

# Section 29 Process and Guidelines

June 2016

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation<sup>1</sup>. We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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<sup>1</sup> Right-touch regulation revised <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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# 1. An explanatory note

- 1.1 Section 29 (“s29”) of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”) provides the Professional Standards Authority (the “Authority”) with a discretion to refer to the High Court<sup>2</sup> (“the Court”) any final fitness to practise panel decision made by one of the nine regulatory bodies that the Authority oversees if that decision is insufficient<sup>3</sup> for public protection. If the Authority makes a s29 referral, the Court will decide whether or not to overturn the final fitness to practise panel’s decision. The precise wording of s29 is to be found at Annex 1.
- 1.2 This document sets out the guidance that is used by the Authority in deciding whether or not to make a s29 referral to Court, and summarises the processes the Authority follows in reviewing final fitness to practise panel decisions.
- 1.3 Any decision to make a s29 referral to Court is made at a formal meeting called a s29 case meeting. At least one Board member must be involved in the decision. The Authority generally uses three decision-makers. In deciding whether or not to exercise the discretion provided by s29, the decision-makers are entitled to take into account all matters raised in the particular circumstances of the case which they consider to be relevant. It is important that this guidance is read with this in mind. This guidance does not seek to set out exhaustively all of the matters that might be relevant, or to indicate that there is only one approach that might be taken in each individual case. This approach is appropriate because the Authority has a public protection remit and its s29 discretion pursuant to that remit could be compromised if this document sought to provide overly specific guidance. Given that each regulator operates under individual sets of rules, the Authority considers that there is no scope for providing exhaustive guidance. Such an approach would also appear to be inappropriate, because decisions concerning a registrant’s fitness to practise require consideration of matters raised by the individual case.
- 1.4 We use the term “patients” throughout this document for ease but this includes users of health care and users of social care and social work services in England.

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<sup>2</sup> Or its equivalent in the other jurisdictions covered by the Act

<sup>3</sup> Whilst the wording of s29 is “not sufficient”, we have used the word “insufficient” and “insufficiency” throughout this document

## 2. Introduction

### Principles underpinning the section 29 process

- 2.1 The main objective of the Authority in exercising its functions, set out at paragraph 2.2 below, is to promote the health, safety and well-being of users of health care, users of social care in England, users of social work services in England and other members of the public.
- 2.2 The Authority's functions as laid out in the 2002 Act are to:
- Promote the interests of users of health care, users of social care in England, users of social work services in England and other members of the public in relation to the performance of their functions by the bodies mentioned in subsection (3) (in this group of sections referred to as "regulatory bodies"), and by their committees and officers,
  - Promote best practice in the performance of those functions,
  - Formulate principles relating to good professional self-regulation, and to encourage regulatory bodies to conform to them, and
  - Promote co-operation between regulatory bodies, and between them, or any of them, and other bodies performing corresponding functions.
- 2.3 The over-arching objective of the Authority in exercising its functions is the protection of the public<sup>4</sup>. Pursuit of the over-arching objective involves the pursuit of the following objectives:
- To protect, promote and maintain the health, safety and well-being of the public
  - To promote and maintain public confidence in the professions regulated by the regulatory bodies
  - To promote and maintain proper professional standards and conduct for members of those professions
  - To promote and maintain proper standards in relation to the carrying on of retail pharmacy businesses at registered pharmacies
  - To promote and maintain proper standards and conduct for business registrants
- 2.4 S29 of the 2002 Act (as amended<sup>5</sup>) provides the Authority with a discretion to refer any final fitness to practise decision made by one of the nine regulators that we oversee to Court, if we consider that decision is not sufficient for the protection of the public.
- 2.5 Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient to protect the health, safety and well-being of the public, whether it is sufficient to maintain public confidence in the profession concerned, and whether it is sufficient to maintain proper professional standards and conduct for members of that profession.

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<sup>4</sup> Health and Social Care (Safety and Quality) Act 2015

<sup>5</sup> The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015  
2015 No. 794, Part 2, Article 18

- 2.6 The insufficiency for the protection of the public of a decision usually relates to the insufficiency of the sanction (or lack of sanction) imposed by the fitness to practise panel. However, a decision can be insufficient for public protection as a result of a finding that was made (or not made) by the final fitness to practise panel before it considered sanction. For example, either a failure to make a finding that one of the statutory grounds of impairment of fitness to practise has been established, or a failure to make a finding that the registrant's fitness to practise is currently impaired can be insufficient for public protection. In addition, in some exceptional circumstances, a factual error can also fall within s29, as can a decision to "stay" a fitness to practise hearing. Similarly, "under prosecution" by a regulator in investigating the case and/or in the way the regulator presented the case to the fitness to practise panel (or other serious procedural irregularities) may mean that the Authority can make a s29 referral to Court.
- 2.7 If the Authority makes a s29 referral to Court, the question the Court will address is whether the decision that the Authority is challenging as being insufficient for public protection is one that a reasonable fitness to practise panel, having regard to the relevant facts and the object of disciplinary proceedings, could reasonably have reached. In practice, this means that the Court will assess whether:
- The decision made by the fitness to practise panel was manifestly inappropriate, having regard to the registrant's conduct and the wider public interest;
  - The decision made by the fitness to practise panel, whilst taking account of the material facts, failed to have due regard for the safety of the public and the reputation of the profession; and/or
  - Serious procedural or other irregularities occurred in the operation of the fitness to practise proceedings which mean that the final outcome reached was inappropriate.
- 2.8 The Authority's power to make a s29 referral to Court is different in respect of final fitness to practise panel decisions made by the adjudication arm of the General Medical Council (the Medical Practitioners Tribunal Service "MPTS"). This is because on 31 December 2015 new legislation came into effect which gives the GMC its own power to appeal final fitness to practise panel decisions made by the MPTS. Further information about the Authority's consideration of final MPTS fitness to practise decisions and how that process differs from our consideration of the final fitness to practise decisions made by the other eight regulators that we oversee is set out in paragraphs 2.43 – 2.47, below.
- 2.9 The Authority's discretion to refer final fitness to practise panel decisions to Court under s29 is not the only way in which we aim to address concerns about fitness to practise panel outcomes. Better public protection has been retrospectively achieved in the specific cases which the Authority has successfully appealed through s29. However, the Authority also aims to help the regulators to improve the quality of their fitness to practise process outcomes by disseminating learning we identify across the final fitness to practise decisions that we review – not just those that result in referrals to Court.

## Operation of the s29 process – principles of good regulation

2.10

This document summarises the Authority's operating processes in relation to s29 of the Act. This is a living document which will be kept under regular review. The processes used reflect the five principles of good regulation identified by the Better Regulation Task Force, to which we have added agility as a sixth principle.

1. *Proportionality*. Where appropriate, the Authority may liaise with regulators to clarify the policies and legal context affecting final fitness to practise panel decisions. Where appropriate, the Authority will explore alternative methods of securing outcomes that achieve sufficient public protection. The Authority will also, where requested, work with Government with the objective of ensuring that the regulators that we oversee have the necessary powers, including an appropriate range of sanctions available to their fitness to practise panels.
2. *Accountability*. The Authority is accountable to patients, the public and to Parliament. The Authority is aware both of the costs incurred in referring final fitness to practise panel decisions to Court and our responsibility to spend our resources cost-effectively. However, this will not prevent the Authority making a s29 referral to Court where appropriate to achieve public protection. We will share the outcomes of our s29 work on our website.
3. *Consistency*. The Authority's first priority is the protection of the public and the consistent application of this principle underpins the s29 process. The Authority will decide whether or not to make a s29 referral to Court based on the merits of each individual case.
4. *Transparency*. Decisions to make s29 referrals to Court are reported to the Authority's Board and information about those decisions is published on our website. Details of our s29 work are shared in Board meetings and in our annual report which is laid before the UK's Parliaments. Each regulator should ensure that their registrants are aware that involvement in their fitness to practise proceedings will lead to scrutiny and possibly to intervention by the Authority in the form of a s29 referral to Court. Court proceedings are generally heard in public and the judgments are usually publicly available (where possible we will include them on our website at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)).
5. *Targeted*. S29 referrals to Court are made for the purposes of public protection. The Authority may decide not to proceed to a Court hearing where other effective mechanisms to protect the public are available.
6. *Agility*. Regulation must look forward and be able to adapt to anticipate change. In exercising its s29 jurisdiction the Authority takes account of the changes to the legislative frameworks governing the regulators' fitness to practise work.
7. The Authority will also apply the principles of right-touch regulation, which is the approach we adopt in all the work that we do. Right-touch regulation means using the minimum regulatory force required to achieve the desired result.

## **Receiving information about final fitness to practise panel decisions: notification to the Authority of all 'relevant decisions' by regulators**

- 2.11 In order for the Authority to comply with the statutory time limits within which a s29 Court referral can be made<sup>6</sup>, we depend upon the regulators notifying us of all relevant decisions within the meaning of s29(1) or (2) within two working days of the notification of that decision to the registrant. 'Relevant decisions' means all determinations made by the relevant fitness to practise panels, including notification of erasures/removals/striking offs and suspensions from the regulators' registers, as well as cases where fitness to practise panels decide that the registrant's fitness to practise is not impaired, either because the facts alleged have not been proved or because those facts are not serious enough to form the basis for a finding of impairment of fitness to practise, or because the registrant's fitness to practise is not currently impaired even though it was impaired in the past. Regulators will be requested to provide an advance list of their scheduled final fitness to practise hearings if this information is not readily available (e.g. on the regulator's website) so that we can check that we have received notification of all relevant decisions.
- 2.12 The Authority needs, in the first instance, the following information from the regulator:
- The name and registered address of the registrant
  - The charges or allegations against the registrant (including any charges/allegations that were withdrawn, or in relation to which the regulator offered no evidence at the fitness to practise hearing)
  - The final fitness to practise panel's findings of fact and any reasons given in relation to the findings of fact
  - The final fitness to practise panel's decision(s) or determination(s), including information about the sanction imposed, and any reasons given in relation to the fitness to practise panel's decision about imposing a sanction
  - Information about the period within which the registrant can appeal the final fitness to practise panel's decision.

## **Informing relevant parties about the Authority's role**

- 2.13 It is important that registrants are informed promptly about any decision by the Authority to make a s29 referral to Court. Regulators have agreed to give registrants factual information about the Authority's existence and its role in reviewing final fitness to practise panel decisions. Whilst the Authority will contact a registrant directly if it decides to make a s29 referral to Court (at which point the registrant would become one of the respondents to the Court proceedings), it is for the regulator to communicate with registrants during the period up until the conclusion of the regulator's fitness to practise proceedings. This means that the regulator should provide adequate information about the Authority's ability to make a s29 Court referral (and the relevant timeframes for it to do so) within the formal documents the regulator sends to registrants about final fitness to practise panel proceedings, including Notices of Inquiry/Notices of Hearing (or their equivalents).

