



Home Office

The Home Secretary's Register of Forensic Pathologists Suitability Rules

01 January 2013 (as amended November 2018)



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Section A: Introduction

1. To ensure that the **register** can be relied on to indicate definitively which forensic pathologists are **suitable for the register**, the Secretary of State for the Home Department, hereon-in referred to as the 'home secretary', has issued these rules to deal with pathologists whose conduct, (including **malpractice** and **misconduct**) professional performance or state of health calls into question whether they should remain on the **register**, when, to do so may compromise the integrity of the **register** or the criminal justice system. Nothing in these rules limits the powers of the **PDB** and the home secretary in relation to enforcing the mandatory requirements of the **register**.
2. These rules are separate from any arrangements for the investigation of complaints by the General Medical Council (**GMC**) and any investigations by a doctor's **responsible officer**. Information gathered in relation to the investigation of complaints using these rules may be shared with the **GMC** and the **responsible officer** in accordance with their statutory responsibilities. The primary consideration of the **GMC** is to protect patient safety, whilst these rules exist to ensure that the integrity of the **register** and the criminal justice system are protected. These rules allow for **sanctions** against a forensic pathologist on the **register** even if a **pathologist** is deemed fit to practice by the **GMC**.
3. Time periods and cross references to other rules are underlined in bold and in red. Words in these rules, which are defined in **section C** and **section D**, and used in that context, are highlighted in bold and black.
4. The home secretary may issue guidance to support the operation of these rules and such guidance may be placed after the end of these rules as appendices but shall not form part of these rules. Such guidance shall come into force on the date of issue or any later date specified by the home secretary.
5. These rules come into force on the **commencement date** and shall apply to any complaint received on or after that date regardless of when the incident complained of occurred. Nothing in these rules will affect the statutory responsibilities of the **responsible officer** in the discharge of his duties to the **GMC**.
6. Where these rules are modified by the home secretary, the new version of the rules shall, subject to the right of the home secretary to implement such transitional arrangements as he deems appropriate, take effect on the date specified by the home secretary. The modified rules, subject to the right to implement transitional arrangements and the provisions of **Rule 6**, shall apply to all complaints received

after they become effective and all complaints received before they become active where no final determination has been reached.

7. Where a complaint against a **pathologist** was received prior to the introduction of modified **procedures** but no final determination reached by the date the modified **procedures** become effective and the **pathologist** believes the conditions set out below are met he may ask the **PDB chair** to act to modify the procedures in use in his case to ensure a fair hearing of the matter. The conditions noted above are:

- 7.1 The modified procedures lead to a significant difference in the consideration of the complaint against the **pathologist**;
- 7.2 The difference in the consideration of the complaint is such as to have a serious and adverse impact on the **pathologist**; and
- 7.3 As a consequence, the **pathologist** cannot achieve a fair hearing under the modified procedures.

Section B: Key Principles

8. The application of these rules shall be governed at all times by the following principles:

Overriding requirement

- 8.1 The overriding requirement is to protect the public interest by ensuring that the **register** continues to identify only those forensic pathologists of sufficient skill, experience, judgement, integrity and credibility who retain the home secretary's confidence as being **suitable for the register**.

Other factors to consider

- 8.2 The home secretary demands the highest standard of competence and integrity for members of the **register** whilst recognising that infallibility is not expected but that ongoing credibility as an expert witness is essential.
- 8.3 The emphasis will be on the protection of the public by the promotion of good practice and by guarding against the risk of prejudicing criminal investigations or proceedings. As many complaints as possible (subject to the overriding requirement to protect the public interest), will be handled through advice, warnings, training or similar measures as agreed with the **responsible officer**.
- 8.4 Where it is clear from the outset that a complaint is not one of such a nature as to call in to question the ongoing or future **suitability for the register** of the **pathologist**, and after consultation with the **responsible officer**, the matter (after due investigation) may be (with the agreement of the **pathologist**) dealt with summarily by the **secretary** who will have the discretion to dispose of the matter without referral to the **review committee** of the **PDB**, referred to from hereafter as 'the **committee**'. If at any time during this process, the **pathologist** objects to the **secretary's** handling of the complaint or subsequent disposal of the matter, the **pathologist** may request its referral to the **committee** in accordance with these rules.
- 8.5 Action against a **pathologist** under these rules will be that judged most likely to serve the public interest and, where appropriate, to secure the **pathologist's** ongoing and future **suitability for the register**.

- 8.6 In considering any allegation against a **pathologist**, **institutions** will aim to establish whether the **pathologist** is **suitable for the register**, and, if not, in the light of any relevant mitigating factors, to take the action necessary in the interests of the public and, where not in conflict with the public interest, of the **pathologist**.
- 8.7 The **institutions** will have regard to (but not be limited to) the following factors when deciding whether to take action in relation to the **pathologist** and if so what action or **sanction** to take, and after due consultation with the **responsible officer**:
- 8.7.1 The gravity of the matter;
 - 8.7.2 Whether more than one incident is involved;
 - 8.7.3 The extent of the present risk to others or to the risk of prejudicing criminal investigations or proceedings;
 - 8.7.4 Whether the **pathologist** acted deliberately, recklessly, accidentally or in bad faith;
 - 8.7.5 Whether the failure stems from inadvertence, lack of training or experience; negligence or incompetence;
 - 8.7.6 Whether the **pathologist** neglected or disregarded his professional responsibilities;
 - 8.7.7 Whether the **private record**, taken together with the complaint (or complaints) under consideration, suggest a pattern that amounts to **misconduct** or malpractice or other reason to suggest **unsuitability for the register**;
 - 8.7.8 Whether the **pathologist** failed to comply with advice or guidance issued by the **PDB**; the **responsible officer**; any of its committees or a person or body acting on its or their behalf; the Forensic Science Regulator or the **GMC**;
 - 8.7.9 Whether there is evidence that a serious health problem may be affecting the **pathologist's** behaviour or professional performance;
 - 8.7.10 The current admission criteria to be on the **register**; and
 - 8.7.11 The **interim measures** if any proposed by the **pathologist**.

Procedural fairness

- 8.8 The rules, procedures, practices, policies and case law relating to other regulatory regimes (such as the **GMC**) and the case law in relation to professional negligence are not to be incorporated in any way into the **procedures**.
- 8.9 All processes must be fair, objective, transparent and free from discrimination.
- 8.10 The **procedures** will be subject to the rules of natural justice. For the avoidance of doubt the home secretary does not accept that Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is applicable to the **register**.
- 8.11 All complaints will be handled and disposed of as promptly as reasonably practical.
- 8.12 No individual may adjudicate at more than one stage of a case. However, this does not prevent the **secretary** carrying out their other administrative and procedural duties in relation to a case.
- 8.13 A **pathologist** should be permitted an adjournment if he has not had a reasonable opportunity to consider any of the allegations or charges under consideration.

