

Fitness to Practise Rule 8E and Rule 10 Guidance for informants

Fitness to Practise Rule 8E and Rule 10 Guidance for applicants			
Version	2.0	Reference	FTP/GUI/034
Department	Fitness to Practise		
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Effective Date	08 March 2017	Review Date	01 May 2017

A. Introduction

1. Where the Investigating Committee has made a decision to refer a case to a Practice Committee, the Investigating Committee can be asked to review and, if appropriate, revise their decision that an allegation or allegations ought to be considered by a particular Practice Committee.
2. This process is known as “Rule 8E” (for cases that were heard by the Investigating Committee for the first time on or after 1 November 2016) **OR** “Rule 10” (for cases that were heard by the Investigating Committee prior to 1 November 2016), referring to the relevant section of the General Dental Council (Fitness to Practise) Rules 2006 (“the Rules”) where the process is outlined.
3. This guidance provides information on:
 - (i) the fitness to practise process generally and where the Rule 8E or Rule 10 review process fits within it;
 - (ii) what a Rule 8E or Rule 10 review application means in terms of the progress of a fitness to practise matter; and
 - (iii) how the Rule 8E or Rule 10 review process may affect an Informant.

B. The Fitness to Practise Process

4. The General Dental Council (GDC) registers dentists, dental hygienists, dental therapists, dental technicians, clinical dental technicians, orthodontic therapists and dental nurses. The GDC investigates complaints made about registrants' fitness to practise.
5. When a written complaint is received, it may progress through triage, into the GDC's Casework Team and then on to an assessment stage where it may then be referred to the Investigating Committee. If referred to the Investigating Committee, the Committee (a panel of three, of which there shall be at least one registered dentist, one lay person, and, in any case concerning a person's registration in the dental care professionals register, one registered DCP) then meets in private and considers the matter.
6. The Investigating Committee has the following options when considering an allegation or allegations referred to it:
 - (i) take no action;
 - (ii) adjourn the case in order for the Registrar to carry out such enquiries as the Investigating Committee specifies;
 - (iii) issue a letter of advice to the Registrant regarding his future conduct, performance and practice;
 - (iv) issue advice to any other person involved in the investigation on any issue arising in the course of the investigation;
 - (v) issue a warning to the Registrant regarding his or her future conduct, performance and practice (such warning will usually be published, but may in certain circumstances be unpublished);
 - (vi) invite the Registrant to agree a series of undertakings on their registration;
 - (vii) refer the case to a Practice Committee: Health, Conduct or Performance;
 - (viii) in certain circumstances, and if appropriate, refer the allegation or allegations to the Interim Orders Committee.
7. If a case is referred to a Practice Committee, the GDC will instruct solicitors to further investigate the case and present the case at the hearing.
8. A Rule 8E or Rule 10 application can be made at any point after the Investigating Committee has referred an allegation (or allegations) to a Practice Committee and before the commencement of the hearing before the Practice Committee or (when there is not to be a hearing) before the Practice Committee has begun to consider written statements or representations.
9. The Rule 8E or Rule 10 review process only applies to cases which have been referred to a Practice Committee by the Investigating Committee, and not to any case which has been referred to a Practice Committee by the Case Examiners, or closed by the Investigating Committee, for which separate powers of review exist¹.

¹ see the *Rule 6E Guidance for Informants* for details of the review process for cases referred to a Practice Committee by the Case Examiners, and the [Guidance on the Registrar's Rule 9 power of review](#) for further information about the review process for cases closed by the Investigating Committee

C. Rule 8E/Rule 10 applications

What are Rule 8E or Rule 10 applications?

