding on the facts or on the barrister's fitness to practise.
49. Whatever restriction is directed, the Panel must explain its reasons for doing so. This will help show that all relevant issues have been addressed and why a particular course of action has been taken. The explanation should include:
 - (a) the factual basis of the decision;
 - (b) the legal power or authority being relied upon; and,
 - (c) conclusions on the main submissions made by the parties or representatives.
50. Reasons must be given in sufficient detail so that interested parties may understand why a determination has been made and should include reference to the mitigating and aggravating factors that influenced its decision. The determination should include an explanation as to why a particular period of restriction was considered necessary, and, in the interest of proportionality, must also demonstrate that the less serious conditions and restrictions were considered, and the reasons as to why the Panel did not consider they were appropriate.

Conditions on practise

51. The Fitness to Practise Panel may make the barrister's right to continue to practise (or right to resume practise after any period of suspension or prohibition) subject to such conditions as it thinks fit. The purpose of conditions is to enable the barrister to deal with his or her health issues while continuing to practise in a way that protects the public.

52. Before imposing conditions the Panel should satisfy itself that:
- (a) the barrister's medical condition can be appropriately managed through conditions;
 - (b) the barrister has genuine insight into his or her health problem(s);
 - (c) the barrister will abide by conditions relating to his or her medical condition(s), treatment and supervision, and that circumstances do not prevent the barrister from doing so;
 - (d) the public will be protected and will not be put at risk either directly or indirectly; and,
 - (e) it is possible to formulate appropriate and practical conditions to impose on registration.
53. Where conditions are imposed they should be:
- (a) clear, so that a barrister knows what is expected of him or her, and a Panel at any future review hearing is able to ascertain the original concerns and the exact proposals for their correction;
 - (b) relevant;
 - (c) addressed to the barrister (not to third parties);
 - (d) necessary in order to protect the public or in the interests of the barrister;
 - (e) proportionate to the impairment;
 - (f) formulated so that the conditions are not in effect a suspension; and,
 - (g) written in such a way that compliance can be easily verified, for example by providing for reports prepared by treating medical practitioners to be provided to the PCC or a Panel considering the matter on review (see below).
54. It is open to a Panel to impose conditions as it sees fit in the circumstances of any particular case, whilst taking account of the general principles outlined above. However, appropriate conditions may include conditions relating to relevant medical treatment, as well as conditions relating to a barrister's day-to-day practise. For example, appropriate conditions may include:
- (a) A requirement to place him or herself under the care of a medical practitioner/health care practitioner specialising in the barrister's condition, attend upon them as required and follow their advice as to treatment of his or her condition;

- (b) Allowing the PCC to exchange information with the medical practitioner/health care practitioner responsible for the barrister's care about his or her health and any relevant treatment he or she is receiving, such information to be disclosed to the Fitness to Practise Panel when reviewing the case;
 - (c) A requirement to attend upon one or more Medical Examiners for regular examination, whose reports will be made available to the Chair of the PCC and/or any Fitness to Practise Panel when reviewing the case;
 - (d) A requirement to place him or herself under the care of a professional supervisor as nominated by the Panel, to attend upon them as required and to follow their advice and recommendations as to day-to-day practise;
 - (e) Allowing the PCC to exchange information with the barrister's Supervisor on his or her progress under supervision and compliance with these conditions, such information being disclosed to the Fitness to Practise Panel when reviewing the case; and,
 - (f) Where a barrister is unfit to practise by reason of a substance addiction, appropriate conditions may include limiting consumption of that substance in accordance with relevant medical advice obtained.
55. Where a barrister is subject to undertakings or conditions following a hearing, these will be monitored and reviewed by the PCC. If evidence suggests that these have been breached or that the barrister's fitness to practise has otherwise deteriorated, then the barrister will generally be referred for a Review Hearing under *Rule 26* in order that appropriate action may be taken. Where the breach raises a question of professional misconduct, the matter will be referred to the PCC to consider a referral to the Disciplinary Tribunal.

Suspension or prohibition from accepting or carrying out public access instructions

56. If a Fitness to Practise Panel determines that a period of suspension or prohibition from carrying out any public access instructions is necessary for public protection, it may direct a suspension or prohibition, either for a period of up to six months or indefinitely.
57. Suspension will be appropriate where the Panel is satisfied that no conditions can be formulated to protect the public or the barrister's interests.
58. The Fitness to Practise Panel does not have the power to disbar a barrister only by reason that he or she is unfit to practise. However, it can impose an indefinite period of suspension or prohibition from accepting or carrying out any public access instructions (*Rule 22(a)*).
59. Indefinite suspension should only be directed where the Fitness to Practise Panel considers that this is the only means of protecting the public and the wider public interest, which includes maintaining public trust and confidence in the profession.

