



Home Office

**REGISTER
OF
FORENSIC PATHOLOGISTS**

DISCIPLINARY GUIDANCE

ISSUE 2 – JULY 2007

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INTRODUCTION

1. The Disciplinary Rules of the Home Office Register of Forensic Pathologists provide that the Home Secretary may issue guidance to support the operation of the rules.
2. The Home Secretary has exercised his right [p 7 DR(2)] to issue such guidance, which is set out in this document.
3. This guidance shall become effective on 1 July 2007.
4. The purpose of this guidance is to support the operation of the Disciplinary Rules and assist those implementing the Rules. This guidance does not override the Disciplinary Rules and in the event of any conflict the Disciplinary Rules will prevail.
5. Failure to comply with this guidance does not invalidate any decision, action etc.
6. The definitions set out in the Disciplinary Rules shall be used in this guidance.
7. Throughout the document reference to the Disciplinary Rules shall be of the form [p1 DR(1)]. This indicates a reference to paragraph 1 in issue 1 of the Disciplinary Rules.
8. Within this document reference is made responsibility for a given decision, action etc. This does not prevent any delegation, nomination or assignment of such responsibility allowed by the Rules.

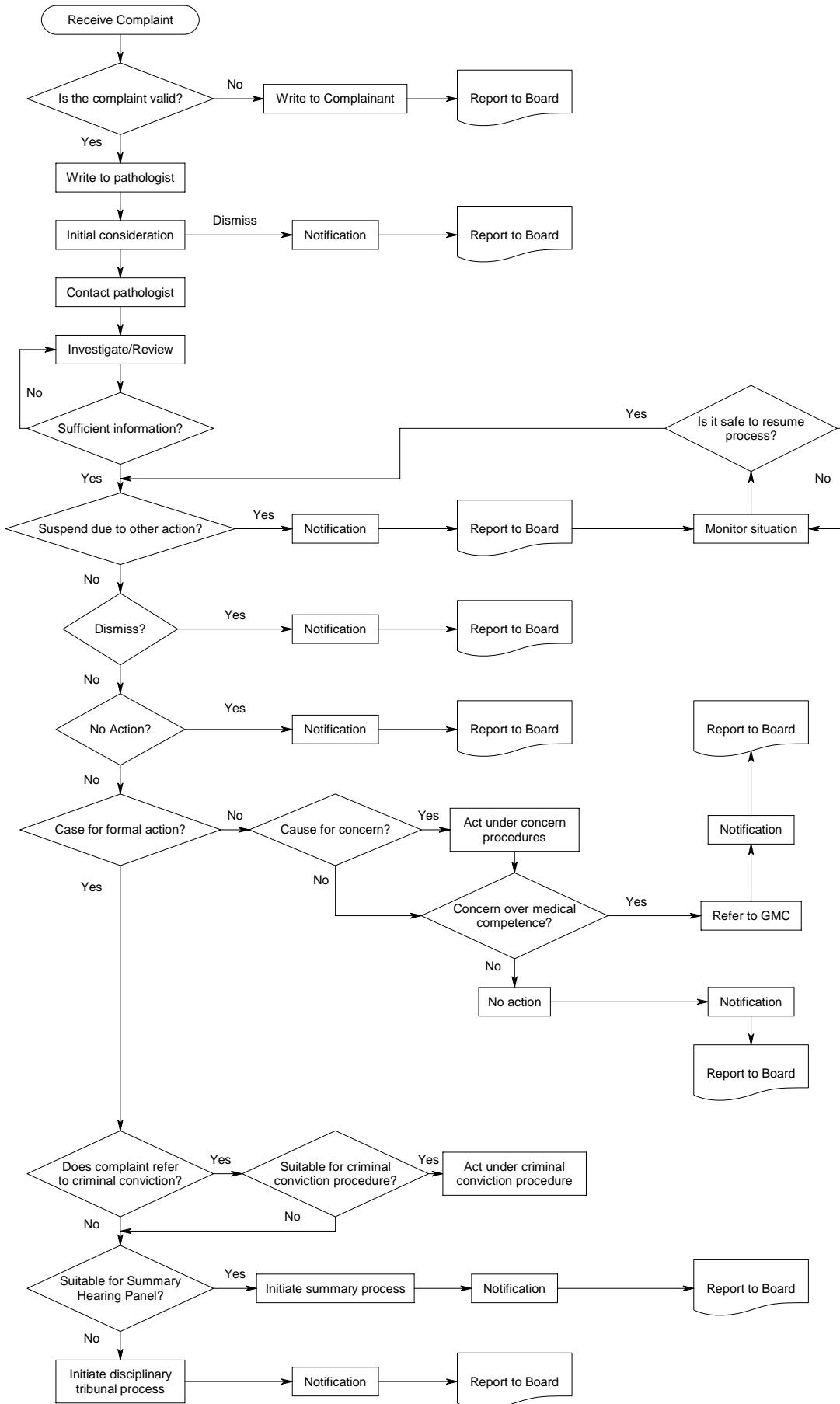
STRUCTURE

9. This document is structured as set out in the table below. In each case a “part” shall start with the core procedure and then present a number of procedures that are linked to the core.

PART	SECTION	GUIDANCE
A	1	Handling of complaints up to determination of course of action
	2	Interim suspension procedure
	3	Non-Co-operation Procedure
	4	Avoidance of Jurisdiction
	5	Disclosure of Information
B	1	Cause for Concern Procedures
C	1	Summary Hearing Rules
D	1	Disciplinary Procedure Rules
	2	Modification of Tribunal
	3	Tribunal
E		Appeal Procedure

PART A.1 - BOARD AND DISCIPLINARY COMMITTEE

10. The process to be adopted by the Delivery Board and Disciplinary Committee on the initial receipt of a complaint is set out in the flowchart below.
11. This stage covers the process to the point at which the handling of the complaint is referred to one of the specific procedures.
12. The flowchart outlines the process. Each decision or action listed in the left-hand side of the flowchart will be dealt with in the subsequent text.



VALIDITY OF COMPLAINT13. Purpose/Background

- 13.1. The disciplinary procedures can only apply to persons who are, or have been, on the Register. There is no jurisdiction to act against persons who have not been on the Register.
- 13.2. The Code of Practice and Code of Conduct issued (or endorsed) by the Home Secretary and/or the Pathology Council apply to persons on the Register. Similarly the standards the Home Office expects from a registered forensic pathologist can only be required from those on the Register. It would be unfair to consider a complaint where the basis of the complaint was that a pathologist did not meet these standards when not on the Register.
- 13.3. The Code of Practice relates to forensic pathology. It is not appropriate to apply these standards to non-forensic work. Complaints relating to non-forensic work will normally be considered only if they relate to the Code of Conduct or the pathologist's fitness to be on the Register.
- 13.4. There are circumstances when acts undertaken by a pathologist at a time when not on the Register may be the subject of a complaint. These would be cases where the acts would undermine the pathologist's current reputation or credibility.
- 13.5. Where a complainant does not identify himself it raises serious questions about his motives and the nature of the complaint. It is therefore normal practice to reject anonymous complaints. It is however recognised that the overriding aim is to protect the public and this requires that even anonymous complaints be considered if they make a serious allegation and provide sufficient information to allow investigation.

14. Responsibility

- 14.1. Responsibility rests with the Secretary to the Delivery Board.

15. Guidance

- 15.1. For a complaint to be valid it must, subject to the avoidance of jurisdiction procedure, comply with the following requirements.
 - The pathologist complained of must be, or have been, on the Register.
 - The complaint must refer to an incident occurring when the pathologist was on the Register or one that has a direct impact on his current registration.
 - Where the complaint alleges a violation of the Code of Practice it must relate to work undertaken as a forensic pathologist, unless the standards set out in the Code of Practice would have applied even though the work was not undertaken as a forensic pathologist.
 - The complainant should be identified. However if the complainant is anonymous and the allegation is serious, has a direct impact on the pathologist's registration and provides sufficient information to allow investigation, the complaint will be valid [p 27 DR(2)].
- 15.2. In assessing the validity of a complaint it the Delivery Board may consider it appropriate to consider the connection of the complainant to the incident which is the basis of the complaint.
- 15.3. The Delivery Board will not normally consider a complaint against a pathologist who is not on the Register at the time the complaint is received [p 26 DR(2)]. However, the Delivery Board may choose to do so if they believe it is in the public interest. This may be for example where the complaint suggests a miscarriage of justice or failings in the operation of the Register.
- 15.4. If the complaint is valid the Delivery Board must refer the matter to the Disciplinary Committee [p 36 DR(2)] to be dealt with under the Disciplinary Rules.

- 15.5. Where the information coming to the attention of the Delivery Board is not clear as to whether it is a complaint or the nature of the complaint the Board may take steps to clarify the situation [p 37 DR(2)]. The reference to the Disciplinary Committee may be delayed until such time as the matter has been clarified.
- 15.6. The Secretary and/or the Chairman of the Delivery Board should at this point determine whether the Crown Prosecution Service should be notified of the complaint. Under normal circumstances this does not take place the completion of the initial consideration. However, if the complaint raises serious issues for the Criminal Justice System notification may occur earlier [p 38 DR(2)].
- 15.7. If the complaint is not valid the Delivery Board should still note it. It is possible that the pathologist will later apply for registration. The information may be relevant in the consideration of any such application.

16. Consequential Actions

- 16.1. Where the Delivery Board determines that a complaint is not valid it must write to the complainant explaining that the complaint can not be considered. It may be appropriate to explain alternative methods of raising the matter. These might include the General Medical Council, the Royal College of Pathologists or the Council for the Registration of Forensic Practitioners.

WRITE TO PATHOLOGIST

17. Background/Purpose

- 17.1. Where the Delivery Board has decided to refer a complaint to the Disciplinary Committee the pathologist concerned must be informed [p 39 DR(2)].
- 17.2. It is desirable that the pathologist is aware of the complaint and the steps the Board are taking before this matter is brought to his attention other than by the Board.

18. Responsibility

- 18.1. Responsibility rests with the Secretary to the Delivery Board.

19. Guidance

- 19.1. The Delivery Board should write to the pathologist [p 39 DR(2)] setting out the following information.
- That the Delivery Board has received a complaint.
 - The nature of the complaint.
 - Seek the pathologists comment and or response to the complaint and set a deadline for response.
 - That the complaint has been referred to the Disciplinary Committee.
 - Offer to provide a copy of the disciplinary procedures.
 - That the referral does not prejudice the determination of the Disciplinary Committee.
 - The possible outcomes of the process.
 - That the Disciplinary Committee may commission such investigation and /or review of the material relating to the complaint or other matters it considers appropriate to allow it to deal with the complaint.
 - That the Disciplinary Committee may write to the pathologist to seek further response to the complaint.
- 19.2. In seeking the pathologist's comments and response to the complaint the letter should provide sufficient detail of the complaint to enable the pathologist to understand what allegations are being made. The letter must make clear that the allegations are the preliminary assessment of the complaint and the Disciplinary Committee has responsibility for finalising the charges against the pathologist and that these, should the matter proceed, may be different from those set out in the letter.
- 19.3. The letter must be clear that the pathologist should agree to his response to the Disciplinary Committee being shared with the complainant.

- 19.4. The letter should set a deadline for response.

INITIAL CONSIDERATION

20. Background/Purpose

- 20.1. The complaint has been referred to the Disciplinary Committee and must be considered by that body.
- 20.2. The first consideration is a review of the complaint to determine whether the Disciplinary Committee should deal with it. In effect it operates a screening process.
- 20.3. The requirement to investigate may, however, be removed in cases where it does not appear necessary [p 63DR(2)].

21. Responsibility

- 21.1. Responsibility rests with the Disciplinary Committee.

22. Guidance

- 22.1. The Disciplinary Committee must consider whether the complaint is of a nature that it should deal with it [p 69 DR(2)].
- 22.2. The member or members appointed to undertake the initial review [p 62 and p 66 DR(2)] shall consider the complaint and the response from the pathologist, if one has been received within the time specified. If, in the opinion of the member or members undertaking the initial review, the complaint falls into the categories set out in paragraphs 22.6 or 22.7 and that the Disciplinary Committee should exercise its powers under those sections he/they shall refer the matter to the Disciplinary Committee with his/their recommendation.
- 22.3. The member or members appointed [p 62 and p 66 DR(2)] to undertake the initial consideration should consider whether the matter raises serious issues for the Criminal Justice System. If, in his/their opinion it does they shall bring this to the attention of the Chairman of the Disciplinary Committee. The Chairman shall, if he agrees with the assessment, notify the matter to the Crown Prosecution Service [p 67 DR(2)].
- 22.4. The existence of a complaint against a person acting as an expert witness supporting the prosecution case is a matter that, in certain cases, should be disclosed to the defence. Failure to disclose such material, in those cases, could allow a challenge to a conviction. The Crown Prosecution Service is therefore of the opinion that even unsubstantiated complaints must be notified to them at an early stage. This allows them to make an informed decision on what should be disclosed. As a consequence the member or members undertaking the initial consideration [p 62 and p 66 DR(2)] must determine whether he/they are likely to complete his/their consideration within a period of eight weeks. If he/they believe this is unlikely they should, after eight weeks, inform the Secretary and ask him to notify the Crown Prosecution Service [p 68 DR(2)]. The notification should advise the Crown Prosecution Service (making clear that it is an initial view) whether, in the opinion of the investigators, the matter is likely to proceed.
- 22.5. Where the member or members undertaking the initial review refers a matter to the Disciplinary Committee he/they must ensure he/they provide the initial complaint, any response from the pathologist and his recommendation with an explanation of why he/they recommend a particular course of action.
- 22.6. The complaint may be dismissed if any of the following conditions are met [p 69 and p 70 DR(2)].
- The complaint lacks validity.
 - The Disciplinary Committee has already dealt with a complaint arising from the same incident.

- The complaint is, in the opinion of the Disciplinary Committee, vexatious.
 - The actions complained of do not provide evidence of any failure on the part of the pathologist.
- 22.7. The Disciplinary Committee may determine that no action will be taken on a complaint if any of the following conditions are met [p 74 DR(2)].
- The actions complained of suggest a failure on the part of the pathologist that is trivial in nature.
 - The actions complained of indicate a failure on the part of the pathologist that is already being appropriately dealt with.
 - The complaint deals with events more than three years prior to the complaint [p 70 DR(2)].
- 22.8. There is no suggestion that professional members on a Disciplinary Tribunal would act in a manner counter to the public interest, but it is important that public confidence in the process is maintained and it is recognised that there is limited trust in “self-regulation”. Lay members act as a safeguard of the public interest. It is important the lay members understand this purpose.
- 22.9. If the Disciplinary Committee decides that the complaint should not be summarily dealt with and that further consideration is warranted it must nominate someone to undertake the investigation [p 78 DR(2)]. This may be a member of the Disciplinary Committee, a representative of the Delivery Board or such other person, as it considers appropriate.
- 22.10. Where the member or members undertaking the initial review decides not to refer a complaint to the Disciplinary Committee with a recommendation under section 22.2 he/they shall nominate a person to undertake the investigation
- 22.11. In nominating someone to manage the investigation the Disciplinary Committee or member or members undertaking the initial review must have regard to possible issues of conflict of interest and fairness. Similar consideration should be given to the appointment of members of a Disciplinary Tribunal set out at paragraph 185.
23. Consequential Actions
- 23.1. Where the Disciplinary Committee decides to dismiss or take no action on a complaint the Disciplinary Committee must write:
- To the complainant to explain the disposal of the complaint [p 72 DR(2)];
 - To the Crown Prosecution Service to explain that a complaint was received, the nature of the complaint and the disposal of the complaint [p 71 DR(2)]; and
 - To the pathologist to inform him of the disposal of the complaint [p 71 DR(2)].
- 23.2. Where the Disciplinary Committee or member or members undertaking the initial review decides that the complaint must be further investigated/considered the Secretary shall write to the Crown Prosecution Service [p 73 DR(2)] to explain:
- That a complaint has been received;
 - The nature of the complaint;
 - That the matter is being investigated;
 - The possible outcomes of the investigation; and
 - That the investigation of the complaint does not indicate there is any validity to it.

CONTACT PATHOLOGIST

24. Background/Purpose

- 24.1. The Disciplinary Committee or member or members undertaking the initial review, having determined the complaint requires further consideration should write to the pathologist to (a) inform him of that decision and (b) invite his comments on the allegations made against him [p 73 DR(2)].

25. Responsibility

- 25.1. Responsibility rests with the Secretary or the member or members undertaking the initial review depending on whether the matter has been considered by the Disciplinary Committee.

26. Guidance

- 26.1. The Disciplinary Committee or member or members undertaking the initial review must write to the pathologist. The letter should include the following information [p 73 DR(2)].
- The complaint has been considered and it has been decided that the matter requires further consideration before the Disciplinary Committee can make a decision on the matter.
 - This further consideration does not mean that the complaint is justified or that any action will be taken on it.
 - Sufficient information about the allegations to allow the pathologist to respond.
 - Seek a response to the allegations and set a deadline of no less that 28 days from the date of posting [p 73 DR(2)] for the response to be received by the Secretary.
 - Seek approval to share the response with the complainant and explain that this is helpful in dealing with complaints.
- 26.2. In seeking the pathologist's comments and response to the complaint the letter must provide sufficient detail of the complaint to enable the pathologist to understand what allegations are being made. The letter must make clear that the allegations are the preliminary assessment of the complaint and that the final charges, if any, may be different from those set out in the letter.
- 26.3. Where, after comment is sought from the pathologist, significant new information comes to the attention of those responsible for consideration of the complaint it may be appropriate to contact the pathologist again. In such cases the new information should be provided to the pathologist and further comment sought. A date by which the further comment must be received should also be specified.

INVESTIGATE/REVIEW

27. Background/Purpose

- 27.1. It is the nature of a complaint that it sets out the position as put by a person who contends that the pathologist has failed to meet the standards properly expected of a registered pathologist. Similarly the response by the pathologist will set out the position as contended by the pathologist.
- 27.2. The Disciplinary Committee should, as far as reasonably practical, attempt to ascertain the facts before acting upon the complaint.
- 27.3. Criticisms have been made of the process in place prior to 2005 on the basis that it moved too readily from the allegations to the tribunal without a proper evaluation of the evidence. Although this criticism is not accepted as being entirely accurate it is sensible to have a review of the evidence.
- 27.4. The requirement to investigate may, however, be removed in cases where it does not appear necessary [p 63DR(2)].

28. Responsibility

- 28.1. Responsibility rests with the Disciplinary Committee and the person or persons nominated by it, or by the member or members undertaking the initial review on its behalf.

29. Guidance

- 29.1. The person or persons responsible for the investigation and/or review [p 62 DR(2)] has/have to take such actions as he/they considers appropriate to report to the Disciplinary Committee the facts of the matter.

- 29.2. This may include, but is not limited to:
- Obtaining original reports, files or other material relating to the matter under investigation;
 - Interviewing or seeking further information from the complainant, the pathologist and any others who may be in a position to assist in ascertaining the facts; and
 - Commissioning appropriate experts to review the pathologist's work or such other work, e.g. toxicology, as may assist the Committee in its assessment.
- 29.3. In commissioning work by experts the person or persons responsible for the investigation should have regard to the following.
- The work should be commissioned from persons with appropriate standing in their field.
 - The work should be commissioned from persons who have no involvement in the cases being considered and have no history of conflict with the pathologist. For conflict to prevent the commissioning of an expert it must go beyond a history of professional differences, and would prevent the expert from making a fair evaluation.
 - It is advisable to have the work reviewed separately by two experts in each field.
 - Steps should be taken to anonymise the information so the reviewers are not aware of the identity of the pathologist or the complainant.
- 29.4. It is important that any expert report used by the Disciplinary Committee is seen to be independent and not biased by being exposed to incomplete information. It is therefore important that one of the following approaches is adopted.
- The experts should have sight of the subject of the complaint (for example a statement, report or testimony) with copies of the complaint and the pathologist's response.
 - The experts should have sight of the subject of the complaint but not the complaint or response.
- 29.5. The person or persons responsible for the investigation shall prepare a report for the Disciplinary Committee setting out the results of his/their investigation. This report, with all supporting information, shall be presented [p 61 DR(2)] to the Disciplinary Committee.

SUFFICIENT INFORMATION?

30. Background/Purpose

- 30.1. The Disciplinary Committee will review the complaint, the response from the pathologist and the results of the investigation/review. It is possible that, even with this information, the Disciplinary Committee may not be in a position to come to a conclusion on the matter due to insufficient information, and may require more information [p 74 DR(2)].

31. Responsibility

- 31.1. Responsibility rests with the Disciplinary Committee.

32. Guidance

- 32.1. When the Disciplinary Committee decides that it requires more information, it shall nominate a person or persons, normally the person or persons who undertook the first investigation, and commission him/them to obtain such additional information as is required.
- 32.2. The Disciplinary Committee shall particularise the information required.
- 32.3. Where the Disciplinary Committee considers a complaint and, on the basis of the information before it relating to the complaint, are unable to come to a conclusion as to the appropriate course of action the additional investigation may extend beyond the subject of the complaint under consideration [p 79 DR(2)]. The purpose is to allow the Disciplinary Committee to have sufficient information about the pathologist's work to make a decision and the investigation may cover any or all aspects of the pathologist's work.

- 32.4. The person nominated shall undertake the investigation in like manner to that set out in paragraphs 27 to 29 above.

SUSPEND DUE TO ACTION?