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<sup>6</sup> See Annex 2 for details on the time limits which apply.



- 2.14 If the Authority decides to make a s29 referral to Court, the regulator should notify the registrant's current employer(s), where their identity is known.
- 2.15 Regulators should also refer to the Authority's role in any leaflets they disseminate to members of the public giving details of how to raise a fitness to practise concern about a registrant. Details about the Authority's functions should also be given by regulators to their fitness to practise panel members, so that they are aware of the Authority's role.

### **Communication with regulators**

- 2.16 A regulator may wish to communicate to the Authority its views about a particular final fitness to practise panel outcome. That is entirely a matter for the regulator concerned. Against the background of the strict statutory time limits for any s29 referral to Court, any communication should be sent to the Authority promptly after the final fitness to practise panel's decision is made. Where appropriate, the Authority may seek clarification from the regulator about general issues of policy and process before any decision is reached to hold a s29 case meeting. The Authority will consider the principles that apply to it as a public body (such as fairness) in deciding whether such clarification should be sought, and the form of that clarification. The Authority believes that any unfairness to interested parties (such as the registrant) should not arise as part of this process, as any such clarification that is sought by the Authority will be for general information only, and the Authority will not, as part of seeking such clarification, invite the regulator to comment on whether or not a s29 referral to Court should be made in the particular circumstances of the case.
- 2.17 Any communication from a regulator to the Authority may be disclosed to the registrant (and other interested parties) in any subsequent legal proceedings.

### **Communication with the Authority from interested parties**

- 2.18 The Authority does not rely upon interested parties to bring to its attention final fitness to practise panel decisions that may be insufficient for public protection – the Authority reviews every final fitness to practise decision in any event. Interested parties such as individual complainants, public bodies (including the police), patient groups, employers and the media may wish to alert the Authority to final fitness to practise panel decisions which they believe are insufficient for public protection. In addition, the High Court has specifically said that there is a duty on the regulators that the Authority oversees to notify the Authority about any such decisions.
- 2.19 Because of the strict statutory time limits for s29 referrals to Court, any correspondence raising concerns about the sufficiency of a final fitness to practise panel decision should be sent to the Authority as soon as possible after the relevant decision was made. It is helpful if any such correspondence includes the following information:
- The name of the regulator
  - The date of the final fitness to practise panel decision
  - The name of the registrant
  - An explanation of why the matter is being drawn to the Authority's attention.

- 2.20 Where interested parties provide information to the Authority which could form the basis of a new allegation of impaired fitness to practise, the Authority will assess whether or not it is appropriate to pass that information to the regulator.

### **Weight given to communication from regulators or other parties**

- 2.21 If interested parties decide to alert the Authority to a decision, the Authority will exercise appropriate caution in considering the weight to be given to the information, given that the other relevant parties will not have had the opportunity to comment upon it. Information supplied to the Authority by interested parties may be disclosed following any decision to make a s29 referral to Court.

### **Procedure following receipt of a final fitness to practise panel decision from a regulator**

- 2.22 An officer of the Authority will check all notified decisions as soon as practicable after notification. The officer will check whether the case is a 'relevant decision' under s29(1) or (2), and note and record the deadline for a s29 referral to Court. For further information about relevant decisions, see Annex 2.
- 2.23 At this stage the officer will also register the case on the Authority's internal s29 database.

### **Assessment of case by an Authority officer**

- 2.24 An Authority officer will identify all those decisions where the regulator's fitness to practise panels imposed the most severe sanction available (usually removal/erasure/striking off of a registrant's name from the register, or a decision not to restore a registrant's name to the register). Details of these decisions are logged on the Authority's internal database in order to provide a baseline against which other panel decisions can be compared.
- 2.25 All other final fitness to practise panel decisions will be scrutinised by an officer in order to assess whether they appear to be sufficient for public protection. The officer will assess whether further information should be obtained from the regulator so that the decision can be reviewed in more detail, or whether no further review is necessary. They will record their assessment (including proper, adequate and intelligible reasons for their conclusions) on the internal database.
- 2.26 The Authority has robust processes in place for the training of officers in undertaking such assessments, and for the quality assurance by senior officers of an appropriate proportion of any assessments made by more junior officers.

### **Assessment of whether or not a decision is sufficient for public protection**

- 2.27 In assessing whether a decision is sufficient for public protection, the officer will exercise their own judgement. It is neither practical nor desirable to produce an exhaustive list of the types of decisions which may not be sufficient for public protection, as that consideration will vary depending on the facts of the particular case. Consideration of whether a final fitness to practise panel decision is sufficient for public protection may include an analysis of some or all of the following issues:
- The adequacy of the allegation considered by the final fitness to practise panel.

- The fitness to practise panel’s findings of fact, and its reasons for finding some facts not proved.
- The context of the registrant’s behaviour/actions.
- Whether the registrant’s failings are of a type that can be remediated and, if so, whether the registrant has demonstrated full remediation of them.
- Whether the registrant has shown any or sufficient remorse.
- Whether the registrant has demonstrated adequate insight.
- The Panel’s determination at impairment stage.
- What other findings, sanctions or decisions were available to the final fitness to practise panel.
- Whether the final fitness to practise panel applied any Indicative Sanctions Guidance appropriately and/or had due regard to case-law.
- Previous decisions of the courts, a regulator, the Authority, tribunals or other bodies.
- Whether, in the opinion of the Authority, the decision is likely to exert a sufficient deterrent effect on other registrants.
- Whether, in the opinion of the Authority, the decision is likely to maintain public confidence in the profession.

2.28 Where the officer assessing a final fitness to practise panel decision considers that the decision is sufficient for protection of the public, the officer may nonetheless consider that the decision raises general issues of importance that should be drawn to the attention of the regulator concerned, regulators as a whole, or to the Authority’s Board in furtherance of its broader statutory functions. Such feedback may also be taken into account by the Authority in its regular assessment of the regulator’s performance within its fitness to practise function.

2.29 Where the officer assessing a final fitness to practise panel decision considers that they cannot reach a conclusion about whether or not it is sufficient for protection of the public, the officer will request from the relevant regulator additional information and/or documents (such as hearing transcripts and documentary evidence). Regulators have agreed to provide such additional information/documents to the Authority within three days of such a request, or as soon as is practicable. Arrangements may need to be put in place to ensure that the provision of transcripts and other relevant documents is not delayed. The additional information or documents requested may include the following:

- The public and private transcript(s) of the hearing or inquiry.
- Other evidence which was available to the final fitness to practise panel, including documentary evidence (“exhibits”).
- Evidence which was available to the regulator, but which was not provided to the final fitness to practise panel. The Authority will not routinely seek such evidence. However, it may be requested in certain circumstances, e.g. in circumstances of apparent ‘under-prosecution’ by the regulator.
- Information about the sanctions available to the decision makers, including any Indicative Sanctions Guidance.

- Details of any third parties representing the regulator, the registrant(s) and/or others at the hearing.
- Any comments the regulator wishes to provide.

- 2.30 Where during the course of its assessment of the decision, new evidence comes to the Authority’s attention which was not available to the final fitness to practise panel during the hearing, and which might have made a difference to the outcome, the Authority will be at liberty to take account of such information.
- 2.31 Exceptionally, the Authority may seek information which was not provided to the final fitness to practise panel for whatever reason but which could have been relevant to its deliberations. This includes evidence which the Authority considers that the regulator did not obtain but which it ought to have obtained and placed before the final fitness to practise panel.
- 2.32 All of the above information will be treated by the Authority as confidential and used solely in connection with the purpose of carrying out and/or exercising any of its statutory functions, duties or powers.

### **Assessment of the case**

- 2.33 Upon receipt of all additional documentation or comment from the regulator, an officer will conduct a detailed review of the case and prepare a written recommendation as to whether a s29 case meeting should be convened to consider the sufficiency for protection of the public of the final fitness to practise panel’s decision. The Chief Executive (or other officer of the Authority appointed for the purpose, known hereafter as “the Decision-Maker”) will consider that recommendation, the final fitness to practise panel’s decision and any other relevant documentation before deciding whether to convene a s29 case meeting, applying the test set out at paragraph 2.33 below.

### **Decision about convening a s29 case meeting**

- 2.34 The decision about whether to convene a s29 case meeting will be made by applying the following test:
- Is it arguable<sup>7</sup> that the final fitness to practise panel’s decision is insufficient for protection of the public?
  - Is it obviously not in the public interest to make a s29 referral to Court?
  - Are there any other compelling reasons to hold a s29 case meeting?
- 2.35 Where the Decision-Maker decides not to accept the recommendation of the officer who has conducted a detailed review of the case to convene a s29 case meeting, their decision will be recorded on the Authority’s database with proper, adequate and intelligible reasons.
- 2.36 In such circumstances the Decision-Maker may consider that the final fitness to practise decision nonetheless raises general issues of importance that should be drawn to the attention of the regulator concerned, regulators as a whole, or to the Authority’s Board in furtherance of its broader statutory functions. Such feedback may also be taken into account by the Authority in its regular assessment of the regulator’s performance within its fitness to practise function.

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<sup>7</sup> To be arguable there must be a real, or sensible, prospect of success. It is not enough that the case is potentially arguable.

2.37 Where the Decision-Maker decides that a s29 case meeting should be convened, an officer will make the arrangements for the case meeting to take place, including instructing an external legal adviser (either a solicitor or Counsel) to provide advice in advance of or at the case meeting. The officer will also notify the regulator that a s29 case meeting is to be convened. If time permits, the regulator will have an opportunity at this stage to provide general explanatory information on policy and process and to provide additional information which might assist the Authority's deliberations (for example, drawing to the Authority's attention relevant parts of any Code of Ethics and/or Conduct). In some instances the Authority may seek clarification about particular matters from the regulator in advance of the case meeting.

2.38 Any oral communications at this stage of the process that take place between the Authority and a regulator will be noted by the Authority.

### **Contact with the registrant or complainant regarding the decision to convene a s29 case meeting**

2.39 The purpose of a s29 case meeting is to review the final fitness to practise panel's decision so that the Authority can decide whether or not to make a s29 referral to Court. It is not a judicial process, and therefore the Authority will not notify either the registrant or any complainant that a s29 case meeting is to take place.

