

Scottish Home and Health Department

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NHS Circular No 1990 (PCS)8
Circular Cancelled - SHM 49/1968

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General Managers of Health Boards
General Manager, Common Service Agency

Your ref

PIE/9/4

Our ref

19 March 1990

Date

Dear Sir

**DISCIPLINARY PROCEDURES FOR HOSPITAL MEDICAL AND DENTAL
STAFF, COMMUNITY MEDICINE STAFF AND DOCTORS IN PUBLIC
HEALTH MEDICINE**

Introduction

1. This Circular notifies Health Boards of the introduction of new disciplinary procedures for hospital medical and dental staff and community medicine staff and doctors in public health medicine. It replaces SHM 49/1968 and sets out changes to Paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff and of Doctors in Public Health Medicine and the Community Health Services in Scotland. It also introduces 2 new procedures:

1.1 Professional Review Machinery whereby a professional panel reviews the conduct of hospital consultants (medical and dental) who are alleged to have failed repeatedly to honour their contractual commitments; and

1.2 Intermediate Procedure for dealing with cases of professional misconduct and professional incompetence against Consultants (including Chief Administrative Medical Officers and Directors of Public Health and other Consultants in Public Health Medicine) which warrant disciplinary action short of dismissal.

Background

2. Following mounting concern about the time taken by and cost of current procedures, the Secretary of State announced in March 1987 a review of the disciplinary procedures affecting hospital and community doctors and dentists. A Joint Working Party with members from the Health Departments, the professions and the NHS was set up to consider ways of improving these procedures. The Working Party presented their report to Ministers in August 1988.

3. In the White Paper "Working for Patients", the Government announced their intention to open negotiations with the professions on the basis of the Working Party's report. Those negotiations have now been concluded and this Circular describes the outcome.

Application

4. The grades of staff to which the various procedures apply are shown in the annexes to this Circular. Health Boards should note that, in cases involving personal conduct, the position of doctors and dentists is no different from that of other NHS staff. Health Boards should review their disciplinary procedures in respect of personal misconduct to ensure that they cover doctors and dentists adequately and consider whether they need to revise them following local consultation. Boards should be aware in particular of the provisions of Section 40 of the General Whitley Council Terms and Conditions of Service and the composition of the appeal panel proposed at paragraph 10 of Annex B of this Circular for cases involving medical and dental staff.

Definitions

5. The procedure(s) to be followed by Health Boards in considering an allegation of misconduct on the part of a practitioner will depend on the nature of the allegation. It is recognised that Boards can have great difficulty in defining the nature of the conduct which is the subject of an allegation, and the following definitions have been agreed between the Health Departments and the professions with a view to assisting Health Boards in these circumstances:

PERSONAL CONDUCT: Performance or behaviour of practitioners not associated with the exercise of medical or dental skills.

PROFESSIONAL CONDUCT: Performance or behaviour of practitioners arising from the exercise of medical or dental skills.

PROFESSIONAL COMPETENCE: Adequacy of performance of practitioners related to the exercise of their medical or dental skills and professional judgment.

Procedure

6. On receiving an allegation from any source, the Chief Administrative Medical Officer and Director of Public Health (CAMO) should make preliminary enquiries in order to determine whether:

- a. there is no substance in the allegations and therefore no further action is necessary;
- b. the case is a minor one which the CAMO considers suitable to be dealt with on an informal basis;
- c. the procedures for sick doctors set out in NHS Circular 1982 (PCS)8 might be appropriate;
- d. the allegation is of personal misconduct, in which case the disciplinary provisions set out in Section 40 of the General Whitley Council Handbook should be followed;
- e. the case is appropriate to be dealt with under the Professional Review Machinery (Annex A);

f. the case involves less serious allegations about professional conduct or competence and is suitable for the intermediate procedure (Annex B); or

g. the case involves allegations concerning serious professional conduct or competence and should be dealt with in terms of Annex C.

During these preliminary enquiries, the CAMO will normally wish to discuss the issues with the practitioner involved.

Action

7. With effect from the date of this Circular Health Boards are asked to introduce the changes detailed in the Annexes as follows:

PROFESSIONAL REVIEW MACHINERY: Annex A introduces informal "pre-disciplinary" machinery for reviewing the conduct of hospital consultants (doctors and dentists) who are alleged to have failed repeatedly to honour their contractual commitments. The procedure is in addition to, and does not replace, either Health Boards' existing powers to take disciplinary action or the arrangements for dealing with sick doctors outlined in NHS Circular No 1982(PCS)8. This procedure shall apply from the date of this Circular and may include the investigation of acts or omissions which have occurred before that date.