33. Background/Purpose

- 33.1. A failure on the part of a forensic pathologist could give rise to a number of different types of proceeding, other than disciplinary action by the Delivery Board. These include, but are not limited to, action by the General Medical Council, legal action by an affected party and prosecution for a criminal offence.
- 33.2. Any complaint may also have direct impact on any criminal proceedings that are underway or pending.
- 33.3. In dealing with a complaint the Disciplinary Committee must not delegate or abandon the responsibility of the Home Secretary in relation to registered forensic pathologists. However, it is important that care be taken with regard to actions that could have an adverse impact on other bodies. The Disciplinary Committee has the power [p 74 DR(2)] to suspend its action pending the outcome of some other action.
- 33.4. The General Medical Council responsibilities with regard to doctors are different to those of the Home Secretary with regard to registered forensic pathologists. When considering a doctor's performance, it is asking a different question from that which would be asked in disciplinary action within Home Office Register of Forensic Pathologists disciplinary procedures. Except in so far as the removal or restriction of a doctor's registration by the General Medical Council would prevent him from acting as a pathologist, the deliberations of the General Medical Council do not determine the actions of the Delivery Board.
- 33.5. In judicial review proceedings¹ there was a suggestion that action should not have been taken until the General Medical Council had determined its action. The court held, at paragraph 35:

"It is the Minister's responsibility and duty to administer the scheme and to see that the proper standards are maintained and that they are elevated. It is for the Minister, through the Board, to set the standards which are required..."

...It would be quite wrong if he did take a course which would amount to delegating the performance of his duty to the General Medical Council, a Body over which he has no control and whose standards are for them and are not standards devised by him through the Board"

34. Responsibility

- 34.1. Responsibility rests with the Disciplinary Committee.

35. Guidance

- 35.1. The decision the Disciplinary Committee makes will be determined by the nature of the other action based on the events that form the basis of the complaint.
- 35.2. Where action is being taken against the pathologist by the General Medical Council the Disciplinary Committee shall not normally suspend action on the complaint. Where the General Medical Council's action is expected to be completed imminently and is reasonably likely to remove the pathologist's registration, the action by the Disciplinary Committee may be suspended on grounds that further action may be rendered unnecessary.

¹ R (on the application of Dr Paula Anastasia Lannas) v Secretary of State for the Home Department [2003] EWHC 3142 (Admin).

- 35.3. Where legal action is being taken against the pathologist the Disciplinary Committee should seek advice from Home Office Legal Adviser's Branch on whether any action it takes would interfere with the proper operation of that case. Only where the advice is that any action by the Disciplinary Committee could prejudice the case, and no steps could be taken to prevent this, should the Disciplinary Committee suspend its action.
- 35.4. Where it is believed there is likely to be a significant impact on the Criminal Justice System or pending/current cases, the Disciplinary Committee shall liaise with the Home Office, which in turn shall liaise with Home Office Legal Adviser's Branch and the Crown Prosecution Service to ensure that no action is taken that may adversely impact on pending or extant criminal investigations or proceedings or that may prejudice such investigations or proceedings.
- 35.5. Where the pathologist is being prosecuted for a criminal offence the Disciplinary Committee shall seek advice from the Home Office, which in turn shall liaise with the Home Office Legal Adviser's Branch and the Crown Prosecution Service. Where there is a risk that action by the Disciplinary Committee may prejudice the prosecution of the pathologist in the criminal proceedings or undermine the pathologist's ability to mount a defence, the action shall be suspended.
- 35.6. Where the Disciplinary Committee decides to suspend action in relation to a complaint, it must consider whether it should exercise its power with regard to interim suspension [p 80 DR(2)].
36. Consequential Action
- 36.1. Where action on a complaint is suspended the Disciplinary Committee shall write to the pathologist, complainant and Designated Parties to explain:
- That the consideration of the complaint has been suspended;
 - The reason for the suspension; and
 - That consideration of the complaint will resume when the reason for suspension is no longer valid.
- 36.2. The Disciplinary Committee shall nominate someone, normally the same person as was responsible for the investigation, to monitor the situation and ensure that the Disciplinary Committee is informed when it is safe to resume consideration of the complaint. The nominated person shall submit a status report to each meeting of the Disciplinary Committee until he reports that it may proceed.

DISMISS?

37. Background/Purpose

- 37.1. In the substantive consideration of the complaint the first option that is open to the Disciplinary Committee is the dismissal of the complaint [p 74 DR(2)].

38. Responsibility

- 38.1. Responsibility rests with the Disciplinary Committee.

39. Guidance

- 39.1. The Disciplinary Committee may (on substantive consideration of the complaint, the response from the pathologist (if any) and any investigation) decide to dismiss the complaint [p 74 DR(2)].
- 39.2. The Disciplinary Committee may dismiss the complaint if any of the following criteria are met.
- The complaint lacks validity.
 - The Disciplinary Committee has already dealt with a complaint arising from the same events.
 - The complaint is vexatious.
 - Consideration of all information before it shows no evidence of failure on the part of the pathologist.

- 39.3. The Disciplinary Committee may provide guidance in relation to the issues raised by the complaint to the pathologist even where they chose to dismiss the complaint [p 76 DR(2)].
- 39.4. The Disciplinary Committee may choose to provide guidance to the pathologist with regard to any aspect of his practice which, in the opinion of the Committee, could be improved [p 77 DR(2)].
- 39.5. Where the Disciplinary Committee decides to provide advice the content of the advice should be determined at the meeting or a member of the Committee should be nominated to draft the advice within a specified period.

40. Consequential Actions

- 40.1. Where the Disciplinary Committee decides to dismiss the complaint it must write to the complainant, the pathologist and Designated Parties to inform them of the decision.

NO ACTION?

41. Background/Purpose

- 41.1. In the substantive consideration of the complaint the second option that is open to the Disciplinary Committee is to take no action on the complaint [p 74 DR(2)].

42. Responsibility

- 42.1. Responsibility rests with the Disciplinary Committee.

43. Guidance

- 43.1. The Disciplinary Committee may decide to take no action on a complaint [p 74 DR(2)] when any of the following criteria are met.
- The information before the Disciplinary Committee shows that the failure on the part of the pathologist was trivial and raises no concern over the pathologist's fitness to practise.
 - The information shows the failure was one which is already being adequately addressed.
 - The complaint deals with events more than three years before the complaint.
 - For any other reason it is not in the public interest to deal with the complaint.
- 43.2. The Disciplinary Committee may provide guidance in relation to the issues raised by the complaint to the pathologist even where they chose to take no action on the complaint [p 76 DR(2)].
- 43.3. The Disciplinary Committee may provide guidance to the pathologist with regard to any aspect of his practice which, in the opinion of the Committee, could be improved [p 77 DR(2)].
- 43.4. Where the Disciplinary Committee decides to provide advice the content of the advice should be determined at the meeting or a member of the Committee should be nominated to draft the advice within a specified period.

44. Consequential Actions

- 44.1. Where the Disciplinary Committee decides to take no action it must write to the complainant, the pathologist and Designated Parties to inform them of the decision.

CASE FOR FORMAL ACTION?

45. Background/Purpose

- 45.1. The initial substantive consideration of the complaint may indicate that the complaint will not be dismissed nor has a "no action" decision been made.
- 45.2. The next step is to determine whether the matter is of sufficient severity to be dealt with by a Summary Hearing Panel or Disciplinary Tribunal.

45.3. If there is insufficient cause, at that point, to refer to a Summary Hearing Panel or Disciplinary Tribunal but there is concern over the pathologist's performance, it should be dealt with under the procedures for concern.

46. Responsibility

46.1. Responsibility rests with the Disciplinary Committee.

47. Guidance

47.1. If the information before the Disciplinary Committee does not make out a prima facie case of misconduct or malpractice, nor raises questions in relation to the pathologist's fitness to practise or registration it would be inappropriate, as an initial step, to refer the matter to a Summary Hearing Panel or Disciplinary Tribunal.

47.2. There will be cases where although there are no grounds, at that point, to refer the matter for formal action the case still raises concerns with regard to the performance of the pathologist.

47.3. In such cases the Disciplinary Committee must decide whether, although not, at that point, justifying formal action, there are grounds for concern.

47.4. If there is a cause for concern the Disciplinary Committee should act under the "cause for concern" procedures which are set out in Part B.

47.5. If there is no cause for concern, the Disciplinary Committee has reached the conclusion that it should take no action. Any such conclusion should be considered carefully as under normal circumstances, this determination would have been reached earlier in the process.

47.6. In all cases the Disciplinary Committee should consider whether there is evidence that the pathologist's registration with the General Medical Council should be reviewed or their professional competence questioned. If the Disciplinary Committee considers that there is reason to question the pathologist's registration or competence the matter should be referred to the General Medical Council or the Royal College of Pathologists [p 74 DR(2)].

47.7. Reference to the General Medical Council is not a disciplinary action but is an acceptance of the role of the General Medical Council in protecting the public. Similarly, reference to the Royal College of Pathologists is recognition of their role with regard to the profession of pathology.

48. Consequential Actions

48.1. The Disciplinary Committee should write to the complainant, the pathologist and Designated Parties explaining the outcome of the complaint.

48.2. Where a decision has been made to refer the matter to the General Medical Council or the Royal College of Pathologists the Secretary shall write to the General Medical Council and/or the Royal College of Pathologists.

DOES COMPLAINT REFER TO CONVICTION?

49. Background/Purpose

49.1. The Code of Conduct sets out the requirement that registered pathologists shall not be convicted of a recordable criminal offence. Conviction by a court, in effect, proves breach of the Code to the criminal standard.

49.2. If a pathologist is convicted of a criminal offence his character, and thus his ability to act as an expert witness is undermined.

49.3. It does not follow that conviction for a criminal offence, particularly minor offences, will lead to disciplinary action or to removal from the Register.

- 49.4. The Delivery Board does not wish to initiate time consuming and costly disciplinary action in circumstances where the outcome is beyond reasonable doubt.
- 49.5. There is no absolute right to a hearing before being removed from the Register. In judicial review proceedings² the court was clear, at paragraph 31, that where a registered pathologist declines to co-operate with respect to their compliance with requirements of registration he could be removed without a hearing.

50. Responsibility

- 50.1. Responsibility rests with the Disciplinary Committee.

51. Guidance

- 51.1. The Disciplinary Committee must decide [p 74 DR(2)] whether to act under the specific procedures relating to criminal conviction [p 102 DR(2)]. To act under the procedure the Disciplinary Committee must be satisfied that:
- The pathologist has been convicted by a court of criminal jurisdiction, including courts martial, within the UK or elsewhere [p 275 DR(2)]; and
 - The conviction was for a serious offence; and either
 - The nature of the offence was such that it would undermine credibility as an witness [p 104 DR(2)]; or
 - The court imposed a custodial sentence [p 104 DR(2)] of 6 months or more (even if this sentence is suspended).
- 51.2. To exercise the powers under this section the Disciplinary Committee should be satisfied that, were the matter referred to a Disciplinary Tribunal, there would be no reasonable prospect of the pathologist remaining on the Register.
- 51.3. In relation to this section a serious offence will be one where the maximum sentence allows imprisonment for at least five years.
- 51.4. The offence (or the sanction imposed e.g. imprisonment) must be of a type that would undermine credibility as an expert witness. The Disciplinary Committee Rules set out a number of types of offence [p 104 DR(2)] but it is not limited to those types nor offences noted. The key is that it is one where the Disciplinary Committee believes it would impact on the pathologist's role as an expert witness.
- 51.5. The Disciplinary Committee should not act under the procedure until any appeal, which would alter its determination, has been concluded [p 105 DR(2)]. It should be noted that an appeal against sentence would only change the position if the Disciplinary Committee were acting under the provision relating to custodial sentence alone.
- 51.6. If the Disciplinary Committee decides to defer acting under this procedure pending an appeal against conviction and/or sentence by the pathologist (or the prosecution) it should consider exercising its power under the interim suspension provisions [p 106 DR(2)].
- 51.7. Where the Disciplinary Committee decides not to employ this procedure, it shall deal with the matter under the normal process.

52. Consequential Actions

- 52.1. If the Disciplinary Committee decides to remove a pathologist from the Register under this procedure it shall write to the pathologist to inform him:
- That the decision has been made to remove him from the Register;
 - The reason for that decision;
 - That he has the right to appeal the decision [p 107 DR(2)]; and

² R (on the application of Dr Paula Anastasia Lannas) v Secretary of State for the Home Department [2003] EWHC 3142 (Admin).

- The means and the date by which the appeal must be lodged.
- 52.2. When the Disciplinary Committee removes a pathologist under this procedure it shall write to the complainant and Designated Parties to explain the outcome of the complaint. This letter should make clear the pathologist has a right of appeal against the decision [p 107 DR(2)].
- 52.3. The Disciplinary Committee must report its determination to the Chairman of the Delivery Board to have the Register altered.

SUITABLE FOR SUMMARY PANEL?**53. Background/Purpose**

- 53.1. The next stage in the substantive consideration of the complaint, having determined that formal action is appropriate, is to consider whether the matter should be dealt with by a Summary Hearing Panel or a Disciplinary Tribunal [p 74 DR(2)].
- 53.2. The issue of whether a complaint is suitable for consideration by a Summary Hearing Panel may also need to be considered by the Disciplinary Committee after the initial referral to the Summary Hearing Panel. This may be because (a) the conditions for a Summary Hearing Panel are not met; (b) the pathologist does not agree to the complaint being dealt with by a Summary Hearing Panel or (c) review prior to the summary hearing suggests (on a full consideration of the evidence) that this case may not be appropriate for a Summary Hearing Panel.

54. Responsibility

- 54.1. Responsibility rests with the Disciplinary Committee.

55. Guidance

- 55.1. The Disciplinary Rules make clear the aim to deal with complaints in a manner that improves the pathologist's work where appropriate [p 8 and p 11 DR(2)]. It is therefore the aim of the Disciplinary Committee to deal with matters by a Summary Hearing Panel rather than Disciplinary Tribunal where appropriate.
- 55.2. The Disciplinary Committee should refer the matter to a Summary Hearing Panel if the following conditions are met [p 74 DR(2)].
- The subject of the complaint would not, if proven, warrant the pathologist's suspension or removal from the Register.
 - There are no prior complaints or disciplinary matters which would, if substantiated, alter the Disciplinary Committee's view that suspension or removal were not warranted.
 - There are no disputes of fact that can not be resolved by a Summary Hearing Panel.
 - The Disciplinary Committee believes that the pathologist will agree to the matter being considered by a Summary Hearing Panel.
- 55.3. Where a reference is made to a Summary Hearing Panel the Disciplinary Committee must decide on a clear set of issues that are to be referred and these must be recorded in the minutes of the Disciplinary Committee. This is to ensure there is a clear record to demonstrate the charges placed before the Summary Hearing Panel are based on those issues referred by the Disciplinary Committee. The exact nature of the charges will be refined as they are drafted for presentation to the Summary Hearing Panel.
- 55.4. After referral to the Summary Hearing Panel the matter may need to be referred to the Disciplinary Committee for reasons set out in the Summary Hearing Rules. Where such a referral occurs because the Disciplinary Committee considers that the evidence may not support the decision to refer to a Summary Hearing Panel, the Disciplinary Committee shall consider the issue afresh and determine whether the matter should be referred back to the Summary Hearing Panel or to a Disciplinary Tribunal.

55.5. Where a complaint which has previously been referred to a Summary Hearing Panel is referred back to the Disciplinary Committee (other than as set out in paragraph 55.4) the normal response of the Disciplinary Committee shall be to refer the complaint to a Disciplinary Tribunal unless it appears to the Disciplinary Committee that the re-referral is a result of non-co-operation. Where the Disciplinary Committee decides the pathologist is not co-operating with the process they shall act under the non co-operation procedure.

56. Consequential Actions

- 56.1. The Disciplinary Committee must write to the pathologist, the complainant and Designated Parties setting out the following information [p 84 DR(2)].
- A complaint has been received.
 - The nature of the complaint.
 - The complaint has been considered by the Disciplinary Committee and it has decided to refer it to a Summary Hearing Panel.
 - The possible outcomes of the Summary Hearing Panel.
 - The reference to the Summary Hearing Panel does not indicate the complaint will be proven.
- 56.2. It would also be appropriate for the Disciplinary Committee to seek agreement from the pathologist for the matter to be dealt with by a Summary Hearing Panel. While formal acceptance of the Summary Hearing Panel approach is incorporated within those procedures it could avoid unnecessary delays if the pathologist were to indicate acceptance at this point.
- 56.3. The letters should take account of the fact that the complainant, the pathologist and the Crown Prosecution Service have already been informed of the matter, but that other recipients have not.
- 56.4. Where the matter is referred to the Disciplinary Committee after an initial referral to the Summary Hearing Panel the procedures set out above shall be modified as appropriate.

REFERRAL TO DISCIPLINARY TRIBUNAL

57. Background/Purpose

57.1. The substantive consideration of the complaint has led to the conclusion that the complaint must be referred to a Disciplinary Tribunal [p 74 DR(2)].

58. Responsibility

58.1. Responsibility rests with the Disciplinary Committee.

59. Guidance

- 59.1. The process has reached a point where reference to a Disciplinary Tribunal is required.
- 59.2. Where a reference is made to a Disciplinary Tribunal the Disciplinary Committee must decide on a clear set of issues that are to be referred and these must be recorded in the minutes of the Disciplinary Committee. This is to ensure there is a clear record to demonstrate the charges placed before the Disciplinary Tribunal are based on those issues referred by the Disciplinary Committee. The exact nature of the charges will be refined as they are drafted for presentation to the Disciplinary Tribunal.

60. Consequential Actions

- 60.1. The Disciplinary Committee must write to the pathologist, the complainant and Designated Parties setting out the following information [p 84 DR(2)].
- A complaint has been received.
 - The nature of the complaint.
 - The complaint has been considered by the Disciplinary Committee and it has decided to refer it to a Disciplinary Tribunal.
 - The possible outcomes of the Disciplinary Tribunal.

- The reference to the Disciplinary Tribunal does not indicate the complaint will be proven.
- 60.2. The letters should take account of the fact that the complainant, the pathologist and the Crown Prosecution Service have already been informed of the matter, but that other recipients have not.

GENERAL GUIDANCE

Composition of the Disciplinary Committee

61. The composition of the Disciplinary Committee is set out in the Disciplinary Rules [p 50 DR(2)]. However, there may be occasions where (perhaps due to attendance and persons withdrawing from considering a complaint) it is not possible to achieve a quorum. In such circumstances the procedure allows three alternative courses of action [p 55 DR(2)].
62. The first is to defer consideration of the matter to the next meeting of the Disciplinary Committee. This should be done where (a) there is a reasonable prospect of there being a quorum available for consideration of this complaint at the next meeting and (b) doing so will not introduce a significant delay in the proceedings.
63. The second option is to consider the complaint and come to a preliminary determination on the matter. This preliminary determination should then be circulated to all members of the Disciplinary Committee who would have been eligible to vote had they been at the meeting. The letter should remind members of the reasons to withdraw from consideration and set a deadline for response. These members must be provided with all material that was available to the members at the meeting (not already provided to them). The votes of these members can then be collected by the Secretary. The majority vote (including the Chairman's casting vote) will be taken as the decision of the Disciplinary Committee. The decision shall be formally recorded at the next meeting of the Disciplinary Committee but shall take effect at the time the decision is made.
64. The third option is to appoint an independent assessor. This option offers a safeguard against a situation where, perhaps due to withdrawal of members, it is difficult or impossible to establish a quorum to consider the complaint. In cases where it is unlikely that a Disciplinary Committee can be formed with a quorum to consider the complaint within a reasonable time the Chairman shall appoint an assessor.
65. Where the Chairman appoints an assessor he should have due consideration to the issues that are set out in p 286 DR(2).
66. The decision of an assessor shall be considered to be the determination of the Disciplinary Committee.

PART A.2 – INTERIM SUSPENSION PROCESS

67. Background/Purpose

- 67.1. The purpose of the Register is the protection of the public by the promotion of good practice and guarding against the risk of prejudicing criminal investigations or proceedings.
- 67.2. In some cases the alleged actions of the pathologist may be so serious that, if they were true, they would make the pathologist unreliable or likely to prejudice any criminal investigation or proceeding in which he is involved.
- 67.3. In these cases, were the allegations true, the possible harm that could be done between the consideration of the complaint and determination of the case would be significant. In such cases the Disciplinary Committee may decide that the pathologist should be suspended from the Register.
- 67.4. The process that operated before the implementation of new form of procedures in 2005 did not allow suspension to be effectively imposed. As a consequence it was difficult for

a difference to be drawn between cases where the nature of the complaint suggested the pathologist should not be acting as an expert for the courts and those where there was no concern over his continued work. The result was that all pathologists who were subject to complaint were placed in a difficult position. It is hoped this process will allow persons using the services of pathologists to make better judgement in relation to the use of pathologists who are the subject of a complaint.

68. Responsibility

- 68.1. Responsibility for proposing interim suspension rests with the Disciplinary Committee. Responsibility for imposing suspension rests with the Chairman of the Delivery Board.

69. Guidance

- 69.1. This guidance applies to the interim-suspension provisions (set out from p 115 DR(2)) and not the wider power of suspension held by the Home Secretary and Chairman of the Delivery Board (see p 250 and p 251 DR(2)).
- 69.2. To act under this process the Disciplinary Committee must be satisfied that one of the following conditions applies [p 116 DR(2)].
- The presence of the pathologist on the Register would pose an unacceptable risk of prejudicing any criminal investigation or proceedings in which he is, or may become, involved or of significantly undermining the integrity of the Register.
 - The Disciplinary Committee intends to remove the pathologist from the Register under the process for dealing with criminal convictions and has delayed that action pending an appeal.
- 69.3. The integrity of the Register is undermined if the pathologist's presence on the Register would lead to a loss of confidence in the Register by the public and/or those within the Criminal Justice System.
- 69.4. The interim suspension process normally should only be employed where the Disciplinary Committee is considering reference to a Disciplinary Tribunal, is acting under the criminal conviction procedure or has serious cause for concern about the pathologist's practice. Otherwise the pathologist's registration is not in question and it does not appear logical to invoke interim suspension when suspension or removal is not a possible outcome of the disciplinary process.
- 69.5. Where the pathologist is referred to a Disciplinary Tribunal the Disciplinary Committee must consider suspension or removal as a possible outcome. In such cases there should be a presumption that interim suspension shall be applied.
- 69.6. Where the Disciplinary Committee decides that action under the interim suspension process is appropriate it shall inform the Chairman of the Delivery Board [p 116 DR(2)].
- 69.7. On receipt of a request for interim suspension, the Chairman of the Delivery Board must consider the recommendation and, if he is satisfied that suspension is appropriate, he shall order suspension from the Register [p 119 DR(2)].
- 69.8. In determining whether to exercise his right to suspend the pathologist the Chairman of the Delivery Board may write to the pathologist [p 118 DR(2)] to seek representations on the proposed suspension and setting a time by which representations must be made.