### **Preparation of documents for a s29 case meeting**

2.40 The following documentation should as far as possible be made available to the panel of decision-makers in advance of a s29 case meeting:

- A copy of the final fitness to practise panel's determination.
- A copy of the transcript(s) of the hearing, together with any relevant documentary evidence made available to the fitness to practise panel.
- Any legal advice received by the Authority in respect of the final fitness to practise panel decision.
- Any relevant guidance published by the regulator, e.g. its Indicative Sanctions Guidance or code of practice.
- Any additional technical advice which may have been sought or received by the Authority.

2.41 Any observations or comments provided by the regulator, registrant, complainant or other interested party may also be considered by the s29 case meeting panel decision-makers. The panel of decision-makers will receive advice from the legal adviser (either a solicitor or Counsel) as to whether this information should be considered and the appropriate stage at which to consider it.

2.42 Additionally, the Authority's case meeting manual will be available to the Authority's decision-makers attending the case meeting. The manual is updated regularly to take account of additional and revised documents, including recent Court judgments and notes of case meetings. The manual includes links to:

- This document
- Checklists for Chairs
- Regulators' up-to-date Indicative Sanctions Guidance

- Regulators' Codes of Conduct
- Authority Court outcomes
- Notes of previous s29 case meetings

2.43 All material that has been considered by Authority officers in making recommendations about the sufficiency for public protection of the final fitness to practise panel decision will be made available to the panel of decision-makers at the s29 case meeting.

### **Process in relation to decisions of the GMC's Medical Practitioners Tribunal Service**

2.44 Since legislative changes which came into force on 31 December 2015 (see Annex 1) the General Medical Council (GMC) has had a legal power to appeal final fitness to practise panel decisions made by its adjudication arm, the Medical Practitioners Tribunal Service (MPTS), under s40A of the Medical Act 1983 if the GMC considers that decision to be insufficient for protection of the public.

2.45 The Authority retains a power to make a s29 referral to Court of any MPTS final fitness to practise decision that it considers is insufficient for protection of the public, and now also has a power to join any GMC s40A appeal, or to take over the conduct of any s40A appeal that the GMC decides during the course of proceedings to withdraw (the GMC similarly has the power to join in any s29 referral or to take over any s29 referral that the Authority decides to withdraw).

2.46 An officer of the Authority will review every final decision made by the MPTS, in the same way that other final fitness to practise panel decisions are reviewed, as set out at paragraphs 2.21 – 2.31, above. If the Authority is notified by the GMC that it is considering exercising its s40A power to appeal, the Authority will request further information and begin a detailed review of the case, if it has not already done so. An officer will prepare a written recommendation as to whether a s29 case meeting should be convened to consider whether the decision is sufficient for protection of the public.

2.47 If the GMC lodges a s40A appeal, a case meeting will be convened to consider not only whether or not the MPTS decision is sufficient for public protection, but also whether the Authority should join the GMC's appeal of it.

2.48 If the GMC does not appeal, the Decision-Maker will apply the test set out in paragraph 2.33 in the usual way. The Decision-Maker will make no decision as to whether a s29 case meeting is required until the GMC's appeal deadline has passed.

2.49 The decision made by the GMC is only relevant to which legal power the Authority may use to take action in respect of a decision which is insufficient for protection of the public. The Authority's review of final fitness to practise decisions made by the MPTS is conducted completely independently of any decision by the GMC to appeal. Any information provided by the GMC about its decision on whether to appeal may be placed before the panel of decision-makers at any subsequent case meeting. The panel of decision-makers will receive advice from the legal adviser (either a solicitor or Counsel) as to the appropriate stage at which this information should be considered.

2.50 If the GMC notifies the Authority of its intention to settle or withdraw a s40A appeal, an officer of the Authority will make a recommendation that will be



considered by the Decision-Maker about whether or not a s29 case meeting should be convened to consider whether the Authority should take s29 action in light of the GMC's intention to settle/withdraw the s40A appeal.

## 3. Section 29 case meetings

### Constitution of a meeting

- 3.1 A s29 case meeting is an ad hoc meeting of a maximum of three panel decision-makers. These will normally be the Authority's Chief Executive and two other members of the Authority's Scrutiny & Quality Directorate. If the Chief Executive is not able to be present, another member of the Authority's Board will attend the meeting. Appropriate and continuing training will be provided for all those involved in decision-making.
- 3.2 Additionally, an external legal adviser (either a solicitor or Counsel) should be present at the meeting to provide advice both about the final fitness to practise panel's decision under consideration, and about the procedure to be followed during the s29 case meeting.
- 3.3 In exceptional circumstances the Decision-Maker may authorise a s29 case meeting to be quorate with two panel decision-makers present.

### Decision-making at a case meeting

- 3.4 Each decision made at a s29 case meeting is a decision of the Authority. The decision-makers at the s29 case meeting are the only people who can take part in the decision-making process. Whilst decisions are generally made by consensus, in the ordinary situation of a meeting of three decision-makers, where a unanimous decision cannot be reached, the view of the majority will become the decision of the Authority. In the exceptional case of a meeting of only two decision-makers, where a unanimous decision cannot be reached, the Chair's decision will stand as the decision of the Authority.
- 3.5 The Authority is entitled to call for expert advice to enhance decision-makers' understanding where this is felt necessary and appropriate, and can adjourn the s29 case meeting for that purpose if required.

### Presence of others

- 3.6 Other Authority staff or Board members may attend s29 case meetings, either as part of their training in areas of the Authority's work or to inform policy.
- 3.7 Such attendees cannot take part in the decision-making process and must always ensure that they treat all information considered at the meeting in confidence.

### Observers

- 3.8 S29 case meetings are held in private. However, occasionally, other people may be permitted by the Authority to attend case meetings as observers, provided that none of the decision-makers present at the s29 case meeting objects. Such observers cannot take part in the discussions or decision-making process and must treat all information considered at the meeting in confidence. Where any such observers are not Authority staff or Board members, they will be required to sign a confidentiality agreement prepared by the Authority prior to attending any s29 case meeting.
- 3.9 The Authority publishes its case meeting notes on its website, as set out at paragraph 3.17.



## The purpose of a s29 case meeting

- 3.10 At the start of each case meeting the legal adviser will be asked to confirm that the Authority has jurisdiction to make a s29 referral to Court in respect of the final fitness to practise panel decision.
- 3.11 Once that confirmation has been received, the decision makers will consider whether the final fitness to practise panel decision is sufficient for protection of the public. If they conclude that it is not sufficient for public protection, they will then go on to consider whether or not to exercise the Authority's discretion to make a s29 referral to Court.
- 3.12 Consideration of whether a decision is sufficient for protection of the public will involve consideration of whether it is sufficient: a) to protect the health, safety and well-being of the public; b) to maintain public confidence in the profession concerned and/or c) to maintain proper professional standards and conduct for members of that profession.
- 3.13 The decision of a s29 case meeting is not binding on subsequent s29 case meetings and does not stand as a precedent; each case will be considered on its own merits.

## The procedure to be adopted at the case meeting

### *The Chair's checklist*

- 3.14 The Chair of the meeting will refer to the checklist attached at Annex 3 and run the meeting in the order outlined in that checklist, ensuring that all of the matters contained in it are covered.

### *Identifying conflicts of interest*

- 3.15 It is particularly important when opening the meeting that the Chair asks the decision-makers to confirm that they do not have any conflicts of interest in the case. Ordinarily, decision-makers would be expected to declare any potential conflict of interest in a case at the earliest opportunity and, where possible, in advance of the meeting. If they do have any such conflicts, the legal adviser should advise on whether they should continue to take part in the meeting. The remaining decision makers should ultimately decide on whether the person who has a conflict of interest should take part in the meeting. Should this happen, exceptionally, the meeting will be allowed to proceed with only two decision-makers. All such decisions should be recorded in the note of the meeting.

### *Role of the legal adviser*

- 3.16 The role of the legal adviser is to provide advice as required both about the final fitness to practise panel's decision and about the procedure to be followed at the s29 case meeting. They may be asked to provide a written report in advance of the s29 case meeting, as well as providing verbal advice during the course of the case meeting. In most cases the advice sought from the legal adviser will be in the following areas:
- The threshold for a s29 referral to Court: the legal adviser might refer to previous decisions of the Court which provide guidance.
  - The legal test the Court may apply and the extent to which this is relevant to the s29 case meeting's consideration.
  - The regulator's rules.

- The prospects of a s29 referral being successful in light of previous case law and the strength of the legal case.
- The point at which any information received from a regulator or other party ought to be considered, if at all.
- Any other matters on which guidance is requested and to which the legal adviser can appropriately respond.

3.17 Arrangements will be made by the officer who organised the s29 case meeting for a note of the meeting to be made, either by an officer of the Authority or, where appropriate, by the legal adviser. The note will record the decisions made at the meeting and the reasons for the decisions. The note will record any legal advice received (although if the note is published on the Authority's website, any references to privileged legal advice may be redacted from the published version).

3.18 The s29 case meeting decision-makers may consider that the final fitness to practise decision raises general issues of importance that should be drawn to the attention of the regulator concerned, regulators as a whole, or to the Authority's Board in furtherance of its broader statutory functions. Those will be recorded separately. They may also be taken into account by the Authority in its regular assessment of the regulator's performance within its fitness to practise function.

#### *Asking Questions*

3.19 The decision-makers are entitled throughout the s29 case meeting to ask questions of the legal adviser or any other expert adviser present.

#### **Documents available to the s29 case meeting**

3.20 The decision-makers should be informed if requests for further documents and/or information from the regulator and/or other sources were made by the Authority, and whether or not they were refused (in whole or in part). This should include the reasons for such requests and any reasons given in response.

3.21 At the s29 case meeting the legal adviser will provide advice on the weight that should be attached to documents available at the meeting. In relation to information and/or documents which were considered by the final fitness to practise panel, this may include advising that care should be taken about the meaning or significance to be attributed to the materials (if any), because the s29 case meeting decision-makers, unlike the final fitness to practise panel, will not have an opportunity to hear live evidence and cross-examine witnesses. In relation to information and/or documents that were not considered by the final fitness to practise panel, this may include advising that caution should be exercised because the final fitness to practise panel, the registrant and other parties have not had the opportunity to comment on the documents.

#### **The findings of the final fitness to practise panel**

3.22 The role of the decision-makers at the s29 case meeting is not to substitute different findings of fact in place of the findings made by the final fitness to practise panel. However, the decision-makers at a s29 case meeting are entitled to consider the evidence and draw conclusions from the final fitness to practise panel's findings and/or the absence of findings. The decision-makers

are entitled to explore issues which will enable them to reach a collective decision about whether the findings of the final fitness to practise panel were sufficient for public protection, although the Authority will not normally undertake its own investigations into the facts of cases.

