

Question for consultation

Review of decision not to refer – Rule 15

The 2005 Rules enable the Investigation Committee to review a decision not to refer an allegation to the Fitness to Practise Committee. The 2005 Rules provide that the Committee will not review such a decision unless it considers that there is new evidence or information which makes such a review necessary for the protection of the public, for the prevention of injustice to the registrant, otherwise necessary in the public interest, or where the Investigation Committee receives information indicating that the Council has erred in its administrative handling of the case and a review is necessary in the public interest.

We are now asking for your comments in relation to one specific amendment to the rules upon which we consulted.

Following our analysis of the consultation responses, we listened to the responses in connection with Rule 15. It was clear that the professional bodies were of the view that the powers contained in Rule 15 of the new rules should be delegated to the case examiners rather than the registrar.

We have amended Rule 15 to take into account this change. We consider that this measure fits with our ambition to improve the pace and efficiency of the process and will reduce the workload of the full Investigation Committee.

Question: do you agree with the provision for the case examiners, rather than the Investigation Committee, to be able to review a decision not to refer?

Extract: Rule 15 Review of decision not to refer

- 15(1) Subject to paragraph (2), a decision not to refer an allegation to the Fitness to Practise Committee may be reviewed by the case examiners, being one lay case examiner and one case examiner who is either a registered dispensing optician or a registered optometrist, at any time within five years, (or within a longer period where the case examiners consider the circumstances are exceptional), of the date of the letter notifying the registrant of the decision.
- (2) The case examiners shall not review such a decision unless either -
- (a) they consider that there is new evidence or information which makes such a review -
- (i) necessary for the protection of the public;
 - (ii) necessary for the prevention of injustice to the registrant; or
 - (iii) otherwise necessary in the public interest;
- or -
- (b) they receive information that the Council has erred in its administrative handling of the case and they are satisfied that it is necessary in the public interest to do so.
- (3) Where the case examiners decide to review a decision under paragraph 15(1), they shall direct the registrar to-
- (a) inform the registrant, the registrant's current employer (if known to the registrar) and the maker of the allegation of the decision to review;
 - (b) inform the registrant and the maker of the allegation of any new evidence or information and, where appropriate, provide them with copies of any new evidence received; and
 - (c) seek representations from the registrant and the maker of the allegation regarding the review of the decision.
- (4) Where the case examiners have reviewed a decision they may-
- (a) determine that the original decision should stand;
 - (b) decide, where no warning was given to the registrant at the time of the original decision, that a warning should be given to the registrant regarding the registrant's future conduct or performance;
 - (c) decide that the allegation ought to be referred to the Fitness to Practise Committee; or
 - (d) decide that a warning given at the time of the original decision should not have been given and remove the record of it.

- (5) The case examiners shall direct the registrar to notify the following persons in writing as soon as reasonably practicable of the outcome of a review under paragraph (1), together with the reasons for that decision –
- (a) the registrant;
 - (b) the maker of the allegation; and
 - (c) any other person the case examiners consider has an interest in receiving a notification, including the registrant's current employer (if known to the registrar).