Fitness to Practise
Rule 8E and Rule 10
Guidance for applicants
A. Introduction

1. Under section 27A(8) and section 36O(8) of the Dentists Act (“the Act”), the Investigating Committee may review and if they consider it appropriate revise a determination made by them that an allegation or allegations ought to be considered by a particular Practice Committee, on an application made by:

   (i) the Council (i.e. the GDC’s prosecutions team or external solicitors);

   (ii) the Registrar (for these purposes, the Registrar’s powers are exercised by the GDC’s Casework team);

   (iii) the person who is the subject of the allegation or allegations (“the Registrant”); or

   (iv) any person making the allegation or allegations (“the Informant”).

2. For cases heard by the Investigating Committee on or after 1 November 2016, Rule 8E of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) provides that where the Investigating Committee receive an application for a review of a previous determination in accordance with section 27A(8)(b) or 36O(8)(b) of the Act, they must, before considering the applicant’s written representations in support of the application, satisfy themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

3. For cases heard by the Investigating Committee prior to 1 November 2016, Rule 10 of the Rules provides that where the Investigating Committee receive an application for review of a previous determination in accordance with section 27A(8)(b) or 36O(8)(b) of the Act, the Investigating Committee shall consider the applicant’s written representations in support of the application, after satisfying themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

4. The process by which the Investigating Committee is asked to review a previous determination to refer an allegation (or allegations) to a particular Practice Committee is therefore known as “Rule 8E” or “Rule 10”.

5. In addition, where (pursuant to section 27B(4) or section 36P(5) of the Act) a Practice Committee considers that any allegation should not have been referred to it by the Investigating Committee under section 27A of the Act, it may refer that allegation back to the Investigating Committee. Rules 8E and 10 do not apply to such referrals back, although the reason for the application, and the issues to be considered by the Investigating Committee are likely to be similar.
B. Information for all applicants

Administration

6. Should the Council, Registrar, Registrant or Informant wish to make a Rule 8E or Rule 10 application, the application (i.e. the letter requesting a Rule 8E or Rule 10 review plus supporting information) should be submitted by e-mail to Statutoryreviews@gdc-uk.org

7. In order to assist the Investigating Committee, it would be helpful if the application made specific reference to the Investigating Committee’s previous determination(s) and outlined:

(i) what (if anything) has changed since the previous decision;
(ii) the reasons for making the application;
(iii) the reasons why the previous Investigating Committee’s decision can and/or should be distinguished, including how the concerns of the previous Investigating Committee have been addressed/are no longer relevant; and
(iv) any other relevant evidence and useful information, including whether there is any linked case in relation to another Registrant.

8. Upon receipt of a Rule 8E or Rule 10 application, the Investigating Committee Manager will check that:

(i) the application falls within the scope of those determinations which the Investigating Committee can review;
(ii) the application is accompanied by written submissions in support (and that those written submissions are complete, and include all supporting documentation);
(iii) the Practice Committee hearing has not yet commenced and that there is sufficient time before the scheduled commencement of the Practice Committee hearing for a Rule 8E or Rule 10 application to be listed and considered by the Investigating Committee; and
(iv) (in the case of a Council or Registrar Rule 8E or Rule 10 application only) that it has been appropriately authorised.

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1 The Investigating Committee can only review a determination made by them (and not the Case Examiners) that an allegation or allegations ought to be considered by a particular Practice Committee, and not a determination that a matter should be closed with a warning, advice, or no further action

2 As section 27A/36O(8)(b)(i) & (ii) provide that the Investigating Committee may review a determination upon an application, but only if such review is carried out before the commencement of the Practice Committee hearing, or (where there is not to be a hearing) before that Practice Committee have begun to consider written statements or representations

3 bearing in mind the need to provide the other relevant persons with reasonable opportunity to provide written representations as well as the time needed to create a bundle and to provide it to Members of the Investigating Committee for consideration in advance of their meeting
9. Provided that the above conditions have been met, the Investigating Committee Manager will list the matter for consideration by the Investigating Committee and will notify those who are entitled to comment of the application (“relevant persons”).

10. As per point (ii) above, the Investigating Committee Manager will not ordinarily list a case for consideration by the Investigating Committee until the complete application (i.e. letter requesting a Rule 8E or Rule 10 review, together with all supporting information) has been received by the Investigating Committee Manager; as such, a listing date should not be requested, and will not ordinarily be provided, prior to that point.

11. The Investigating Committee Manager will always aim to ensure that a Rule 8E or Rule 10 application is listed for reconsideration by the Investigating Committee as soon as possible, bearing in mind the steps that have to be taken to comply with the legislative regime and matters of practicality. Ordinarily, the Investigating Committee Manager will be able to list an application approximately 6 – 8 weeks after receipt.