### **Other matters**

- 3.23 The decision-makers at the s29 case meeting should be informed of any other matters that may be relevant. Examples might be any representations made by the complainant or an interested party, or any submissions provided to the Authority by the relevant regulator. Copies of all such documents should be made available at the meeting. The decision-makers will receive legal advice as to the appropriate stage at which any such representations or submissions should be considered.
- 3.24 The note of the decision(s) reached at the s29 case meeting (and any separate note of feedback points to be sent to the regulator) will be circulated to decision-makers for agreement and signed by the Chair of the meeting before being published on the Authority's website (for a limited period of time).

### **Informing regulators of the outcome of a case meeting**

- 3.25 Where the decision-makers decide to exercise the Authority's discretion to make a s29 referral to Court, the Authority will notify the regulator by telephone or email in the first instance, usually within one day of the case meeting, followed by a formal letter sent to the regulator. Once the note of the case meeting has been finalised, the Authority will send the regulator a copy. The note of the case meeting (redacted to remove any unnecessary personal data) will not appear on the Authority's website until after the appeal has been concluded.
- 3.26 If the decision reached at the s29 case meeting is not to make a s29 referral to Court, the Authority will inform the regulator of that decision as soon as possible, and in any event within five days. The Authority will also send the regulator a copy of the note of the case meeting, shortly before that note is due for publication on the Authority's website.

### **Informing registrants of the outcome of a case meeting**

- 3.27 Where the decision-makers decide to make a s29 referral to Court, the Authority will, wherever possible, notify the registrant at the same time as notifying the regulator. Where no s29 referral to Court is made, the registrant will be notified of this decision. In such cases, the registrant will also be informed that the Authority's note of the s29 case meeting will be published on the Authority's website in due course. A number of factors determine whether personal details within the case meeting note will be anonymised.

### **Informing employers of a s29 referral to Court**

- 3.28 The responsibility for notification of employers (NHS, private and voluntary), along with other statutorily notifiable organisations, about a s29 referral to Court rests with the regulator. Employers in this context include those who contract for services with self-employed registrants.

### **Informing complainants of a s29 referral to Court**

- 3.29 Complainants who have previously been kept advised by the regulator of the progress of the fitness to practise case, should also be made aware of any s29 referral to Court. This should be undertaken by the regulator unless specific arrangements are in place for the Authority to do this.
- 3.30 The Authority will also notify anyone who contacts us directly in relation to the final fitness to practise panel's decision about the outcome of the case meeting.

### **Communicating with other bodies**

- 3.31 Some final fitness to practise panel decisions may give rise to issues which the Authority considers ought to be communicated to another agency (such as the Care Quality Commission or National Clinical Assessment Service (NCAS) and their equivalents in Scotland and Northern Ireland). Such communication would ordinarily follow discussion with the regulator in the first instance, and indeed in most cases the Authority would expect that the regulator would make the referral. Any decision to communicate issues to another agency will be recorded, alongside proper, adequate and intelligible reasons for making such a referral.

### **Further processes**

- 3.32 There is no appeal process against a decision of the Authority not to make a s29 referral to Court. Such decisions could be subject to judicial review.
- 3.33 Occasionally, circumstances may arise which require the Authority to review or amend a decision previously made at a s29 case meeting. When a further s29 case meeting is required, the decision-makers at the further meeting can be the same decision-makers as those involved in the original case meeting, or others, or a combination of the two.

### **Virtual meetings/tele-conferences and consideration of cases by members on the basis of papers**

- 3.34 Case meetings may take place by tele-conference, video-conference or face-to-face. Whatever the format, all decision-makers will have electronic/paper access to all of the transcripts and evidence relating to the final fitness to practise panel decision, as well as access to the Authority's process and guidance documents, including the electronic case meeting manual.

### **Statutory Deadline decision-making**

- 3.35 Where it appears to the Decision-Maker that there may be insufficient time to hold a s29 case meeting prior to the expiry of the statutory time limit for a s29 referral to Court to be made, the Decision-Maker may authorise the making of a s29 referral to Court. In these circumstances, the Decision-Maker has a discretion as to whether a s29 case meeting should subsequently be held to confirm it or withdraw the referral.
- 3.36 Where the Decision-Maker decides that a s29 case meeting should be held subsequent to the referral, the Chair will ensure that the case meeting follows the procedure set out in the checklist at Annex 4.

### **The Court referral**

- 3.37 The s29 referral by the Authority will be treated by the Court as an appeal by the Authority against the relevant final fitness to practise panel decision, even though the Authority was not a party to the fitness to practise proceedings. The regulator whose fitness to practise panel made the relevant decision will be the first respondent, and the registrant will be the second respondent.

### **Alternative Dispute Resolution (ADR)**

- 3.38 The Authority recognises that in some cases there may be useful alternatives to a contested Court hearing, which may result in lower costs and can in some cases be effective in delivering public protection. The Authority's policy on ADR is set out in Annex 5.

### **Expedited hearings**

- 3.39 In cases where the Authority considers that the registrant presents an immediate risk to the public, we will ask the Court to list the appeal hearing as quickly as possible. For example, where a period of suspension is due to expire imminently, we would seek to have the case heard before the suspension period expires. We would also consider seeking injunctive relief from the Court to extend the period of the suspension until the s29 referral has been concluded if we considered this to be necessary for protection of the public.
- 3.40 In circumstances where the registrant's registration is due to expire shortly with the result that the proceedings against the registrant will lapse, and where it appears unlikely that the Court hearing of the s29 referral will be concluded before that expiry date, and where the regulator is unable to decline to prevent removal of the registrant's name from its register (this may be the case for some regulators, due to their legislative frameworks) we will consider seeking injunctive relief from the Court to prevent the registrant's registration status "lapsing". As part of that application we may also ask the Court to order the s29 hearing to be expedited.

### **Case Management of cases referred to Court under s29**

- 3.41 For practical reasons there will be a delegation of the day-to-day management of s29 appeals to the Authority staff. Decisions relating to the conduct of the litigation can be taken by the Chief Executive, the Director of Scrutiny & Quality or the Assistant Director of Scrutiny & Quality, in consultation, where the Chief Executive considers it necessary, with the Chair of the Authority's Board (or other member, if the Chair is unavailable). Such decisions will, where appropriate, be informed by legal advice and supported by documented reasons as to why action was necessary. The status of ongoing s29 referrals is regularly reported to the Board at its meetings.

### **Decisions open to the Court**

- 3.42 The 2002 Act (as amended) sets out the options open to the Court following a s29 referral. The Court may:
- Dismiss the s29 referral
  - Allow the s29 referral and quash the fitness to practise panel's decision
  - Allow the s29 referral and substitute for the fitness to practise panel's decision any other decision which could have been made

- Allow the s29 referral and remit the case back to the fitness to practise panel to dispose of in accordance with the direction of the Court
- And may make such order about who should bear the various parties' costs (or in Scotland, expenses) as the Court thinks fit.

### **Costs (Expenses in Scotland)**

3.43 If the Court allows the Authority's s29 referral, the Authority will usually apply to the Court for an order for its costs to be paid by the regulator and/or the registrant. However, the Authority will consider this on a case by case basis. The approach taken by the respondents is likely to be an important factor in the Authority's approach to recovery of its costs. If a respondent has supported or conceded the s29 referral at an early stage and has not attended the Court hearing or made written submissions for consideration at the Court hearing, the Authority will usually only seek recovery from that respondent of the costs that it has incurred up to the relevant date. For example, the Authority might only seek to recover its costs (or a proportion of them) from that respondent up until the date when their concession of the s29 referral was formalised in a Consent Order approved by the Court.

### **Further appeals by the Authority where a s29 referral has been dismissed or part dismissed**

3.44 In cases where a s29 referral has been dismissed, or part dismissed, by the Court, the Authority can make a further appeal to the relevant Court of Appeal. Such a decision will be made by the Board, who may take legal and policy advice to inform their decision.

### **Identification and dissemination of learning**

3.45 The Authority aims to help the regulators improve the quality of the fitness to practise panel outcomes by disseminating learning from the decisions we review. Such feedback points are likely to be identified from the following sources:

- Where an officer has identified issues from reading the final fitness to practise panel decision and/or additional papers which are not sufficient to warrant a s29 case meeting being held
- Where decision-makers identify issues during a s29 case meeting which do not form part of any s29 referral to Court
- Issues arising from judgments of the Court in relation to s29 referrals.

3.46 Such feedback may be taken into account by the Authority in its regular assessments of the regulator's performance within its fitness to practise function.

### **Public information**

3.47 As a matter of policy, the Authority is committed to the principles of openness and transparency in all its procedures. Statistical information about cases will be collated, reported to the Authority's Board and made available to the public by means of the Authority's annual report and information published on its website. The Authority currently also puts into the public domain documents such as copies of notes of its s29 case meetings and available Court judgments on its website.



3.48 The Authority will inform any party with whom it has had correspondence and who was not a party to the fitness to practise panel decision about the outcome of the s29 referral to Court.

#### **Quality assurance**

3.49 The Authority's Scrutiny Committee regularly reviews a sample of final fitness to practise panel decisions that the Authority did not consider at s29 case meetings, as well as reviewing s29 case meeting outcomes, to provide quality assurance. The Scrutiny Committee will also review, at least annually, the Authority's use of the Statutory Deadline decision-making process, as detailed at paragraphs 3.35 – 3.36 and, similarly, will be notified of any instances where a s29 case meeting was deemed quorate with fewer than three decision-makers. The Scrutiny Committee consists of three members of the Authority's Board, and its terms of reference can be seen at Annex 6. The Scrutiny Committee reports regularly to the Authority's Board on the Authority's exercise of its s29 function and makes recommendations for change. Any concerns expressed by the Scrutiny Committee about any aspect of the functioning of the Authority's s29 processes will be brought to the attention of the Chief Executive (or other officer appointed for the purpose) and corrective action will be taken where appropriate.

3.50 The Authority's Board, in addition to receiving the minutes of Scrutiny Committee meetings, receives an update at each meeting about the Authority's exercise of its s29 powers and in particular about any ongoing Court referrals.