10. Rule 8E or Rule 10 applications are a request for the Investigating Committee to review, and, if appropriate revise its previous determination to refer the matter to a particular Practice Committee, in accordance with Rule 8E (for cases heard by the Investigating Committee for the first time after 1 November 2016) **OR** Rule 10 (for cases heard by the Investigating Committee prior to 1 November 2016) of the Rules.
11. Where a Rule 8E or Rule 10 review application is made, it does not necessarily mean that the previous decision by the Investigating Committee was either wrong or flawed. For example, Rule 8E or Rule 10 review applications are often made where either the circumstances of the original case considered by the Investigating Committee have changed, or additional evidence which is relevant to the case has been obtained.
12. A Rule 8E or Rule 10 review application can also be made, to change the referral from one Practice Committee to another, for example to change a referral to the Professional Conduct Committee to the Professional Performance Committee.

Who can make a Rule 8E or Rule 10 review application?

13. A Rule 8E or Rule 10 review application can be 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").

When can a Rule 8E or Rule 10 review application be made?

14. A Rule 8E or Rule 10 application can be made between the Investigating Committee referring a case to a Practice Committee, and the Practice Committee hearing.
15. Where there are fewer than six weeks between the Rule 8E or Rule 10 application being made and the scheduled start of the Practice Committee hearing, the issues may instead be considered at a preliminary meeting of the Practice Committee.

How is a Rule 8E or Rule 10 review application made?

16. Information on how to make a Rule 8E review application is contained in the GDC's Rule 8E and 10 Guidance for Applicants, a copy of which is available on the GDC's website: <https://www.gdc-uk.org/about/who-we-are/committees/case-examiners>

What happens after a Rule 8E or Rule 10 review application is made?

17. Provided that:

- (i) the application falls within the scope of those determinations which the Investigating Committee can review²;
- (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 commenced³ 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 Committee⁴; and
- (iv) (in the case of a Council or Registrar Rule 8E or Rule 10 application only) that it has been appropriately authorised.

the Investigating Committee Manager (“ICM”) will list the case and will notify those who are entitled to comment of the application.

18. All those who are entitled to comment upon the application will then be given a reasonable opportunity to submit written representations. Ordinarily, a period of 14 days is considered reasonable opportunity but this may be varied depending on the circumstances of the case.
19. Following receipt of comments, the ICM will circulate these for information purposes to the other persons who were entitled to comment upon the application. No further comments are invited at this stage. However, if further comments are received by the ICM, they will be circulated for information purposes to the other relevant persons and will be provided to the Investigating Committee to decide whether to take them into account.

Does the informant have to comment on the Rule 8E or Rule 10 review application?

20. You (the Informant) will be provided with a reasonable opportunity to comment on the application, but you are not obliged to do so.
21. Your original complaint and any submissions you have made previously to the referring Investigating Committee, will be considered by the Investigating Committee that considers the Rule 8E or Rule 10 review application. You do not therefore need to resubmit the complaint or restate the points you covered in your previous submissions.

² the Investigating Committee can only review a determination made by them 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, or a determination made by the Case Examiners

³ as section 27A/360(8)(b)(i) & (ii) of the Act 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

⁴ bearing in mind the need to provide those entitled to comment with reasonable opportunity to provide written representations as required by Rule 8E and Rule 10, as well as the time needed to create a bundle and to provide it to the Investigating Committee for consideration

22. The ICM will write to you to provide you with the deadline for submitting comments in response to a Rule 8E or Rule 10 review application and instructions on how to submit your comments (if any). If you do not wish to comment, it is helpful if you let the ICM know so that this information can be passed on to the Investigating Committee.

How do you submit comments on the Rule 8E or Rule 10 review application?

23. You should submit your comments (and any supporting documents) on the Rule 8E or Rule 10 review application by email: Statutoryreviews@gdc-uk.org.

24. If you do not have access to email, your comments should be sent to:

Investigating Committee Manager
Fitness to Practise
General Dental Council
37 Wimpole Street
London
W1G 8DQ

25. If you do not want part of your submission to be disclosed to the Registrant (e.g. your personal contact details such as email address or telephone number), please ensure that you tell the ICM when you submit your comments. You should explain what information you do not want disclosed and the reason why you do not want that information disclosed. You will also need, if possible, to provide a redacted copy of your submission (see below) and a non-redacted copy.
26. The ICM will then consider whether the material should be disclosed to the Registrant. However, please note that any comments / material you provide may be disclosed to the Registrant even if you have indicated that you do not want it to be disclosed (although this is unlikely to apply to your personal contact details). This is because it is important that the Registrant fully understands the allegation(s) against them and so that they are able to respond to any allegation(s) made.