INTERMEDIATE PROCEDURE FOR LESS SERIOUS MATTERS INVOLVING PROFESSIONAL CONDUCT OR COMPETENCE: Annex B introduces a new procedure for dealing with cases of professional misconduct or professional incompetence which warrant disciplinary action short of dismissal. The procedure applies to consultants including Chief Administrative Medical Officers and Directors of Public Health and other Consultants in Public Health Medicine. The provisions are effective from the date of this Circular and may include the investigation of acts or omissions which have occurred before that date.

PROCEDURE FOR SERIOUS DISCIPLINARY CASES: Annex C supersedes Circular SHM49/1968 and applies to disciplinary procedures in serious cases involving professional conduct and professional competence of all hospital doctors and dentists and community doctors and those in public health medicine.

REPRESENTATIONS AGAINST DISMISSAL TO THE SECRETARY OF STATE: Annexes D and E detail changes to Paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff (Scotland) and of Doctors in Community Medicine and Public Health Medicine. The new procedure will apply to representations lodged with the Secretary of State after 19 March 1990. Replacement pages for the respective handbooks will be issued in due course.

8. The amendments to paragraph 190 of the Terms and Conditions of Service have been approved by the Secretary of State under Regulation 3 of the NHS (Remuneration and Conditions of Service) (Scotland) Regulations 1974 (SI 1974 No 276).

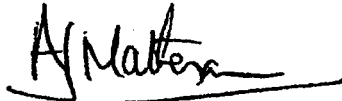
9. The Department wishes to monitor these new procedures and Health Boards are therefore asked to maintain records of cases dealt with. The records should show for each case the nature of the allegation made, the procedure followed, the stage reached, and, where the case has been completed, the outcome. Anonymised returns only will be required and will be called for in due course. In addition, Health Boards will be asked for their views on the effectiveness of the procedures.

10. Circular SHM 49/1968 is cancelled from the date of this circular except where Health Boards have started proceedings on the basis of SHM 49/1968 before this date.

Enquiries

11. Any enquiries regarding this circular should be directed to Mrs L Middleton, Room 155 (Ext 2828) or Miss M Glen, Room 130c (Ext 2475) St Andrew's House, Edinburgh, EH1 3DE.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'A J Matheson', with a horizontal line underneath.

A J MATHESON

PROFESSIONAL REVIEW MACHINERY

1. The professional review machinery is an informal mechanism for reviewing the conduct of hospital consultants who are alleged to have repeatedly failed to honour their contractual commitments.

Professional Panel

2. The Area Committee for Hospital Medical Services (ACHMS) or its equivalent will establish a professional panel to operate the procedure. The panel will normally consist of the Chairman of the ACHMS and two other consultants, one whole-time and one part-time, nominated by the ACHMS to serve for a period of not more than 2 years. A fourth member will be added to the panel to assist with each case, as set out in paragraph 6 below.

Referral

3. Allegations may be brought to the attention of the panel directly

- by consultants; or
- by the CAMO

Allegations from staff in other disciplines should be submitted through their line manager to the CAMO. Medical staff other than consultants may choose to make their allegations via a consultant or direct to the CAMO.

4. The CAMO will preserve the anonymity of those making allegations, if they so wish. The legal position of those making allegations is that an action for defamation is not likely to succeed against persons passing on information which in their opinion should be brought to the notice of the recipients, since these persons would, unless actuated by malice, be able to rely on the defence of qualified privilege. This defence applies to a statement made in pursuance of a legal, moral or social duty to a person who has a corresponding duty to receive it. If proceedings are brought against persons making allegations which establish that the defendants have acted in accordance with the recommended procedure, in good faith and with reasonable care, the Health Board should meet the cost of their defence and of any damages or costs ordered to be paid by them in those proceedings.

Procedure

5. When the CAMO receives an allegation, he will decide whether any action is needed and, if so, under which procedure. He may decide to use the intermediate procedure for less serious cases, to institute the procedure for serious disciplinary cases, to use the procedure set out in NHS Circular No 1982(PCS)8 concerning sick doctors, or to refer the matter to the chairman of the professional panel constituted in accordance with paragraph 2 above. CAMOs and consultants bringing allegations to the attention of the panel must do so in writing.