June 2016

## 4. Annex 1: Section 29 of the National Health Service Reform and Health Care Professions Act 2002 (as amended<sup>8</sup>) and section 40A and Section 40B of the Medical Act 1983

### 29 Reference of disciplinary cases by the Authority to court

- (1) This section applies to—
- (a) a direction of the Fitness to Practise Committee of the General Pharmaceutical Council under article 54 of the Pharmacy Order 2010 (consideration by the Fitness to Practise Committee) or under section 80 of the Medicines Act 1968 (power to disqualify and direct removal from register,
  - (b) a direction of the Statutory Committee of the Pharmaceutical Society of Northern Ireland under Article 20 of the Pharmacy (Northern Ireland) Order 1976 (S.I. 1976/1213 (N.I. 22)) (control of registrations by Statutory Committee) or section 80 of the Medicines Act 1968,
  - (c) a direction by a Medical Practitioners Tribunal of the General Medical Council under section 35D of the Medical Act 1983 (c. 54) that the fitness to practise of a medical practitioner was,
  - (ca) a direction by a Medical Practitioners Tribunal of the General Medical Council under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Medical Act 1983 for suspension of a person's registration or for a conditional registration,
  - (e) a direction by the Professional Conduct Committee, the Professional Performance Committee or the Health Committee of the General Dental Council under any of sections 27B, 27C, 36P or 36Q of the Dentists Act 1984 following a determination that a person's fitness to practise as a dentist or as a member of a profession complementary to dentistry, or class of members of such a profession, is impaired,
  - (f) a direction by the Fitness to Practise Committee of the General Optical Council under section 13F(2) of the Opticians Act 1989 (powers of Fitness to Practise Committee,
  - (g) any step taken by—
    - (i) by the Professional Conduct Committee of the General Osteopathic Council under section 22 of the Osteopaths Act

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<sup>8</sup> The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 2015 No. 794, Part 2, Regulation 18. Regulation 18 was included in the Commencement Order S.I. 2015/1952.



- 1993 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or
    - (ii) by the Health Committee of the General Osteopathic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),
  - (h) any step taken—
    - (i) by the Professional Conduct Committee of the General Chiropractic Council under section 22 of the Chiropractors Act 1994 (which relates to action to be taken in cases of allegations referred to the Professional Conduct Committee), or
    - (ii) by the Health Committee of the General Chiropractic Council under section 23 of that Act (which relates to action to be taken in cases of allegations referred to the Health Committee),
  - (i) any corresponding measure taken in relation to a nurse, or midwife under the Nursing and Midwifery Order 2001,
  - (j) any corresponding measure taken in relation to a member of a profession regulated by the Health and Social Work Professions Order 2001, under that Order.
  
- (2) This section also applies to—
  - (a) a final decision of the relevant committee not to take any disciplinary measure under the provision referred to in whichever of paragraphs (a) to (h) of subsection (1) applies,
  - (b) any corresponding decision taken in relation to a nurse, or midwife under the Nursing and Midwifery Order 2001, or to any such person as is mentioned in subsection (1)(j) and
  - (c) a decision of the relevant regulatory body, or one of its committees or officers, to restore a person to the register following his removal from it in accordance with any of the measures referred to in paragraphs (a) to (j) of subsection (1).
  
- (3) The things to which this section applies are referred to below as “relevant decisions”.
  
- (4) Where a relevant decision is made, the Authority may refer the case to the relevant court if it considers that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.
  
- (4A) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—
  - (a) to protect the health, safety and well-being of the public;
  - (b) to maintain public confidence in the profession concerned; and
  - (c) to maintain proper professional standards and conduct for members of that profession.

- (5) In subsection (4) (subject to subsection (5A)), the “relevant court” —
- (a) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Scotland, means the Court of Session,
  - (b) in the case of a person who (in accordance with the rules applying to the body making the relevant decision) was, or was required to be, notified of the relevant decision at an address in Northern Ireland, means the High Court of Justice in Northern Ireland, and
  - (c) in the case of any other person, means the High Court of Justice in England and Wales.
- (5A) In the case of a social worker in England, the “relevant court” means the High Court of Justice in England and Wales.
- (6) The Authority may not so refer a case after the end of the period of—
- (a) 40 days beginning with the day which is the last day on which the practitioner concerned can appeal against the relevant decision, or
  - (b) in the case of a relevant decision against which it is not possible for the practitioner concerned to appeal, 56 days beginning with the day on which notification of the decision was served on the person to whom the decision relates.
- (7) If the Authority does so refer a case—
- (a) the case is to be treated by the court to which it has been referred as an appeal by the Authority against the relevant decision (even though the Authority was not a party to the proceedings resulting in the relevant decision), and
  - (b) the body which made the relevant decision (as well as the person to whom the decision relates) is to be a respondent.
- (7A) In a case where the relevant decision is taken by a committee, the reference in subsection (7)(b) to the body which made the decision is to be read as a reference to the body of which it is a committee.
- (8) The court may—
- (a) dismiss the appeal,
  - (b) allow the appeal and quash the relevant decision,
  - (c) substitute for the relevant decision any other decision which could have been made by the committee or other person concerned, or
  - (d) remit the case to the committee or other person concerned to dispose of the case in accordance with the directions of the court, or, in the case of a relevant decision within subsection (1)(c) or (ca) or a relevant decision within subsection (2)(a) or (c) not to take a disciplinary measure under a provision referred to in subsection (1)(c) or (ca), remit the case to the

Medical Practitioners Tribunal Service for them to arrange for a Medical Practitioners Tribunal so to dispose of the case.  
and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.

- (9) Where rules under paragraph 1 of Schedule 4 to the Medical Act 1983 provide, by virtue of paragraph 1(2E) of that Schedule, for the application of section 35D of that Act, the reference in subsection (1)(c) of this section to section 35D of that Act includes a reference to that section as so applied.
- (10) The reference in subsection (1)(ca) to paragraph 5A(3D) of the Medical Act 1983 includes a reference to that provision as applied by section 35A(6E) of that Act.

### **29A.— References under section 29: role of the General Medical Council**

- (1) If the Authority makes a reference under section 29 of a case involving a relevant decision such as is mentioned in subsection (8)(d) of that section—
  - (a) the Authority must without delay give the General Medical Council notice of the reference; and
  - (b) the General Medical Council may not bring an appeal under section 40A of the Medical Act 1983 against the decision.
- (2) Where the General Medical Council is the respondent in the case of a reference under section 29, the matters which it may raise on the reference include any matter that it could have raised on an appeal against the relevant decision under section 40A of the Medical Act 1983.
- (3) If the General Medical Council is the respondent in the case of a reference under section 29, and the Authority either wishes to withdraw the reference or, having agreed the terms of a settlement of the case with the person to whom the relevant decision relates, wishes the case to be disposed of on those terms, the Authority must give notice of its wish to the Council.
- (4) The General Medical Council, having received a notice under subsection (3), must by notice inform the relevant court, the Authority and the person concerned whether it wishes the proceedings on the reference to continue.
- (5) Where the General Medical Council gives notice under subsection (4) that it wishes the proceedings to continue, they are to continue but, from the time when the Council gives its notice to the relevant court under subsection (4), are to be treated as proceedings on an appeal made by the Council under section 40A of the Medical Act 1983.
- (6) In a case within subsection (5), the General Medical Council must give notice to the relevant court, the Authority and the person concerned specifying the grounds of its case; and—

- (a) the person concerned has the opportunity to respond accordingly, and
  - (b) the Authority has the opportunity to become a party to the appeal by virtue of section 40B(2) of the Medical Act 1983.
- (7) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.
- (8) In this section, “relevant court” and “relevant decision” each have the same meaning as in section 29.

#### **40A. Appeals by the General Medical Council**

- (1) This section applies to any of the following decisions by a Medical Practitioners Tribunal—
  - (a) a decision under section 35D giving—
    - (i) a direction for suspension, including a direction extending a period of suspension;
    - (ii) a direction for conditional registration, including a direction extending a period of conditional registration;
    - (iii) a direction varying any of the conditions imposed by a direction for conditional registration;
  - (b) a decision under paragraph 5A(3D) or 5C(4) of Schedule 4 giving—
    - (i) a direction for suspension;
    - (ii) a direction for conditional registration;
  - (c) a decision under section 35D—
    - (i) giving a direction that a suspension be terminated;
    - (ii) revoking a direction for conditional registration or a condition imposed by such a direction;
  - (d) a decision not to give a direction under section 35D;
  - (e) a decision under section 41 giving a direction that a person’s name be restored to the register;
  - (f) a decision not to give a direction under paragraph 5A(3D) or 5C(4) of Schedule 4.
- (2) A decision to which this section applies is referred to below as a “relevant decision”.
- (3) The General Council may appeal against a relevant decision to the relevant court if they consider that the decision is not sufficient (whether as to a finding or a penalty or both) for the protection of the public.

- (4) Consideration of whether a decision is sufficient for the protection of the public involves consideration of whether it is sufficient—
  - (a) to protect the health, safety and well-being of the public;
  - (b) to maintain public confidence in the medical profession; and
  - (c) to maintain proper professional standards and conduct for members of that profession.
- (5) The General Council may not bring an appeal under this section after the end of the period of 28 days beginning with the day on which notification of the relevant decision was served on the person to whom the decision relates.
- (6) On an appeal under this section, the court may—
  - (a) dismiss the appeal;
  - (b) allow the appeal and quash the relevant decision;
  - (c) substitute for the relevant decision any other decision which could have been made by the Tribunal; or
  - (d) remit the case to the MPTS for them to arrange for a Medical Practitioners Tribunal to dispose of the case in accordance with the directions of the court, and may make such order as to costs (or, in Scotland, expenses) as it thinks fit.
- (7) In this section and section 40B, “relevant court” has the meaning given by section 40(5).

**40B. Appeal under section 40A: role of Professional Standards Authority for Health and Social Care**

- (1) If the General Council bring an appeal under section 40A—
  - (a) the Registrar must without delay give notice of the appeal to the Professional Standards Authority for Health and Social Care (“the Authority”); and
  - (b) the Authority may not refer the case to which the appeal relates under section 29 of the National Health Service Reform and Health Care Professions Act 2002 (“the 2002 Act”).
- (2) The Authority may, in spite of subsection (1)(b), become a party to the appeal by giving notice to that effect to the relevant court, the General Council and the person to whom the relevant decision relates; and—
  - (a) the Authority does not require the permission of the relevant court to become a party to the appeal; and
  - (b) accordingly, any provision of rules of court requiring an application for such permission does not apply to the Authority.