Duty to co-operate

- 8.14 The **pathologist** is under a duty to co-operate with those given functions in relation to him under these rules and to comply with the requirements of these rules and with any **sanction**.

Legal representation

- 8.15 A **pathologist** answering an allegation will have the right to be legally represented, the right to be accompanied at a hearing or personal appearance by a friend, relative or colleague, and the right not to attend a hearing or personal appearance and to send a legal representative in his place.
- 8.16 The actions and omissions of the **pathologist's** representative will be attributed to the **pathologist**.

Interrelationship to third party proceedings

- 8.17 The **procedures** will operate separately from any other proceedings in which the same, or similar, facts or issues are being considered by a separate body (for instance the **GMC** or the **responsible officer**). However, the **responsible officer** will direct the **secretary** to investigate the case for them and also the same **examiner** will be used (person agreed between them) but that the **responsible officer** will consider the outcome of the investigation separately and come to their own conclusion related to their separate statutory role.
- 8.18 Investigations may be co-ordinated with other bodies in relation to disciplinary action.
- 8.19 Consideration of a complaint may only in highly exceptional circumstances be delayed allowing completion of proceedings based on the same or similar matter by a separate body.
- 8.20 Where action is being taken against a **pathologist** by the **GMC**, the **committee** shall not normally suspend action on a complaint. Where the **GMC's** action is expected to be completed imminently and is reasonably likely to result in erasure from the medical register, action by the **committee** may be suspended on the grounds that further action may be unnecessary.
- 8.20.1 The deliberations of the **GMC** (save in relation to erasure from the **medical register** or restriction on registration) do not determine the actions of the **institutions**. The High Court in the case of R (on the application of Dr Paula Anastasia Lannas) v Secretary of State for the Home Department [2003] EWHC 3142 (Admin) said "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."
- 8.21 Disciplinary action against a **pathologist** will be suspended if the matter that is the subject of the complaint has led to the criminal prosecution of the **pathologist** or any other person and would interfere with that prosecution or would interfere with any criminal prosecution (save that the **PDB chair** will at

all times be able to suspend the **pathologist** from the **register**). The action will be re-instituted when the risk of impact on the criminal case has ended.

- 8.22 Where any person with functions under these rules is considering a complaint resulting from (or in any way dealing with) the conviction of a **pathologist** in any criminal court, the verdict of (and, if relevant, the sentence imposed by) that court may not be challenged in any way.
- 8.23 Where any person with functions under these rules is considering a complaint arising from (or in any way dealing with) a finding, action or **sanction** by the **GMC**, the Royal College of Pathologists (or any court dealing with issues arising from such a finding etc) the finding of (and, if relevant, any sanction imposed) the **GMC**, Royal College of Pathologists and/or court shall not be challenged in any way.

Notifications, deadlines and extensions

- 8.24 Where a response is requested or required from the **pathologist** and the **pathologist** is not able to provide a response by the given deadline due to (a) being away from their normal location; (b) illness or (c) for some other reason, then the **examiner, secretary, PDB chair** or the **institutions** may extend the deadline. In cases where an action has already been taken without the response of the **pathologist** the body involved may choose to reconsider that action. In all cases it shall be for the **pathologist** to prove the fact it was not possible to respond within the period given.
- 8.25 Where a notification deadline relates to the **pathologist** or a response is requested or required from the **pathologist** the **examiner, secretary, PDB chair** or the **institutions** as appropriate to the particular response/notification may, at their discretion, extend the deadline. A request for an extension of time must be submitted at least **five days** prior to the deadline in relation to which an extension is being sought. Only in the most exceptional circumstances will a deadline be extended to allow a response/notification to be submitted less than five days before the meeting at which it is to be considered. In any case where a response/notification is not received by the deadline, or where it has been extended under this section, by the new deadline, it shall be determined that no response/notification was received.
- 8.26 Where at any point in the disciplinary process a response is requested from the **pathologist** or notification required and a deadline set by which the response/notification must be provided the deadline shall, unless an alternative is specified in writing, expire at **4pm** on the date given.

- 8.27 As regards correspondence with the **pathologist**, proof of delivery by recorded post (or other similar method) shall be conclusive proof of notification, service etc. The address used shall be that given on the **register**, unless the **pathologist** notifies the **secretary** that a different address should be used. In cases where the **pathologist** has nominated someone to represent them, the **pathologist** may nominate this person to receive all letters and enclosures in connection with his case.
- 8.28 Where a party agrees to the use of electronic forms of delivery (including fax and e-mail) these may be used for notification, service etc. The fax number or e-mail address employed shall be that provided by the party.
- 8.29 Where any party wishes to make representations, submissions or in any other way raise matters before the **institutions** the material, of whatever form, to be presented shall be provided not less than **five days** prior to the meeting at which it is to be considered. Where this requirement is not met it shall be determined that no material was received or submitted.

Costs

- 8.30 Save as provided for elsewhere in the rules, the **institutions** shall have no power to award costs.
- 8.31 Costs associated with witnesses shall normally be met by the party instructing them.
- 8.32 An **institution** may order the payment by the **PDB**, of reasonable expenses and/or fees of witnesses who give evidence, whether oral or written if it believes it is necessary to do so to ensure a fair hearing of the matter.
- 8.33 Where the conditions set out below are met, an **institution** may recommend to the home secretary that an ex-gratia payment be made to the pathologist to assist with reasonable legal costs associated with the representation before an institution. The conditions applying to this paragraph are:
- 8.33.1 No charge shall have been found proved against the **pathologist**;
- 8.33.2 No finding that the **pathologist's suitability for the register** has been brought into question shall have been made; and
- 8.33.3 The relevant **institution** shall be satisfied that the proceedings were not caused, or prolonged, by any act or omission of the **pathologist** or his representatives.

- 8.34 The home secretary considers that it is the responsibility of each member of the **register** (either alone or in collaboration with their employer or group practice) to insure themselves against any loss of income arising from any suspension from the **register**.