70. Consequential Actions

- 70.1. Where the Chairman of the Delivery Board imposes an interim suspension he shall write to the pathologist and Designated Parties to inform them [p 119 DR(2)]:
- That the pathologist has been suspended from the Register;
 - That the suspension is an interim measure pending the determination of a complaint against the pathologist [p 120 DR(2)];

- The suspension will last until a final determination has been reached [p 120 DR(2)]; and
- That the suspension is a routine power exercised to protect the integrity of the Register and the Criminal Justice System and does not suggest that the complaint is justified or that the disciplinary action against the pathologist will necessarily find against him.

PART A.3 – NON-CO-OPERATION PROCEDURE

71. Background/Purpose

- 71.1. The Disciplinary Rules [p 98 and p 100 DR(2)] provide that a failure, or refusal, to co-operate with the disciplinary process shall be referred to the Disciplinary Committee.

72. Responsibility

- 72.1. Responsibility rests with the Disciplinary Committee.

73. Guidance

- 73.1. It is important to recognise certain overriding principles in the application of the non co-operation process. These are:
- A pathologist is considered responsible for the actions of his representatives; and
 - Nothing within the non-co-operation procedure must be used to force a pathologist to incriminate himself.
- 73.2. It is incumbent on all persons on the Register to co-operate with the disciplinary procedures. Failure to comply with the procedures can take a number of forms. These include, but are not limited to, the following.
- Failure to respond to communications from the Disciplinary Committee, Summary Hearing Panel, Disciplinary Tribunal or Appeal Panel.
 - Failure to comply with advice provided under the cause for concern procedures.
 - Failure to comply with any sanction imposed under the (current or previous) disciplinary procedures.
 - Any attempt to obstruct, delay or pervert the disciplinary process.
 - Any attempt to mislead any person or body involved in the disciplinary process or making false or misleading statements to such person or body.
- 73.3. It is incumbent on all persons on the Register to be scrupulously honest in all dealings in relation to the Disciplinary Proceedings.
- 73.4. Where the Disciplinary Committee believes the pathologist is failing to co-operate, or the pathologist is referred to the Disciplinary Committee for non-co-operation, the Disciplinary Committee shall act under this section.
- 73.5. If the Disciplinary Committee is dealing with the allegation that a pathologist has failed to co-operate with the process, it shall write to the pathologist and seek explanation of the conduct. The letter shall specify a date by which a reply must be received.
- 73.6. The Disciplinary Committee may investigate the matter and appoint persons to undertake the investigation and report to the Committee [p 99 DR(2)].
- 73.7. The Disciplinary Committee shall consider the allegation, the results of any investigation and any response provided by the pathologist (within the period specified). If in the opinion of the Disciplinary Committee the pathologist has failed or refused to co-operate with the disciplinary process, it shall consider what actions are appropriate to ensure compliance.
- 73.8. Where the Disciplinary Committee concludes that the pathologist is deliberately refusing (or had deliberately refused) to co-operate the presumption shall be that the appropriate response is removal from the Register.
-

- 73.9. If the Disciplinary Committee determine that the pathologist has done any of the things set out below (which are in the view of the Secretary of State wholly incompatible with acting as an expert witness) the presumption is that the pathologist must be removed from the Register. The acts specified are:
- Making statements of fact or opinion which are false and the pathologist knew, or should have known, them to be false;
 - Making statements of fact or opinion whilst reckless as to whether those statements are true;
 - Making statements of fact or opinion which are intended to mislead the recipient; or
 - Making statements of fact or opinion which are not sufficiently full and frank to avoid the recipient being misled.
- 73.10. Where the Disciplinary Committee concludes that the pathologist is not deliberately failing (or had not deliberately refused) to co-operate it should provide the pathologist with a warning that he has failed to co-operate and that any further non-co-operation will almost certainly lead to removal from the Register.
- 73.11. The pathologist shall be notified, by the Secretary, of the actions decided upon by the Disciplinary Committee.
- 73.12. Where, in the opinion of the Disciplinary Committee, the pathologist fails to co-operate with its attempts to ensure compliance it shall determine that the pathologist be removed from the Register.
- 73.13. Where the matter of non co-operation is referred to the Disciplinary Committee by another body (e.g. Summary Hearing Panel or Disciplinary Tribunal) or in relation to proceedings before such a body and the Disciplinary Committee decides to remove the pathologist from the Register the proceedings before the relevant body should be adjourned. The adjournment shall last until:
- The period within which a notice of intention to appeal the removal has expired and no notice has been served – in which case the hearing before the relevant body shall be terminated;
 - The appeal against removal has been determined and the appeal rejected – in which case the hearing before the relevant body shall be terminated; or
 - The appeal against removal has been determined and upheld – in which case the hearing before the relevant body shall be resumed.
- 73.14. Where the alleged non co-operation involves the pathologist misleading those instructing him as to his status on the Register the matter must be referred to the Home Office. In these circumstances misleading would include, but not be limited to:
- Wrongly claiming to be on the Register;
 - Failing to notify persons using the services of pathologists of removal from the Register;
 - Failing to notify persons using the services of pathologists of suspension from the Register; or
 - Failing to notify persons using the services of pathologists of a requirement for supervision.
- 73.15. Where the Home Office is informed of a pathologist misleading those instructing him it shall:
- Consider referring the matter to the police as such action may amount to a criminal offence, for example contravention of the Fraud Act 2006;
 - Liaise with the Crown Prosecution Service to deal with the possible implications for cases where the pathologist has acted as an expert witness; and
 - Consider referring the matter to the General Medical Council.
- 73.16. The non co-operation procedures also cover failure to co-operate with disciplinary action taken under procedures in place prior to those in operation, including those under the

governance of the Policy Board. Under normal circumstances this shall relate to failure to comply with advice, failure to comply with a sanction or misleading those instructing the pathologist.

74. Consequential Actions

- 74.1. The Disciplinary Committee shall notify the Chairman of the Delivery Board of the decisions made under this section.
- 74.2. The Secretary must write to the pathologist and, where it is decided the pathologist should be removed from the Register, to the Designated Parties to inform them of the decision that has been reached.

PART A.4 – AVOIDANCE OF JURISDICTION

75. Background/Purpose

- 75.1. The disciplinary process in place prior to 2005 applied only to those on the Register. Consequently a pathologist, once informed of a complaint against him, could resign from the Register and thus avoid proper consideration of the complaint.
- 75.2. Whilst the pathologist's resignation would, to some degree, guard against the risk of prejudicing criminal investigations or proceedings it would fail to address the complaint and would allow the pathologist to continue to act as an expert witness with no adverse record when this may not be justified. This is not in the overall interest of justice
- 75.3. It is necessary to strike a balance between protecting the interests of the Criminal Justice System and those of the pathologist.

76. Responsibility

- 76.1. Responsibility rests with the Disciplinary Committee.

77. Guidance

- 77.1. Where, after a pathologist has been notified of a complaint (by the Secretary to the Disciplinary Committee) and before the disciplinary process has reached a determination, the pathologist chooses to resign from the Register, the procedure set out in this section shall be followed [p 108 et seq. DR(2)].
- 77.2. Upon receipt of the pathologist's resignation from the Register the Secretary to the Disciplinary Committee shall write to the pathologist to explain the provisions of this section of the disciplinary procedures. The Secretary shall offer to delay acceptance of the resignation to allow the disciplinary process to reach a conclusion.
- 77.3. If the pathologist decides to delay resignation, the matter will be dealt with under the normal process. If not it shall be dealt with as set out in this section.
- 77.4. Where the pathologist delays resignation pending the outcome of the action the resignation must, if the pathologist is not removed from the Register, take effect at the end of the process.

Resignation Prior to Disciplinary Committee Determination

- 77.5. Where the resignation is submitted and accepted before the Disciplinary Committee has substantively considered the complaint and determined the course of action, it shall proceed under the Disciplinary Committee Rules until the point of making that determination [p 111 DR(2)].
- 77.6. Where the Disciplinary Committee decides that, had the pathologist remained on the Register it would not have referred the complaint to a Summary Hearing Panel or Disciplinary Tribunal, it shall rule that no action shall be taken [p 112 DR(2)].

77.7. Where, on substantive consideration of the complaint, the Disciplinary Committee decides that, had the pathologist remained on the Register, it would have referred the complaint to a Summary Hearing Panel or Disciplinary Tribunal, it shall determine that the public record, discipline record and Register record that the pathologist resigned from the Register whilst subject to disciplinary action [p 113 DR(2)].

77.8. Where it is decided that the complaint would have been referred and the record modified as set out in paragraph 77.7 above the pathologist will be prohibited from applying for re-registration [p 113 DR(2)].

Resignation after Disciplinary Committee Determination

77.9. Where the resignation is submitted and accepted after the Disciplinary Committee has decided to refer the matter to a Summary Hearing Panel or Disciplinary Tribunal, it shall determine that the public record, discipline record and Register record that the pathologist resigned from the Register whilst subject to disciplinary action [p 114 DR(2)].

77.10. Where the pathologist resigns after the Disciplinary Committee has referred the matter to a Summary Hearing Panel or Disciplinary Tribunal but before the proceedings are concluded he shall be prohibited from applying for registration [p 114 DR(2)].

78. Consequential Actions

78.1. Where the process ends at this point the Secretary shall write to the pathologist, the complainant and Designated Parties to inform them of the outcome of the matter

PART A.5 – DISCLOSURE OF INFORMATION

79. The Delivery Board or the Disciplinary Committee may (a) wish to release information about the handling or details of a complaint or (b) receive a request to provide information about the process at any point from initiation to implementation of final sanction. Disclosure of information is considered a necessary part of the process.

80. Requests may be made under the Data Protection Act 1998 or the Freedom of Information Act 2000 to gain access to information. Alternatively legal process may be used to seek information.

81. The Criminal Cases Review Commission has statutory power³ to demand the preservation and disclosure of information.

82. The General Medical Council has statutory power⁴ to require disclosure of information.

83. As a public authority the Home Office is keen to ensure transparency and that the public is well informed of its activities. This must be balanced against a number of other interests including, but not limited to, the following.

- The protection of the reputation and interests of the pathologist.
- The protection of the privacy of the pathologist, the subjects of the post-mortem examinations and their families.
- Guarding against the risk of prejudicing criminal investigations or proceedings.
- Ensuring the integrity of the disciplinary process.

84. It is also recognised that the Home Office will be approached by journalists and interested parties seeking information. It is important to ensure that an appropriate press line is maintained. To achieve this, the Secretary and the Clerk must (on behalf of the Chairman of the Delivery Board) ensure the Home Office is kept informed of the progress of all complaints [p 290 DR(2)].

Consideration and Investigation of Complaint

³ s17 Criminal Appeals Act 1995

⁴ s35A Medical Act 1983

85. Records relating to the consideration and investigation of a complaint by the Delivery Board and the Disciplinary Committee are considered private by the Home Office. Consequently they should not normally be voluntarily disclosed other than as set out in the disciplinary procedures.
86. Requests under the Data Protection Act 1998 by persons other than the pathologist are unlikely to be successful, as the records are not likely to be “personal data” with respect to them. Requests under the 1998 Act by the pathologist may be prohibited and in any case, the disciplinary procedures provide for the pathologist to be provided with the information that would be covered by the Act.
87. Requests under the Freedom of Information Act 2000 by persons other than the pathologist should not normally lead to disclosure of this type of information as it is likely to be personal data with respect to the pathologist⁵. It is also important to note that, in such cases, it would be very difficult to make the information non-personal by redaction. There also exclusions within the Freedom of Information Act which apply to records of courts/tribunals and material the disclosure of which would be prohibited by law.
88. The pathologist can not make an application under the Freedom of Information Act 2000⁶.

Summary Hearing Panel

89. The points made above also apply to the records of any Summary Hearing Panel. The disclosure of information about a Summary Hearing Panel, other than set out in the disciplinary procedures, should be resisted.

Disciplinary Tribunal

90. Where a Disciplinary Tribunal is held in public it must be taken that matters discussed before it are (subject to paragraph 91) in the public domain. Where a Disciplinary Tribunal is not held in public the presumption will be that the matters discussed are private. As discussed below, the presumption is that such hearings will be held in public and where a decision has been made to hold it in private there must be good reason.
91. Even where the tribunal was held in public there may have been material dealt with which was not made public and the publication of which may not be in the public interest. There is no requirement to disclose such information [p 307 DR(2)].
92. The points made above in respect of the Data Protection Act and the Freedom of Information Act apply to the records of any Disciplinary Tribunal.

Legal Process

93. Attempts may be made to use a witness summons or other legal process to gain access to the records of the disciplinary process.
94. Such attempts should be resisted for the following reasons.
- Whilst the case is under consideration the information released will only be partial. No final determination will have been reached and thus disclosure could seriously mislead the court receiving it.
 - Once the case is complete the public record will contain sufficient information to inform persons of the nature of the complaint, the finding and sanction for such period as that may be relevant.
 - The Crown Prosecution Service has access to the records and will ensure disclosure of relevant information to the parties in any criminal proceeding.
95. There may be cases where it is clear that disclosure is necessary and/or appropriate and the information may be disclosed in those circumstances.

⁵ s44 Freedom of Information Act 2000 restricts the release of personal information.

⁶ s40 Freedom of Information Act 2000 states that the Act does not apply to personal information where the person seeking the information is the subject of the information.

Criminal Cases Review Commission

96. The Criminal Cases Review Commission (CCRC) has the power to issue a notice under s17 Criminal Appeals Act 1995 requiring the preservation and disclosure of information if it believes it may assist it in the exercise of any of its functions.
97. Should such a notice be issued all persons involved are obliged to comply with it.
98. The person to whom such a notice is issued should inform the Home Office so that they can liaise with the CCRC to ensure the following.
- The CCRC obtain the information it requires.
 - That the CCRC request covers appropriate information.
 - The CCRC understands the information provided and the significance of the information.
 - Any reservations the Home Office has about the information.
99. The Act provides⁷ that the disclosure to the CCRC can be accompanied by a request that the information provided is not further disclosed without prior consent. Where the notice requires disclosure of information that would not have been made public as part of the disciplinary process the disclosure should be subject to the requirement for consent.

General Medical Council

100. The General Medical Council (GMC) may have the power to require disclosure of information under s35A Medical Act 1983 if it believes it relevant to the discharge of any of its functions with regard to professional conduct, professional performance or fitness to practise.
101. Should the GMC request information under its powers set out above the information may be provided. The provisions of paragraph 98 with regard to CCRC may be applied with modification as appropriate.

⁷ s25 Criminal Appeals Act 1995

PART B.1 – CAUSE FOR CONCERN PROCEDURES

102. The “cause for concern” procedures will normally be invoked where the Disciplinary Committee has reviewed a case and determined it can not dismiss or take no action on a complaint but does not believe it warrants referral to a Summary Hearing Panel or Disciplinary Tribunal.

103. In such circumstances the Disciplinary Committee must determine whether it has any concerns about the standards or conduct of the pathologist.

104. If the Disciplinary Committee has such concerns it must take steps to deal with those concerns.

105. Letter of Advice

105.1. Where the facts of the complaint are clear and the pathologist does not dispute these, the Disciplinary Committee may act by providing advice.

105.2. In such cases the Disciplinary Committee shall write to the pathologist setting out its advice which may include, but not be limited to:

- A statement of the issues raised by the complaint;
- The concerns the Disciplinary Committee has over the pathologist’s standards, conduct or any other matter; and
- Advice as to the pathologist’s future conduct or standards.

105.3. The pathologist shall be required to acknowledge receipt of the advice and confirm that he will comply with it.

105.4. The Disciplinary Committee may wish to instigate steps, such as audit or review, to ensure the pathologist acts in compliance with the advice.

105.5. Any failure to co-operate with the “cause for concern” procedure should be dealt with by the Disciplinary Committee under the failure to co-operate procedures (see paragraph 73).

106. Interview

106.1. Where the Disciplinary Committee has concerns over the standards or conduct of a pathologist but decides that a letter of advice is not the appropriate course of action, it shall normally proceed by arranging an interview between the pathologist and someone appointed by the Chairman of the Delivery Board to inform its deliberations.

106.2. The Disciplinary Committee may nominate a person to hold such an interview to the Chairman of the Delivery Board [p 91 DR(2)].

106.3. The Chairman of the Delivery Board should confirm the person nominated is willing, and available within the timescale required, to undertake the interview. If the nominated individual is not willing or available the Chairman of the Delivery Board shall nominate a different individual to undertake the interview [p 93 DR(2)].

106.4. The Chairman of the Delivery Board shall notify the pathologist of the person nominated to undertake the interview, and the date, time and place at which the interview is to occur.

106.5. The interview will normally take place within 28 days of the notification [p 92 DR(2)].

106.6. The Chairman of the Delivery Board is not required to allow the pathologist to object to the person nominated to hold the interview, or the circumstances of the interview. He may however do so. In such circumstances he shall consider any objections and inform the pathologist, and others, of his decision.

106.7. The procedure for the interview is to be informal and the aim is to come to an agreement as to the actions required to ensure the pathologist’s future standards and conduct meet the expected standards.

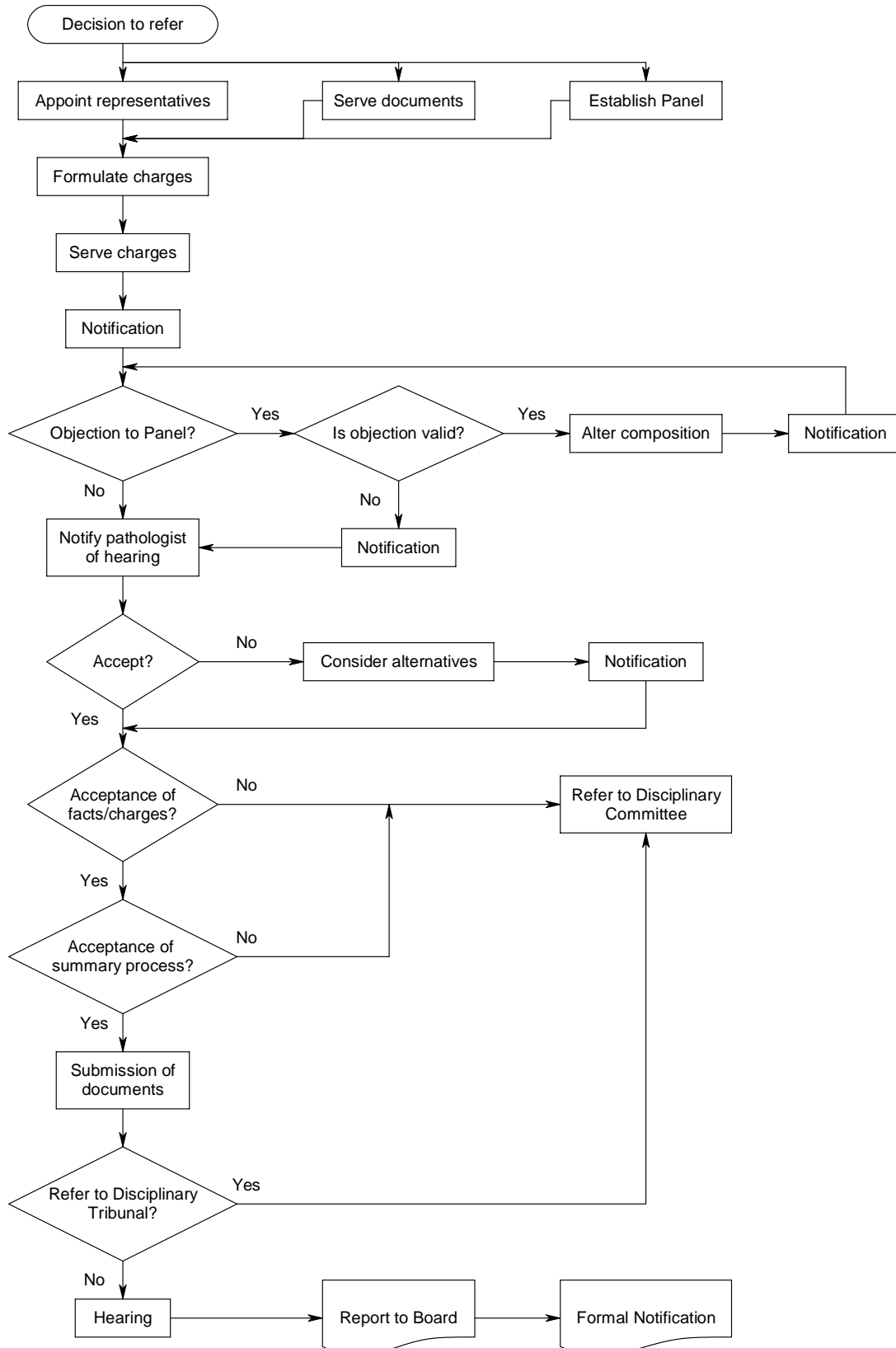
- 106.8. The nominated interviewer shall ensure a record of the meeting and the any agreement with the pathologist is prepared and provided to the pathologist and the Chairman of the Delivery Board [p 92 DR(2)].
- 106.9. Where the agreed action involves training and/or mentoring the Chairman of the Delivery Board shall, as far as reasonably practical, ensure such training/mentoring is available [p 95 DR(2)]. The Chairman of the Delivery Board shall work with appropriate bodies to ensure, as far as reasonably practical, an appropriate programme is available.
- 106.10. Where no agreement is reached as to the appropriate course of action the matter must be referred back to the Disciplinary Committee [p 94 DR(2)]. The Disciplinary Committee must consider whether the concerns are such that more action is required. In such cases the matter should normally be referred to a Summary Hearing Panel.
- 106.11. Costs associated with any training and/or mentoring shall not be met by the Delivery Board but by the pathologist.