- (3) Having become a party to an appeal under section 40A by virtue of subsection (2) of this section, the Authority may make representations or file evidence in the appeal at any time before the end of the hearing of the appeal; but where it does so at a time which would, but for this subsection, have been in breach of a time limit imposed by rules of court, the relevant court may impose such conditions as it thinks fit.
- (4) The matters which the Authority may raise on an appeal under section 40A include any matter which it could have raised on a reference of the case under section 29 of the 2002 Act.
- (5) Where the Authority raises matters on an appeal under section 40A, the General Council and the person to whom the relevant decision relates have the same opportunity to respond as they would have if the Authority had raised the matters on a reference of the case under section 29 of the 2002 Act (and the General Council and person concerned had accordingly been respondents by virtue of subsection (7) of that section).
- (6) If the General Council wish to withdraw an appeal under section 40A or, having agreed the terms of a settlement of the appeal with the person concerned, wish the appeal to be disposed of on those terms, they must give notice of their wish to the Authority (whether or not the Authority is a party to the appeal).
- (7) The Authority, having received a notice under subsection (6), must by notice inform the relevant court, the General Council and the person concerned whether it wishes the proceedings on the appeal to continue.
- (8) Where the Authority gives notice under subsection (7) that it wishes the proceedings to continue, they are to continue but are, from the time when the Authority gives its notice to the relevant court under subsection (7), to be treated as proceedings on a reference made by the Authority to the court under section 29 of the 2002 Act.
- (9) In a case within subsection (8), the Authority must give notice to the relevant court, the General Council and the person concerned specifying the grounds of its case; and the General Council and the person concerned (as respondents to the appeal by virtue of section 29(7) of the 2002 Act) have the opportunity to respond accordingly.
- (10) A requirement in this section to give a notice to a specified person is in addition to such requirements as are imposed by rules of court in relation to the persons to whom notice is to be given; and the giving of notice under this section is subject to such other requirements relating to the giving of notices as are imposed by rules of court.

## 5. Annex 2: Application of s29 to the procedures of each regulatory body

- 5.1 The following sets out the Authority's understanding of the application of s29 to the procedures of each of the regulators it oversees.
- 5.2 As procedures change, there will be implications for the scope and application of s29.
- 5.3 The Authority will need to know of the procedures relevant to each final fitness to practise panel decision under consideration – for example, 'new' rules may provide for a wider range of sanction options than 'old' rules.
- 5.4 Some regulators may run both 'old' and 'new' procedures in parallel for a period. The Authority will need to confirm with those regulators which procedure applies to any final fitness to practise panel decision under consideration.
- 5.5 This information is correct as of May 2016.

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
<b>GMC</b> 29(1)(c), (ca) & (2)(a), 29A	Directions by a Medical Practitioners Tribunal under section 35D of the Medical Act 1983 that the fitness to practise of a medical practitioner was impaired. Impairment includes: <ul style="list-style-type: none"> <li>• misconduct</li> <li>• deficient professional performance</li> <li>• convictions and cautions</li> <li>• adverse physical or mental health</li> <li>• not having the necessary knowledge of English</li> <li>• determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> </ul> Direction by a Medical Practitioners Tribunal under paragraph 5A(3D) or 5C(4) of Schedule 4 to the Medical Act 1983 for suspension of a person's registration or for conditional registration as a result of failure to submit to or comply with requirements of a professional performance assessment, health or English language assessment.  A final decision of the Medical Practitioners Tribunal not to take any of the above measures (including voluntary erasure).	Erasure (except in health or language case)	High Court of Justice/Court of Session	28 days beginning with the date on which the notification of the decision was served (can be extended).		40 days beginning with the last day of registrant's appeal period.	67 days
		Suspension for up to 12 months initially, with a discretionary review, where the suspension may be: <ul style="list-style-type: none"> <li>• extended for up to 12 months</li> <li>• extended indefinitely after two years (health and language only, can be reviewed on doctor's request.)</li> <li>• changed to conditions</li> <li>• changed to erasure (except for health and language)</li> </ul>			To the High Court of Justice/ Court of Session, 40 days beginning with the last day of registrant's appeal period.		
		Suspension for up to 12 months for failure to submit to (or provide information required about) an assessment of health, professional performance or knowledge of English.					
		Conditions for up to three years initially, with a discretionary review, where the order may be: <ul style="list-style-type: none"> <li>• revoked</li> <li>• extended for up to another three years</li> <li>• changed</li> <li>• changed to suspension for up to 12 months</li> <li>• changed to erasure (except for health and language)</li> </ul>					



Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	A decision of the Medical Practitioners Tribunal to restore a person to the register following his removal from it.	Conditions of practice order for up to three years for failure to submit to (or provide information required about) an assessment of health, professional performance or knowledge of English.					
		Warning (no finding of impairment)				56 days beginning with the day on which notification of the decision was served.	56 days
		No impairment					
<b>NMC</b> 29(1)(i) & (2)(b)	"Any corresponding measure taken in relation to a nurse or midwife under the Nursing and Midwifery Order 2001" i.e. directions by the Conduct and Competence Committee or Health Committee under article 29 that the fitness to practise of a nurse or midwife was impaired. Impairment includes: <ul style="list-style-type: none"> <li>• misconduct,</li> <li>• lack of competence,</li> <li>• convictions and cautions</li> <li>• physical or mental health,</li> </ul>	Striking-off order (only for competence, health or language where the registrant has already been suspended/subject to conditions for two years)	High Court of Justice/Court of Session	28 days beginning with the date on which notice of the order or decision appealed against is served.		40 days	67 days
	Suspension order for up to one year initially with a mandatory review, where the order may be: <ul style="list-style-type: none"> <li>• extended or further extended for up to a year;</li> <li>• replaced with another order</li> <li>• on expiry of the suspension, replaced with conditions of practice</li> </ul>						

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<ul style="list-style-type: none"> <li>not having the necessary knowledge of English</li> <li>determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> </ul> <p>A final decision of Conduct and Competence Committee or Health Committee not to take any of the above measures.</p> <p>A decision of the Investigating Committee, Conduct and Competence Committee or Health Committee to restore a person to the register following his removal from it.</p>	<p>Conditions of practice order for up to three years initially with a mandatory review, where the order may be:</p> <ul style="list-style-type: none"> <li>extended or further extended for up to three years</li> <li>replaced with another order</li> </ul>					
		Caution order (between one and five years)					
		Mediation				56 days	56 days
		No further action					
		Allegation is not well founded					
<b>GPhC</b> 29(1)(a) & (2)(a)	Directions of the Fitness to Practise Committee under article 54 of the Pharmacy Order 2010:	Removal from Register (not for health cases)	High Court/Court of Session	28 days beginning with the date on which the... decision was sent, or within such longer period as the relevant court may, in accordance with rules of court, allow.		40 days	67 days
	Determinations of impairment of fitness to practise of pharmacists and pharmacy technicians and sanctions by the Fitness to Practise Committee. Impairment includes:	Removal of premises registered as retail pharmacy businesses from the register (including those removed for a limited period)					
	<ul style="list-style-type: none"> <li>misconduct;</li> <li>deficient professional performance/competence;</li> <li>adverse physical or mental health;</li> </ul>	Suspension for up to 12 months initially with a discretionary review where the suspension may be: <ul style="list-style-type: none"> <li>extended for up to a further year</li> <li>changed to indefinite suspension after two years of suspension (or indefinite may be terminated)</li> </ul>					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<ul style="list-style-type: none"> <li>failure to comply with a reasonable requirement imposed in connection with a professional performance assessment;</li> <li>convictions and cautions;</li> <li>In Scotland, an admonition, absolute discharge or conditional offer;</li> <li>penalty as alternative to prosecution under the Social Security Administration Act 1992;</li> <li>being bound over in England or Wales</li> <li>determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> <li>being included on a Safeguarding Vulnerable Groups barred list (including NI and Scottish equivalents)</li> </ul> <p>Directions of the Fitness to Practice Committee under section 80 of the Medicines Act 1968 - disqualifications of bodies corporate carrying on a retail pharmacy business:</p> <ul style="list-style-type: none"> <li>convicted of certain offences, with members of the board or employees</li> <li>with a board member, officer or employee convicted of an offence or found guilty of misconduct which the Fitness to Practise Committee considers makes them fit to be a pharmacist or pharmacy technician</li> </ul>	<ul style="list-style-type: none"> <li>changed to conditions for up to three years</li> <li>changed to removal from register (not for health).</li> </ul>					
		<p>Conditions for up to three years initially, with a discretionary review, where the conditions may be:</p> <ul style="list-style-type: none"> <li>extended</li> <li>varied</li> <li>changed to suspension for up to 12 months</li> <li>changed to removal from register (not for health).</li> </ul>					
		Warning (impairment).				56 days	56 days
		Warning (no impairment).					
		Advice to any other person (no impairment)					
		No impairment.					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<ul style="list-style-type: none"> <li>where one of its registered premises fails to meet the standards set out by the GPhC</li> </ul> <p>A final decision of the Fitness to Practise Committee not to take any of the above measures.</p> <p>A decision of the Fitness to Practise Committee to restore a person to the register following his removal from it.</p>						
PSNI 29(1)(b) & (2)(a)	Directions of the Statutory Committee under Article 20 of the Pharmacy (Northern Ireland) Order 1976:	Strike off (not for health)	High Court of Justice in Northern Ireland	28 days beginning with and including the date on which the decision... was sent, or within such longer period as the High Court may, in accordance with rules of court, allow.		40 days	67 days
	<ul style="list-style-type: none"> <li>determinations of fitness to practise of pharmacists and sanction by the Statutory Committee. Impairment includes:</li> </ul>	Removal of premises registered as retail pharmacy businesses from the register (including those removed for a limited period).					
	<ul style="list-style-type: none"> <li>misconduct;</li> <li>deficient professional performance/competence;</li> <li>adverse physical or mental health;</li> <li>convictions and cautions</li> <li>penalty as alternative to prosecution under the Social Security Administration Act 1992;</li> <li>being bound over in England or Wales</li> </ul>	<p>Suspension for up to 12 months initially, with a discretionary review, where the suspension may be:</p> <ul style="list-style-type: none"> <li>extended for up to 12 months</li> <li>indefinitely extended after two years (or end an indefinite extension)</li> <li>changed to conditions for up to three years</li> <li>changed to removal from register (except for health)</li> </ul>					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<ul style="list-style-type: none"> <li>determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> <li>being included on a Safeguarding Vulnerable Groups barred list (including NI and Scottish equivalents)</li> </ul> <p>Directions of the Statutory Committee under section 80 of the Medicines Act 1968 - disqualifications of bodies corporate carrying on a retail pharmacy business:</p> <ul style="list-style-type: none"> <li>convicted of certain offences, with members of the board or employees</li> <li>with a board member, officer or employee convicted of an offence or found guilty of misconduct which the Fitness to Practise Committee considers makes them fit to be a pharmacist</li> <li>where one of its registered premises fails to meet the standards set out by the PSNI</li> </ul> <p>A final decision of the Statutory Committee not to take any of the above measures.</p> <p>A decision of the Statutory Committee to restore a person to the register following his removal from it.</p>	<p>Conditions for up to three years, with a discretionary review, where the conditions may be:</p> <ul style="list-style-type: none"> <li>extended for up to three years</li> <li>varied</li> <li>changed to suspension for up to 12 months</li> <li>changed to removal from register (except for health)</li> </ul> <p>Warning (impairment)</p> <p>Advice to any other body (no impairment)</p> <p>Warning (no impairment)</p> <p>No impairment</p>					
<b>GOC</b>		Erasure (including of specialty) (except for health)		28 days beginning with		40 days	67 days