60. Indefinite suspension may be appropriate where:
- (a) the barrister demonstrates a persistent lack of insight into the seriousness of his or her condition and its impact on his or her fitness to practise;
 - (b) as a result of the barrister's incapacity, he or she has displayed a reckless and continuing disregard for the protection of the public;
 - (c) the barrister is incapacitated to the extent that his or her behaviour is fundamentally incompatible with the behaviour reasonably expected of a barrister.
61. The Panel is required in the interests of proportionality to balance the need to take action to protect the public, with the interests of the member, including any personal misfortune that a period of suspension would result in for the barrister or his or her family. However, the Panel must remember that its primary function is to protect the public.
62. A Panel must provide reasons for the period of suspension chosen, including the factors that led them to conclude that the particular period of suspension was appropriate

Undertakings

63. In lieu of making a direction to impose a period of suspension, prohibition or a restriction or to make his or her practise subject to conditions, a Panel may accept undertakings from a barrister. Those undertakings may relate to any conditions on practise, or any period of suspension or prohibition, and must be such as a Panel would have imposed.
64. Undertakings will only be appropriate where a Panel is satisfied that a barrister will comply with them, for example, because the barrister has shown genuine insight into his or her condition. The Panel may wish to see evidence that the barrister has taken responsibility for his or her own actions and/or otherwise taken steps to mitigate his or her actions.
65. Panellists should ensure that any undertakings are appropriate, proportionate, are sufficient to protect clients and the public, and are an effective way of addressing the concerns about the barrister. The guidance above in relation to conditions similarly applies where undertakings impose conditions on the right to practise.
66. Where a Panel accepts undertakings, the PCC will monitor the barrister's progress and consider any new information received in relation to him or her, including any representations from the barrister to suggest that the undertakings are no longer appropriate.
67. Where there has been a breach of undertaking, or where further concerns about the barrister's fitness to practise arise (including new information indicating a deterioration in the barrister's health), the matter may be referred for a review

hearing at the discretion of the Chair of the PCC. Where the breach raises a question of professional misconduct, the matter will be referred to the PCC to consider a referral to the Disciplinary Tribunal.

Referral to another Committee

68. The Fitness to Practise Panel has a discretion to refer a case back to the PCC to consider whether the case should be referred for a hearing before a Disciplinary Tribunal (*Rule 38*). This may be appropriate where a case raises an issue of professional misconduct, and where the public interest in the matter being determined in public, and when the range of powers available, requires the matter to be ventilated before the Disciplinary Tribunal (having in mind, in particular, the power available to the Disciplinary Tribunal to disbar a barrister).

Review Hearings

69. Where restrictions are directed by the Fitness to Practise Panel under *Rule 22* or undertaken under *Rule 23*, they shall be reviewed at the discretion of the Chair of the PCC, either on his own motion or at the request of the Professional Conduct Department of the Bar Standards Board or the barrister in the event of a significant change in circumstances, or other good reason (*Rule 26*).
70. There may be a “significant change in circumstances or other good reason” where, for example, new and relevant evidence has come to light which could not reasonably have been known before the restrictions were imposed, or where circumstances have changed. Any change in circumstances must be significant having in mind the issues in the case, that is, be capable of leading the Panel on review to revoke or vary the order. Whether there is a significant change in circumstances or other good reason warranting a review hearing will be a question of judgment for the Chair of the PCC, who shall decide whether to convene a Fitness to Practise Panel to review the case.
71. On review, the Fitness to Practise Panel must determine whether the barrister remains unfit to practise, and if so, whether the restriction imposed should be extended or varied.
72. It is important that no barrister should be allowed to resume unrestricted practise following a period of conditional registration or suspension unless the Panel considers that he or she is fit to resume practise and that the public will not be placed at risk by resumption of practise or by the imposition of conditions on practice.
73. The Panel will take into account any evidence produced in relation to the barrister’s conduct or behaviour following the imposition of a restriction, including any evidence arising from any conditions made under *Rule 22(b)*, as well as evidence from any medical examinations undertaken in accordance with *Rule 13*.

74. Where a review hearing cannot be concluded before the expiry of the period of conditional registration or suspension, the Panel may extend that period for a further short period to allow for re-listing of the review hearing as soon as practicable, with the objective of preserving the status quo pending the outcome of the review hearing (*Rule 29*).
75. If a Panel finds that the barrister failed to comply with any term of suspension or prohibition or any conditions imposed [or undertaken], it may refer the matter to the PCC to consider whether a charge of professional misconduct should be brought before a Disciplinary Tribunal.

Appealing the Fitness to Practise Panel's Decision

76. The barrister has a right to appeal against any decision made under the Rules (except a previous decision made by a Review Panel, including a decision to refer a case to the Fitness to Practise Panel. Any appeals are heard by way of rehearing before a Review Panel, and the burden will be on the appellant to establish that the original decision was wrong in fact or in law.
77. Upon determination of any hearing of the Review Panel, the Panel may decide to:
- (a) allow the appeal;
 - (b) confirm the decision that is the subject of the appeal;
 - (c) exercise any of the powers of a Fitness to Practise Panel.
78. The guidance above in relation to procedure and decision-making similarly applies to hearings before a Review Panel.