Section C: Definitions and Interpretations

Definitions

9. In these rules, the following definitions will be used (unless the circumstances make clear that this is not intended):

Adjudicator	The appeal adjudicator appointed to hear an appeal under these rules and who shall be legally qualified and who shall not be a Home Office official or employee, a member of the PDB , the committee , the RTC , the pathologist's responsible officer nor have been a member of the tribunal .
Assessor	A professional member who is designated by the PDB chair or secretary to assess the competence of a pathologist and who may be the PDB's independent responsible officer and who must not be a member of the committee or tribunal .
Code of Conduct	The code of conduct issued under the title 'Good Medical Practice in Forensic Pathology' and any other documents in force at the time of the incident and issued by or on behalf of the home secretary or the PDB either declared to constitute a code of conduct that sets out standards of conduct required of registered forensic pathologists or having a similar purpose to a code of conduct.
Code of Practice	'The Code of Practice and Performance Standards for Forensic Pathology in England, Wales and Northern Ireland' issued by or on behalf of the home secretary and any document in force at the time of the incident either declared by or on behalf of the home secretary or the PDB to constitute a code of practice or having a similar purpose.
Commencement Date	The date on which the current rules commence.
Committee, the	The Review Committee of the PDB .

**Criminal Conviction
Procedure**

This is set out in **section F** at **Rules 78 – 79**.

Designated Parties

- Chief Officers of **police**
- The National Police Chiefs' Council's lead for forensic pathology
- H.M. Coroners
- The Chief Coroner
- All persons on the **register**
- All rota coordinators
- The Director of Public Prosecutions
- The Attorney General of England and Wales
- The **employer**
- The **responsible officer**
- The Criminal Cases Review Commission
- The Independent Office for Police Conduct
- The **GMC**
- The **PDB's** independent **responsible officer**
- Any other person or organisation that the **secretary** believes to be necessary to notify to protect the integrity of the criminal justice system.

Employer

References to an employer within the **procedures** refer to cases where a **pathologist** provides services as a forensic pathologist as part of his employment. In these cases, the organisation for which he works will be considered his **employer** regardless of its legal position. Where a **pathologist** provides services direct to the police or coroners he shall be considered not to have an **employer**.

Examiner

A person appointed by the **secretary** to examine a complaint. This could be the **secretary** in person.

Group Practice

All Home Office registered forensic pathologists are required to join one of the six forensic pathology group practice areas, as listed on the GOV.UK website [here](#) and stipulated in 'The process and criteria for recommendation for admission to the Home Secretary's Register of Forensic Pathologists'.

GMC

The General Medical Council

Institution	Any of the committee , the tribunal , the tribunal chair and the adjudicator .
Interim Measures	A measure either agreed by the pathologist or imposed on the pathologist by the secretary to secure the integrity of the Register and the criminal justice system.
Key Principles	The principles set out in section B of these rules.
Lay Member	<p>A person who is not, nor has been:</p> <ul style="list-style-type: none">• A forensic pathologist in the UK or elsewhere; or• A person licensed to practise as a medical practitioner in the UK or elsewhere. <p>Their function shall be to represent the public interest and to ensure that the discussion does not turn inward and become exclusively concerned with professional and technical matters and focussed on purely professional interests.</p>
Legally Qualified	Means a person who is or has at some time qualified to practise as a solicitor or barrister within England & Wales or in positions equivalent to solicitor or barrister in Scotland or Northern Ireland.
Local Parties	<p>In relation to the geographical area in which the pathologist is or has been working:</p> <ul style="list-style-type: none">• HM Coroners• Chief officers of police• Crown Prosecution Service• His employer• The rota coordinator for his group practice• The other members of his group practice <p>The responsible officer.</p>
Malpractice	Breach of the Code of Practice .
Medical Register	The GMC List of Registered Medical Practitioners.
Misconduct	Breach of the Code of Conduct or such other behaviour that brings the pathologist's suitability for the register into question.

Non-Cooperation Procedure Pathologist	<p>The procedure set out in <u>section J</u>.</p> <p>The forensic pathologist against whom a complaint has been made.</p>
PDB	<p>The Pathology Delivery Board</p>
PDB Chair	<p>This shall be the chair of the PDB unless, for any reason, he is not able to undertake the duties as such. In this case the home secretary shall nominate a person to act in this capacity with regard to the procedures.</p>
Police	<p>References to the police, and chief officers of police, shall be taken to refer to the following bodies and the persons in charge of them:</p> <ul style="list-style-type: none">• The 43 territorial police forces in England and Wales• The National Police Chief's Council of England, Wales and Northern Ireland• The British Transport Police• Ministry of Defence Police• The Civil Nuclear Constabulary• The National Crime Agency• Service Police
Private Advice	<p>Written advice by the committee to the pathologist on his conduct or professional practice which shall not form part of the public record but which shall form part of the private record.</p>
Private Interview	<p>An interview with the pathologist to discuss the private advice given by the committee.</p>

Private Record

Records of complaints and/or disciplinary action against a pathologist (whether or not currently on the **register**) held by the **PDB**, the Home Office or the **GMC** which are available to, and may be used by, the **institutions** when considering a complaint against a **pathologist**. Ideally it should identify:

- The nature of the complaint.
- The finding in relation to the complaint.
- The sanction imposed or other determination of the matter.
- Whether the **pathologist** is prohibited from applying for registration.

The **private record** may contain material held by the **PDB's** predecessor and by the Scientific Standards Committee. Material in the **private record** is retained indefinitely, because of potential allegations of miscarriage of justice.

Procedures

The rules and any guidance issued hereunder.

Professional Member

A person who is now, or has at some time, been a forensic pathologist on the **register** (and who must not have been removed from the **register** as the result of disciplinary action nor have resigned during the currency of a disciplinary investigation) or who has held a similar position outside of England and Wales.

Public Record

Information which will be disclosed to the public which shall include any **sanction** once the period for appeal in relation to the **sanction** has lapsed or any appeal has been concluded and ideally should indicate:

- The nature of the complaint.
- The finding in relation to the complaint.
- The **sanction** imposed or other determination of the matter.
- Whether the **pathologist** is prohibited from applying for registration.

The **public record** may contain material held by the **PDB's** predecessor and by the Scientific Standards Committee. Material in the **public record** is retained indefinitely, because of allegations of miscarriage of justice.

Register	The Home Secretary's Register of Forensic Pathologists also known as the Home Office Register of Forensic Pathologists.
Responsible Officer	The responsible officer for the pathologist in accordance with the Medical Profession (Responsible Officer) Regulations 2010 and Medical Profession (Responsible Officer) (Amendment) Regulations, 2013 (as may be amended or varied from time to time) or where no such person has been appointed for the pathologist , the PDB's independent responsible officer .
RTC	The Registration and Training Committee of the PDB .
Sanction/s	Any of the following as defined in <u>section D</u> : <ul style="list-style-type: none">• Assessment Order• Fees Order• Health Order• Public Advice• Supervision Order• Suspension Order• Training Order• Removal• Reprimand• Restriction Order
Secretary	The secretary to the PDB . If, for any reason, he is not able to undertake the duties as such the PDB chair or home secretary shall nominate a person to act in this capacity with regard to the procedures .