6. When the chairman of the panel receives an allegation, he will inform the consultant concerned verbally and provide him with a copy of any written representations received. The panel will co-opt a fourth member

from the same specialty as the consultant against whom the allegations have been made or from an allied specialty. The fourth member must be employed by another Health Board and he will be co-opted on the recommendation of the Chairman of the ACHMS or the equivalent in that area.

7. The consultant will then be invited to meet the panel and discuss the allegation. The matter will be discussed informally with the consultant and no friends or representatives will be present. In the light of these informal discussions, the panel may conclude that the allegation is unfounded, in which case no further action will be necessary. If they conclude that there is substance to the allegations, the consultant will be advised accordingly and counselled regarding his future conduct. He may be invited to meet the panel again at any time but he will in any case be invited to do so no later than 6 months from the date of the original meeting to review the situation. If, after this second meeting, the panel consider that there has been no improvement, the matter will be referred to the CAMO.

8. The CAMO will be informed of all referrals to the panel and the outcome in each case, including those where the consultant concerned refuses to meet the panel.

9. The Chairman will keep a note of the meeting, consisting of a factual statement of the complaint received and a statement that the consultant has been counselled by the panel. No other record of the meeting should be kept.

10. In the case of a consultant who refuses to meet the panel, the CAMO may institute formal disciplinary procedures.

INTERMEDIATE PROCEDURE FOR LESS SERIOUS MATTERS INVOLVING PROFESSIONAL CONDUCT OR COMPETENCE

1. The "intermediate procedure" involves the use of independent professional assessors to investigate and advise the CAMO on less serious matters involving the professional conduct or competence of consultants.
2. The following procedure will require commitment from the profession in that the SJCC would have to find suitable assessors speedily and there would have to be sufficient volunteers to act as assessors; there will also need to be commitment from Health Boards in releasing assessors, including perhaps allowing locum cover. Travelling and subsistence expenses of the assessors are payable in accordance with NHS Circular 1988(GEN)24 as subsequently amended.
3. The assessors, who should be nominated by the Scottish Joint Consultants Committee (SJCC), should have no disciplinary powers themselves. This procedure could be used in cases where a specific disciplinary allegation involving less serious matters of professional conduct or competence is made against a consultant. The procedure could also be invoked where there are major problems arising from differing professional views within a department.
4. If the CAMO decides that the procedure for less serious cases is appropriate, he should write to the SJCC with details of the practitioner's specialty and the hospital(s) where he works, together with a very brief indication of the problem (for example doubts about a practitioner's clinical practice or a clash of professional views) and invite them to nominate independent assessors to investigate the situation and advise him. At the same time, the CAMO should inform the practitioner involved and such other persons as he thinks appropriate in writing that he has taken this action.
5. The SJCC will nominate 2 independent assessors from another Health Board with at least one from the same specialty as the practitioner concerned and agree their appointment with the CAMO. The SJCC will aim to provide the names of assessors within one month.
6. When the CAMO receives notification of the names of the assessors and agrees their appointment, he will provide them with a detailed statement of the case within one month, copying it at the same time to the practitioner(s) involved. The assessors will examine the statement and first consider whether or not it is appropriate to the intermediate procedure.
7. The assessors may wish to meet the CAMO at this stage for a preliminary discussion or if they need further background information. The assessors will determine whom they wish to interview. Through the CAMO they will provide the practitioner involved with a list of the names of those to be interviewed and ask the practitioner whether he would like anybody else to be interviewed by them. The assessors will visit the Health Board and undertake the necessary investigations. They will have no power to compel any person - including the practitioner(s) involved - to meet them but refusal to do so should not frustrate the enquiry. Any person who is interviewed should be informed that they will be expected to provide a written statement or to sign an agreed record of the

interview and that copies of this record or statement will be passed to the practitioner involved. The practitioner involved will be invited to meet the assessors and may do so either alone or accompanied by a representative of his professional organisation or by a friend. During the period of the investigation and preparation of the report, the CAMO will provide the assessors with secretarial and administrative assistance as required. If at any time the assessors decide that the case is not appropriate to this procedure but requires to be dealt with under one of the other procedures, they will bring this to the notice of the CAMO who will decide what action to take.