The role of Medical Examiners

79. A Medical Examiner is a registered medical practitioner, nominated by the Panel to conduct a medical examination of the barrister. The Medical Examiner is responsible for reporting his or her findings to the Panel, and may be required to give evidence of those findings before the Panel. The barrister or his or her representative shall be entitled to cross-examine the Medical Examiner.

Attendance at Hearings

80. The attendance of the barrister at any hearing of the Fitness to Practise Panel and Review Panel is required (*Rule 37(b)*).
81. However, if the barrister does not attend, the Panel may proceed in his or her absence if it is satisfied that:
- (a) it is appropriate to do so; and,

- (b) all reasonable efforts have been made to serve the barrister with notice of the hearing, by post to the barrister's address or, where agreed, by email; and,
 - (c) no acceptable explanation for the barrister's absence has been provided. Examples of what is acceptable may include ill health supported by relevant medical evidence, child/dependent care arrangements falling through unexpectedly, death/bereavement or serious accident involving family members.
82. If the Panel is not satisfied the above conditions have been met, it shall adjourn.
83. In considering whether proceeding in the absence of the barrister is appropriate, the Panel should take into account the following factors, where applicable:
- (a) the nature and circumstances of the barrister's behaviour in absenting himself or herself from the hearing, and in particular whether the behaviour was voluntary and deliberate and so plainly waived the right to be present;
 - (b) whether an adjournment might result in the barrister attending voluntarily;
 - (c) the likely length of such an adjournment;
 - (d) whether the barrister, though absent, is, or wishes to be represented or has, by his or her conduct, waived his or her right to representation;
 - (e) whether the barrister's representative was able to receive instructions from him or her and the extent to which they could present his or her defence;
 - (f) the extent of the disadvantage to the barrister in not being able to present his or her account of events, having regard to the nature of the evidence against him or her;
 - (g) the risk of the hearing reaching an improper conclusion about the absence of the barrister;
 - (h) the general public interest and the particular interest of any witnesses that a hearing should be held within a reasonable time; and,
 - (i) the effect of the delay on the memories of witnesses.

Listing and Vacating Hearing Dates

84. Fitness to Practise Panels and Review Panels are convened by the President of the Council of the Inns of Court. The President maintains an independent list of members eligible to sit on a Panel to consider fitness to practise issues, and those lists shall include barrister, medical and lay members. In order to be eligible to sit on a Fitness to Practise Panel, a barrister must be at least 10 years Call, and to be a Chair, must be Queen's Counsel. To be eligible to sit on a Review Panel, a

- barrister member must be Queen's Counsel who is entitled to sit as a Recorder or Deputy High Court Judge, or have been Queen's Counsel for at least 10 years.
85. Before a hearing is listed, the barrister will be notified of the proposed time and date, and one alternative. The barrister will have an opportunity to accept one of the dates proposed, or to make representations proposing two further alternative dates.
86. Where the notice of hearing has been served, a hearing scheduled before a Fitness to Practise or Review Panel may be postponed by the Chair of the Panel under *Rule 44*. Where a hearing before a Fitness to Practise or Review Panel has commenced, the Panel may, at any time, adjourn a hearing in accordance with *Rule 45*.]
87. In deciding whether to postpone or adjourn a hearing, the decision-maker must take into account all material circumstances, including:
- (a) the public interest in the expeditious disposal of the case;
 - (b) the potential inconvenience caused to a party or any witnesses to be called by that party;
 - (c) the conduct of the party seeking the postponement or adjournment; and,
 - (d) the effect of any delay on the fairness of proceedings.
88. Where the barrister applies for a postponement or adjournment on grounds of ill health:
- (a) the barrister must adduce appropriate medical certification in support of that application; and,
 - (b) the decision-maker may, if not satisfied by the medical certification produced, require the person to submit to be examined by a registered medical practitioner approved by the President.

Administrative Matters

89. Where a Panel is convened, it will be assisted by a secretary who will be responsible for providing administrative support to the Panel, but who will carry out this role independently of the Bar Standards Board. A representative of the Professional Conduct Committee of the Bar Standards Board will be responsible for matters relevant to the preparation of the papers for presentation before a Panel hearing, including obtaining any reports or undertaking such other investigations as directed by Panel.
90. Panel hearings shall be recorded electronically, and the records shall be retained in accordance with the Professional Conduct Department's Data Retention Policy or, if any charges of professional misconduct are brought against the barrister

arising from the case, until those proceedings have been finally disposed of or any appeal in relation to those proceedings has been exhausted.

91. Where a Panel directs that a barrister's ability to practise be subject to restrictions, conditions or agreed undertakings, the President shall communicate brief details of the decision, in writing to the following:
- (a) the Lord Chancellor;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General;
 - (d) the Director of Public Prosecutions;
 - (e) the Chair of the Bar Council;
 - (f) the Director of the Bar Standards Board;
 - (g) the Leaders of the six circuits;
 - (h) the Chair of the Professional Conduct Committee;
 - (i) the Barrister;
 - (j) the Barrister's Head of Chambers;
 - (k) the Treasurers of the Barrister's Inn of Call and of any other Inns of which he is a member.