12. The lodging of a Rule 8E or Rule 10 application will not necessarily mean that the fitness to practise process is halted, or that an upcoming Practice Committee hearing will be vacated or postponed. In fact, where an application is made within 6 weeks (or less) of the scheduled Practice Committee hearing, it may be more appropriate for the issues to be dealt with at a preliminary meeting of that Practice Committee.

Linked cases

13. Where two or more Rule 8E or Rule 10 applications are made in respect of linked cases, e.g.

(i) those regarding different Registrants but which arise out of the same initial complaint, or otherwise from the same circumstances⁴; or

(ii) those regarding the same Registrant, but where the allegation or allegations were originally considered at two or more separate Investigating Committee meetings,

these will ordinarily, and unless there is good reason not to do so, be listed for Rule 8E or Rule 10 consideration at the same Investigating Committee meeting.

14. However, it is not usually appropriate to reference anywhere in the application (i.e. letter requesting a Rule 8E or Rule 10 review and supporting information):

(i) the outcomes of cases relating to other Registrants, even where the facts may be linked; or

(ii) other ongoing fitness to practise issues relating to the same Registrant.

Notification to relevant persons

15. Once the application (i.e. letter requesting a Rule 8E or Rule 10 review and supporting information) has been provided to the Investigating Committee Manager, and an Investigating Committee date has been identified, the Investigating Committee Manager will either email or post letters as follows:

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⁴ i.e. those which may be considered for joinder at a PC hearing pursuant to Rule 25 of the Rules
16. The Informant will, as a general rule, be sent all relevant information. However, the Investigating Committee Manager will check with the submitting party as to whether the application requires redaction to ensure that no evidence relating to the health or private and family life of the Registrant or a third party is disclosed to the Informant 6.

17. In addition, the Investigating Committee Manager will check with the GDC Prosecutions Team as to whether there is information contained within an application, or supporting documents, which should not be disclosed to the Informant in order to avoid the risk of contaminating their evidence at any future Practice Committee hearing. If so, the GDC Prosecutions Team will be asked to redact the material prior to disclosure to the Informant. The views of the Registrant may be sought at this time.

18. In either case, where redactions have taken place, they should be explained so that the Informant is able to understand why the material sent to them has been redacted.

Representations

19. Rule 8E and Rule 10 provide that where the Investigating Committee receives an application for review of a previous determination, the Investigating Committee shall consider the applicant’s written representations in support of the application, after satisfying themselves that any other person entitled to make such an application has been provided with a reasonable opportunity to submit written representations in response to the application.

20. As such, when a Rule 8E or Rule 10 application is made, the Investigating Committee must first satisfy itself that all relevant persons have been provided with a reasonable opportunity for making written representations on the application.

21. What amounts to a “reasonable opportunity” is likely to depend on all of the circumstances of the case, which will include (but are not limited to):

(i) the length and complexity of the application for review;

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5 Documents provided to the Informant may need to be redacted – see below

6 See Rule 5(3)/Rule 7(3) of the Rules
(ii) the number and complexity of the allegations to which the application for review relates; and

(iii) the quantity of documentary evidence in the case.

22. Ordinarily, the Investigating Committee Manager will provide relevant persons with 14 days in which to provide written representations in response to the application. However, there may be exceptional circumstances in which an extended period should be provided to a relevant person or persons, or on occasion (including where the scheduled Practice Committee hearing of the case is imminent) where a shorter period may be appropriate.

23. Whilst the Registrar is entitled to provide representations on Rule 8E or Rule 10 applications made by others, the policy of the GDC is that the Registrar will not usually do so.

24. Once written representations in response to the application have been received, the Investigating Committee Manager will send these to the applicant and to the other relevant persons for their information only. Although additional observations are not directly invited at this point, on occasion, the Investigating Committee Manager will receive further comments from a relevant person or persons, commenting on the comments of others.

25. Any such “comments upon comments” which are received by the Investigating Committee Manager will be circulated to the other relevant persons and will then be tabled on the day of the Investigating Committee meeting, for the Investigating Committee to decide whether to take them into account.

26. In order to prevent either a case being withdrawn from the scheduled Investigating Committee meeting, or documents not being provided to the Investigating Committee, all those providing comments should ensure that they:

(i) comply with deadlines - extension requests and applications for late addenda will only be agreed in exceptional circumstances;

(ii) submit documents electronically where possible- either via e-mail (to Statutoryreviews@gdc-uk.org), GDC File Secure, or digital media (CD/USB stick)7;

(iii) collate documents for the bundle appropriately - including pagination and indexing. There is no need to provide further copies of information which was provided to the Investigating Committee which originally considered the matter, as the material which was before that Investigating Committee will be provided to the subsequent Investigating Committee in any event8.