8. As far as possible, the investigation will be completed within 13 weeks of the assessors receiving the statement of case from the CAMO. The assessors will prepare a report which will be divided into 2 parts. The first part will set out the assessors' findings on all the relevant facts of the case but will contain no recommendations as to action. The second part will contain a view as to whether and to what degree the practitioner involved is at fault and it may also contain recommendations, for example, regarding organisational matters within the department or advice to be given to the practitioner. In no circumstances should the assessors themselves be given disciplinary powers.

9. The assessors will send the practitioner involved and the CAMO a copy of the first part of the report and should allow a period of 2 weeks for the submission of his comments on its factual accuracy. Where agreement cannot be reached between the practitioner and the Health Board on the factual accuracy of the assessors' report, both arguments should be recorded. The assessors will then submit the full report to the CAMO.

10. The CAMO will then decide what further action is necessary, and will inform the practitioner involved accordingly. If he decides that disciplinary action is necessary, for example that a warning is appropriate, established local procedures based on paragraphs 12(a) and 12(b) of the ACAS Code "Disciplinary Practice and Procedures in Employment" should be followed.

11. If the practitioner involved wishes to appeal against any disciplinary action taken, the appeals procedure based on the provisions of Section 40 of the General Whitley Council Handbook, suitably adapted for medical and dental staff, should be used. It is suggested that the appeal committee might be made up of the Chairman of the Health Board (or a deputy), a practitioner who is a member of the Board, and another practitioner in the same or an associated specialty as the practitioner involved. The last-mentioned should be a practitioner employed by another Health Board.

12. This procedure shall also apply to Directors of Public Health and other consultants in public health medicine. Where the subject of the allegation is the CAMO the reference should be to the Health Board General Manager who will seek appropriate professional advice.

PROCEDURE FOR SERIOUS DISCIPLINARY CASES

1. The following guidance replaces Circular SHM 49/1968 and should be followed in serious disciplinary cases involving the professional conduct and professional competence of all hospital medical and dental staff and community doctors and doctors in public health medicine where the outcome of the disciplinary action could be the dismissal of the medical or dental practitioner concerned.

Suspension and Summary Dismissal

2. The arrangements are without prejudice to the right of a Health Board to take immediate action against a practitioner, where this is required in cases of a very serious nature. In such instances the CAMO should first consider whether the interests of the service require that the practitioner concerned should cease to carry out his duties while the allegations are being examined. If it is decided that they do, the practitioner should be suspended from duty temporarily. It should be understood that suspension is intended only as a precaution to safeguard the interests of the service while matters are being investigated. The suspension should be confirmed or terminated by the Chairman of the Health Board within 14 days. The power to dismiss medical and dental staff should remain with the Health Board and should not be delegated to any officer of the Board.

Type of Case

3. There are broadly 3 types of case which may affect medical or dental staff:

- 3.1 cases involving personal conduct;
- 3.2 cases involving professional conduct; and
- 3.3 cases involving professional competence.

It is for the Health Board to decide into which category a case falls. A definition of each category is given in paragraph 5 of this Circular.

Cases Involving Personal Conduct

4. In cases involving personal conduct, the position of a doctor or dentist is no different from that of other health service staff. Accordingly, the provisions of Section 40 of the General Whitley Council Conditions of Service shall apply in such cases. Only cases involving professional conduct and professional competence are dealt with in this annex.

Cases Involving Professional Conduct or Competence:**Preliminary Investigation and Establishment of Prima Facie Case**

5. When an incident is reported or a complaint is made involving the professional conduct or competence of a medical or dental practitioner preliminary inquiries should be made by the CAMO or CADO as appropriate. Where necessary, the Health Board's legal adviser should be called in to assist. A report should be made to the Chairman of the

Health Board who should decide whether there is a prima facie case which, if well founded, could result in serious disciplinary action such as dismissal. Where the matter arises from an incident for which an accident report has been made in accordance with NHS Circular 1977(GEN)13, the Chairman, before reaching his decision, should have regard to the accident report, but normally no subsequent use should be made of the report in the proceedings, except insofar as it is used by the Health Board's legal advisers in preparing a case to be presented to an investigating panel (see paragraph 9 below).

6. If the Chairman decides immediately that there is no prima facie case, the practitioner concerned should be informed in writing and any suspension should be lifted immediately on the direction of the Chairman.