Redaction

27. If you do not want part of your submission to be disclosed to the Registrant, you should, where possible, submit a full copy of your comments for the Investigating Committee and a redacted version of your comments, where the parts of the text which you do not want disclosed are obscured / blacked out.

For example:

Comments:
I was visiting my mother who is not well.
Redacted version of comments:
I was visiting my [REDACTED]

28. If you are unable to redact your submission yourself, please contact the ICM for assistance.

What does a Rule 8E or Rule 10 review application mean for the scheduled Practice Committee hearing?

29. A Practice Committee hearing is not automatically adjourned because a Rule 8E or Rule 10 review application has been made.
30. If you have any questions about the Practice Committee hearing, please contact the GDC's Legal Team who will be able to assist.

What can happen at the Investigating Committee?

31. The Investigating Committee will first decide whether or not the relevant persons (including you as Informant) have been provided with a reasonable opportunity to submit written representations in response to the application. If the Investigating Committee is not satisfied on this point, it cannot proceed to consider the application.
32. If the Investigating Committee considers that the relevant persons (including you as Informant) have been provided with a reasonable opportunity to submit written representations in response to the application, the Investigating Committee may review and if appropriate revise its previous decision.
33. In doing so the Investigating Committee will consider whether on the basis of the information before it:
 - (i) there is a real prospect of the facts supporting the allegation being established; and if so,
 - (ii) whether, on the basis of those facts, there is a real prospect of a Practice Committee finding that the statutory ground (misconduct, deficient professional performance etc.) is established; and if so,
 - (iii) whether there is a real prospect that a Practice Committee will find the Registrant's fitness to practise to be currently impaired⁵.
34. 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 (if so, the Investigating Committee may also refer the matter to the Interim Orders Committee);
 - (ii) be referred to a different Practice Committee (if so, the Investigating Committee may also 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;

⁵ More information about the real prospect test is available in the *Investigating Committee Guidance Manual*

- (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).
35. 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.
36. 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.

When will I find out the Investigating Committee's decision?

37. You will be sent the written determination usually within four working days of the Investigating Committee making their decision.

D. Practice Committee referrals to the Investigating Committee

38. Practice Committees have the power to refer an allegation back to the Investigating Committee, for the Investigating Committee to review and, if appropriate, revise their previous determination that an allegation or allegations ought to be considered by a particular Practice Committee. The relevant sections of legislation are Sections 27B(4) and 36P(5) of the Dentists Act 1984.
39. The process is however slightly different, in that there is no requirement under Rule 8E or Rule 10 for the Investigating Committee to be satisfied, as a preliminary matter, that all relevant persons have had an opportunity to comment upon a Practice Committee referral back.
40. For that reason, the ICM will not invite comments upon the referral back. If any comments are submitted to the ICM, these will be circulated to the other relevant persons and will be provided to the Investigating Committee who will decide whether to take them into account.

E. Any questions?

41. The ICM is responsible for the administration of the Rule 8E or Rule 10 process. If you have any queries about the submission of your comments to the Investigating Committee, you should contact the ICM:

Email: Statutoryreviews@gdc-uk.org

Post: Investigating Committee Manager
Fitness to Practise
General Dental Council
37 Wimpole Street
London
W1G 8DQ

Telephone: +44 (0)20 7167 6000⁶

42. The ICM has a largely administrative role in the process and will not be familiar with the details of your case. If you have questions about the ongoing fitness to practise matter regarding the registrant, please contact the GDC's Legal Team.
43. Example questions would include:
- questions regarding any upcoming Practice Committee hearings and whether you will be required to attend; and
 - questions about the content of the Rule 8E or Rule 10 Application.

⁶ Ask to be connected to Investigating Committee Team. It would be helpful if you give the name of the person who wrote to you regarding the Rule 8E or Rule 10 process.