Adjournments

27. Where a Rule 8E or Rule 10 application is made and one or more relevant person is not in a position to provide a response within the requested timeframe, an application may be made to the Investigating Committee Manager for an adjournment.

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7 This does not apply to the Informant’s comments which can also be received by either post or fax. Where digital media is being posted, it should be sent via secure post to the Investigating Committee Manager at 37 Wimpole Street, London, W1G 8DQ

8 Previously presented evidence can be referenced using the pagination of the last Investigating Committee bundle
28. If the Investigating Committee Manager rejects an application for adjournment, a further adjournment application may be made directly to the Investigating Committee for consideration on the day. As with all cases, in deciding whether to adjourn its determination of a Rule 8E or Rule 10 application, the Investigating Committee will need to consider the issue of timeliness.

**Rule 8E and Rule 10 bundles**

29. The Investigating Committee Manager will compile the Rule 8E or Rule 10 bundle which will include:

(i) the Rule 8E or Rule 10 application (i.e. written submissions and all supporting documentation);

(ii) written submissions received in response to the application, and supporting documents;

(iii) the material which was before the Investigating Committee which originally considered the matter (including any addenda) and the notification of outcome letter (which contains the Investigating Committee’s original determination); and

(iv) where a previous Rule 8E or Rule 10 application has been considered by the Investigating Committee, the bundle from that meeting (redacted as necessary).

30. Whilst there may be circumstances where comments made or information provided by a relevant person is likely to prejudice the Registrant’s position (or the position of another relevant person) such that redaction would be necessary prior to the provision of the comments or information to the Investigating Committee, this is likely to be rare and compelling reasons would need to be provided as to why the redaction is considered to be necessary. The Investigating Committee is a professional, experienced and independent committee which is well placed to make a decision as to the relevance and weight of the information before it. Further, should Members consider that there are irrelevant matters before them in submissions they are capable of putting these aside in order to perform their functions.

31. The bundle will ordinarily be provided to Investigating Committee Members 2 – 3 weeks in advance of their meeting. This timescale may be shortened where circumstances require, provided that the Members concerned are able to accommodate this.

**Addenda**

32. Where a relevant person wishes to submit an addendum or addenda by way of further information to the Investigating Committee, the addendum or addenda will be circulated to the other relevant persons, and will be tabled on the day of the Investigating Committee meeting. The Investigating Committee will then decide whether this should be taken into account. The exception to this will be if the Investigating Committee Manager wishes to circulate administrative documents to the Investigating Committee in which case they will be sent in advance.

**Outcome**

33. Upon review, the Investigating Committee may decide that the case should:

(i) still be considered by the Practice Committee to which it was originally referred (in which case the Investigating Committee may also, if appropriate, refer the matter to the Interim Orders Committee);
(ii) be referred to a different Practice Committee (in which case the Investigating Committee may also, if appropriate, refer the matter to the Interim Orders Committee);

(iii) be closed with no further action;

(iv) be closed with a letter of advice to the Registrant regarding his/her future conduct, performance and practice;

(v) be closed with advice to any other person involved in the investigation on any issue arising in the course of the investigation;

(vi) be closed with a warning to the Registrant regarding his/her future conduct, performance and practice (such warning will usually be published but may in certain circumstances be unpublished).

34. When considering a Rule 8E or Rule 10 review application, the Investigating Committee can also adjourn for limited reasons, including:

(i) to obtain legal advice;

(ii) to request further clarification on particular evidence;

(iii) to request further clarification in relation to a specific point or points made in the submissions of a relevant person (or persons); and/or

(iv) other administrative reasons.

35. The Investigating Committee does not, however, have the power upon review to adjourn for further enquiries to be conducted. Nor does the Investigating Committee have the power upon review to agree undertakings with the registrant.

Notification of IC decision

36. Confirmation of the Investigating Committee outcome will be available the morning after the Investigating Committee meeting, if the relevant persons wish to request this information. Otherwise, relevant persons will be provided with the written determination usually within four working days of the Investigating Committee meeting.
C. Council applications

Authorisation

37. If a Rule 8E or Rule 10 application by the Council is considered necessary, appropriate authorisation must be sought from the Senior FTP Lawyer.

38. If the Council does not oppose, wishes to remain neutral, or wishes to support an application made by another relevant person, authorisation must be given by the Senior Lawyer.

39. Where a Rule 8E or Rule 10 application has been authorised, a record of the authorisation must be made on the case file and should be submitted to the Investigating Committee Manager (either via e-mail to Statutoryreviews@gdc-uk.org, GDC File Secure, or on a CD/USB stick) at the time of making the application.