7. Otherwise the practitioner should be informed immediately in writing of the allegation or complaint which has been made and advised that the question of an inquiry which might lead to serious disciplinary action is under consideration. Copies of all relevant correspondence should be sent to the practitioner and he should be informed that any comments made by him will be placed before the Chairman and any investigating panel which may be appointed. The practitioner should be given 4 weeks to respond and to seek advice if he so wishes before any final decision is taken on whether an inquiry is necessary.

8. If on considering the allegation or complaint made and the practitioner's comments, if any, in reply to the written notification given in accordance with paragraph 7, the Chairman decides that a prima facie case exists and if there is no substantial dispute as to the facts, any subsequent disciplinary action which the Health Board may take should comply with the guidance contained in Section 40 of the General Whitley Council Conditions of Service. An inquiry on the lines laid down in paragraphs 9-15 below would normally be unnecessary also where, in a matter affecting the practitioner's professional conduct or competence, the facts in question have been the subject of a criminal charge on which the practitioner has been found guilty in a court of law or have been established by a public inquiry set up by the Government. If the Chairman decides that a prima facie case exists and that there is a dispute as to the facts, the Health Board should proceed to an inquiry, as in paragraphs 9-15 below.

Inquiry

9. An investigating panel, the composition of which should differ with the type of inquiry, should be set up by the Health Board responsible for appointing the practitioner. No member of the panel should be associated with the hospital(s) in which the practitioner concerned works, or, in the case of a community doctor or dentist, with the Health Board in which he works. The panel should normally consist of up to five persons, including a legally qualified chairman, not being either an officer of the Scottish Home and Health Department or a member or officer of the Health Board concerned. In cases involving professional conduct, membership of the panel other than the chairman should be divided equally between professional and lay persons, unless the allegations relate only to relationships between a practitioner and his professional colleagues when it would be appropriate to have a panel consisting wholly or mainly of professional members apart from the Chairman. In cases concerned solely with professional competence, all panel members (other than the Chairman) should be medically or dentally qualified and it will normally be

appropriate for at least one of their number to be in the same or an allied specialty to that of the practitioner whose professional competence has been called in question. It may also be appropriate for one of the members to be a practitioner from another hospital in the same grade as the practitioner whose competence is the subject of enquiry. The professional members should be nominated by the appropriate professional body. In the case of a doctor this would be the Scottish Joint Consultants Committee (SJCC). In the case of a dentist the SJCC or the appropriate group of the British Dental Association would provide the nominations.

10. The terms of reference of the panel should include the nature of the incident or complaint. The practitioner should be informed of the setting up of the panel and its terms of reference and he should be given not less than 21 days to prepare his case. He should be provided as soon as possible with copies of any correspondence or written statements made. A list of witnesses should be drawn up with the main points on which they are to give evidence. This task might be undertaken by the legal adviser to the Health Board assisted by the CAMO or CADO as appropriate as early as possible before the hearing the panel should undertake to exchange between the practitioner and the disciplinary authority lists of witnesses and the main points on which they can give evidence unless exceptionally the Chairman of the panel gives authority for the names of witnesses not to be provided in advance of the hearing.

11. The investigating panel should meet in private and seek to establish all the relevant facts of the case. At the hearing the practitioner should appear personally before the panel and hear all the evidence presented to it. Both the practitioner and the Health Board may be represented, legally or otherwise. The Health Board's case should normally be presented by their legal adviser. Where the Health Board and/or the practitioner are represented before the panel by a lawyer, both sides should make efforts to reduce the formality and length of the proceedings. Both the practitioner and the Health Board may call witnesses, including officers of the Board if desired, who may be cross-examined before the panel. Only one representative of each party, or the practitioner himself if he is not represented, shall be entitled to cross-examine witnesses. Members of the panel may question witnesses of either party or may ask for other witnesses to be called. The panel should ensure as far as possible that all witnesses are asked to present factual evidence and not personal impressions or opinions.

12. The procedure at the hearing and rules regarding the admission of evidence before the investigating panel should be determined by the Chairman who may hold a preliminary meeting with the parties or their representatives for this purpose. The question of adjournment of the hearing in the event of illness or unavoidable absence of the practitioner or any witness is also a matter for the Chairman to decide in accordance with natural justice.