Review

107. The Disciplinary Committee should monitor the standards and conduct of the pathologist. Any failure to co-operate with the requirements for training/mentoring or other development required in response to the interview should be dealt with as non-co-operation with the procedures (see paragraph 73).
108. The Disciplinary Committee shall be responsible for ensuring the “cause for concern” has been addressed. If not satisfied that it has been addressed the Disciplinary Committee shall determine what further steps shall be taken. This may include interim suspension and reference to a Summary Hearing Panel or Disciplinary Tribunal [p 97 DR(2)].

PART C.1 - SUMMARY HEARING PANEL

109. The process to be adopted when establishing a Summary Hearing Panel is set out in the flowchart below.
110. This stage covers the process from the decision to refer to a Summary Hearing Panel to the implementation of any finding and/or sanction.
111. The flowchart outlines the process. Each decision or action listed in the left-hand side of the flowchart will be dealt with in the subsequent text. In some cases, where actions are taken in parallel other actions will also be dealt with.



APPOINT REPRESENTATIVES**112. Background/Purpose**

- 112.1. The Disciplinary Committee must appoint representatives [p 84 DR(2)] to formulate the charges and to present the case before the Summary Hearing Panel.

113. Responsibility

- 113.1. Responsibility rests with the Secretary.

114. Guidance

- 114.1. The Secretary should liaise with Home Office Legal Adviser's Branch and the Treasury Solicitor's Department to select and appoint suitably qualified representatives.
- 114.2. The information provided in the relevant section dealing with appointment of representatives before the Disciplinary Tribunal should be considered.

FORMULATE CHARGES**115. Background/Purpose**

- 115.1. The Disciplinary Committee must present charges to the Summary Hearing Panel that are sufficiently clear to enable the pathologist and the Summary Hearing Panel to understand both the essential facts alleged and the basis for alleging that such facts bring into question the pathologist's conduct (including allegations of malpractice and/or misconduct) and/or his professional performance, and/or his state of (physical or mental) health [p 84 DR(2)].

116. Responsibility

- 116.1. Responsibility rests with the Secretary. The representatives appointed above shall undertake the formulation of the charges.

117. Guidance

- 117.1. Where the charge relates to misconduct it shall specify the section or sections of the Code of Conduct with which it is alleged the pathologist has failed to comply.
- 117.2. Where the charge relates to malpractice, it shall specify the section or sections of the Code of Practice which it is alleged the pathologist has contravened.
- 117.3. Where a charge does not allege misconduct or malpractice but alleges that the pathologist is unfit to practise, it must specify the basis for alleging that the pathologist's conduct, and/or his professional performance, and/or his state of (physical or mental) health makes him unfit.
- 117.4. In all cases the charge must be supported with sufficient information so that the pathologist and the Summary Hearing Panel can establish:
- The criminal investigation or proceedings and/or other circumstances that are the basis of the allegation;
 - The acts/omissions by the pathologist or other facts that form the basis of the allegation.
- 117.5. The charge must also provide sufficient information to allow the pathologist to prepare a defence against the allegation.
- 117.6. The information required by this section may be presented within the reference to the Summary Hearing Panel or in other documents provided to or available to the pathologist.

SERVE DOCUMENTS**118. Background/Purpose**

- 118.1. The pathologist must have access to the information available to the Disciplinary Committee and the Summary Hearing Panel.

119. Responsibility

- 119.1. Responsibility rests with the Secretary to the Disciplinary Committee.

120. Guidance

- 120.1. The Secretary to the Disciplinary Committee shall provide the following documents to the pathologist [p 85 DR(2)].
- A letter setting out:
 - The complaints that are being referred to the Summary Hearing Panel (note that the formal charges will be served separately);
 - A statement of the facts that are the basis of the complaints/charges;
 - That the Disciplinary Committee may provide further documents; and
 - That the charges against the pathologist may be altered.
 - Copies of the documents that will be available to the Summary Hearing Panel.
 - Copies of any information that will be made available to the Summary Hearing Panel.
- 120.2. The service of documents and statements may continue after the referral [p 86 DR(2)] because they are not completed or, for any reason, not available at the time of referral. The statements and documents should be served a sufficient time before the substantive consideration of the case to ensure the pathologist has the opportunity to prepare a proper defence.
- 120.3. The Disciplinary Committee must provide the pathologist with all documents and facts that will be available to the Summary Hearing Panel. This does not require that all documents that the Disciplinary Committee possesses must be disclosed to the pathologist. The Disciplinary Committee may decide that not all documents are needed to present the charge to the Summary Hearing Panel or that some information contained within the documents should not be disclosed. In these cases the Disciplinary Committee may restrict the information disclosed.
- 120.4. It is important that the Disciplinary Committee should not restrict disclosure of information that is required, or may be necessary, for the pathologist's defence. The Disciplinary Committee and its legal representatives should have in mind the principles of disclosure applicable to criminal proceedings.

ESTABLISH PANEL**121. Background/Purpose**

- 121.1. To establish the Summary Hearing Panel [p 132 and p 133 DR(2)].

122. Responsibility

- 122.1. Responsibility rests with the Chairman of the Delivery Board.

123. Guidance

- 123.1. The guidance provided below on the establishment of a Disciplinary Tribunal applies to the formation of the Summary Hearing Panel.

SERVE CHARGES**124. Background/Purpose**

- 124.1. The pathologist and the Summary Hearing Panel must be presented with the charges.

125. Responsibility

- 125.1. Responsibility rests with the Secretary.

126. Guidance

- 126.1. Copies of the charges must be served on the pathologist [p 84 DR(2)].
- 126.2. The accompanying letter should explain that the charges may be subject to alteration.

NOTIFICATION**127. Background/Purpose**

- 127.1. The pathologist should be informed of the membership of the Summary Hearing Panel.

128. Responsibility

128.1. Responsibility rests with the Secretary to the Delivery Board.

129. Guidance

129.1. The Secretary to the Delivery Board should write to the pathologist informing him of the composition of the Summary Hearing Panel.

129.2. The Disciplinary Rules do not provide the right to object to the membership of the Summary Hearing Panel. However, the Chairman of the Delivery Board may offer the pathologist the opportunity to object.

129.3. Where the Chairman of the Delivery Board provides the opportunity to object to members of the Summary Hearing Panel the letter setting out the composition shall make clear the following points.

- The date by which any objection to the composition of the Summary Hearing Panel must be received by the Chairman. This will normally be 7 days from the date of the letter.
- That the objection must name each of the members being objected to and the reasons why the pathologist objects to their presence on the Summary Hearing Panel.
- That any objection must set out a reasonable case as to why the proposed member is unable fairly to determine the case against the pathologist.

OBJECTION TO PANEL**130. Background/Purpose**

130.1. Consideration of any objection to membership of the Summary Hearing Panel.

131. Responsibility

131.1. Responsibility rests with the Chairman of the Delivery Board.

132. Guidance

132.1. Where the Chairman of the Delivery Board has allowed objection to the composition of the Summary Hearing Panel he shall consider objections received within an appropriate time. To be considered a valid objection the Chairman must be satisfied the objection meets one of the following criteria.

- The member has an interest in the outcome.
- The member had some involvement in the events that led to the complaint.
- There is evidence of animosity between the member and the pathologist. This must go beyond a history of professional differences, and would prevent the member from making a fair evaluation.
- There is other evidence to raise a reasonable case that the member would not make a fair evaluation of the case.

132.2. If the Chairman accepts the objection he shall appoint a replacement member of the panel. The appointment shall be subject to the same consideration as set out at paragraph 185.

133. Consequential Actions

133.1. The Chairman of the Delivery Board must write to the pathologist to inform him of his decision and any alteration he has made to the Summary Hearing Panel.

133.2. The Chairman of the Delivery Board must write to any member of the Summary Hearing Panel who is replaced to explain the reasons and thank him for his assistance.

NOTIFY PATHOLOGIST OF HEARING**134. Background/Purpose**

134.1. The pathologist is to be informed of the date of the meeting [p 138 DR(2)].

135. Responsibility

135.1. Responsibility rests with the Secretary to the Delivery Board.

136. Guidance

- 136.1. The Secretary must write to the pathologist setting out the following.
- The date, time and place of the meeting of the Summary Hearing Panel [p 138 DR(2)].
 - One alternative date and time for the meeting [p 138 DR(2)].
 - The right of the pathologist to make representations as to alternative dates to those proposed [p 139 DR(2)].
 - The right of the pathologist to be represented by counsel, solicitor or any other representative he chooses [p 8 and p 149 DR(2)].
 - The right of the pathologist to have copies of the documents that are listed at paragraph 120.
 - The requirement on the pathologist to specify whether he admits the charges [p 141 DR(2)].
 - The requirement on the pathologist to specify any facts he disputes [p 141 DR(2)].
 - The requirement on the pathologist to consent to the matter being dealt with by the Summary Hearing Panel [p 141 DR(2)].
 - That failure to accept the matter being dealt with by the Summary Hearing Panel will almost certainly result in the matter being referred to a Disciplinary Tribunal.
 - A date (not less than 28 days from the date of the letter) by which a response must be received [p 143 DR(2)].

ACCEPT?**137. Background/Purpose**

- 137.1. To consider objections to the date/time.

138. Responsibility

- 138.1. Responsibility rests with the Secretary to the Delivery Board.

139. Guidance

- 139.1. The Disciplinary Rules allow the pathologist to request a date other than one of the two specified by the Secretary [p 139 DR(2)]. In such circumstances he should provide two dates. The Secretary must consider such a request.
- 139.2. The Secretary has the power to accept one of the dates suggested by the pathologist, affirm one of the dates specified in the original letter or set a different date [p 139 DR(2)].
- 139.3. The Secretary should, within reason, attempt to set a date that is convenient to the pathologist but should do so within the constraints of (a) completing the process within a reasonable time and (b) preventing the use of delaying tactics.

140. Consequential Actions

- 140.1. The Secretary must notify all parties of the final date time and place set for the hearing.

ACCEPTANCE OF FACTS/CHARGES?**141. Background/Purpose**

- 141.1. The Disciplinary Rules place restrictions on the circumstances in which a complaint can be referred to the Summary Hearing Panel.

142. Responsibility

- 142.1. Responsibility rests with the Secretary to the Delivery Board.

143. Guidance

- 143.1. The Disciplinary Rules require that for a case to be submitted to a Summary Hearing Panel [p 74 and p 145 DR(2)]:

- The pathologist must admit the charges; or
- The pathologist must not challenge any significant facts.

143.2. The letter sent to the pathologist to specify the date of the Summary Hearing Panel meeting requires him to confirm the above requirements [p 141 DR(2)]. If he does not reply within the specified time or does not confirm one of these requirements the matter should be referred back to the Disciplinary Committee [p 143 DR(2)].

144. Consequential Actions

144.1. Where a matter is referred back to the Disciplinary Committee under this section it shall consider reference to a Disciplinary Tribunal. The presumption is that the matter will be referred to a Disciplinary Tribunal.

ACCEPTANCE OF SUMMARY PANEL?

145. Background/Purpose

145.1. The Disciplinary Rules require the pathologist to agree to the Summary Hearing Panel [p 141 DR(2)].

146. Responsibility

146.1. Responsibility rests with the Secretary to the Delivery Board.

147. Guidance

147.1. In the letter specifying the date of the hearing the pathologist is asked to consent to the matter being dealt with by a Summary Hearing Panel.

147.2. If the pathologist does not respond within the specified period or does not consent the matter must be referred to the Disciplinary Committee [p 143 DR(2)].

148. Consequential Actions

148.1. Where a matter is referred to the Disciplinary Committee under this section it shall consider reference to a Disciplinary Tribunal. The presumption is that the matter will be referred to a Disciplinary Tribunal.

SUBMISSION OF DOCUMENTS

149. Background/Purpose

149.1. The pathologist has the right to submit documents to the Summary Hearing Panel.

150. Responsibility

150.1. Responsibility rests with the pathologist.

151. Guidance

151.1. After agreement of facts and of documents relevant to the case, the pathologist may submit further documents for consideration by the Summary Hearing Panel [p 144 DR(2)].

151.2. Where the pathologist wishes to submit additional documents this must be done at least 21 days prior to the hearing. The Chairman of the Summary Hearing Panel may, at his discretion, allow documents to be submitted after this period.

151.3. All submissions shall be made to the Secretary.

152. Consequential Actions

152.1. The Secretary must provide copies of all submissions to all parties.

CONSIDER REFERRAL

153. Background/Purpose

153.1. The Disciplinary Rules require [p 145 and p 146 DR(2)] that prior to the Summary Hearing Panel hearing a case there should be a review to determine if it is still a suitable option.

154. Responsibility

154.1. Responsibility rests with the Secretary to the Disciplinary Committee.

155. Guidance

155.1. Prior to the case being heard by the Summary Hearing Panel the matter should be reviewed by the Chairman of the Delivery Board. The purpose is to determine whether the matter is one that is still considered suitable to be dealt with by a Summary Hearing Panel.

155.2. The Chairman should consider additional material provided by the pathologist to determine whether (a) it is clear that the pathologist does intend to deny the charges or contest significant facts or (b) the new information suggests the decision of the Disciplinary Committee to refer the matter to a Summary Hearing Panel is no longer valid.

155.3. Where the Chairman believes that the matter is no longer suitable for a Summary Hearing Panel he shall refer the matter to the Disciplinary Committee which shall review the matter and either (a) confirm the process already underway or (b) terminate that process and refer the matter to a Disciplinary Tribunal. The Chairman of the Delivery Board may seek representations from the pathologist prior to making this decision.

156. Consequential Actions

156.1. Where the matter is to be referred to the Disciplinary Committee the Secretary must write to the pathologist to inform him of the decision. The members of the Summary Hearing Panel should not be informed of the reasons for the reconsideration in case it is referred back to them. They may however be informed of the fact there is a delay.

HEARING**157. Background/Purpose**

157.1. To set out the procedure for the hearing.

158. Responsibility

158.1. Responsibility rests with the Chairman of the Summary Hearing Panel.

159. Guidance

159.1. The intention of the disciplinary procedures is that the Summary Hearing Panel should operate, as far as possible, in an informal manner. The Chairman of the Summary Hearing Panel shall determine the procedures to be adopted at the hearing in the light of this intention.

159.2. The Chairman may, if he chooses, seek comment from the pathologist and the representative of the Disciplinary Committee on the proposed procedures.

159.3. Where the Chairman elects to seek comment from the pathologist and the representative of the Disciplinary Committee he shall consider any comments provided by the pathologist and may choose to modify the procedures.

160. Consequential Actions

160.1. The pathologist and the members of the Summary Hearing Panel should be informed of the procedures for the hearing.

REPORT TO BOARD**161. Background/Purpose**

161.1. The findings and sanctions, if any, imposed by the Summary Hearing Panel must be reported to the Disciplinary Committee and the Chairman of the Delivery Board [p 165 DR(2)].

162. Responsibility

162.1. Responsibility rests with the Secretary.

163. Guidance

- 163.1. The Summary Hearing Panel must report its conclusions to the Disciplinary Committee and the Chairman of the Delivery Board. The report must provide the following.
- For each charge referred to the Summary Hearing Panel:
 - The finding on the charge; and
 - The reasons for the finding.
 - A summary of any matters the Summary Hearing Panel considered relevant as to sanction.
 - The sanction, if any, imposed.

FORMAL NOTIFICATION**164. Background/Purpose**

- 164.1. The pathologist will have been informed at the end of the Summary Hearing Panel of the finding and sanction.
- 164.2. The Disciplinary Committee should write to the pathologist to notify him formally of the outcome of the process and related matters.

165. Responsibility

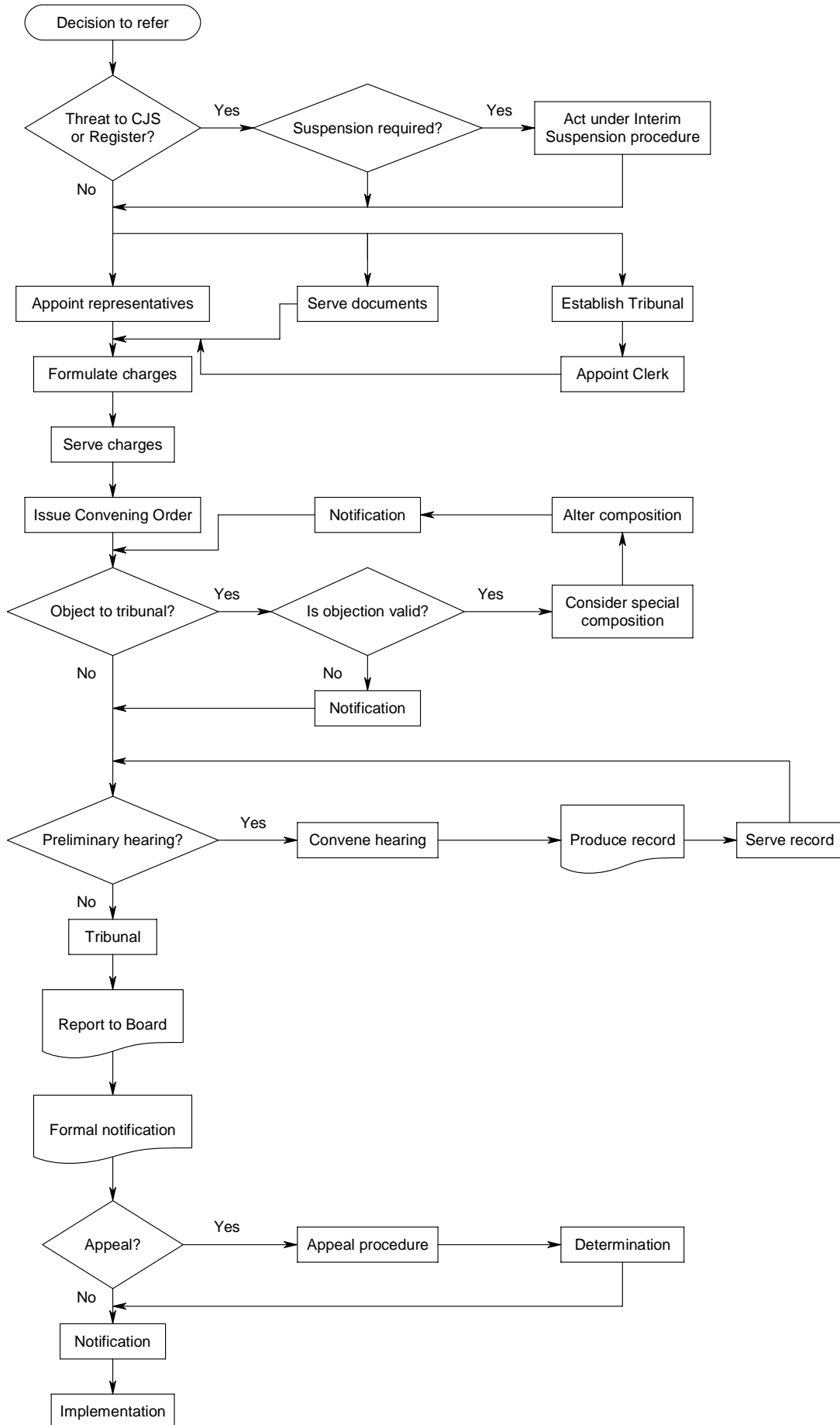
- 165.1. Responsibility rests with the Secretary.

166. Guidance

- 166.1. The Secretary should write to the pathologist to:
- Inform him of the finding;
 - Inform him of the sanction, if any, imposed; and
 - Explain that failure to comply with the sanction, including advice or requirements in relation to later conduct, may lead to a removal from the Register.
- 166.2. The Secretary should write to the complainant and Designated Parties to report the finding of the Summary Hearing Panel and the sanction, if any, imposed.

PART D.1 - DISCIPLINARY TRIBUNAL

167. The process to be adopted when establishing a Disciplinary Tribunal is set out in the flowchart below.
168. This stage covers the process from the decision to refer to a Disciplinary Tribunal to the implementation of any finding and/or sanction.
169. The flowchart outlines the process. Each decision or action listed in the left-hand side of the flowchart will be dealt with in the subsequent text. In some cases, where actions are taken in parallel other actions will also be dealt with.



THREAT TO CRIMINAL JUSTICE SYSTEM OR REGISTER?**170. Background/Purpose**

170.1. The Disciplinary Committee decides that the complaint shall be referred to a Disciplinary Tribunal.

170.2. The reasoning for such a decision indicates that the Disciplinary Committee considers suspension or removal from the Register a possible outcome. This suggests the complaint is of a serious nature. Consideration must be given to whether the pathologist's presence on the Register poses a risk of prejudicing criminal investigations or proceedings or undermining the integrity of the Register.

171. Responsibility

171.1. Responsibility rests with the Disciplinary Committee.

172. Guidance

172.1. The decision to refer to a Disciplinary Tribunal indicates that a serious allegation has been made and that there is evidence to support the allegation and further, that the Disciplinary Committee thinks that suspension or removal from the Register are possible sanctions.