Suitable for the register	A pathologist shall be regarded for the purposes of these Rules as suitable for the register if there are no matters concerning his conduct (including malpractice or misconduct), his professional performance, or his state of (physical or mental) health which (when considered together) make him unsuitable to be or remain personally recommended by the home secretary as a person of sufficient qualification skill and experience to offer expert and credible assistance to coroners, police and courts in cases of violent or suspicious death. The phrases “suitability for the register ” and “unsuitable for the register ” shall be construed accordingly.
Tribunal	A suitability tribunal of the PDB .
Tribunal Chair	The chair of the suitability tribunal .
Tribunal Clerk	A person or organisation appointed by the PDB chair to clerk a suitability tribunal, who may not be: <ul style="list-style-type: none">• The secretary,• A member of the register,• The examiner,• A member of the committee,• A member of the RTC or a member of the PDB The responsible officer

Interpretations

10. References to one gender shall be deemed to include references to the other genders.
11. Reference within the **procedures** to criminal courts shall be taken to include any court in the United Kingdom or elsewhere which has jurisdiction over matters which (a) are considered criminal within that jurisdiction or (b) would be considered to be a criminal matter if dealt with in England and Wales. In this regard a court-martial, whether related to the armed forces of the United Kingdom or not, shall be considered to be a criminal court.
12. Reference within the **procedures** to a criminal offence shall be taken to include any offence contrary to the criminal or military law of the country where prosecution occurred.

13. Where the **procedures** refer to any act of parliament or statutory instrument the reference shall be taken to refer to the act or instrument as modified by any subsequent legislation or, if repealed, to any subsequent act or Instrument dealing with the same subject.
14. Where the **procedures** refer to any person or body the reference shall be taken to include any person or body which subsequently takes responsibility for the relevant matters.
15. Where in the **procedures** a period is specified by a number of days the following provisions shall apply to the implementation of the period – (unless an alternative is specified in writing):
 - 15.1 The period shall include all calendar days including weekends and public holidays.
 - 15.2 That every day shall end at 4pm.
 - 15.3 Where the period expires on weekend or public holiday the period shall be extended to end at 10am on the first working day after the weekend or public holiday.

Section D: Sanctions

Delay in implementation of sanctions

16. No **sanction** determined by the **committee**, the **tribunal** or the **PDB chair** (under the **criminal convictions procedure**) shall be implemented:

Automatic suspension

17.

- 17.1 In the event that the **committee** refers a complaint against the **pathologist** to the **tribunal** the **pathologist** will automatically be suspended from the **register** until the proceedings are completed. This automatic suspension will commence **14 days** after the **pathologist** is sent notification of the referral.
- 17.2 In the event that the **GMC** suspends the **pathologist** from its medical register the **pathologist** shall automatically be suspended from the **register** with immediate effect for the same period as the **GMC's** suspension.
18. Where the **committee**, **tribunal** or **PDB chair** (under the **criminal conviction procedure**) imposes **removal** the **pathologist** shall be suspended from the **register** until the period for lodging an appeal has expired and no appeal lodged or, where an appeal is lodged, pending the outcome of the appeal. There is no mechanism for lifting an automatic suspension under this **Rule 18**.
19. In the event of an automatic suspension under **Rule 17.1** the **pathologist** may apply in writing to the **PDB chair** within **seven days** of being notified of the automatic suspension for it to be annulled.
20. An application under **Rule 19** would need to be justified on extraordinary grounds given that the **committee** would have formed a view (after giving the **pathologist** a chance to make written representations) that the **pathologist's** conduct was sufficient to warrant **removal**.
21. There shall be no appeal from the decision of the **PDB chair** on an application under **Rule 19** to annul an automatic suspension under **Rule 17**.
22. An application under **Rule 19** must set out the alternative measures the **pathologist** proposes to secure the integrity of the criminal justice system, and if such measures have not been proposed before by the **pathologist**, an explanation why they were not proposed at an earlier stage.

23. In determining an application under **Rule 19** whether to annul an automatic suspension under **Rule 17** the **PDB chair** will have regard to:
- 23.1 The **examiner's** report to the **committee**;
 - 23.2 The **pathologist's** written responses to the **committee**;
 - 23.3 The **private record**;
 - 23.4 The **committee's** reasons for finding that the **pathologist's suitability for the register was** questioned;
 - 23.5 Any **interim measures** proposed by the **pathologist**;
 - 23.6 Any **interim measures** imposed by the **secretary**;
 - 23.7 The risk to the integrity of the criminal justice system of a pathologist continuing to be instructed to conduct forensic post mortem examinations when there is a significant risk that they may be removed from the **register**;
 - 23.8 The effect of suspension as set out in **Rule 26** (and in particular the ongoing ability of the **pathologist** to give evidence in court notwithstanding the suspension);
 - 23.9 The **key principles**; and
 - 23.10 Any other material he considers relevant
24. If, following an application under **Rule 19**, the **PDB chair** does annul an automatic suspension under **Rule 17** the **PDB chair** must make an order imposing any measures he sees fit to secure the integrity of the criminal justice system pending the outcome of the referral to the **tribunal** and this may include (but is not limited to) any measure equivalent to any **sanction** (other than **removal** or a **suspension order**) or equivalent to an **interim measure**. There is no right of appeal against any measure imposed by the **PDB chair** as a replacement for automatic suspension.
25. If, following an application under **Rule 19**, the **PDB chair** does annul an automatic suspension under **Rule 17** he must annotate the public version of the **register** identifying the measures imposed by him as a replacement for automatic suspension.

Effect of suspension

26. If a **pathologist** is suspended from the **register** in whatever circumstances and whether under these rules or not:
- 26.1 The **pathologist** must not hold themselves out as a current member of the **register**.
 - 26.2 The public version of the **register** must be annotated to show that the person is suspended and on what basis.
 - 26.3 The **pathologist** must not appear on any rota of any **group practice** to perform post mortem examinations for the criminal justice system.
 - 26.4 The Crown Prosecution Service, all chief officers of **police** and HM coroners, the chief coroner and the **responsible officer** must be informed by the **secretary** of the **suspension** immediately.
 - 26.5 The **pathologist** must in writing inform all prosecution teams in current criminal investigations or proceedings in which he is involved (whether advising the Crown or the defence) that he has been suspended.
 - 26.6 The **pathologist** may give evidence in ongoing criminal proceedings providing he informs both the prosecution and defence that he is currently suspended from the **register**.
 - 26.7 The **pathologist** must in writing inform any person seeking to instruct him during the period of suspension on behalf of the defence that he is currently suspended from the **register**.
 - 26.8 The **pathologist** must in writing inform any coroner seeking to instruct him during the period of suspension on routine coronial work that he is currently suspended from the **register**.
 - 26.9 The **pathologist** must disclose all written notification under **Rules 26.5, 26.7** and **26.8** to the **secretary** upon request.