13. The report of the investigating panel should be presented in 2 parts. The first part should set out the panel's findings and all the relevant facts of the case but contain no recommendations as to action. The second part should contain a view as to whether the practitioner is at fault and should explain the basis on which this finding is reached. At the request of the Health Board the second part of the report may contain recommendations as to disciplinary action. In no circumstances should the investigating panel itself be given disciplinary powers.

14. The panel should send the practitioner and the Health Board a copy of the first part of their report, and should allow a period of 4 weeks for the submission to them of any proposals for the correction of facts. It would be for the panel to decide whether to accept any proposed amendments and whether any further meeting was necessary to enable them to reach this decision. Following completion of this procedure, the facts as set out in the panel's report should be accepted as established in any subsequent consideration of the case.

15. The Health Board should then receive the full report of the investigating panel and decide what action to take. In the event of the panel finding that the practitioner is at fault, their views on the case and recommendations in the second part of their report should be made available to the practitioner in good time before the Health Board meets to consider their decision and the practitioner should be given the opportunity to put to the Board any plea in mitigation which he may wish to make before they reach any decision as to action.

Staff with Honorary Appointments

16. If cases arise involving the professional conduct or professional competence while engaged on health service duties of members of staff holding honorary appointments, the Chairman of the Health Board should decide whether there is a prima facie case for a formal inquiry with a view to further action.

17. If the Chairman decides that a prima facie case does exist, he should inform and consult with the practitioner's principal employers (ie University, Medical Research Council or other authority). Subsequent procedure should be on the same lines as set out in the preceding paragraphs of this memorandum, except that the principal employers should be consulted about the selection of the professional members of any investigating panel appointed by the Health Board and they should be invited to send an observer to attend the proceedings of the panel. The principal employers should also be sent a copy of the report of the investigating panel and notified of the Board's proposed decision and given the opportunity to comment on it if they so wish.

Timetable

18. The following time limits should apply to each stage of the procedure. The time taken from the decision that there is a prima facie case to the submission of the panel's report to the Health Board should not exceed 32 weeks:

a. Chairman of the Health Board decides:

that there is a prima facie case and informs the practitioner accordingly.

b. Practitioner comments on the case - within 4 weeks.

c. After receipt of comments, Health Board decide to follow the procedure set out in this Annex - within 2 weeks.

- d. Health Board appoints chairman and other members of investigating panel and panel meets - within 13 weeks.
- e. Hearing is concluded - within 1 week.
- f. Report is produced and factual part sent to practitioner and the Health Board - within 4 weeks.
- g. Practitioner and Health Board comment - within 4 weeks.
- h. Full report submitted to Health Board - within 4 weeks.

Fees and Expenses

19. The Chairman of the panel should receive a fee for his services which should cover any preparatory work required and time spent on preparation of reports. Travelling and subsistence expenses of the Chairman and members of the panel should be paid in accordance with NHS Circular No 1988(GEN)24 as subsequently amended. All fees and expenses should be paid by the Health Board setting up the inquiry.

20. These arrangements are without prejudice to the provisions of Paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff (Scotland) and Doctors in Community Medicine and the Community Health Service (Scotland).

If the panel decides that the termination is solely on the grounds of personal misconduct, the practitioner's application shall be rejected. If the panel decides that the termination is not solely on the grounds of personal misconduct, the practitioner may (if he has not already done so) appeal in accordance with sub-paragraph (a) within a period of one month from the date of notification of the panel's decision. The time allowed for the purposes of sub-paragraph (e) shall be 2 months from the date of such notification.

e. A practitioner making representations under sub-paragraph (a) shall send to the Secretary of State, normally no later than within a period of 4 months beginning with the date on which he received notice of termination of his employment, a full statement of the facts of his case. If he fails to do so, the application shall be treated as having been determined by a decision confirming the termination of the practitioner's appointment. The Secretary of State may however extend the time limit for such further period as he thinks reasonable if he is satisfied that it was not practicable for the statement of facts to be presented within the period of 4 months.

f. On receipt of a statement of case from a practitioner entitled to appeal under sub-paragraph (a) and (c), the Secretary of State shall

i. request the Health Board to give its written views on the case; and

ii. refer the case for advice to a professional committee consisting of representatives of the Secretary of State and of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer as appropriate of the Scottish Home and Health Department or their deputies.