172.2. The Disciplinary Committee must therefore consider whether the pathologist's continued presence on the Register poses a risk of prejudicing criminal investigations or proceedings or undermining the integrity of the Register [p 80 DR(2)]. Where it considers that such a threat exists, it should act under the interim suspension procedures set out at Part A.2.

173. Consequential Actions

173.1. These are set out in the interim suspension procedure.

APPOINT REPRESENTATIVES**174. Background/Purpose**

174.1. The Disciplinary Committee must appoint representatives to formulate the charges and to present the case before the Disciplinary Tribunal [p 84 DR(2)].

175. Responsibility

175.1. Responsibility rests with the Secretary.

176. Guidance

176.1. The Secretary should liaise with Home Office Legal Adviser's Branch and the Treasury Solicitor's Department to select and appoint suitably qualified representatives.

176.2. It may be advisable to consider a representative with experience in presenting criminal cases or cases before the General Medical Council.

FORMULATE CHARGES**177. Background/Purpose**

177.1. The Disciplinary Committee must present charges to the Disciplinary Tribunal that are sufficiently clear as to enable the pathologist and the Disciplinary Tribunal to understand both the essential facts alleged and the basis for alleging that such facts bring into question the pathologist's conduct (including allegations of malpractice and/or misconduct) and/or his professional performance, and/or his state of (physical or mental) health [p 84 DR(2)].

178. Responsibility

178.1. Responsibility rests with the Secretary. The representatives appointed above shall undertake the formulation of the charges.

179. Guidance

179.1. Where the charge relates to misconduct, it shall specify the section or sections of the Code of Conduct with which it is alleged the pathologist has failed to comply

- 179.2. Where the charge relates to malpractice, it shall specify the section, or sections, of the Code of Practice which it is alleged the pathologist has contravened.
- 179.3. Where the charge does not allege misconduct or malpractice but alleges that the pathologist is unfit to practise, it must specify the basis for alleging that the pathologist's conduct, and/or his professional performance, and/or his state of (physical or mental) health make him unfit to be on the Register.
- 179.4. In all cases the charges must be supported with sufficient information that the pathologist and the Disciplinary Tribunal can establish:
- The criminal investigation or proceeding and/or other circumstances that are the basis of the allegation; and
 - The acts/omissions by the pathologist or other facts that form the basis of the allegation.
- 179.5. The charges must provide sufficient information to allow the pathologist to prepare a defence against the allegations.
- 179.6. The information required by this section may be presented within the reference to the Disciplinary Tribunal or in other documents provided to or available to the pathologist.

SERVE DOCUMENTS

180. Background/Purpose

- 180.1. The pathologist must have access to the information available to the Disciplinary Committee and the Disciplinary Tribunal [p 85 DR(2)].

181. Responsibility

- 181.1. Responsibility rests with the Secretary to the Disciplinary Committee.

182. Guidance

- 182.1. The Secretary to the Disciplinary Committee shall provide the following documents to the pathologist.
- A letter setting out:
 - The complaints that are being referred to the Disciplinary Tribunal (note that the formal charges will be served separately);
 - The facts that are the basis of the complaints/charges;
 - That the Disciplinary Committee may provide further documents; and
 - That the charges against the pathologist may be altered.
 - Copies of all documents that will be available to the Disciplinary Tribunal.
 - Copies of any information that will be made available to the Disciplinary Tribunal.
- 182.2. The service of documents and statements may continue after the referral [p 86 DR(2)] because they are not completed or for any reason are not available at the time of referral. The statements and documents should be served a sufficient time before the substantive consideration of the case to ensure the pathologist has the opportunity to prepare a proper defence.
- 182.3. The Disciplinary Committee must provide the pathologist with all documents and facts that will be available to the Disciplinary Tribunal. This does not require that all documents that the Disciplinary Committee possesses must be disclosed to the pathologist. The Disciplinary Committee may decide that not all documents are needed to present the charge to the Disciplinary Tribunal or that some information contained within the documents should not be disclosed. In these cases the Disciplinary Committee may restrict the information disclosed.
- 182.4. It is important that the Disciplinary Committee should not restrict disclosure of information that is required, or may be necessary, for the pathologist's defence. The

Disciplinary Committee and its legal representatives should have in mind the principles of disclosure applicable to criminal proceedings.

ESTABLISH TRIBUNAL

183. Background/Purpose

- 183.1. The purpose is to establish a Disciplinary Tribunal that can hear the charges against the pathologist and render fair judgement on them.
- 183.2. The Home Secretary does not accept that disciplinary proceedings related to the Register amount to the determination of the pathologist's civil rights and obligations or of any criminal charges against him. Consequently, the Home Secretary does not consider that Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms applies to such proceedings.
- 183.3. However, it is accepted that the standards set out in Article 6 (section 1) should be met in disciplinary proceedings related to the Register.
- 183.4. Article 6 provides, amongst other things, that charges should be determined by "an independent and impartial tribunal". The purpose is therefore to establish a tribunal which consists of persons who have no actual or apparent bias in the matter and, in reaching their determination, are independent of the Disciplinary Committee.

184. Responsibility

- 184.1. Responsibility rests with the Chairman of the Delivery Board.

185. Guidance

Composition

- 185.1. The first issue that must be addressed is the number of members of the tribunal. The minimum number allowable under the Disciplinary Rules is three [p 174 DR(2)]. However, where a tribunal is composed of only three members the loss of any member would render the tribunal inquorate.
- 185.2. The Disciplinary Tribunal should be composed of three members only if the matter under consideration is such that it can be dealt with relatively rapidly. If there is likely to be prolonged consideration it would be advisable to increase the number of members to four or five. Further, if there is the possibility of a challenge to the members of the tribunal a low number would pose a risk to the continuance of the panel.
- 185.3. All members of the panel should be willing to act as such, rather than being present to ensure the number of persons appointed is appropriate. However, it may be good practice to appoint an excess of members so that, should some be unavailable at the dates set for the hearing, the case can continue.
- 185.4. In determining the number of members, and the balance between lay and professional members, care should be taken to ensure that the votes held by lay members (including the chairman's casting vote) are not exceeded by the votes held by professional members.
- 185.5. Whilst it is acceptable to appoint members of the Delivery Board to the Disciplinary Tribunal [p 174 and p 282 DR(2)] care should be taken that they are not the majority nor the only lay member.
- 185.6. None of the following persons may be appointed to the Disciplinary Tribunal [p 174 and p 282 DR(2)].
 - Members of the Pathology Council.
 - Members of the Disciplinary Committee or persons who were previously members of the Disciplinary Committee and involved in consideration of the complaint.
 - Officials of the Home Office.

- 185.7. No member may be appointed unless they comply with the conditions set out in the Disciplinary Rules relating to independence [p 286 DR(2)].

Chairman

- 185.8. The Chairman of the Disciplinary Tribunal must be legally qualified [p 174 DR(2)]. The Chairman of the Delivery Board should liaise with the Home Office Legal Adviser's Branch and the Treasury Solicitor's Department to find an appropriate candidate.
- 185.9. In selecting the Chairman of the Disciplinary Tribunal it may be appropriate to select a person with experience in chairing or acting as Legal Assessor or adviser for disciplinary panels such as those of the General Medical Council.

Lay Member(s)

- 185.10. The Disciplinary Rules set only one condition [p 317 DR(2)] with regard to lay members – that they are not, and have never been, medical practitioners. However, the appointment of appropriate persons requires more consideration.
- 185.11. Persons invited to act as lay members should be persons of sufficient standing, reputation and integrity that their judgement is respected. Persons who have attained senior positions in private industry, the public service, voluntary organisations or educational bodies may be appropriate.
- 185.12. Although the procedures do not require it, the selection of lay members should take account of their experience. Examples would include the following.
- Where the complaint relates to purely medical matters it may be appropriate to select lay members who have experience in considering a wide range of general issues.
 - Where the complaint relates to interpretation of evidence it may be appropriate to appoint lay members with experience in that area. This may include forensic scientists or other forensic practitioners.
 - Where the complaint refers to conduct as an expert witness it may be appropriate to appoint persons with knowledge of what should be expected of witnesses. This may include police officers, forensic practitioners, coroners or persons with judicial experience.

Professional Member(s)

- 185.13. The Disciplinary Rules only require [p 317 DR(2)] that the professional members are, or have held, the position of forensic pathologist (or equivalent outside of England and Wales). The appointment of professional members requires more consideration.
- 185.14. To ensure the Disciplinary Tribunal is seen to be fair and impartial the following issues should be addressed when considering appointment.
- It is inadvisable to appoint a professional member who has a history of conflict with the pathologist, beyond normal differences between expert witnesses.
 - It is inadvisable to appoint a member who may be considered to be in competition for work in the same area as the pathologist.
 - It is inadvisable to appoint a member who has worked very closely with the pathologist.
- 185.15. Consideration should be given to appointing professional members who have appropriate experience in any specialist area that is being considered by the Disciplinary Tribunal.
- 185.16. The Chairman of the Delivery Board has the power [p 185 DR(2)] to form a Disciplinary Tribunal that contains no professional members. This power would normally be used after objections had been made to the composition of the Disciplinary Tribunal. However, where it appears there would be significant problems in establishing a panel involving professional members that would be considered fair and impartial, the power should be employed.

186. Consequential Actions

- 186.1. The Chairman of the Delivery Board must write to those appointed to the Disciplinary Tribunal to ask whether they are willing and able to participate.
- 186.2. The Chairman of the Delivery Board should make certain matters clear in the letter of appointment. These include the following.
- The pathologist has the right to object [p 191 DR(2)] to the tribunal and, for that or other reasons, the Chairman of the Delivery Board may alter the membership of the tribunal [p 176 DR(2)].
 - Members, other than the Chairman, will have all reasonable expenses met and an honorarium paid for each day of sitting of the tribunal. They will also be paid for preparation time.
 - The Chairman will be paid in accordance with the arrangement with the Delivery Board.
 - All matters related to the Disciplinary Tribunal are confidential and members must not discuss them with any person outside of the proceedings [p 288 DR(2)].

APPOINT CLERK**187. Background/Purpose**

- 187.1. The Disciplinary Tribunal requires a clerk support its operation [p 182 DR(2)], co-ordinate the work and documents and to manage the process.

188. Responsibility

- 188.1. Responsibility rests with the Chairman of the Delivery Board.

189. Guidance

- 189.1. The Clerk does not act as a member of the Disciplinary Tribunal or make judgement on the charges before the tribunal. However, he does have a significant role in the process, and should meet the requirements set out in the Disciplinary Rules [p 286 DR(2)].
- 189.2. It may be appropriate to appoint a member of staff of the Home Office, who has not previously dealt with matters related to the complaint. However, it may be appropriate to appoint someone from outside of the Home Office. It would also be acceptable to appoint a firm of solicitors or other organisation to undertake the role.

SERVE CHARGES**190. Background/Purpose**

- 190.1. The pathologist and the Disciplinary Tribunal must be provided with the charges.

191. Responsibility

- 191.1. Responsibility rests with the Secretary.

192. Guidance

- 192.1. Copies of the charges must be served on the pathologist and the Clerk to the Disciplinary Tribunal [p 84 DR(2)].
- 192.2. The accompanying letter should explain that the charges may be subject to alteration [p 187 DR(2)].
- 192.3. The Clerk to the Disciplinary Tribunal should contact both parties to confirm that both parties agree to the papers being sent to the members of the Disciplinary Tribunal. Where the parties agree the papers shall be sent to members.
- 192.4. If the parties disagree the Clerk should ask for the production of an agreed set of papers. In the event that the parties can not agree the papers shall be provided to the Chairman of the Disciplinary Tribunal for his decision on the matter.

ISSUE CONVENING ORDER**193. Background/Purpose**

- 193.1. The convening order sets out information relating to the Disciplinary Tribunal hearing [p 188 et seq. DR(2)].

194. Responsibility

- 194.1. Responsibility rests with the Chairman of the Delivery Board.

195. Guidance

- 195.1. The convening order may only be issued after:

- The charges have been served on the pathologist or his representative;
- The membership of the Disciplinary Tribunal has been determined;
- The Clerk to the Disciplinary Tribunal has been appointed;
- A date has been set for the hearing; and
- Accommodation has been arranged for the hearing.

- 195.2. In setting the date for the hearing the Chairman may attempt to find a date convenient to all parties but this must be balanced by the need to deal with the matter expeditiously. The Chairman may set a date at his discretion regardless of the availability of the parties or their representatives [p 188 DR(2)].

- 195.3. The convening order must be served on the pathologist, or his representative, at least 28 days [p 188 DR(2)] before the date set for the hearing. It is advised that a date for the hearing be set at least 8 – 12 weeks after the order to allow for preliminary hearings and case preparation.

- 195.4. The convening order should set out the following information.

- The date, time and place where the Disciplinary Tribunal shall convene [p 188 DR(2)].
- The identity of members of the Disciplinary Tribunal [p 188 DR(2)].
- The identity and contact details of the person nominated to act as clerk [p 188 DR(2)].
- The power of the Chairman to alter the date, time and place of the hearing [p 189 DR(2)].
- The power of the Chairman to modify the membership of the Disciplinary Tribunal [p 176 DR(2)].
- The pathologist's right to be represented by counsel, solicitor or any other representative he chooses [p 8 and p 190 DR(2)].
- The pathologist's right to have copies of the documents listed at paragraph 120.
- The pathologist's right to provide a written response to the charges [p 190 DR(2)].
- The pathologist's right to object to the composition of the Disciplinary Tribunal [p 190 and p 191 DR(2)].

- 195.5. With regard to the pathologist's right to object to the composition of the Disciplinary Tribunal, the letter shall set out:

- The date by which any objection to the composition of the Disciplinary Tribunal must be received by the Chairman. This will normally be 7 days from the date of the letter;
- That any objection must name each of the members being objected to and the reasons why the pathologist objects to their presence on the tribunal; and
- That any objection must set out a reasonable case why the proposed member would be unable fairly to determine the case against the pathologist.

196. Consequential Actions

- 196.1. Where the Disciplinary Tribunal is to be held in public the Clerk to the Disciplinary Tribunal must liaise with the Home Office to ensure a notice is issued specifying the details set out in the convening order with regard to the meeting of the Disciplinary Tribunal.

OBJECTION TO TRIBUNAL?**197. Background/Purpose**

197.1. The convening order sets out the pathologist's right to object to members of the Disciplinary Tribunal [p 190 and p 191 DR(2)].

197.2. Any such objection must be considered and dealt with as set out in this section.

198. Responsibility

198.1. Responsibility rests with the Chairman of the Delivery Board.

199. Guidance

199.1. The convening order sets out a date by which any objection to the composition of the Disciplinary Tribunal must be received [p 190 DR(2)].

199.2. The Chairman of the Delivery Board shall consider objections received within the specified period. To be considered a valid objection the Chairman must be satisfied that the matters raised by the objection would cause a fair-minded and informed observer to conclude that there was a real possibility, or real danger, the two being the same, that the member would be biased against the pathologist. This may arise where (for example) the Chairman is satisfied that:

- A member of the Disciplinary Tribunal has an interest in the outcome;
- A member of the Disciplinary Tribunal had some involvement in the events that led to the complaint;
- There is evidence of animosity between the member and the pathologist. This must go beyond a history of professional differences and amount to differences such as would prevent the member making a fair evaluation; or
- There is other evidence to raise a reasonable case that the member would not be able fairly to evaluate the case.

199.3. If the Chairman accepts the objection, he shall appoint a replacement member to the tribunal. The appointment shall be subject to the same considerations as set out at paragraph 185.

199.4. The Chairman should consider the use of the special composition involving no professional members for the Disciplinary Tribunal, particularly if there have been a number of objections to the membership of the Disciplinary Tribunal [p 185 DR(2)].

199.5. The Chairman must notify the pathologist, representatives of the Disciplinary Committee, the Clerk, and the tribunal members if he decides to change the membership. This letter will make clear the pathologist's right [p 191 DR(2)] to object to the new members of the tribunal in like manner to those named in the convening order. It shall set out a date by which the objection must be received.

200. Consequential Actions

200.1. Where the objection is accepted, the Chairman of the Delivery Board must write to any member of the Disciplinary Tribunal who is being replaced explaining the action and thanking him for his assistance.

PRELIMINARY HEARING**201. Background/Purpose**

201.1. The Disciplinary Rules provide for the holding of one, or more, preliminary hearings to facilitate the process of the Disciplinary Tribunal [p 193 et seq. DR(2)].

202. Responsibility

202.1. Responsibility rests with the Chairman of the Disciplinary Tribunal.

203. Guidance

Preliminary Matters

- 203.1. Before a preliminary hearing is held:
- The charges must be formulated and served on the pathologist;
 - The Clerk must provide copies of the charges to members of the Disciplinary Tribunal; and
 - The membership of the Disciplinary Tribunal should have been finalised.

Convene

- 203.2. The Disciplinary Rules allow for, but do not require, the holding of one, or more, preliminary hearing [p 193 DR(2)]. The decision as to whether a preliminary hearing is held rests with the Chairman of the Disciplinary Tribunal.
- 203.3. The Chairman of the Disciplinary Tribunal has discretion to convene a preliminary hearing and will normally do so if:
- The Chairman of the Disciplinary Tribunal decides that it is in the interests of an efficient process;
 - The representative of the Disciplinary Committee requests one; or
 - The pathologist, or his representative, requests one.
- 203.4. The Chairman of the Disciplinary Tribunal may determine that the preliminary hearing should be heard before the full tribunal panel or before the Chairman acting alone [p 197 DR(2)]. In cases where the matters under consideration, or the majority of them, are administrative or deal with issues which would best be heard in the absence of other panel members it is recommended the hearing should be before the Chairman alone.
- 203.5. Where the Chairman of the Disciplinary Tribunal decides to hold a preliminary hearing, the Clerk to the Disciplinary Tribunal should arrange the meeting.
- 203.6. The Clerk should write to the pathologist, the representative of the Disciplinary Committee, the Secretary to the Disciplinary Committee and the Home Office to inform them of the date, time and place of the hearing. This notice should, save in exceptional circumstances, be served at least 7 days prior to the date of the hearing.
- 203.7. The notice served on the parties must set out the issues to be decided at the preliminary hearing. The notice shall offer the parties the opportunity to request other matters to be raised at the preliminary hearing. The notice should specify the date by which any request for additional issues to be addressed must be received.
- 203.8. Where any party requests that additional matters are considered at the preliminary hearing, the request shall be considered by the Chairman of the Disciplinary Tribunal. The Clerk to the Disciplinary Tribunal shall inform all parties of the matters to be dealt with at least three days prior to the preliminary hearing.
- 203.9. The Chairman may, in his discretion, decide that any issue which is not the subject matter of a notice under paragraphs 203.7 or 203.8 should nonetheless be determined at the preliminary hearing, provided that he is satisfied that no party is prejudiced thereby.
- 203.10. Where any party intends to ask the Disciplinary Tribunal to make a determination at the preliminary hearing that will have a significant impact on the case they shall submit a skeleton argument and, where appropriate, evidence in support of the application. The Chairman shall have the power to direct by notice that skeleton arguments and/or evidence shall be submitted by the parties in relation to any issue to be determined and set a timetable for such matters.

Attendance

- 203.11. A preliminary hearing of the Disciplinary Tribunal is not a public hearing. Attendance shall be restricted to the following.

- Members of the Disciplinary Tribunal.
- The Clerk to the Disciplinary Tribunal.
- The representatives of the Disciplinary Committee.
- The Secretary to the Disciplinary Committee.
- The Chairman of the Disciplinary Committee.
- The pathologist.
- The representatives of the pathologist.
- Officials of the Home Office.
- Other persons at the discretion of the Chairman of the Disciplinary Tribunal and of the Clerk.

Issues

- 203.12. A preliminary hearing may be used to deal with such issues as will facilitate the expeditious or efficient management of the hearing including, but not limited to the following [p 194 DR(2)].
- Whether proceedings should be stayed as an abuse of process.
 - Application for cases to be separated or for separate hearings.
 - Applications for cases or hearings to be joined.
 - Applications for charges to be severed.
 - Such issues as will facilitate the substantive hearing including, but limited to, the following.
 - Admission of facts.
 - Admission of documents.
 - Any questions over the wording of charges.
 - The date by which skeleton arguments should be exchanged.
 - The date by which evidence should be exchanged.
 - The date by which lists of witnesses shall be exchanged.
 - Arrangements for the substantive hearing including, but not limited to the following.
 - The time allocated for the presentation of each party's case.
 - The period within which the hearing will take place.
 - Consideration of any special requirements for the hearing
 - Whether the substantive hearing should be held in public or not [p 204 DR(2)].

Specific Issue - Abuse of Process

- 203.13. Abuse of process has been described⁸ as “something so unfair and wrong that the court shall not allow a prosecution to proceed with what is in all other respects a regular proceeding”.
- 203.14. In considering whether the exceptional remedy of a stay is demanded the Disciplinary Tribunal is entitled to take account of the following.
- The Disciplinary Tribunal is composed of persons of standing and possessed of both legal and technical expertise. It may be credited with considerable ability to put out of its mind matters which are irrelevant or upon which it would be unfair to rely.
 - In considering the familiar triangulation of interests, it is relevant to note that a stay of proceedings is unlikely to be in the interests of the pathologist himself. This is a result of the nature of the profession of forensic pathology. Once a complaint is made about a forensic pathologist it can seriously undermine his position as an expert witness. If disciplinary action is initiated and then abandoned it may leave the pathologist in “professional limbo”. This is not in the interests of the pathologist or the Home Office.

Specific Issue – Public Hearing

- 203.15. The Disciplinary Rules [p 204 DR(2)] provide that there is a presumption that the hearing be held in public. A preliminary hearing may be used to determine whether this presumption should be displaced.

⁸ Hui-Chi Ming v R (1992) 1 AC 34.