Particular sanctions in alphabetical order:

Assessment Order

27. An **assessment order** is an order that the **pathologist's** competence is assessed by the **assessor** and that if the **pathologist** fails the assessment the **pathologist** shall be automatically suspended from the **register**, if not already suspended.
28. If the **pathologist** fails the assessment of competence the matter shall be immediately referred to the **committee** which shall invite the **pathologist** on **21 days'** notice to make representations to it or to make a personal appearance before it to explain why he should not be removed from the **register** or what other measures may be taken to ensure his **suitability for the register**. The **committee** may then decide to impose any of the **sanctions** (including **removal**) alone or in combination.
29. If the **pathologist** passes the assessment of competence the **committee** shall meet within **35 days** to consider lifting any **training order**, **supervision order**, **suspension order** or **restriction order**.
30. If the **pathologist** neither passes nor fails the assessment of competence the **committee** shall meet within **35 days** to consider the **assessor's** report and impose any further **sanctions** (other than **removal**) it considers necessary to secure the **pathologist's suitability for the register**.

Fees Order

31. A **fees order** is an order that the **pathologist** repay (by a specified date) or forego his fees in relation to a particular case where the **committee** or **tribunal** find that his service did not meet the standard that might reasonably have been expected. The **fees order** would normally be imposed in combination with another **sanction**.

Health Order

32. A **health order** is an order that the **pathologist's** health be assessed by an independent medical examiner at the cost of the **PDB** and that the **committee** consider the **pathologist's suitability for the register** in the light of the report and any other medical evidence provided by the **pathologist**.

Public Advice

33. **Public advice** is written advice to the **pathologist** on his conduct or professional practice which shall form part of the **public record**.
34. **Public advice** may involve requiring an apology to be given to another person.
35. It would normally be appropriate to give **public advice** in the following circumstances:

- 35.1 The charge proved demonstrates a failure by the pathologist that was due to inadvertence or lack of training/experience, and
- 35.2 The failure was of a relatively minor nature, and
- 35.3 The institution believes that the provision of advice will be sufficient to ensure that the standard of work by the pathologist will be of the expected standard; and
- 35.4 The pathologist has not been the subject of disciplinary action in the previous five years and has not previously been the subject of disciplinary action in relation to a failure of a similar nature.

Removal

- 36. **Removal** means the **removal** of the **pathologist** from the **register** by one of the **institutions** or by the **PDB chair** under the **criminal conviction procedure**.
- 37. **Removal** automatically acts as a permanent prohibition from re-applying for membership of the **register**.
- 38. Where a **removal order** is being considered by the **tribunal** or the **adjudicator**, **removal** would be the appropriate **sanction** in any of the following circumstances:
 - 38.1 The charge proven shows a standard of conduct or work that poses a risk of prejudicing criminal investigations or proceedings or undermining the integrity of the **register**;
 - 38.2 The charge proved is of a nature that would undermine the **pathologist's** credibility as an expert witness; or
 - 38.3 The charge proved, whilst not of itself sufficient to warrant **removal**, when taken with previous disciplinary action or complaints demonstrates that the **pathologist** was not **suitable for the register**. In this regard, there is a presumption that if the **pathologist** has been the subject of a **reprimand** or a **suspension order** (or its equivalent) within the previous **ten years**, the **sanction** imposed will be **removal**.

Reprimand

- 39. A **reprimand** is a written warning to the **pathologist** that any future misconduct or malpractice may result in his **removal**.
- 40. A **reprimand** would normally be appropriate if:
 - 40.1 The finding shows a clear failure on the part of the **pathologist**;

- 40.2 The failure is serious or one of a number of relatively minor errors; and
- 40.3 The **institution** does not believe that **removal** is warranted but wishes to issue a clear warning that any further failure is likely to lead to **removal**.
41. A **reprimand** may be imposed with all **sanctions** other than **removal**.
42. The final wording of a **reprimand** will be settled by the **committee**, irrespective of which **institution** made the **sanction**.

Restriction Order

43. A **restriction order** is an order that the **pathologist** refrain from undertaking a particular area of forensic pathology for the criminal justice system and that if the **pathologist** does not satisfy the **committee** of his competence in the restricted area within a specified period the **pathologist** will be subject to **removal**.
44. If a **restriction order** is made an assessment order must be made.
45. A **restriction order** would normally be appropriate where:
- 45.1 The **pathologist's** failure shows a lack of training or experience;
- 45.2 The **institution** is not content that **public advice**, a **training order** and **supervision order** by themselves would ensure the standards required are achieved sufficiently to protect the criminal justice system;
- 45.3 Valuable service to the criminal justice system could be given by the **pathologist** in areas where his competence was not questioned; and
- 45.4 A **suspension order** was inappropriate
46. If the **pathologist** fails to satisfy the **committee** of his competence by the time set out in the **restriction order** the matter shall be immediately referred to the **committee** who shall invite the **pathologist** on **21 days'** notice to make representations to it or to make a personal appearance before it to explain why he should not be removed from the **register** or what other measures may be taken to ensure his **suitability for the register**. The **committee** may then decide to impose any of the **sanctions** (including **removal**) alone or in combination.
47. Restrictions may include but not limited to:
- 47.1 Not conducting forensic post mortem examinations in relation to children; and/or,

47.2 Not conducting forensic post mortem examinations where sexual assault is alleged.

Supervision Order

48. A **supervision order** is an order that the ongoing work of the **pathologist** for the criminal justice system shall be supervised by the **assessor** or by another named person and that if the **pathologist** does not satisfy the **committee** of his competence within a specified period the **pathologist** will be subject to **removal**.
49. The cost of such supervision shall not be at the cost of the **PDB**.
50. If a **supervision order** is made an **assessment order** must also be made.
51. A **supervision order** would normally be appropriate where the **pathologist's** failure shows a lack of training or experience and the **institution** is not content that **public advice** or **training** by themselves would ensure the standards required are achieved.
52. If the **pathologist** fails to satisfy the **committee** of his competence by the time set out in the **supervision order** the matter shall be immediately referred to the **committee** which shall invite the **pathologist** on **21 days'** notice to make representations to it or to make a personal appearance before it to explain why he should not be removed from the **register** or what other measures may be taken to ensure his **suitability for the register**. The **committee** may then decide to impose any of the **sanctions** (including **removal**) alone or in combination.