g. The Secretary of State shall not be obliged to consider any of the Health Board's views which are given more than 2 months after the date of the request made in accordance with sub-paragraph f(i) ("the request date"). Failure to submit views within the 2 month period will result in the appeal being determined by a decision to direct that the practitioner's appointment should continue. The Secretary of State may extend the time limit for such further period as he thinks reasonable if he is satisfied that it was not practicable for the statement of facts to be presented within the 2 months of the request date.

h. The professional committee -

i. shall be assisted by an advocate or solicitor;

ii. may, if it thinks fit, interview the practitioner and representative(s) of the Health Board;

iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND
CONDITIONS OF SERVICE OF HOSPITAL MEDICAL AND DENTAL STAFF
SCOTLAND

- 190 a. Subject to sub-paragraph (c), a Consultant, Senior Hospital Medical Officer, Senior Hospital Dental Officer, Associate Specialist, or Hospital Practitioner who considers that his appointment is being unfairly terminated may make representations to the Secretary of State against the termination by sending to him a notice of appeal at any time during the period of notice of termination of his appointment.
- b. There is no right of appeal under sub-paragraph (a) where
- i. in terms of his appointment a practitioner is ordinarily required to work for no more than 5 notional half days and he has income from other NHS medical or dental work equal to or greater than the income from the appointment being terminated; or
 - ii. subject to sub-paragraphs (c) and (d) below, the termination* is solely on the grounds of personal misconduct.

For the purposes of this paragraph personal misconduct shall mean "unacceptable performance or behaviour not associated with the exercise of medical or dental skills".

c. A practitioner who considers that his appointment is being unfairly terminated solely on the grounds of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 4 weeks following the date notice was given, require the Secretary of State to refer to a panel the question of whether his appointment is being terminated solely on the grounds of personal misconduct.

d. The panel shall comprise the Chief Medical Officer or Chief Dental Officer as appropriate of the Scottish Home and Health Department, the Chairman of the Scottish Joint Consultants Committee or their deputies and an advocate or solicitor not in the employment of the government legal service or any Health Board. The panel shall decide whether or not the termination is solely on the grounds of personal misconduct and shall notify the Secretary of State, the practitioner and the Health Board terminating the appointment ("the Health Board") accordingly.

* Section 40 of the General Whitley Council Terms and Conditions provides a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190. Where such an appeal is made, the panel set up by the employing authority should include one professional member appointed from outside the Authority at the same grade and in the same (or related) specialty as the practitioner concerned.

than three months, after receipt by the Secretary of State of the Health Board's views; or, where the Health Board's views are not given within two months after the request date, no earlier than three months and no later than five months after the request date;

iv. shall submit its advice to the Secretary of State, so far as is practical within a period of 3 months.

i. Where the professional committee is minded to advise the Secretary of State neither to confirm the termination of the practitioner's appointment nor to direct that his appointment continue, but to arrange a solution agreeable to the practitioner and the Health Board, it shall

i. before giving advice to the Secretary of State, ascertain the extent to which the proposed solution is likely to be acceptable to the practitioner and the Health Board; and

ii. include in any advice given to the Secretary of State to arrange such a solution the committee's assessment of the extent to which it would prove acceptable to the practitioner and the Health Board.

j. Having received the professional committee's advice, the Secretary of State shall, as far as is reasonably practicable, within a period of 3 months

i. confirm the termination of the practitioner's appointment; or

ii. direct that the practitioner's appointment continue; or

iii. arrange some other solution acceptable to the practitioner and the Health Board.

k. The termination of the practitioner's appointment shall not have effect while an application duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (c) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Health Board until the decision is given (and, in the case of a referral under sub-paragraph (c), until any time allowed by sub-paragraph (d) for appealing has expired). The period of notice shall be further extended as the Secretary of State may direct in a case where he decides to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND CONDITIONS OF SERVICE OF DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE

- 190 a. Subject to sub-paragraph (c), a Chief Administrative Medical Officer/Director of Public Health, a consultant in Public Health Medicine, an officer holding an appointment under paragraph 17, a Senior Clinical Medical Officer or Senior Medical Officer (Community Medicine) or a Clinical Medical Officer on or above the 6th point of the salary scale who considers that his appointment is being unfairly terminated may appeal to the Secretary of State against the termination by sending to him a notice of appeal at any time during the period of termination of his appointment.
- b. There is no right of appeal under sub-paragraph (a) where
- i. in terms of his appointment a practitioner is ordinarily required to work for no more than 17½ hours per week and he has income from other NHS medical or dental work equal to or greater than the income from the appointment being terminated; or
 - ii. subject to sub-paragraphs (c) and (d) below, the termination* is solely on the grounds of personal misconduct.