- 203.16. The Disciplinary Rules provide that the presumption may be overturned when:
- The pathologist requests the hearing is private;
 - It is necessary to protect the privacy of those involved; or
 - It is necessary to protect the interests of justice.
- 203.17. Where the pathologist applies to have the hearing held in private this request is not binding on the Disciplinary Tribunal. Such requests should be considered seriously but must be balanced against the public interest.
- 203.18. The hearing may be held in private to protect the privacy of the parties or the persons involved in the post-mortem examinations or otherwise involved in the incident(s) under consideration. Issues that may be appropriate to consider include the following.
- The effect the hearing may have on the families of those who were the subject of the post-mortem examinations under consideration. In this regard it is important to remember that the cases will invariably relate to a traumatic event.
 - Whether providing anonymity will prevent distress to the families of the deceased. It should be noted that it may be impossible to prevent people being identified as the details are discussed.
 - The impact that a public hearing may have on the pathologist and his private and professional life.
- 203.19. Where a private hearing is being considered on the basis that it is necessary in the interests of justice, the reason that such a step is necessary should be noted, and may include, but not be limited to, the following.
- The matters under discussion refer to criminal investigations or prosecutions that are in progress. In such cases the possible impact on the case should be considered.
 - The matters under discussion refer to criminal prosecutions that have concluded. In this case particular consideration should be given to the following issues.
 - Would a public hearing lead to difficulties for a convicted person mounting an appeal against conviction?
 - Would a public hearing prejudice a fair hearing of an appeal?
 - Would a public hearing raise the hopes of those convicted?
 - Would a public hearing risk an attack on a not guilty verdict by a court in circumstances where those acquitted could not reasonably defend their reputation?
 - Would a public hearing prejudice a future trial after acquittal (for example under the provisions of s76 Criminal Justice Act 2003)?
 - The risk to current or future prosecutions of cases not involved in the complaint should be considered.
- 203.20. Where the Disciplinary Tribunal determines that the hearing is to be in private it must also determine who will have access to the hearing. Those persons who have access to the preliminary hearing (see paragraph 203.11) will be presumed to have access to the full hearing even if heard in private. The Disciplinary Tribunal should consider whether additional persons should have access. In particular it should consider the complainant and the press.

Procedure

- 203.21. The procedures adopted for any preliminary hearing shall be determined by the Chairman of the Disciplinary Tribunal.

Records

- 203.22. The Disciplinary Rules require [p 196 DR(2)] the Clerk to the Disciplinary Tribunal to produce a record of the preliminary hearing. This record must (subject to the Chairman's right to restrict the records [p 234 DR(2)]) detail all decisions, directions, admissions or arrangements made at the preliminary hearing.
- 203.23. The record prepared by the Clerk shall be served on the pathologist or his representative, the representative of the Disciplinary Committee, and members of the Disciplinary

Tribunal [p 196 DR(2)]. Copies of the record shall be supplied to the Secretary to the Disciplinary Committee and the Home Office.

203.24. It is advisable to arrange a verbatim transcript to be produced of any preliminary hearing(s). This ensures a proper record is obtained and that any disputes related to hearing(s) can be settled easily.

203.25. Where a verbatim transcript is produced it shall be held by the Clerk and supplied (subject to the Chairman's right to restrict the records [p 234 DR(2)]) upon request to any persons who are listed above as recipients of the record of the meeting. The Clerk may charge for transcripts to cover the cost of production.

204. Consequential Actions

204.1. Where the Disciplinary Tribunal determines that there should be a stay of proceedings, the Clerk should inform:

- The Disciplinary Committee;
- The Chairman of the Delivery Board; and
- The Home Office.

204.2. Where the Disciplinary Tribunal determines that there should be alterations to the charges, hearings or cases the Clerk should write to the Disciplinary Committee to inform it of the decision and ensure steps are taken to implement the decision.

TRIBUNAL

See Part D.3.

REPORT TO BOARD

205. Background/Purpose

205.1. The findings and sanctions, if any, imposed by the Disciplinary Tribunal must be reported to the Disciplinary Committee and the Chairman of the Delivery Board [p 227 DR(2)].

206. Responsibility

206.1. Responsibility rests with the Clerk to the Disciplinary Tribunal.

207. Guidance

207.1. The Disciplinary Tribunal must report its conclusions to the Disciplinary Committee and the Chairman of the Delivery Board [p 227 DR(2)]. The report must set out: For each charge referred to the Disciplinary Tribunal:

- The finding on the charge;
- The vote on that finding (numbers only);
- The reasons for the finding;
- A summary of any matters the tribunal considered relevant as to sanction; and
- The sanction, if any, imposed unless this is dealt with for a number of charges together.

FORMAL NOTIFICATION

208. Background/Purpose

208.1. The pathologist will have been informed at the end of the Disciplinary Tribunal of the finding and sanction.

208.2. The Disciplinary Committee should write to the pathologist to notify him formally of the outcome of the process and related matters.

209. Responsibility

209.1. Responsibility rests with the Secretary.

210. Guidance

210.1. The Secretary should write to the pathologist setting out:

- The finding;

- The sanction, if any, imposed;
- The fact that failure to comply with any sanction, including advice or requirements in relation to later conduct, may lead to a removal from the Register;
- The right of appeal and the date by which an appeal must be lodged;
- The fact that the Disciplinary Committee has the right to appeal any sanction imposed and that such appeal must be lodged by the same date by which he may lodge an appeal;
- The fact that any sanction shall not be imposed (subject to the power to suspend) until the date by which an appeal may to be lodged has passed or, if an appeal is lodged within that period, until that appeal has been determined;
- That, where a sanction of removal has been imposed, the Chairman of the Delivery Board may suspend the pathologist from the Register pending appeal; and
- In cases where interim suspension has been applied, the effect of the determination on the suspension.

210.2. The Secretary should write to the complainant and Designated Parties to report the finding of the Disciplinary Tribunal and the sanction, if any, imposed. The letter should note the right of appeal and the effect that has on the imposition of the sanction.

APPEAL

See Part E.

NOTIFICATION

211. Background/Purpose

- 211.1. The formal notification process set out, in paragraphs 208 to 210, above will formally notify the pathologist of the finding of the Disciplinary Tribunal and the sanction imposed. It will also set out the right of appeal.
- 211.2. Following notification, one of the following could result.
- The pathologist could appeal.
 - The Disciplinary Committee could appeal.
 - No party appeals.
- 211.3. The pathologist and other interested parties therefore need to be (a) notified of the decision of the Appeal Panel or (b) that no appeal has been lodged.

212. Responsibility

- 212.1. Responsibility rests with the Secretary.

213. Guidance

- 213.1. Where no appeal is lodged within the specified period the Secretary shall write to the pathologist, the complainant and Designated Parties explaining that no appeal has been lodged, and that the finding and sanction previously notified will stand.
- 213.2. Where an appeal has been lodged and the appeal process concluded, the Secretary should write to the pathologist setting out:
- The finding;
 - The sanction, if any, imposed;
 - The fact that failure to comply with the sanction, including advice or requirements in relation to later conduct, may lead to a removal from the Register; and
 - In cases where interim suspension, or suspension pending appeal, has been applied, the effect of the determination on the suspension.
- 213.3. The Secretary should write to the complainant and Designated Parties to inform them of the outcome of the appeal.
- 213.4. The Secretary should also arrange for Home Office Ministers to be informed of the outcome of the matter.

IMPLEMENTATION OF THE SANCTION**214. Background/Purpose**

- 214.1. To ensure that any sanction imposed by the disciplinary bodies are implemented.

215. Responsibility

- 215.1. Responsibility rests with the Disciplinary Committee.

216. Guidance*General*

- 216.1. The public and disciplinary records must be updated to reflect the outcome of the disciplinary action.
- 216.2. The wording in the public record is determined by the Disciplinary Committee and should be relatively brief. The starting point for drafting the entry should be the basic statement:
- “[Name] was the subject of a complaint of [misconduct/malpractice/other] in relation to [provide information]. The matter was referred to a Disciplinary Tribunal which considered the matter and on [Date] determined that [Name] should be subject to the sanction of [insert details].”
- 216.3. The wording in the discipline record shall be produced by the Delivery Board and shall be sufficiently detailed to ensure the information is sufficient to assist any future disciplinary body which has to consider previous conduct.
- 216.4. The Disciplinary Committee must establish a process to ensure the imposed sanction is complied with. This may involve, but not be limited to, auditing or monitoring. Where a pathologist fails to comply with the sanction this should be dealt with under the non-cooperation procedure.
- 216.5. The Home Office must be consulted, by the Secretary, on the production on a public notice and press lines.

Forgo or Repay Fees

- 216.6. The letter to the complainant informing him of the finding and sanction should stress that there is no direct method of enforcing the sanction.
- 216.7. The complainant should therefore be asked to inform the Disciplinary Committee whether, by the date specified in the sanction (or if no date was specified within three months of final determination), the sum has been repaid or forgone.
- 216.8. If the pathologist does not comply, this amounts to a failure to co-operate with the Disciplinary Committee and shall lead to referral to the Disciplinary Committee.

Advice

- 216.9. The Disciplinary Committee does not have to intervene directly in cases where advice is provided. However, it may choose to implement an audit regime for the pathologist, or such other process as appears appropriate, to ensure the advice is being complied with.

Training and Assessment

- 216.10. The Disciplinary Committee must ensure provisions are in place to ensure that the pathologist has undergone the appropriate training and met the standard required. This will include determining what proof of competence will be required.

Reprimand

- 216.11. The Register must be altered to record the reprimand. The wording of the entry in the Register is for the Disciplinary Committee to determine. The basic wording shall normally be “Reprimand entered in the Register in relation to [description] on [date]”. However, the Disciplinary Committee can set the wording as it determines appropriate.

- 216.12. The Disciplinary Committee shall be advised by the Disciplinary Tribunal or Summary Hearing Panel as to the wording of the entry. However, the final wording should be determined by the Disciplinary Committee after consultation with the Legal Adviser's Branch of the Home Office to ensure that the wording does not raise any legal issues.

Supervision

- 216.13. The entry on the Register must be altered to reflect the requirement for supervision. The Legal Adviser's Branch of the Home Office should be consulted to ensure that the wording does not raise any legal issues.
- 216.14. The Disciplinary Committee should nominate an individual to monitor the supervision and to take appropriate action at the end of the period of supervision. These actions shall include determining whether any conditions tied to the supervision (e.g. training and assessment) have been met and advising the Disciplinary Committee on whether the sanction should be removed.

Suspension

- 216.15. The entry in the Register must be altered to reflect the suspension. The Disciplinary Committee must determine the wording to be used. Advice should be sought from the Legal Adviser's Branch of the Home Office to ensure the wording does not raise any legal issues.
- 216.16. The Disciplinary Committee should nominate an individual to monitor the suspension and to take appropriate action at the end of the period of suspension. These actions shall include determining whether any conditions tied to the suspension (e.g. training and assessment) have been met and advising the Disciplinary Committee on whether the sanction should be removed.

Removal

- 216.17. The Register should be altered to implement the decision of the Disciplinary Tribunal. This will normally be the removal of the name with no further comment in the Register. Where the Disciplinary Committee wishes to place a comment in the Register the Legal Adviser's Branch of the Home Office should be consulted.

PART D.2 – MODIFICATION OF TRIBUNAL

217. Background/Purpose

- 217.1. The Disciplinary Rules provide that the Chairman of the Delivery Board may alter the composition of the Disciplinary Tribunal at any point up to the time when it begins substantive hearing of the charge [p 176 DR(2)].
- 217.2. This provides the Chairman of the Delivery Board with considerable control over the Disciplinary Tribunal composition. To ensure this is employed in an acceptable manner, guidance is provided.

218. Responsibility

- 218.1. Responsibility rests with the Chairman of the Delivery Board.

219. Guidance

- 219.1. The Disciplinary Rules provide for modification of the composition in response to an objection by the pathologist.
- 219.2. The Disciplinary Rules also provide a general power to alter the composition of the Disciplinary Tribunal [p 176 DR(2)]. This power may be employed in the following circumstances.
- Where, after the formation of the Disciplinary Tribunal, a member withdraws or becomes unable to participate.

- Where, after the formation of the Disciplinary Tribunal, it becomes apparent that the Disciplinary Tribunal could not act as a fair and impartial tribunal.
- Where, after the formation of the Disciplinary Tribunal, it becomes clear that the Disciplinary Tribunal includes members who are not properly qualified to act.
- Where it is clear that it is appropriate to alter the composition of the Disciplinary Tribunal to provide for a fair, impartial and expeditious hearing of the case.

219.3. Where the composition of the Disciplinary Tribunal is altered the same considerations (see paragraph 183 et seq.) that applied to the selection of members of the Disciplinary Tribunal should apply to selection of new members.

220. Consequential Actions

220.1. The Chairman of the Delivery Board should write to all parties explaining any change in composition of the Disciplinary Tribunal and, as far as is appropriate, explaining the reasons for the alteration.

220.2. The Chairman of the Delivery Board should write to any member being replaced explaining the decision and thanking him for his assistance.

PART D.3 – TRIBUNAL HEARING

RESPONSIBILITIES

221. Background/Purpose

221.1. It is essential that all members of the Disciplinary Tribunal are aware of their responsibilities.

222. Responsibility

222.1. Responsibility rests with members of the Disciplinary Tribunal.

223. Guidance

General

223.1. It is the responsibility of the members of the Disciplinary Tribunal to ensure that they have read and understood the contents of this guide which outlines the principles for the conduct of Disciplinary Tribunals.

223.2. Disciplinary Tribunals must not only be absolutely fair, independent and impartial in fact, but must also be seen to be so in practice. Prior to any hearing of the Disciplinary Tribunal, any member who believes himself ineligible or unqualified for the role, or who knows something about the case, or who knows the accused or a potential witness or anyone else involved in the case should immediately inform the Clerk. If similar concerns arise once the tribunal hearing has commenced he should immediately arrange to speak to the Chairman without mentioning the matter to anyone else.

223.3. Where a member raises concerns about contact with persons involved in the case, the Chairman and Clerk should consider the matter. Where a member's position has been compromised it may be necessary for him to be removed from the Disciplinary Tribunal. This should not be done lightly as it may lead to the tribunal failing which is not desirable for any party. It may be appropriate to discuss the matters with representatives of the parties prior to making a decision to remove a member.

223.4. Throughout the Disciplinary Tribunal hearing the members must avoid contact (which might call into question their impartiality) with the representatives of the parties, witnesses, or any other persons involved directly or indirectly with the proceedings, other than in the hearing itself. It is accepted that it may be impossible to avoid contact completely but such contact should be in relation to professional matters and should be reported to the Clerk.

223.5. The members should make no attempt to discover any details about the matter before the Disciplinary Tribunal, apart from those presented in evidence.

- 223.6. When away from the hearing, the members should not discuss any aspect of a tribunal in progress. In any event no discussion of a tribunal in progress should take place unless all members are present.
- 223.7. No discussion whatsoever of the sanction, options or implications, no matter however general or hypothetical, is to take place before or during any hearing before a finding of that a charge has been proved has been arrived at and announced, or in the absence of the Chairman.
- 223.8. It is possible that a member of the Disciplinary Tribunal may be involved in an inquest or criminal prosecution in which the pathologist is involved. In such cases the following advice should be adhered to.
- Whilst the matter is still being considered under the disciplinary procedures members should not disclose information, even that in the public domain, to those involved in the inquest/prosecution. This will avoid the appearance of using involvement in the Disciplinary Tribunal for personal or professional advantage.
 - After the conclusion of the matter under the disciplinary procedures the members should limit any comment to factual information which is in the public domain.
 - Members may have concerns that, in the interest of justice, parties to an inquest or prosecution should be aware of the fact that there is a complaint against the pathologist. The disciplinary procedures recognise that the interests of justice require appropriate disclosure of this information. Consequently, the fact a complaint is being considered is disclosed to HM Coroners and the Crown Prosecution Service.
- 223.9. The members of the tribunal will hear, assess, deliberate on, and arrive at a finding on the facts of the case.

Chairman

- 223.10. The Chairman will be a lawyer, most likely a barrister, who has been appointed by the Chairman of the Delivery Board to chair the Disciplinary Tribunal and to ensure it provides a fair hearing of the matters before it.
- 223.11. The Chairman will conduct the Disciplinary Tribunal in accordance with the law of England and Wales and the disciplinary procedures. He will decide all questions of law, practice and procedure. His rulings and directions are binding on the other members of the tribunal.
- 223.12. It is also the responsibility of the Chairman to ensure the Disciplinary Tribunal properly investigates the matter before it and comes to the correct determination of the facts. The Disciplinary Rules [p 181 DR(2)] provide the Chairman with power to take an inquisitorial role and ensure there is a proper consideration of the matter.

All Members

- 223.13. Persons appointed to act as members of a Disciplinary Tribunal are to do so independently and impartially in accordance with the evidence, disciplinary procedures and the law. Members must not be subjected to any external influence or pressure prior to, during or after the hearing. Any such attempt must be reported to the Clerk immediately.
- 223.14. The members will decide whether each charge is proven based on the facts presented to them. If a charge is found proven, the members will determine the appropriate sanction based on the charges found proven. Irrespective of his role, the worth or value of the opinion and vote of every member is entirely equal subject to the Chairman's casting vote. The other members must accept the Chairman's directions on all matters of law and procedure.

PROCEDURE AT THE HEARING**224. Background/Purpose**

- 224.1. To set out the procedure to be adopted at a Disciplinary Tribunal.

225. Responsibility

225.1. Responsibility rests with the Chairman of the Disciplinary Tribunal.

226. Guidance*Preliminaries*

226.1. A typical layout of a room for tribunal should include the following.

- Seating (table and chair) for the following.
 - The Disciplinary Tribunal
 - The Clerk to the Disciplinary Tribunal
 - The pathologist and his representatives.
 - The representatives of the Disciplinary Committee.
 - Witnesses.
 - The “court reporter” taking the verbatim record.
- Seating for the following.
 - Persons attending the Disciplinary Tribunal on official business.
 - Members of the public where appropriate.
- Facilities necessary for the presentation of evidence.

226.2. It is also good practice to provide smaller rooms to allow the members of the Disciplinary Tribunal and the parties to hold private discussions. This would include a room for the panel and one for each of the parties.

226.3. Before the hearing the Chairman will sometimes conduct pre-tribunal hearings with representatives of the parties which, while delaying the start of the hearing, may well save time overall. If the Chairman does wish to speak to all the tribunal members prior to the hearing he will probably do so at this stage.

226.4. The time at which the Clerk is to open the hearing will previously have been decided by the Chairman and notified to the members and the parties. The Clerk will subsequently have forewarned all others as necessary.

Initial Statement

226.5. The Chairman shall formally open the hearing by announcing that the hearing is a Disciplinary Tribunal convened to consider the professional performance and conduct of the pathologist named in the reference.

226.6. The Chairman should publicly warn the other members not to talk to anyone else about the case for as long as it continues. That includes not talking to family, friends, work associates, the legal representatives, the pathologist and anyone who may be a witness.

226.7. The Chairman shall ask members of the tribunal to identify themselves. Once the members have done so the Chairman shall ask the persons appearing before the tribunal to identify themselves.

226.8. The Chairman should identify the Clerk to the Disciplinary Tribunal.

Admissions

226.9. If the pathologist admits the charge to all of the charge(s) the tribunal will be informed of the facts of the case by the representative of the Disciplinary Committee and will hear information about the pathologist’s disciplinary record and any other relevant material. The pathologist’s representative will then present his case. The pathologist’s representative may make an address in mitigation and provide medical or other reports.

226.10. Where the pathologist does not admit all charges, the sanction in relation to the admitted charges shall be dealt with at the same time as those that are not admitted.

Admissions - Sanction

226.11. When appropriate, the Chairman will announce that the tribunal is closing to deliberate on sanction. The Chairman will direct the other members on the legal principles of “sentencing” and the range of sanctions available. The sanction will be determined by a majority of votes with the Chairman having a casting vote in the event of a tie [p 213 DR(2)]. The Chairman will record the sanction and matters considered relevant in determining the sanction. All members will sign that record.

Admissions - Announcement of Sanction

226.12. When the Clerk has announced that the tribunal hearing is open again and all are assembled, the Chairman will announce the reasons for the sanction and will read the sanction as it appears in the record of proceedings. The Chairman will then dissolve the tribunal.

Denial of Charge

226.13. If the pathologist denies any charge, the representative of the Disciplinary Committee will make an opening address. He will then call witnesses. The Chairman will ask witnesses to take the oath or affirm. The representative of the Disciplinary Committee will conduct his examination of the witness; the representative of the pathologist can then cross-examine that witness and the representative of the Disciplinary Committee may re-examine on matters arising out of the cross-examination. Members may wish to take down brief notes of important points in the evidence but need not try to keep a record of everything that is said. It is more important to watch witnesses giving their evidence. The Chairman will summarise the main points of the evidence in his summing up.

226.14. A member of the Disciplinary Tribunal may put questions to a witness. However the Chairman has the right to disallow a question if he considers it to be inappropriate. From time to time the Chairman will be required to decide matters of law, such as the admissibility of a particular piece of evidence. When he does, he will direct the other members to withdraw so that they do not hear inadmissible evidence in the course of legal argument, or other matters which are prejudicial or irrelevant.

226.15. The Disciplinary Tribunal may, at any time after the representative of the Disciplinary Committee has presented all his evidence, find the any particular charge not proved. The representative of the Disciplinary Committee must, however, be allowed to address the tribunal on the matter before they finally decide.

226.16. Once the representative of the Disciplinary Committee has completed presenting evidence the representative of the pathologist shall present his case. The procedure set out in paragraphs 226.13 to 226.14 shall apply with the parties reversed as appropriate.