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
29(1)(f) & (2)(a)	<p>Directions by the Fitness to Practise Committee under section 13F(2) of the Opticians Act 1989 that:</p> <ul style="list-style-type: none"> <li>a registered optometrist's or registered dispensing optician's fitness to practise is impaired;</li> <li>a business registrant's fitness to carry on business as an optometrist or a dispensing optician or both is impaired; or</li> <li>a student registrant's fitness to undertake training is impaired.</li> </ul> <p>Impairment includes:</p> <ul style="list-style-type: none"> <li>misconduct;</li> <li>deficient professional performance (not student registrants);</li> <li>convictions and cautions;</li> <li>in Scotland, a conditional offer or absolute discharge</li> <li>penalty as alternative to prosecution under the Social Security Administration Act 1992;</li> <li>adverse physical or mental health;</li> <li>determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> </ul>	<p>Suspension (including of specialty) for up to 12 months initially, with a discretionary review, where the suspension may be:</p> <ul style="list-style-type: none"> <li>extended for up to 12 months (after which, in health cases where the registrant has already been suspended for two years, the suspension may be made indefinite)</li> <li>replaced with erasure (except for health)</li> <li>changed to conditions for up to three years</li> </ul>	High Court of Justice/Court of Session	the day on which the decision was served on him.			
		<p>Conditions (including of specialty) for up to three years initially where the order may be:</p> <ul style="list-style-type: none"> <li>extended for up to three years</li> <li>varied or removed</li> <li>changed to suspension (including of specialist entry) for 12 months</li> <li>changed to erasure (except for health)</li> </ul>					
		Financial penalty order (not for health)					
		Warning (no impairment)					
		No impairment					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<p>A final decision of the Fitness to Practise Committee not to take any of the above measures.</p> <p>A decision of the Professional Conduct Committee to restore a person to the register following his removal from it.</p>						
<b>GDC</b> 29(1)(e) & (2)(a)	<p>Directions by the Professional Conduct Committee, Professional Performance Committee or the Health Committee under sections 27B, 27C, 36P or 36Q of the Dentists Act 1984 following a determination that a person's fitness to practise as a dentist or as a member of a profession complementary to dentistry (or class of members) is impaired. Impairment includes:</p> <ul style="list-style-type: none"> <li>• misconduct;</li> <li>• deficient professional performance;</li> <li>• adverse physical or mental health;</li> <li>• convictions and cautions;</li> <li>• In Scotland, an absolute discharge or conditional offer;</li> <li>• Penalty as alternative to prosecution under the Social Security Administration Act 1992;</li> <li>• Determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> </ul>	Erasure (not for health)	High Court/Court of Session	28 days beginning with the date on which notification of the decision was served (may be extended under Section 29(1C)/36S(4))		40 days	67 days
		<p>Suspension for up to 12 months initially, with a discretionary review, where the suspension may be:</p> <ul style="list-style-type: none"> <li>• terminated</li> <li>• extended for up to 12 months</li> <li>• replaced with conditions for up to three years</li> </ul>					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<ul style="list-style-type: none"> <li>Being included on a Safeguarding Vulnerable Groups barred list (including NI and Scottish equivalents)</li> </ul> <p>A final decision of Professional Conduct Committee, Professional Performance Committee or the Health Committee not to take any of the above measures.</p> <p>A decision of the Professional Conduct Committee to restore a person to the register following his removal from it.</p>	<ul style="list-style-type: none"> <li>changed to indefinite suspension if the registrant has already been suspended for 2 years (with a mandatory review if registrant requests)</li> </ul>					
		<p>Conditions for up to three years initially, with a discretionary review, where the conditions may be:</p> <ul style="list-style-type: none"> <li>removed</li> <li>extended for up to three years</li> <li>varied</li> <li>changed to suspension for up to 12 months</li> </ul>					
		Reprimand (impairment)				56 days	56 days
		No impairment					
<b>GOsC</b> 29(1)(g) & (2)(a)	<p>Any step taken by the Professional Conduct Committee or Health Committee under sections 22 or 23 of the Osteopaths Act 1993. Allegations against a registered osteopath relate to:</p> <ul style="list-style-type: none"> <li>conduct falling short of the standard required of a registered osteopath;</li> <li>professional incompetence;</li> <li>conviction</li> <li>ability to practise is seriously impaired by a physical or mental condition.</li> </ul>	<p>Conduct – removal</p>	High Court of Justice/Court of Session	28 days beginning with the date on which the notification of the decision is served on him.		40 days	67 days
	<p>Conduct - suspension order with a mandatory review, where the order may be</p> <ul style="list-style-type: none"> <li>extended</li> <li>changed to conditions</li> </ul>						



Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<p>A final decision of Professional Conduct Committee or the Health Committee not to take any of the above measures.</p> <p>A decision of the Professional Conduct Committee to restore a person to the register following his removal from it.</p>	<p>Conduct - conditions of practice order with a mandatory review, where the conditions may be:</p> <ul style="list-style-type: none"> <li>• extended</li> <li>• varied (including with a test)</li> <li>• reduced</li> </ul>					
		Conduct – admonishment					
		<p>Health - suspension order with a discretionary review, where the order may be</p> <ul style="list-style-type: none"> <li>• extended</li> <li>• changed to conditions</li> <li>• revoked</li> <li>• varied</li> </ul>	Appeal tribunal, then High Court of Justice/Court of Session	28 days beginning with the date on which notification of the decision of the committee/tribunal is sent to him.		40 days	40 days from last committee/tribunal decision
		<p>Health - conditions of practice order with a discretionary review, where the conditions may be:</p> <ul style="list-style-type: none"> <li>• extended</li> <li>• varied (including with a test)</li> <li>• reduced</li> </ul>					
		Health and conduct - not well founded				56 days	56 days
GCC 29(1)(h) & (2)(a)	Any step taken by the Professional Conduct Committee or Health Committee Council under sections 22 or 23 of the Chiropractors Act. Allegations against a registered chiropractor relate to:	Conduct - removal	High Court of Justice/Court of Session	28 days beginning with the date on which notification of the decision is sent to him		40 days	67 days
		Conduct - suspension order for up to three years initially with a mandatory review (see Part IV of PCC Rules and Guidance on Sanctions), where the order may be					

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal				
			Appeal body	Time							
	<ul style="list-style-type: none"> <li>conduct falling short of the standard required of a registered chiropractor;</li> <li>professional incompetence;</li> <li>conviction</li> <li>ability to practise is seriously impaired by a physical or mental condition.</li> </ul> <p>A final decision of Professional Conduct Committee or the Health Committee not to take any of the above measures.</p> <p>A decision of the Professional Conduct Committee to restore a person to the register following his removal from it.</p>	<ul style="list-style-type: none"> <li>extended</li> <li>changed to conditions</li> </ul>		(for each appeal)							
		Conduct - conditions of practice order for up to three years initially with a mandatory review (see Part IV of PCC Rules and Guidance on Sanctions), where the conditions may be: <ul style="list-style-type: none"> <li>extended</li> <li>varied (including with a test)</li> <li>reduced</li> </ul>									
		Conduct – admonishment									
		Health - suspension order for up to three years initially with a discretionary review, where the order may be <ul style="list-style-type: none"> <li>extended</li> <li>changed to conditions</li> </ul>						Appeal tribunal then High Court of Justice/Court of Session	28 days beginning with the date on which the decision of the committee/tribunal is sent to him.	40 days	40 days from last committee/tribunal decision
		Health - conditions of practice order for up to three years initially with a discretionary review, where the conditions may be: <ul style="list-style-type: none"> <li>extended</li> <li>varied (including with a test)</li> </ul>									
	Health and conduct - Not well founded				56 days	56 days					
<b>HCPC</b>	"any corresponding measure taken in relation to a member of a profession	Striking-off order (only for health or competence after two years of suspension or conditions)		28 days beginning with the date on		40 days	67 days				

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal	
			Appeal body	Time				
29(1)(j) & (2)(b)	<p>regulated by the Health and Social Work Professions Order 2001."</p> <p>Professions are: arts therapists, biomedical scientists, chiropractors, podiatrists, clinical scientists, dietitians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists, orthotists, radiographers, social workers in England, speech and language therapists.</p> <p>Corresponding measures means a directions by the Conduct and Competence Committee or Health Committee under article 29 that an allegation is well founded. An allegation includes that an entry in the register relating to him had been fraudulently procured or incorrectly made or that his fitness to practise is impaired by reason of:</p> <ul style="list-style-type: none"> <li>• misconduct</li> <li>• lack of competence</li> <li>• convictions or cautions</li> <li>• physical or mental health</li> <li>• determination of another UK health or social care regulator that their fitness to practise is impaired, or a determination by a regulatory body elsewhere to the same effect.</li> <li>• being included on a Safeguarding Vulnerable Groups barred list (including NI and Scottish equivalents)</li> </ul>	<p>Suspension order for up to one year initially with a mandatory review, where the order may be:</p> <ul style="list-style-type: none"> <li>• extended</li> <li>• replaced with another order</li> <li>• impose a conditions of practice order</li> </ul>	High Court of Justice/Court of Session	which the order or decision is served				
		<p>Conditions of practice order for up to three years initially with a mandatory review, where the order may be:</p> <ul style="list-style-type: none"> <li>• extended</li> <li>• replace with another order</li> </ul>						
		Caution order						
		Mediation						
		Not well founded						
								56 days

Regulator	Relevant decision as described in Section 29	Sanction	Appeal by registrant		Appeal by Regulator	Time for appeal by the Authority	Maximum time for Authority appeal
			Appeal body	Time			
	<p>A final decision of Conduct and Competence Committee or the Health Committee not to take any of the above measures.</p> <p>A decision of the Conduct and Competence Committee or Health Committee to restore a person to the register following his removal from it.</p>						