For the purposes of this paragraph personal misconduct shall mean "unacceptable performance or behaviour not associated with the exercise of medical or dental skills".

c. A practitioner who considers that his appointment is being unfairly terminated solely on the grounds of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 4 weeks following the date notice was given, require the Secretary of State to refer to a panel the question of whether his appointment is being terminated solely on the grounds of personal misconduct.

d. The panel shall comprise the Chief Medical Officer or Chief Dental Officer as appropriate of the Scottish Home and Health Department, the Chairman of the Scottish Joint Consultants Committee or their deputies and an advocate or solicitor not in the employment of the government legal service or any Health Board. The panel shall decide whether or not the termination

* Section 40 of the General Whitley Council Terms and Conditions provides a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190. Where such an appeal is made, the panel set up by the employing authority should include one professional member appointed from outside the Authority at the same grade and in the same (or related) specialty as the practitioner concerned.

is solely on the grounds of personal misconduct and shall notify the Secretary of State, the practitioner and the Health Board terminating the appointment ("the Health Board") accordingly. If the panel decides that the termination is solely on the grounds of personal misconduct, the practitioner's application shall be rejected. If the panel decides that the termination is not solely on the grounds of personal misconduct, the practitioner may (if he has not already done so) appeal in accordance with sub-paragraph (a) within a period of the month from the date of notification of the panel's decision. The time allowed for the purposes of sub-paragraph (e) shall be 2 months from the date of such notification.

e. A practitioner making representations under sub-paragraph (a) shall send to the Secretary of State, normally no later than within a period of 4 months beginning with the date on which he received notice of termination of his employment, a full statement of the facts of his case. If he fails to do so the application shall be treated as having been determined by a decision confirming the termination of the practitioner's appointment. The Secretary of State may, however, extend the time limit for such further period as he thinks reasonable if he is satisfied that it was not practicable for the statement of facts to be presented within the period of 4 months.

f. On receipt of a statement of case from a practitioner entitled to appeal under sub-paragraph (a) and (c), the Secretary of State shall

i. request the Health Board to give its written views on the case; and

ii. refer the case for advice to a professional committee consisting of representatives of the Secretary of State and of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer as appropriate of the Scottish Home and Health Department or their deputies.

g. The Secretary of State shall not be obliged to consider any of the Health Board's views which are given more than 2 months after the date of the request made in accordance with sub-paragraph f(i) ("the request date"). Failure to submit views within the 2 month period will result in the appeal being determined by a decision to direct that the practitioner's appointment should continue. The Secretary of State may extend the time limit for such further period as he thinks reasonable if he is satisfied that it was not practicable for the statement of facts to be presented within the 2 months of the request date.

h. The professional committee

i. shall be assisted by an advocate or solicitor;

ii. may, if it thinks fit, interview the practitioner and representative(s) of the Health Board;

iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than three months, after receipt by the Secretary of State of the Health Board's views; or, where the Health Board's views are not given within two months after the request date, no earlier than three months and no later than five months after the request date;

iv. shall submit its advice to the Secretary of State, so far as is practical within a period of 3 months.

i. Where the professional committee is minded to advise the Secretary of State neither to confirm the termination of the practitioner's appointment nor to direct that his appointment continue, but to arrange a solution agreeable to the practitioner and the Health Board, it shall

i. before giving advice to the Secretary of State, ascertain the extent to which the proposed solution is likely to be acceptable to the practitioner and the Health Board; and

ii. include in any advice given to the Secretary of State to arrange such a solution the committee's assessment of the extent to which it would prove acceptable to the practitioner and the Health Board.

j. Having received the professional committee's advice, the Secretary of State shall, as far as is reasonably practicable, within a period of 3 months

i. confirm the termination of the practitioner's appointment; or

ii. direct that the practitioner's appointment continue; or

iii. arrange some other solution acceptable to the practitioner and the Health Board.

k. The termination of the practitioner's appointment shall not have effect while an application duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (c) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Health Board until the decision is given (and, in the case of a referral under sub-paragraph (c) until any time allowed by sub-paragraph (d) for appealing has expired). The period of notice shall be further extended as the Secretary of State may direct in a case where he decides to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.