Suspension Order

53. A **suspension order** is an order that the **pathologist** is suspended from the **register** and setting out the requirements necessary for the suspension to be ended and specifying the date (which may be determined by reference to the start of the suspension) by which the **suspension** must end.
54. Where the date for the ending of **suspension** is reached and in the opinion of the **committee** (after giving the **pathologist 21 days'** notice to make written representations or if he prefers a personal appearance before the **committee**) the requirements set have not been met, the **suspension** shall alter to a **removal** without the matter being referred to the **tribunal**.
55. A **suspension order** would be appropriate where the **institution** believes that it would present an unacceptable risk to the criminal justice system to allow the **pathologist** to practise whilst remedial action was undertaken to secure his suitability for the **register**.

56. A **suspension order** would ordinarily be made in conjunction with at least one of a **training order**, a **supervision order**, a **health order** or an **assessment order**.

Training Order

57. A **training order** is an order that the **pathologist** attend specified training courses or provision within a specified period at his own cost or the cost of his **group practice** or **employer**.
58. A **training order** would normally only be appropriate if:
- 58.1 The finding demonstrated a lack of knowledge or experience;
 - 58.2 There is no evidence of a pattern of failure or other reason to believe the **pathologist** is **unsuitable for the register**; and
 - 58.3 The **pathologist** has not been subject to disciplinary action in the previous five years.
59. If a **training order** is made an **assessment order** must also be made to ensure that the training has had a remedial effect on the **pathologist's** practice.
60. A **training order** will usually be made in combination with either a **suspension order** or a **restriction order**.

Section E: The Home Secretary

Absolute unfettered discretion

61. The **register** is the home secretary's personal recommendation of a forensic pathologist. The home secretary therefore determines, in their absolute discretion, who shall be placed, or remain, on the **register**. It is therefore essential that all pathologists on the **register** maintain the confidence of the home secretary.
62. The home secretary (at their own instance or at the recommendation of the **PDB chair**) may suspend or remove a pathologist from the **register** if believed to be appropriate to do so to uphold public confidence in the **register** or the criminal justice system or to protect the integrity of the **register** or the criminal justice system. There is no right of appeal against such suspension or removal.
63. The home secretary may amend these rules, issue new versions of existing rules, add new rules or remove rules as he sees fit. In preparing new or amended rules the home secretary may consult anyone the home secretary deems appropriate but may act without such consultation.

Abnormal circumstances

64. Where the **PDB** or its related committees cannot offer advice under normal circumstances to the home secretary, he shall act directly. In relation to complaints, this situation may arise when those acting under the **procedures** cannot or cannot within a period considered reasonable by the home secretary, reach a determination on a complaint or any determination under the **procedures** has been made and is later successfully challenged in any court.
65. In any of the circumstances envisaged in **Rule 64** or in any other circumstances where a complaint cannot be determined (or cannot be determined within a period considered reasonable by the home secretary) according to the **procedures**, the home secretary shall determine whether he is content to continue to recommend the **pathologist**. In making this determination the home secretary may consider such information as he considers relevant including, but not limited to, the following:
 - 65.1 The complaint against the pathologist;
 - 65.2 The pathologist's response, if any, to the complaint;
 - 65.3 The conduct of the pathologist (and his representatives) in responding to the complaint;

- 65.4 The pathologist's private record;
- 65.5 Whether the pathologist would, due to the complaint and related circumstances, have difficulty acting as an expert witness;
- 65.6 The importance of his recommendation;
- 65.7 The impact on the criminal justice system of his recommendation; and
- 65.8 The interests of the criminal justice system.
66. In making a decision under **Rule 64** as to whether he is content to continue to recommend the **pathologist**, the home secretary is not making a determination of whether the complaint against the **pathologist** is justified. He is making a determination of whether, on the available information, he is content to continue to recommend the **pathologist**.
67. Where the home secretary is not satisfied that it is in the interests of the criminal justice system and/or the public interest to continue to recommend the **pathologist** he shall determine that the **pathologist** be removed from the **register**. There is no appeal from the determination of the home secretary under **Rule 64**.

Effect of direct removal by the home secretary

68. Where the **pathologist** is removed from the **register** directly by the home secretary he shall be prohibited from re-admission to the **register** and may only be re-admitted to the **register** on the approval of the home secretary.

Delegation

69. Where the home secretary exercises his power to issue guidance to support these rules, the assignment of responsibility or power within such guidance shall be considered an effective assignment or delegation of the relevant power or responsibility. Any assignment or delegation within such guidance shall not preclude any alternative or further assignment, delegation or nomination etc. allowed by these rules.
70. Where the **procedures** provide for a matter to be dealt with by the home secretary this may also be dealt with by any minister, whether the Minister of State or the Parliamentary Under Secretary of State, at the Home Office. The home secretary may delegate any power assigned to him/her by these rules to any person or body he deems appropriate.

Copyright consent

71. All records of the **PDB** shall be subject to Crown copyright and shall not be reproduced without the home secretary's consent.

Representations

72. The home secretary is responsible for all matters of policy related to the **register** and its use within the criminal justice system. Therefore:

- 72.1 The home secretary may make such representations to the institutions as he considers appropriate; and

- 72.2 The institutions may request representation from the home secretary.

Section F: The Pathology Delivery Board Chair

General powers and delegation

73. Separate from any power granted by these rules, the **PDB chair** acting on behalf of the home secretary in accordance with the Constitution of the **PDB**, may (at his own instance or on the recommendation of the **secretary**) suspend the **pathologist** from the **register**. The period of suspension shall be that deemed appropriate by the **PDB chair**.
74. The **procedures** have attempted to deal with the handling of complaints under all circumstances that can be envisaged. However, it is recognised that circumstances may arise that have not been foreseen or that cases may occur where following the **procedures** would (a) not be in the public interest; or (b) may not allow a fair hearing of the matter. The **PDB chair** has (whilst considering the **key principles**) the power to take any action, or authorise any action, which is, in his opinion, appropriate in the public interest or the interest of a fair handling of a complaint.
75. The **PDB chair** may delegate any of his powers under the rules to the **secretary** on either a general or specific basis.
76. The **PDB chair** shall take such steps as are appropriate to give effect to the result of any disciplinary action. This may include, but not be limited to, the following:
 - 76.1 To modify the **register** to reflect any **sanction**;
 - 76.2 To ensure all records of the action are held and records relating to the **pathologist** are updated; and/or
 - 76.3 To ensure the responsibility for any ongoing action has been assigned and a plan for monitoring it established.