226.17. In the event that the Disciplinary Tribunal call witnesses they should appear at this point. The witness should be questioned by the Chairman of the Disciplinary Tribunal. Once this questioning has been completed the two parties shall have the opportunity to ask questions.

226.18. After all the evidence has been given the representative of the Disciplinary Committee and representative of the pathologist will make their closing addresses. The Chairman may chose to direct the members on the provisions of the disciplinary procedures and law relating to it.

226.19. Whilst the members are deliberating on their findings no one but the Clerk (subject to the right of the Disciplinary Tribunal to have expert advice [p 203 DR(2)]) may be present.

226.20. A finding must be reached in respect of each charge individually, although in some circumstances no finding need be made on an alternative charge. The Chairman will direct the members about this and, as with all other matters of law, practice or procedure, they must follow his directions.

226.21. The Chairman will normally initiate the discussion on the issue of whether a charge is proved. He should ensure that each member gives his opinion on finding in respect of

each charge separately. A unanimous decision is preferable, but a majority of votes will decide the issue – including the Chairman’s casting vote. The Chairman should write down the findings in the record and sign it. Prior to the tribunal being re-opened he should remind any members who voted in the minority that they must now adopt the finding of the tribunal. This is important in the event charges being found not proved, as the personal feelings of individual members regarding this determination must not influence the decision on sanction.

- 226.22. If a charge has been proved against the pathologist the tribunal will receive information about his disciplinary record, any other material/information that may be relevant and other reports handed in by the representative of the pathologist. The representative of the pathologist may address the tribunal in mitigation and the tribunal will proceed to determine sanction as in the case of an admission (see above). In determining the sanction they must take account of any charges admitted, the discipline record, any other relevant material and all charges found proved.

Conclusion of Hearing

- 226.23. When the Chairman has dissolved the tribunal he should remind the members of the requirement for confidentiality before releasing them.
- 226.24. Irrespective of whether the tribunal’s finding was that a charge was proved or not proved, the Chairman must complete a report to the Chairman of the Delivery Board and the Chairman of the Disciplinary Committee [p 227 DR(2)].

EVIDENCE

227. Background/Purpose

- 227.1. The Disciplinary Rules [p 200 DR(2)] state that the Disciplinary Tribunal may admit any evidence.

228. Responsibility

- 228.1. Responsibility rests with the Chairman of the Disciplinary Tribunal.

229. Guidance

- 229.1. The Disciplinary Rules provide that the Disciplinary Tribunal may admit any evidence. The Disciplinary Tribunal has discretion as to what evidence is admitted.
- 229.2. The Chairman of the Disciplinary Tribunal shall determine what evidence shall be admitted and, in doing so, may choose to hear submissions and make determinations as to the admission of evidence in the absence of the other members. This is to avoid members being exposed to evidence or argument that the Chairman excludes from the Disciplinary Tribunal.
- 229.3. The Chairman of the Disciplinary Tribunal may choose to exclude evidence if he believes it to be irrelevant, its prejudicial effect outweighs its probative value, or there is some other reason why it should be excluded.
- 229.4. In making a decision to exclude evidence, the Chairman of the Disciplinary Tribunal must bear in mind the tribunal is composed of persons who can be trusted to make a reasonable judgement and place an appropriate weight on evidence. There is therefore a presumption in favour of the admission of relevant evidence.
- 229.5. The Chairman of the Disciplinary Tribunal may choose to place restrictions on the evidence admitted. This may for example require the removal of information that identifies the individual subject to post-mortem examination if there is to be a public hearing.
- 229.6. The Chairman of the Disciplinary Tribunal shall provide reasons for any significant decision in relation to the admission of evidence. This must be included within the record of the Disciplinary Tribunal. The Chairman, in his discretion, may determine that the

other members of the Disciplinary Tribunal, or any others, should not see such parts of the record until the conclusion of the proceedings [p 234 DR(2)].

- 229.7. The Chairman of the Disciplinary Tribunal may choose to give advice to the Disciplinary Tribunal in relation to any evidence admitted.

FINDING

230. Background/Purpose

- 230.1. The Disciplinary Tribunal must come to a determination on each charge.

231. Responsibility

- 231.1. Responsibility rests with the Disciplinary Tribunal.

232. Guidance

- 232.1. There are two stages in the determination process. First, there is the question of which particulars of fact specified in the charge are proved. The burden of proof to the civil standard rests upon the Disciplinary Committee with respect to this stage. Secondly, there is the question of whether, in the light of such findings, the pathologist's conduct (including malpractice and misconduct), and/or his professional performance, and/or the state of his (physical or mental) health bring into question whether he is fit to be on the Register. This is a question of judgment for the Disciplinary Tribunal.
- 232.2. There is a duty on the Disciplinary Tribunal to enter into an inquiry and come to a finding with respect to each particular of fact specified in the charge unless the representative of the Disciplinary Committee expressly indicates that the matter is not pursued. The duty exists irrespective of whether the allegation has been developed in the case against the pathologist or put in cross-examination by the representative of the Disciplinary Committee of any witness called on behalf of the pathologist (including the pathologist himself). The pathologist should not assume that because a matter has not been developed or put to him or his witnesses, it will not be considered by the Disciplinary Tribunal. Accordingly, he should call such evidence as he considers appropriate to meet any evidence which supports any particular of fact in the charge. Where a matter of importance is not developed or not put by the representative of the Disciplinary Committee, whether by design or through inadvertence, the members of the Disciplinary Tribunal should consider either inviting the representative of the Disciplinary Committee to elect whether to pursue the matter or not; or, in the alternative, the members of the Disciplinary Tribunal should consider asking pertinent questions of their own.
- 232.3. The role of the Register is to protect the public by the promotion of good practice and by guarding against the risk of prejudicing criminal investigations or proceedings. In light of that responsibility, and of judgements in areas where a similar responsibility exists⁹, the standard of proof required is the balance of probabilities [p 201 DR(2)]. It is also notable that the Shipman Inquiry¹⁰ recommended the use of this standard. It may be appropriate, at the Chairman's discretion, to apply the heightened standard where, for example, the allegations are of a scandalous nature.
- 232.4. In one case¹¹ the Privy Council noted:

“The function of the CPP is not penal. It is to protect the public and to rehabilitate (if possible) practitioners whose professional standards have fallen too low. In the first of its tasks (that is deciding whether the standard of a practitioner's performance has been seriously deficient) the CPP has to ascertain the primary facts (which in many cases may not be seriously in doubt) and then to exercise their judgment (in the case of some but not all the members of the CPP, their professional judgment as experienced doctors). In this exercise the standard of proof of the primary facts ought not, in the generality of cases, to be an issue which gives rise to much difficulty. So far as it is a material issue the

⁹ Sadler v General Medical Council [2003] UKPC 59 (15th July 2003).

¹⁰ The Shipman Inquiry: Safeguarding Patients - Fifth Report, CM 6394; at paragraph 27.256.

¹¹ Sadler v General Medical Council [2003] UKPC 59 (15 July 2003).

standard should in their Lordships' view, in the generality of cases, be the ordinary civil standard of proof. There may be exceptional cases (probably cases in which the practitioner is fortunate to be facing the CPP rather than the Professional Conduct Committee) in which a heightened civil standard might be appropriate, as explained by the House of Lords in *re H(minors) (sexual abuse: standard of proof)* [1996] AC 563."

232.5. The heightened standard was set out in *Re H*¹² in the following terms:

"Where the matters in issue are facts the standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability. This is the established general principle. There are exceptions such as contempt of court applications, but I can see no reason for thinking that family proceedings are, or should be, an exception. By family proceedings I mean proceedings so described in the 1989 Act, ss 105 and 8(3). Despite their special features, family proceedings remain essentially a form of civil proceedings. Family proceedings often raise very serious issues, but so do other forms of civil proceedings.

The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury. A stepfather is usually less likely to have repeatedly raped and had non-consensual oral sex with his under age stepdaughter than on some occasion to have lost his temper and slapped her. Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.

Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred. The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established"

- 232.6. The members of the Disciplinary Tribunal must consider each charge separately and not conclude that an adverse finding on one charge should lead to an adverse finding on any other charge. The exception to this principle is where the charges allege conduct such that an adverse finding on one is logically probative in relation to the others. The Chairman may provide guidance on such matters.
- 232.7. It is open to the Disciplinary Tribunal, on the basis of all of the information, regardless of the findings in relation to any, or all, alleged facts or charges to determine that the pathologist is not fit to practise [p 208 DR(2)].
- 232.8. The power noted at paragraph 232.7 is intended to be used only in exceptional circumstances. There may be cases where the evidence is sufficient to establish that the pathologist is unfit to practice but the circumstances prevent the Disciplinary Tribunal from finding the pathologist guilty of the charge. In such circumstances it is not in the public interest for the Home Secretary to continue to recommend the pathologist. The Disciplinary Tribunal has therefore been provided with the power to find the pathologist unfit to practice. In doing so they must be satisfied that, had a correctly worded charge been before them, it could have found him guilty. The Disciplinary Tribunal must describe the nature of the "unfitness" and the basis on which it finds the "charge" proved.
- 232.9. The Home Secretary demands that pathologists registered with the Home Office display the highest standards of professional competence and personal integrity at all times.

¹² *Re H and others (minors) (sexual abuse: standard of proof)* [1996] 1 All ER 1.

- 232.10. This does not mean that registered pathologists must be infallible. Perfection is an unobtainable standard and to demand such a standard would be counter productive. Members of the Disciplinary Tribunal must judge whether the pathologist has maintained the standards that are required of pathologist on the Register.
- 232.11. In doing so they should recall that the Register is the Home Secretary's personal recommendation that a pathologist has the necessary qualifications, expertise and experience to deal with cases of suspicious death. It follows that they must have the character and integrity to act as an expert witness in the most serious criminal cases.
- 232.12. In deciding whether the charges before the Disciplinary Tribunal have been proved, the Chairman should initiate the discussion. After the matter has been discussed each member should express his opinion as to whether the charge has been proved. In this discussion it would be advisable for the Chairman to express his opinion last.
- 232.13. In the event of a tie the Chairman has a casting vote. The Chairman should be very careful in the use of this vote. It would be advisable for the Chairman to ask members to review their positions and explain their reasoning before he decides to use the casting vote.
- 232.14. In coming to a finding on each charge the Disciplinary Tribunal must record its reasoning for the decision. It should also record the vote on the decision. The record of the vote is for the records of the Board and shall not be made public.

SANCTIONS

233. Background/Purpose

- 233.1. The purpose of the Disciplinary Procedures is the protection of the public interest, by the promotion of good practice and by guarding against the risk of prejudicing criminal investigations or proceedings [p 8 and p 11 DR(2)].
- 233.2. The purpose of any sanctions imposed is therefore not normally to be punitive in nature but to meet the aims set out above.

234. Responsibility

- 234.1. Responsibility rests with the Disciplinary Tribunal.

235. Guidance

- 235.1. The Disciplinary Rules allow a range of sanctions to be imposed where the Disciplinary Tribunal finds one, or more, charge proved against the pathologist. These are as follows [p 214 DR(2)].
- To take no action.
 - To order the pathologist to repay or forgo fees.
 - To give advice as to future conduct.
 - To require training and/or assessment.
 - To issue a reprimand.
 - To require the pathologist to be supervised in carrying out his work.
 - To suspend the pathologist from the Register.
 - To strike the pathologist from the Register.
- 235.2. Where a pathologist is not on the Register at the time the complaint or complaints are received and the matter is considered pursuant to paragraph 75 DR(2) the Disciplinary Tribunal should limit their consideration to whether they would, had the pathologist still been on the Register, have imposed the sanction of reprimand, suspension or removal. Where they would have imposed such a sanction the Register, public record and disciplinary record should be modified to reflect this. In other cases no alteration shall be made to those records or the Register.

- 235.3. In determining what sanction should be imposed the Disciplinary Tribunal should consider, amongst others, the following issues.
- The nature of the failure on the part of the pathologist.
 - The consequences of that failure that would have been reasonably foreseeable at the time.
 - The discipline record of the pathologist.
 - Whether the failure appeared to be a consequence of failing to comply with advice or a sanction previously imposed.
 - All of the charges found proven against the pathologist.
 - Whether the failure demonstrated:
 - Inadvertence;
 - Lack of training or experience;
 - Negligence;
 - A disregard for professional standards; or
 - A pattern of failure that demonstrates incompetence and/or negligence.

No Action

- 235.4. The first sanction that can be imposed is one of “no action”. Given the previous consideration by the Disciplinary Committee and its ability to dismiss the case or to reject taking “no action” on a complaint it is likely to be only an exceptional case that would warrant this “sanction”.

Repay or Forgo Fees

- 235.5. The second sanction available is to order the pathologist to repay or forgo fees. This would only be suitable where the complainant had instructed the pathologist and was responsible for payment of fees. Where that condition is satisfied and the complaint is in respect of specific cases where the complainant believes the service provided did not meet the standard that might reasonably have been expected, then it may be appropriate to order this sanction in regard of the specific cases complained of.
- 235.6. This sanction would not be appropriate in other cases, as the Delivery Board has no legitimate means by which to enforce such a sanction.
- 235.7. By itself this sanction does not meet the aims set out above and would therefore normally be imposed in conjunction with another sanction.
- 235.8. Where this sanction is imposed the Disciplinary Tribunal must specify a date by which the pathologist must have complied.

Advice

- 235.9. The third sanction available to the Disciplinary Tribunal is to give advice as to future conduct.
- 235.10. It would normally be appropriate to impose this sanction in the following conditions.
- The charge proved demonstrates a failure by the pathologist that was due to inadvertence or lack of training/experience.
 - The failure was of a relatively minor nature.
 - The Disciplinary Tribunal believes that the provision of advice will be sufficient to ensure the standard of work by the pathologist will be of the expected standard.
 - The pathologist has not been the subject of disciplinary action in the previous five years and has not previously been subject to disciplinary action in relation to a failure of a similar nature.
- 235.11. The Disciplinary Tribunal may, regardless of whether they decide to give advice to the pathologist, give advice to the Delivery Board [p 209 DR(2)]. This will normally be where the matters presented to, or evidence before the Disciplinary Tribunal raise issues that have an impact on forensic pathology that is wider than the conduct of the pathologist. Such advice may include, but not be limited to, the following.
- Advice with regard to an aspect of the practise of forensic pathology.

- Advice relating to the Code of Conduct or Code of Practice.
- Advice relating to the use of forensic pathology within the coronial or criminal justice systems.
- Recommendations for studies to be undertaken, perhaps in conjunction with other bodies, to develop understanding, standards or practices in specific areas.

235.12. The Disciplinary Tribunal may provide advice to the Delivery Board in public or private [p 210 DR(2)].

Training and Assessment

235.13. The fourth sanction available to the Disciplinary Tribunal is to require training and/or assessment of competence.

235.14. It would normally be appropriate to impose this sanction if the following conditions are met.

- The charge proved demonstrates a lack of knowledge or experience.
- That there is no evidence of a pattern of failure or other reason to believe the pathologist is unfit to be on the Register.
- The pathologist has not been subject to disciplinary action in the previous five years.

235.15. The Rules provide two options in relation to this sanction. The first, and probably the normal manner in which it shall be applied, is to require the pathologist to undergo training. There is then the option to require assessment to ensure the training has had the hoped effect.

235.16. There is a second option – the Disciplinary Tribunal can require the pathologist to undergo an assessment of competence. Where this version of the sanction is imposed the Disciplinary Tribunal must also set out what is to happen if the pathologist (a) passes or (b) fails the assessment.

235.17. In this regard it is important to note that an assessment under “exam conditions” is unlikely to provide evidence as to whether the pathologist had met the expected standards.

235.18. The Disciplinary Tribunal may impose this sanction together with a requirement that the pathologist’s work in the area where training is required be supervised, that the pathologist does not carry out any work in that area or that the pathologist be suspended from the Register.

Reprimand

235.19. The fifth sanction available to the Disciplinary Tribunal is the issue of a reprimand.

235.20. It would normally be appropriate to issue a reprimand when the following conditions are met.

- The charge found proved demonstrates a clear failure on the part of the pathologist.
- The failure is of a serious nature or is one of a number of relatively minor errors.
- The Disciplinary Tribunal does not believe that removal from the Register is warranted but wishes to issue a clear warning that any further failure will result in serious sanction.

235.21. The final wording of the reprimand entered in the Register shall be determined by the Disciplinary Committee (see paragraph 216.11). The Disciplinary Tribunal may recommend to the Disciplinary Committee the wording it considers appropriate.

235.22. This sanction may be imposed with a requirement for training and/or assessment, supervision and/or with suspension.

Supervision

- 235.23. The sixth sanction available to the Disciplinary Tribunal is to require the pathologist to be supervised when undertaking his work. Such a requirement may be general, applying to all areas, or limited to a specific field.
- 235.24. Supervision would normally be appropriate where the failure on the part of the pathologist shows a lack of training or expertise and the Disciplinary Tribunal is not content that advice or training by themselves would ensure the standards required are achieved.
- 235.25. It would normally be appropriate to impose this sanction in conjunction with a requirement for training and/or assessment, or the provision of advice. This sanction, by itself, does protect the Criminal Justice System but can only operate as an interim measure.
- 235.26. In most cases the end of the period of supervision shall be determined by the point at which the appropriate training and/or assessment is completed and competence demonstrated. Where a sanction of supervision is imposed and a period for that supervision set the period, and therefore the ending date, should be determined by reference to the date at which the sanction takes effect. This avoids a delay caused by an appeal altering the period of supervision.

Suspension

- 235.27. The seventh sanction available to the Disciplinary Tribunal is suspension from the Register. Such a suspension may be general, applying to all areas, or limited to a specific field.
- 235.28. It would normally be appropriate to impose suspension where the Disciplinary Tribunal has imposed a sanction requiring training and/or assessment and the Disciplinary Tribunal believe that it would present an unacceptable risk to the Criminal Justice System to allow the pathologist to work either generally, or in a specified field, until such time as he has demonstrated his competence.
- 235.29. Where the Disciplinary Tribunal imposes suspension, either generally or specifically, they will normally specify a date (see paragraph 235.31) upon which the suspension shall end. If, by the date specified, the pathologist has completed any required training and/or assessment and, where required, demonstrated his competence to the satisfaction of the Disciplinary Committee, the suspension shall be lifted. If not, the suspension will alter to a limitation on registration in the case of specific suspension (unless the sanction specifies that the limited suspension shall lead to removal from the Register) and a removal from the Register in the case of a general suspension [p 217 DR(2)].
- 235.30. In the event that there is any question or ambiguity in relation to whether the sanction imposed required that, on failure to meet attached conditions, a suspension became (a) a restriction on registration or (b) a removal from the Register; it is to be presumed that the imposed sanction required removal from the Register. This presumption can be rebutted if the pathologist can prove the true nature of the sanction imposed [p 218 DR(2)].
- 235.31. Where a sanction of suspension is imposed and a period for that suspension set the period, and therefore the ending date, should be determined by reference to the date at which the sanction takes effect. This avoids a delay caused by an appeal altering the period of suspension.
- 235.32. If at any date before the date specified for the ending of a suspension imposed under this section, the pathologist has completed any training and/or assessment (in relation to which suspension was imposed) and demonstrated his competence to the satisfaction of the Disciplinary Committee, the suspension may be terminated by the Disciplinary Committee.

Removal

- 235.33. The seventh sanction that can be imposed by the Disciplinary Tribunal is removal from the Register.
- 235.34. It would normally be appropriate to impose this sanction in any of the following circumstances:
- The charge proved shows a standard of conduct or work that poses a risk of prejudicing criminal investigations or proceedings or undermining the integrity of the Register;
 - The charge proved is of a nature that would undermine the pathologist's credibility as an expert witness; or
 - The charge proved is not, in itself, of a standard that would require removal from the Register but taken with previous disciplinary action, or complaints dealt with at the same time, demonstrates that the pathologist is unfit to be on the Register. In this regard there is a presumption that where a charge is proved against a pathologist who has been reprimanded or suspended within the last ten years, the sanction imposed will be removal.

RECORDS

236. Background/Purpose

- 236.1. There must be a record of the Disciplinary Tribunal.