## 6. Annex 3: Section 29 case meeting

### Checklist for Chairs

1. Confirm the meeting is quorate. The following should be present:
  - i. The Chief Executive, or a Board Member in his absence
  - ii. At least one person from any of the following roles:
    - the Director of Scrutiny & Quality
    - the Assistant Director of Scrutiny & Quality (Legal)
    - Senior Solicitor
  - iii. A third member from any of the roles listed at (i) or (ii), or one of the following:
    - The Assistant Director of Scrutiny & Quality (Performance)
    - Lawyer
    - Senior Legal Reviewer
    - Scrutiny Manager
2. Establish that a Legal Adviser and note-taker are present.
3. State the name of the final fitness to practise panel decision being considered and the relevant regulator.
4. Establish and record any conflicts of interest amongst the decision-makers.
5. Is the electronic case meeting manual available to the meeting?
6. Have the decision-makers received any written report from the Legal Adviser and all supporting documents (including exhibits) if requested?
7. Are there any questions/comments on the documents?
8. Has the regulator or any other party provided information for the purpose of the case meeting? If so, ask the Legal Adviser to advise on the appropriate stage at which this should be considered by the decision-makers.
9. Address the question of jurisdiction – yes/no and on what basis?
10. When does the Authority's deadline for s29 referral to Court expire?
11. Ask the Legal Adviser to outline the case, starting with a brief outline of the facts.
12. Either the Legal Adviser or an officer of the Authority should set out the registrant's current status (e.g. if suspended and when this will end). The Legal Adviser should outline any steps that might be taken. If appropriate, the decision-makers should discuss whether any steps should be taken in the interim to address public protection.

13. Have specific issues highlighted in by the Legal Adviser been addressed?
14. Where necessary, consider with the Legal Adviser the extent of deference due to the final fitness to practise panel that made the decision in the specific circumstances and the weight to be attached to different types of evidence.
15. If relevant, ask the Legal Adviser/relevant officer of the Authority to cover/expand on developments in recent cases and similar facts.
16. Consider the application of section 29<sup>9</sup>:  
  
*Is the final fitness to practise panel's decision sufficient for public protection in terms of:*
  - *Protection of the health, safety and well-being of the public*
  - *Maintaining public confidence in the profession*
  - *Maintaining proper professional standards and conduct for members of that profession*
17. If the threshold set under s29 is met the decision-makers should go on to consider whether or not to exercise the Authority's discretion to make a s29 referral to Court:
  - a. Success prospects – to be addressed by the Legal Adviser
  - b. Alternative means available to achieve public protection
  - c. Impact on resources available to the Authority
18. Summarise the reasons for the decision and confirm the decision-makers' understanding.
19. Identify with the other decision-makers what alternative sanction might be appropriate to address the public protection concerns.
20. If the decision of the decision-makers is not to make a s29 referral to Court, consider whether the decision has given rise to any learning points should be fed back either to the regulator or more generally across the sector.

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<sup>9</sup> This applies to any final fitness to practise panel decision made on or after 1 January 2016. A differently worded test applied to any such decision made on or before 31 December 2015.

## 7. Annex 4: Section 29 case meeting

### Statutory deadline decision-making checklist for Chairs

1. Clarify that this is a full s29 case meeting convened in order for the decision-makers to decide whether or not to confirm the s29 referral to Court made under the statutory deadline decision-making procedure
2. Establish that the decision makers were not involved in the earlier decision to lodge the s29 referral to Court and confirm that they will not take into account the fact that a s29 referral to Court has been made when considering whether or not the final fitness to practise decision is insufficient for public protection
3. Confirm the meeting is quorate. The following should be present:
  - i. The Chief Executive, or a Board Member in his absence
  - ii. At least one person from any of the following roles:
    - The Director of Scrutiny & Quality
    - The Assistant Director of Scrutiny & Quality (Legal)
    - Senior Solicitor
  - iii. A third member from any of the roles listed at (i) or (ii), or one of the following:
    - The Assistant Director of Scrutiny & Quality (Performance)
    - Lawyer
    - Senior Legal Reviewer
    - Scrutiny Manager
4. Establish that a Legal Adviser and note-taker are present.
5. State the name of the final fitness to practise panel decision being considered and the relevant regulator.
6. Establish and record any conflicts of interest amongst the decision-makers.
7. Is the electronic case meeting manual available to the meeting?
8. Have the decision-makers received any written report from the Legal Adviser and all supporting documents (including exhibits) if requested?
9. Are there any questions/comments on the documents?

10. Has the regulator or any other party provided information for the purpose of the case meeting? If so, ask the Legal Adviser to advise on the appropriate stage at which this should be considered by the decision-makers.
11. Address the question of Jurisdiction – yes/no and on what basis?
12. Ask the Legal Adviser to outline the case, starting with a brief outline of the facts.
13. The Legal Adviser or an officer of the Authority should set out the registrant's current status (e.g. if suspended and when this will end). The Legal Adviser should outline any steps that might be taken. If appropriate, the decision-makers should discuss whether any steps should be taken in the interim to address public protection.
14. Have specific issues highlighted in by the Legal Adviser been addressed?
15. Where necessary, consider with the Legal Adviser the extent of deference due to the final fitness to practise panel that made the decision in the specific circumstances and the weight to be attached to different types of evidence.
16. If relevant, ask the Legal Adviser/relevant officer of the Authority to cover/expand on developments in recent cases and similar facts.
17. Consider the application of section 29<sup>10</sup>:

*Is the final fitness to practise panel's decision sufficient for public protection in terms of:*

- *Protection of the health, safety and well-being of the public*
- *Maintaining public confidence in the profession*
- *Maintaining proper professional standards and conduct for members of that profession*

18. If the threshold set under s29 is met the decision-makers should go on to consider whether or not to confirm the s29 referral to Court:
19. Success prospects – to be addressed by the Legal Adviser
20. Alternative means available to achieve public protection
21. Impact on resources available to the Authority
22. Summarise the reasons for the decision and confirm the decision-makers' understanding.
23. Identify with the other decision-makers what alternative sanction might be appropriate to address the public protection concerns.
24. If the decision of the decision-makers is to withdraw the s29 referral to Court, consider whether the decision has given rise to any learning

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<sup>10</sup> This applies to any final fitness to practise panel decision made on or after 1 January 2016. A differently worded test applied to any such decision made on or before 31 December 2015.



points should be fed back either to the regulator or more generally across the sector.

## 8. Annex 5: Alternative Dispute Resolution

1. The Authority has adopted a policy for Alternative Dispute Resolution ('ADR'), which is set out in this Annex.
2. ADR generally refers to a range of options (negotiation, mediation, neutral evaluation, arbitration) that enable litigants to agree a course of action and recommend to a judge how best to resolve a case. This enables parties to minimise costs and reach agreement at an earlier stage than having to undertake full Court proceedings.
3. While not seeking to constrain the ability of the Authority to assess the most appropriate means of ensuring public protection in advance, the ADR policy acknowledges that for some s29 referrals to Court it may be appropriate to seek proposals from, and have discussions with, the regulators and registrants concerned, in order to identify whether the Authority's concerns can be resolved without the need for a Court hearing. This has been the approach that the Authority has already used successfully in relation to various s29 referrals to Court, working with other parties to resolve cases earlier and saving resources.
4. The Authority's adoption of ADR formalises this approach. It will be followed in all cases that the Authority considers suitable, if the respondents are prepared to explore settlement options. In most cases, the Authority expects that negotiation of wording of an agreed Consent Order (to be approved by the Court) will be the most appropriate ADR process.
5. Any decision by the Authority to settle a s29 referral to Court by means of a Consent Order requires the approval of the Chief Executive (or in their absence, the Director of Scrutiny & Quality/Assistant Director of Scrutiny & Quality (Legal)). If possible the Chief Executive should seek comments from the decision-makers who attended the s29 case meeting in advance of approving the wording of the Consent Order.
6. Similarly, any agreement as to the amount of the costs to be paid to (or exceptionally, by) the Authority in connection with a s29 referral to Court is a matter for the Chief Executive (or in their absence, the Director of Scrutiny & Quality/Assistant Director of Scrutiny & Quality (Legal)).

## 9. Annex 6: Scrutiny Committee Terms of Reference

### **Role**

The Scrutiny Committee reviews, monitors and reports on the operation of the Authority's work in scrutinising the work of the nine healthcare regulatory bodies, the processes for approving appointments to those bodies, and the Accredited Registers programme overseen by the Authority. In particular, this includes work in the following areas:

#### *Work of the regulatory bodies*

- Consideration of final fitness to practise decisions in accordance with the Authority's powers under Section 29
- The audit of initial fitness to practise decisions and the performance reviews of the regulators
- Consideration of concerns about the regulatory bodies

#### *Appointments to the regulatory bodies*

- Provision of advice to the Privy Council regarding its appointment functions in relation to regulators' councils, pursuant to s227 of the Health and Social Care Act 2012

#### *Accredited registers programme*

- The performance of the Accredited Registers programme, compliance with and the effectiveness of its policies and procedures.

### **Responsibilities**

The Scrutiny Committee is required to:

- Assure on behalf of the Board the quality of the work of the Scrutiny and Quality Team in scrutinising the regulatory bodies and advising the Privy Council on appointments
- Review process and guidelines documents used by the Authority in scrutinising the regulators
- Advise on policy developments and operational priorities in relation to the scrutiny work
- Assure on behalf of the Board the quality of the work of the Accredited Registers team
- Commission research and advice as appropriate.

## **Membership**

Membership of the Scrutiny Committee will consist of three Authority members. The Committee reserves the right to co-opt a number of external representatives.

Membership of the Committee will be reviewed annually.

A Chair of the Committee will be selected by the members of the Committee.

The Scrutiny Committee is permitted to co-opt additional members to the Committee when this is necessary to conduct business.

The Scrutiny Committee may ask any or all of those attending, who are not members of the Committee, to withdraw if a private discussion is required.

Meetings will normally be attended by:

- Chief Executive
- Director of Scrutiny and Quality
- Accredited Registers team, Accreditation Manager
- Executive Secretary (note taker)
- Other members of the Scrutiny and Quality or Standards and Policy teams who are responsible for the topics to be discussed.

Other members of the Scrutiny and Quality Team may attend meetings on occasions.

The Scrutiny Committee may ask any other officials of the organisation to attend to assist with its discussions on any particular matter.

## **Meetings**

The Scrutiny Committee will meet approximately three times a year.

The quorum for meetings will be any two Committee members.

## **Reporting**

The Scrutiny Committee will report to the Board.

*Updated February 2016.*

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