The Criminal Conviction Procedure

77. The **PDB chair** may remove a **pathologist** from the **register** if:
 - 77.1 The **pathologist** is convicted of any criminal offence which in the **PDB chair's** opinion makes the **pathologist unsuitable for the register** and

- 77.2 The period for appeal against conviction or custodial sentence has lapsed or any appeal against conviction or sentence has been completed.
78. Where the **PDB chair** has exercised his power of **removal** under **Rule 76**, the **pathologist** will have the right to appeal against the **removal** to the **adjudicator** provided the appeal is exercised within **14 days** of the date of the **removal** in writing to the **secretary**.
79. If the **chair** determines not to remove the **pathologist**, the matter may proceed to the **committee** as a live complaint.

Disclosure of information

80. The **PDB chair** shall have the right to restrict the information in the **public** or **private record** if he believes it necessary in the public interest. He also has the right to restrict the disclosure of information contained in those records.
81. The **PDB chair** shall have authority to disclose information in circumstances not set out in these Rules if it is, in his opinion, necessary in the public interest or the interests of the criminal justice system.
82. Papers before the **tribunal** and the **adjudicator** and transcripts or minutes of their public proceedings shall be made available to the public at a cost unless the **PDB chair, adjudicator** or **tribunal chair** directs they shall be private. This shall not require the disclosure of papers, such as post mortem reports, which (a) may have been discussed in a public hearing but not made available to non-parties and (b) are not, in the opinion of the **PDB chair** suitable for publication.
83. The **PDB chair** may charge appropriate costs to cover the cost of production of materials before supplying them to any person.

Section G: Examining Complaints

Identifying a complaint

84. A complaint is any information provided to or coming to the attention of the **secretary** that could suggest a pathologist may not be **suitable for the register**.
85. Any person or organisation can make a complaint. All complaints must also be notified to the **PDB's** Independent **responsible officer** in order that the **responsible officer** can conduct his responsibilities to the **GMC**.
86. Where information which could form the basis of a complaint comes to the attention of the **secretary**, but not in the form of a complaint direct to the **secretary**, it may be difficult to identify an individual to act as the complainant. In such cases the **secretary** shall make the formal reference on behalf of the complainant. Examples include, but are not limited to, the following:
- 86.1 Criticism in the judgement of any court of law;
 - 86.2 Criticism in the news media;
 - 86.3 Criticism by any public or judicial inquiry;
 - 86.4 Criticism by an appropriate professional or regulatory body; or
 - 86.5 Conviction by any criminal court.
87. For the avoidance of doubt a complaint may refer to the **pathologist's** work or conduct:
- 87.1 Outside England & Wales;
 - 87.2 On a routine coronial autopsy;
 - 87.3 An autopsy for any armed forces police force;
 - 87.4 For the defence;
 - 87.5 In relation to a critical conclusion check or peer review performed on the work of another forensic pathologist; or
 - 87.6 On a post mortem examination not performed under the **code of practice**.

88. A criticism, decision, determination, sanction or other action by a professional or regulatory body (or of any court reviewing such a matter) which leads to the **pathologist** no longer being able to meet the requirements for registration (for example the removal of a licence to practise by the **GMC**) shall not be dealt with under the **procedures**. Such cases shall be dealt with outside these Rules by the **PDB chair** as a failure to comply with registration requirements.

Initial assessment by the secretary

89.

89.1 In cases where the **secretary** considers that the complaint is not one of such a nature as to call in to question the ongoing or future **suitability for the register** of the **pathologist**; at the secretary's discretion, and with the agreement of the **pathologist**, it may be dealt with administratively by the **secretary**, without the need for the **secretary** to refer the matter for investigation under the live complaints procedure and subsequent referral to the **committee**. All such cases must however be referred also to the **responsible officer**.

89.2 This will apply (but not be limited) to matters such as:

- Complaints relating to delays in reporting cases by the **pathologist**.
- Complaints by police or coroners concerning the alleged rude behaviour or attitude of the pathologist towards others at the death scene or mortuary.
- Complaints concerning issues of process not connected with the medical aspects of the pathologist's work.

89.3 In cases of this nature, the secretary shall instruct the **examiner** to conduct such investigations as are necessary to determine the facts of the matter complained of and provide a report for the **secretary's** consideration.

89.4 Where having considered the facts in the **examiner's** report, the **secretary** is of the view that the matter is not of a sufficiently serious nature as to call in to question the ongoing or future **suitability for the register** of the **pathologist**, the **secretary** shall take one or more of the following courses of action:

- issue a formal warning in writing to the **pathologist** informing him that details of the complaint will be retained on the **pathologist's private record** and may be used as supporting evidence in future cases

where complaints of a similar nature are made against the **pathologist**.

- require the **pathologist** to attend a private interview with the **secretary** and where deemed appropriate the **responsible officer**. The pathologist shall acknowledge the **private advice** in writing and shall confirm in writing that he shall accept the advice. Details of the private interview will be retained on the **pathologist's private record** and may be used as supporting evidence in future cases where complaints of a similar nature are made against the **pathologist**.
- refer the matter to the **pathologist's group practice** manager for internal management or administrative action by **the group practice** manager.

- 89.5 The **secretary** or **examiner** will notify the **responsible officer** of all matters dealt with under **Rule 89**.
- 89.6 If at any time during this process, the **pathologist** objects to the **secretary's** handling of the complaint or subsequent disposal of the matter, they may request its referral to the **committee** in accordance with **Rule 90** below.
- 89.7 In cases where repeat complaints of a similar nature are received against the **pathologist**, the **secretary** at his discretion may refer any such subsequent complaint for investigation and where necessary referral to the **committee** in accordance with **Rule 90** below.
- 89.8 Where the **secretary** deems the complaint to be trivial or unfounded, he may dismiss the complaint and take no further action against the **pathologist** and make or cause to be made a note of his determination on the **pathologist's private record**. The **secretary** shall inform the **pathologist** in writing of the outcome and action taken.
90. In cases where the **secretary** considers that a complaint is of such nature as to call in to question the ongoing or future **suitability for the register** of the **pathologist**, the **secretary** will as soon as reasonably practicable after receiving a complaint determine if the complaint is 'live'. A complaint is live if:
- 90.1 The **pathologist** is on the **register** at the time of the complaint is received by the **secretary**;
- 90.2 The **pathologist** was on the **register**; or was training to be on the **register** at

- the time of the alleged events forming the complaint; or was not on the **register** at the time of the alleged events but the allegation has such a direct bearing on the **pathologist's suitability for the register** that the question of whether he was not on the **register** at the time of the alleged events forming the complaint is subordinate to the public interest;
- 90.3 The complaint is made by an identifiable person or organisation (or, if not, is nevertheless still capable of investigation);
- 90.4 The complaint is not trivial;
- 90.5 The complaint is not vexatious;
- 90.6 The complaint has not previously been dealt with by the **committee**;
- 90.7 The complaint has been presented within **three years** of the date of the alleged events forming the complaint (except where the complaint has such direct bearing on the **pathologist's suitability for the register** that the question of excessive delay in bringing complaint is subordinate to the public interest);
- 90.8 The complaint is not one where the **PDB chair** is going to exercise his power of **removal** under the **criminal conviction procedure**; and
- 90.9 The complaint is not one where the **PDB chair** is going to exercise his general power of suspension and recommendation for removal for failure to comply with a mandatory requirement to be on the **register**.