237. Responsibility

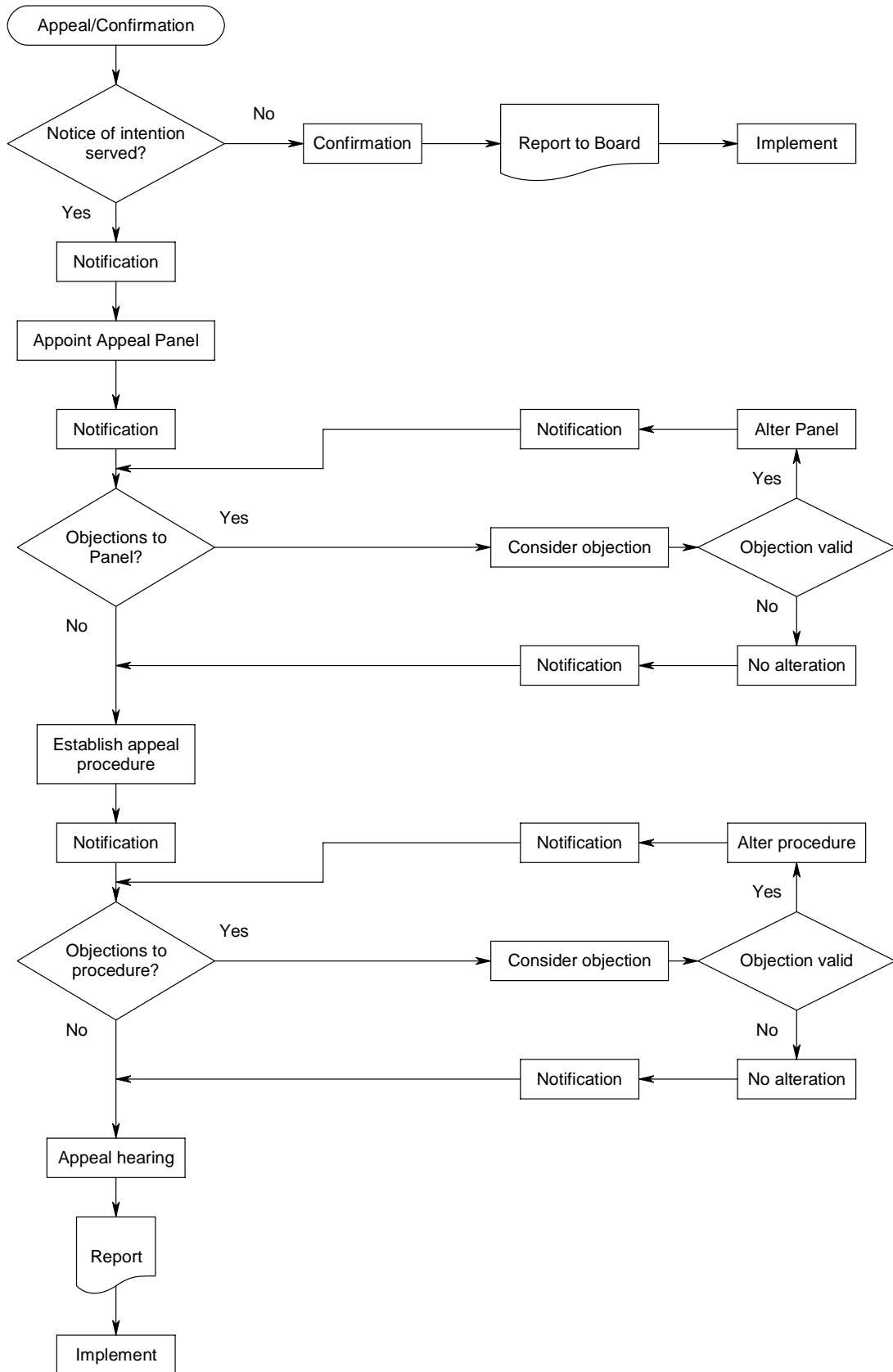
- 237.1. Responsibility rests with the Clerk.

238. Guidance

- 238.1. The Clerk to the Disciplinary Tribunal is responsible for the creation of a record of all meetings [p 232 DR(2)].
- 238.2. In the case of substantive hearings of the evidence in a case the Clerk shall arrange a verbatim recording of the hearing [p 233 DR(2)]. The Clerk may also choose to have a verbatim record prepared of any preliminary hearing.
- 238.3. The Clerk shall hold copies of the record and, subject to the Chairman's right to restrict the record [p 234 DR(2)], make it available to all parties on their application. The Clerk may charge for the production of the verbatim record.
- 238.4. Where the records are edited at the order of the Chairman of the Disciplinary Tribunal the original and edited versions shall be provided to the Chairman and the Home Office [p 235 DR(2)].

PART E – APPEALS PROCEDURE

239. The process to be adopted when establishing an Appeal Panel is set out in the flowchart below.
240. This stage covers the process from the decision which is appealed against to the completion of the appeal process.
241. The flowchart outlines the process. Each decision or action listed in the left-hand side of the flowchart will be dealt with in the subsequent text. In some cases, where actions are taken in parallel other actions will also be dealt with.



NOTIFICATION OF INTENTION TO APPEAL**242. Background/Purpose**

- 242.1. The Disciplinary Rules provide [p 237 DR(2)] that a pathologist may appeal against the finding of a Disciplinary Tribunal, or the sanction imposed. The pathologist also has the right to appeal against a decision by the Disciplinary Committee to remove him from the Register [p 101 and p 107 DR(2)].
- 242.2. The Disciplinary Committee has the right to appeal [p 238 DR(2)] against a sanction imposed if it believes it to be too lenient.
- 242.3. The first stage in mounting an appeal is notification [p 239 DR(2)] to the Chairman of the Delivery Board.

243. Responsibility

- 243.1. Responsibility rests with the person/body wishing to appeal.

244. Guidance

- 244.1. The person/body wishing to appeal (the “appellant”) should serve notice of intention to appeal on the Chairman of the Delivery Board within 28 days of the decision that he/it wishes to appeal [p 239 DR(2)].
- 244.2. Where the Disciplinary Tribunal issues decisions on facts/charges and sanction on different dates the period for lodging the appeal (in relation to all decisions of the Disciplinary Tribunal) shall run from the date of the decision on sanction [p 239 DR(2)].
- 244.3. The decision of a Disciplinary Tribunal is, in relation to the appeal period, to be considered to have been taken on the date the Disciplinary Tribunal pronounce the final decision rather than the date of formal notification by the Delivery Board.
- 244.4. The decision of the Disciplinary Committee, in relation to the appeal period, is to be considered to have been taken on the date of notification of the pathologist. This shall be the date of the letter of notification.
- 244.5. The notification of intention to appeal must specify the information set out below.
 - The body that made the decision against which he wishes to appeal.
 - The charge in relation to which the decision was made.
 - The decision against which he wishes to appeal which shall be:
 - A finding of fact;
 - A finding in relation to a charge; or
 - A sanction imposed.
 - The reason for his appeal against each decision.
- 244.6. At this stage the appellant does not have to provide a fully detailed case for the appeal but must provide sufficient information to allow the other party and the Pathology Council to understand the basis of the appeal.

NOTIFICATION**245. Background/Purpose**

- 245.1. The pathologist and the Disciplinary Committee have the right to appeal. It is essential that both parties are made aware of any appeal by the other.
- 245.2. The appeal is dealt with by the Pathology Council or its Chairman and it/he must therefore be informed of the appeal.

246. Responsibility

- 246.1. Responsibility rests with the Chairman of the Delivery Board.

247. Guidance

- 247.1. On receipt of notification of intention to appeal, the Chairman of the Delivery Board must write to the Chairman of the Pathology Council to notify him of the appeal, including a copy of the notice of intention to appeal.
- 247.2. The Chairman of the Delivery Board must write to the appellant to acknowledge receipt of the notice of intention to appeal.
- 247.3. Where one party (pathologist or Disciplinary Committee) has served notice the Chairman of the Delivery Board shall write to the other party to inform him of the notice of intention to appeal, including a copy of the notice of intention to appeal.
- 247.4. Where both parties appeal, the Chairman of the Delivery Board shall acknowledge both appeals and provide details, including copies of the notices of intention to appeal, to the opposing party for each appeal.

APPOINT APPEAL PANEL

248. Background/Purpose

- 248.1. The Disciplinary Rules require the appointment of a panel to consider the appeal [p 240 DR(2)].

249. Responsibility

- 249.1. Responsibility rests with the Chairman of the Pathology Council.

250. Guidance

- 250.1. The Chairman of the Pathology Council must appoint (subject to paragraph 250.2) a panel of at least three members of the Pathology Council to consider the appeal [p 240 DR(2)].
- 250.2. The Chairman of the Pathology Council has the power [p 241 DR(2)] to appoint persons who are not members of the Pathology Council to an Appeal Panel. This would be appropriate where it would not, within a reasonable time, be possible to convene a panel of members of the Council which would, in the opinion of the Chairman, be considered independent and impartial. It would also be appropriate if it were necessary to ensure the appropriate knowledge and experience were reflected in the Appeal Panel.
- 250.3. Where the Chairman of the Pathology Council is also the Chairman of the Delivery Board and his selection of the Appeal Panel could give rise to questions about the impartiality of the appeal process, the appointment of the Appeal Panel shall be undertaken, or confirmed, by the Home Office Legal Adviser or his nominee [p 240 DR(2)].
- 250.4. The Disciplinary Rules do not set down requirements with respect to lay members and professional members. It is advised that the number of lay members exceeds the number of professional members.
- 250.5. The Chairman of the Pathology Council should nominate one of the members to act as Chairman of the Appeal Panel.
- 250.6. It is advisable to appoint one legally qualified person to the Appeal Panel. It may also be appropriate to nominate this member as Chairman. Where no legally qualified member is nominated the Chairman of the Pathology Council has the authority [p 242 DR(2)], in consultation with Home Office Legal Adviser's Branch, to appoint a legal adviser to assist the Appeal Panel.
- 250.7. No persons meeting the following conditions may be appointed to the Appeal Panel [p 283 DR(2)].
- Members of the Delivery Board or persons who were previously members and involved in the consideration of the complaint [p 283 and p 284 DR(2)].

- Members of the Disciplinary Committee or persons who were previously members and involved in the consideration of the complaint [p 283 and p 284 DR(2)].
- Members of the Disciplinary Tribunal which made the decision subject to appeal [p 283 DR(2)].
- Officials of the Home Office.

250.8. No member may be appointed unless they comply with the conditions set out the Disciplinary Rules [p 286 DR(2)] relating to independence.

250.9. The issues raised above (p 183 et seq. modified as appropriate) in respect of appointment to a Disciplinary Tribunal should be considered when appointing the Appeal Panel.

NOTIFICATION

251. Background/Purpose

- 251.1. The pathologist and the Disciplinary Committee should be advised of the composition of the Appeal Panel.
- 251.2. The Disciplinary Rules do not provide a right to object to membership of the Appeal Panel. However, the Chairman of the Pathology Council may think it appropriate to offer the opportunity to object.

252. Responsibility

- 252.1. Responsibility rests with the Chairman of the Pathology Council.

253. Guidance

- 253.1. The Chairman of the Pathology Council should write to the pathologist and the Secretary of the Disciplinary Committee to notify them of the composition of the Appeal Panel.
- 253.2. In the letter of notification the Chairman may, but is not obliged to, offer the opportunity to object to any member of the Appeal Panel.
- 253.3. Where the Chairman offers the opportunity to object to the Appeal Panel the approach should be based on that for objecting to the composition of a Disciplinary Tribunal as set out from paragraph 197 above.

OBJECTION TO APPEAL PANEL?

254. Background/Purpose

- 254.1. The Disciplinary Rules do not provide a right to object to the Appeal Panel but the Chairman of the Pathology Council may allow such objection.

255. Responsibility

- 255.1. Responsibility rests with the Chairman of the Pathology Council.

256. Guidance

- 256.1. The Chairman of the Pathology Council should, if he has offered the opportunity to object, consider any objection to the composition of the Appeal Panel (made within the time allowed). If the Chairman is satisfied that the objection is justified he shall alter the composition of the Appeal Panel. In cases where the Appeal Panel was appointed, or confirmed, by the Home Office Legal Adviser or his nominee no such alteration may be made without his consent or that of his nominee.
- 256.2. The points raised in relation to consideration of objections to members of a Disciplinary Tribunal are relevant in this consideration.

257. Consequential Actions

- 257.1. The Chairman of the Pathology Council shall write to parties to the appeal to inform them of any alteration to the composition.

- 257.2. The Chairman of the Pathology Council shall write to the member of the Appeal Panel, if any, who is being replaced to explain the matter and thank him for his assistance.

ESTABLISH APPEAL PROCEDURE

258. Background/Purpose

- 258.1. The Disciplinary Rules require the Chairman of the Pathology Council to set down procedures for the appeal [p 245 DR(2)].

259. Responsibility

- 259.1. Responsibility rests with the Chairman of the Pathology Council.

260. Guidance

- 260.1. The Chairman of the Pathology Council should determine the procedure to be followed for the appeal [p 245 DR(2)]. This may include, but is not limited to, the following.
- The timescale for the process.
 - Whether representations shall be written, verbal or both.
 - The dates of the hearings, if any, to be held.
 - The format of any hearing to be held.
- 260.2. The procedure to be adopted may allow for a preliminary consideration of skeleton arguments by the Appeal Panel. Such a hearing may determine whether the appeal should be refused prior to a full hearing.
- 260.3. A model appeal procedure which may be adopted is provided at Annex 2.
- 260.4. Appropriate legal advice shall be obtained with regard to the procedure.

NOTIFICATION

261. Background/Purpose

- 261.1. The parties to the appeal must be informed of the procedure being followed.
- 261.2. The Disciplinary Rules do not provide a right to object to the procedure to be adopted by the Appeal Panel. However, the Chair of the Pathology Council may think it appropriate to offer the opportunity to object.

262. Responsibility

- 262.1. Responsibility rests with the Chairman of the Pathology Council.

263. Guidance

- 263.1. The Chairman of the Pathology Council should write to the pathologist and the Secretary of the Disciplinary Committee, or their representatives if appointed, to notify them of the procedures of the Appeal Panel.
- 263.2. In the letter of notification the Chairman may, but is not obliged to, offer the opportunity to object to the procedures.
- 263.3. Where the Chairman offers the opportunity to object to the procedures he shall specify the date by which the objection must be lodged and the information to be provided in any objection.

OBJECTION TO APPEAL PROCEDURE?

264. Background/Purpose

- 264.1. The Disciplinary Rules do not provide a right to object to the Appeal Panel procedures but the Chairman of the Pathology Council may allow such objection.

265. Responsibility

- 265.1. Responsibility rests with the Chairman of the Pathology Council.

266. Guidance

266.1. The Chairman of the Pathology Council should, if he has offered the opportunity to object, consider any objection to the Appeal Panel procedures received within the period allowed. If the Chairman is satisfied that the objection is justified he shall alter the procedures of the Appeal Panel.

266.2. Appropriate legal advice shall be obtained with regard to the modified procedure.

267. Consequential Actions

267.1. The Chairman of the Pathology Council shall write to parties to the appeal to inform them of any alteration to the procedures.

APPEAL HEARING**268. Background/Purpose**

268.1. To provide parties with the opportunity to present their appeal cases.

269. Responsibility

269.1. Responsibility rests with the Chairman of the Pathology Council and Chairman of the Appeal Panel.

270. Guidance

270.1. The format of the consideration of the appeal shall be as set out in the procedures set by the Chairman of the Pathology Council. This may allow for the matter to be dealt with via submissions or by a full hearing.

Determination

270.2. The Appeal Panel shall determine each ground of appeal against each charge or sanction imposed.

270.3. The Appeal Panel shall render decisions as follows.

- Where the pathologist has appealed against the finding of fact by the Disciplinary Tribunal the Appeal Panel shall determine:
 - Whether the decision of the Disciplinary Tribunal was irrational;
 - If the decision was irrational the Appeal Panel must consider its impact on the finding on any charge based on that fact; and
 - In light of the Appeal Panel's view on the findings on charges, the sanction may need to be considered.
- Where the pathologist has appealed against the overall finding of the Disciplinary Tribunal the Appeal Panel shall determine whether, on the basis of the facts before them (subject to the effect of an appeal against conclusion as to facts) the decision was reasonable.
- Where the pathologist has appealed against the sanction imposed by the Disciplinary Tribunal the Appeal Panel shall determine whether, on the basis of the charges found proven (subject to the effect of an appeal against conclusion as to fact or to finding) the decision was reasonable.
- Where the pathologist appeals against the disciplinary process on the grounds that it was unfair the Appeal Panel shall determine whether the process, taken as a whole, provided the pathologist with a fair hearing of the case.
- Where the pathologist appeals against the decision of the Disciplinary Committee to remove his name from the Register under the criminal convictions process (see paragraph 51) or the non-co-operation procedure (see paragraph 73) the Appeal Panel must determine whether the decision was irrational.
- Where the Disciplinary Committee appeals against a sanction imposed by a Disciplinary Tribunal the Appeal Committee shall decide whether the sanction imposed was manifestly too lenient.

270.4. In making its determination the Appeal Panel must be clear that the primary purpose of the procedures is to protect the public interest by the promotion of good practice and by guarding against the risk of prejudicing criminal investigations or proceedings.

270.5. To ensure the Appeal Panel can protect the public interest it has the power (regardless of its finding in relation to any, or all, appeals) to determine that the finding and/or sanction was an appropriate and justifiable finding or sanction or that the sanction imposed was appropriate and justifiable to protect the public interest. In such circumstances the Appeal Panel can refuse to intervene [p 247 DR(2)].

Powers

270.6. Where the pathologist appeals against the finding of a Disciplinary Tribunal in regard of any, or all charges, and (a) the Appeal Panel finds for the pathologist and (b) reverses a finding of the Disciplinary Tribunal the Appeal Panel has, subject to the provisions regarding non-intervention [p 247 DR(2)], the following powers [p 247 DR(2)].

- Where the Appeal Panel reverses the Disciplinary Tribunal finding on all charges and leaves no charges proven against the pathologist all sanctions shall, subject to the provisions of paragraph 270.5, be withdrawn.
- Where the Appeal Panel reverses the finding in respect on one, or more charges, but leaves one or more charges found proven the Appeal Panel has the power to substitute any sanction it believes appropriate in place of that imposed by the Disciplinary Tribunal. Other than in exceptional circumstances the sanction imposed should be less severe than that imposed by the Disciplinary Tribunal.

270.7. Where the pathologist appeals against the sanction imposed by a Disciplinary Tribunal and the Appeal Panel finds for the pathologist it may substitute any sanction it believes appropriate in place of that imposed by the Disciplinary Tribunal. Other than in exceptional circumstances the sanction imposed should be less severe than that imposed by the Disciplinary Tribunal.

270.8. Where the pathologist appeals against the decision of the Disciplinary Committee to remove his name from the Register under the process relating to criminal convictions and the Appeal Panel finds for the pathologist, it has the power to return the pathologist's name to the Register and order the Disciplinary Committee to deal with the complaint under the normal procedures. In such circumstances the Appeal Panel may choose to specify that the return to the Register shall take effect on the date of the next meeting of the Disciplinary Committee. This will provide the Disciplinary Committee the opportunity to consider interim suspension whilst the matter is referred to a Disciplinary Tribunal.

270.9. Where the pathologist appeals from the decision of the Disciplinary Committee to remove his name from the Register under the non co-operation procedure the Appeal Panel may return the pathologist's name to the Register and order that such disciplinary proceedings as were underway shall be resumed.

270.10. In cases where the pathologist was suspended from the Register prior to the action under the non-co-operation procedure that pathologist will be returned to a suspended status.

270.11. Where the Disciplinary Committee appeals against a sanction imposed by a Disciplinary Tribunal, and the Appeal Panel finds for the Disciplinary Committee it has the power to substitute the sanction it believes to be appropriate in place of that imposed by the Disciplinary Tribunal. Other than in exceptional circumstances the sanction imposed should be more severe than that imposed by the Disciplinary Tribunal.

REPORT

271. Background/Purpose

271.1. The Appeal Panel must report its determination to the Chairman of the Pathology Council.

272. Responsibility

272.1. Responsibility rests with the Chairman of the Appeal Panel.

273. Guidance

273.1. The Chairman of the Appeal Panel shall report the results of the Appeal Panel's consideration to the Chairman of the Pathology Council.

273.2. The report must include the following information.

- For each ground of appeal the Appeal Panel must report:
 - The finding; and
 - The reasoning for that finding.
- The Appeal Panel's determination as to the overall finding and the sanction to be imposed.

274. Consequential Actions

274.1. The Chairman of the Pathology Council must inform the Disciplinary Committee of the outcome of the appeal.

ANNEX 1

General

1. The provisions of this document are subject to the Disciplinary Rules and, in the event of any conflict, the Disciplinary Rules shall prevail.
2. The Appeal Panel shall:
 - a. Have the power to adopt such procedures, rules or conventions as it believes appropriate (see paragraph 273 of the Disciplinary Rules); and
 - b. Exercise powers equivalent to those held by a Disciplinary Tribunal and its Chairman for the management and control of the consideration of the matter before it.
3. Should the Appeal Panel considers that compliance with the Disciplinary Rules, or these provisions, makes it impossible to ensure a fair hearing of the appeal it shall recommend such modifications as it considers appropriate to me. I may choose to make such modifications under the relevant powers within the Disciplinary Rules.

Procedure

4. The appellant pathologist will within [...] days serve on the Appeal Panel, the respondent and the Home Office his full grounds of appeal which must be cross referenced to the proceedings before the Tribunal, and which will stand as his written submission.
5. Within 28 days of receipt of the grounds of appeal the respondent will serve on the Appeal Panel, the appellant and the Home Office its detailed response to the grounds of appeal, which response will stand as the respondent's written submission.
6. Within 14 days of receipt of the response the Home Office will serve upon the Appeal Panel, the appellant and the respondent any written representations it may wish to make.
7. Within 14 days of receipt of the Home Office representations (or within 28 days of receipt of the respondents response if no written representations are made by the Home Office) the appellant will serve on the Appeal Panel, the respondent and the Home Office any written reply he may wish to make to the response and to any representations made by the Home Office.
8. The Appeal Panel will then consider the submissions and the record of proceedings before the Tribunal, including in particular the determination of the Tribunal, and decide whether it wishes to hear oral submissions in relation to any, and if so which, grounds of appeal. That decision will then be communicated to the appellant, the respondent, and the Home Office.
9. If the Appeal Panel decides to receive oral submissions:
 - a. it will indicate whether it would be assisted by skeleton arguments from the appellant and the respondent in relation to those grounds of appeal which are to be the subject of oral submissions. If skeleton arguments are invited they must be sequential, the appellant's being submitted not less than 14 days, and the respondent's not less than 7 days, before the date fixed for the hearing.
 - b. it will invite the parties to agree:
 - i. the time required for oral submissions;
 - ii. that place at which and the time at which oral submissions will be heard;
 - iii. whether, contrary to normal practice, any oral hearing should be in public.

The Appeal Panel will then decide upon those matters taking into account any agreement reached between the parties.

10. At any oral hearing submissions will be received from the appellant, the respondent, the Home Office and the appellant in reply – in that order. The Appeal Panel is likely to lay down time limits for each submission.

11. At the conclusion of any oral hearing the Appeal Panel may or may not indicate its conclusions in relation to the appeal, but its reasons in relation to all grounds of appeal will be supplied to the parties in writing.

END OF DOCUMENT