Format

40. Council Rule 8E or Rule 10 applications should include the following details:

(i) the date of the previous Investigating Committee decision(s) in respect of which the application is made;

(ii) the Registrant’s name and registration number;

(iii) whether the Registrant is a dentist or DCP;

(iv) confirmation of which Practice Committee the Registrant’s case was referred to (Conduct, Performance or Health) and on the basis of what allegation (misconduct, deficient professional performance, adverse physical or mental health etc.);

(v) whether the matter has been listed for a Practice Committee hearing, and if so, the date;

(vi) whether a draft or final charge or the Notice of Hearing has been served, and if so when;

(vii) Casework and Prosecution case reference numbers;

(viii) details of the Registrant’s defence organisation (where available);

(ix) details of any Interim Order currently in place, or of any IOC hearings or reviews which are pending, including the listing date;

(x) whether there are any other issues or circumstances to consider, such as ongoing investigations (criminal, regulatory, NHS, Coroner’s or otherwise) or relevant persons being difficult to contact.

41. When submitting supporting documents as part of the application, the Council should ensure that:

(i) all witness statements supporting Rule 8E or Rule 10 applications are signed by the individual providing the statement;
(ii) where assertions are made that no evidence exists to support the allegation (or grounds supporting the allegation), an explanation is provided which details the steps taken (and if appropriate discounted) to establish that no evidence exists; and

(iii) any duty of disclosure has been complied with and that confirmation of compliance and appropriate disclosure is contained within the letter of application.
D. Registrar Applications

42. Registrar Rule 8E or Rule 10 applications will usually be limited to incidences where there is evidence to suggest that there has either been a serious procedural error, or some other serious irregularity during the Investigating Committee proceedings which led to the referral of a Registrant to a Practice Committee. In these instances, an application may be initiated by the Registrar, either of the Registrar’s own volition or, as a result of correspondence received regarding the decision.

43. Where the Registrar makes a Rule 8E or Rule 10 application, one of the following will usually apply:

(i) the decision is potentially unlawful, which may include (but is not limited to) cases where the Investigating Committee has:
   - referred matters to the Practice Committee which were not alleged in the notification of allegation; or
   - referred a case to a particular Practice Committee where there was no jurisdiction to have done so (i.e. a referral has been made to the Professional Performance Committee where the only allegation referred to the Investigating Committee was one of misconduct); or
   - failed to apply the correct test for referral to either a Practice Committee or Interim Orders Committee;

(ii) the Registrar has been made aware that evidence relevant to the case was available prior to the Investigating Committee meeting but was inadvertently omitted from the Investigating Committee bundle, for example:
   - observations provided by the Registrant or Informant; or
   - records (including radiographs);

(iii) the Registrar has been made aware that inaccurate information was inadvertently provided to the Investigating Committee, for example in relation to the Registrant’s fitness to practise history; or

(iv) the case has proceeded on an erroneous basis, for example upon the assumption that the Registrant has been convicted of a criminal offence (or has an adverse finding from another Regulator) when this is not in fact the case.

44. Disagreement with the decision made by the Investigating Committee will not, unless in exceptional circumstances, result in a Rule 8E or Rule 10 application being made by the Registrar.

45. A Registrar Rule 8E or Rule 10 application should not, under normal circumstances, make a submission as to whether the decision of the Investigating Committee was appropriate. It should also not make any submission as to the appropriate outcome of the case.

46. Authorisation for a Registrar Rule 8E or Rule 10 application must be obtained from either the Director of Fitness to Practise or their nominated deputy and a copy of this authorisation should be retained on the case file.
E. Practice Committee referrals back

47. Where a Practice Committee has invoked its power under section 27B(4) or 36P(5) of the Act to refer an allegation back to the Investigating Committee, the Hearings Team should notify the Investigating Committee Manager and should provide the Practice Committee’s reasons for making the application, together with any information considered by the Practice Committee.

48. Upon receipt of the relevant information from the Hearings Team, the Investigating Committee Manager will list the case and will provide the Registrant, the Council and the Informant with confirmation of the Investigating Committee meeting date, the composition of the Investigating Committee and the information received from the Practice Committee.

49. Applications referred to the Investigating Committee for re-consideration under these provisions of the Act do not require compliance with Rule 8E or Rule 10. As such, no submissions on the referral back will be invited by the Investigating Committee Manager.

50. Where submissions are received by the Investigating Committee Manager, these will be circulated to the other relevant persons and will then be tabled on the day of the Investigating Committee meeting, for the Investigating Committee to decide whether to take into account.

51. Notification of the Investigating Committee’s decision to either grant or reject the application will be available the morning after the meeting, if relevant persons wish to request this information. Relevant persons will otherwise be provided with the written determination usually within four working days of the Investigating Committee meeting.