Steps by the secretary after initial assessment

91. If the **secretary** determines that the complaint is not live he shall:
- 91.1 Inform the complainant; and
- 91.2 In circumstances where the **pathologist** is not on the **register**, ensure that details of the complaint are recorded so that in the event that the **pathologist** later applies for membership of the **register** the information is available to the **PDB**.
92. If the **secretary** determines that the complaint is live (and does not fall to be dealt with under the **non-cooperation procedure**) he shall:
- 92.1 Inform the complainant;

- 92.2 Inform the **pathologist** (as soon as reasonably practical and at such a time that does not prejudice the investigation) that:
- 92.2.1 A live complaint has been received;
 - 92.2.2 The **examiner** will be investigating the complaint;
 - 92.2.3 The **procedures** can be downloaded from the Internet;
 - 92.2.4 He may if he wishes comment on the complaint at any time during the investigation;
 - 92.2.5 He has an obligation to inform the prosecution team in any live matter about the fact of the complaint;
 - 92.2.6 He must discuss the complaint and possible **interim measures** with a senior colleague in the **group practice** identified by the **secretary**;
 - 92.2.7 The **pathologist** has **14 days** in which to indicate what, if any, **interim measures** he proposes to implement to protect the integrity of the **register** and the criminal justice system during the period of investigation;
 - 92.2.8 The **secretary** will after **21 days** be informing the local parties that a complaint has been made, that it is being investigated, that no determination has been made whether the complaint makes the pathologist unsuitable for the **register** and if **interim measures** are in place;
 - 92.2.9 He should as soon as possible and in any event within **21 days** provide any documents requested to the **examiner**.
- 92.3 If the **secretary** believes it is necessary to protect the integrity of the criminal justice system notify the Crown Prosecution Service of the complaint at any time;
- 92.4 Instruct the **examiner** to undertake such investigations as the **examiner** considers appropriate and to prepare a written report for the **committee**;
- 92.5 On or after **21 days** from the date of his letter to the **pathologist**, inform the **local parties** of:
- 92.5.1 The fact of the complaint;

- 92.5.2 That it is being considered by the examiner;
- 92.5.3 That no determination whether the complaint makes the pathologist unsuitable for the register has been made; and
- 92.5.4 Whether interim measures have been put in place.
- 92.6 Impose such **interim measures** as he deems necessary to protect the integrity of the **register** and the criminal justice system during the period of investigation provided that he has:
- 92.6.1 Given the **pathologist seven days**' notice of the proposed **interim measures** and an opportunity to make written representations and
- 92.6.2 Set down a date within the following **30 days** to review **the interim measures**.
- 92.7 Send a copy of the **examiner's** written report of the complaint for the **committee** to the **pathologist**, giving him **21 days** in which to make written representations on the report and notifying him of the potential actions available to the **committee**. Inform him of the right to make any written representations in relation to mitigation or potential action and in particular drawing his attention to the fact that the **committee** has the power to refer the matter to the **tribunal** if they consider that **removal** is appropriate with the effect of such a referral being automatic suspension from the **register**.
- 92.8 Convene a meeting of the **committee** to take place at least **28 days** after the date the **examiner's** written report on the complaint is sent to the **pathologist**.
- 92.9 Present the **examiner's** written report on the complaint to the **committee** for its consideration.
93. The **examiner's** investigation may include (but not be limited to):
- 93.1 The instruction of an independent forensic pathologist or other expert (who shall not at the time of instruction be the **pathologists responsible officer**, the **PDB's** independent **responsible officer**, a member of the **pathologist's group practice** or member of the **committee**);
- 93.2 Interviewing the complainant, the **pathologist**, other members of the **register** and other relevant people;
- 93.3 Obtaining documents from the **pathologist**, the **group practice**, the relevant

coroner, the **police**, the relevant paramedic ambulance service, the relevant hospital;

- 93.4 Obtaining relevant court transcripts or records;
- 93.5 Obtaining the senior investigating officer's policy log;
- 93.6 An examination of the **pathologist's** workload; and
- 93.7 An examination of the **pathologist's private record**;
- 93.8 Any other enquiry deemed necessary and proportionate.

Interim measures

94. An **interim measure** will last until:

- 94.1 The **secretary** or the **PDB chair** discharge it on their own instance or on request from the **pathologist**, the **responsible officer** or the **pathologist's group practice**;
- 94.2 The committee discharges it after considering the complaint; or
- 94.3 Any **sanction** imposed by the **committee** or **tribunal** takes effect if it is not previously discharged.

95. Imposed **interim measures** may only include requiring the **pathologist** to:

- 95.1 Ensure that all the **pathologist's** work or a particular sub-set of his work is subject to enhanced critical conclusions checking or peer review by any one or more of: a member of the **group practice**, the **responsible officer**, the **PDB's** independent **responsible officer** or his most recent appraiser for the **GMC** revalidation process;
- 95.2 Report weekly on his workload to any one or more of: the secretary, the responsible officer, the **PDB's** independent **responsible officer** or his most recent appraiser for the **GMC** revalidation process;
- 95.3 Contact any one or more of: the **responsible officer**, the **PDB's** independent **responsible officer** or his most recent appraiser for the **GMC** revalidation process for professional guidance in relation to the matters raised by the complaint;
- 95.4 Reduce the number of hours on call to an appropriate level to avoid problems from over-working; or

- 95.5 Remove himself from the rota for the **police** force area where the complaint arose in order to remove conflict of interest.
96. A **pathologist** may ask the **secretary** or the **PDB chair** to review an imposed **interim measure** and may make written representations.
97. The fact that an **interim measure** is in place is disclosed to the **local parties** but it is not disclosed whether the **interim measure** was agreed or imposed.
98. The content of an **interim measure** remains private (and forms part of the **private record**) and is not ordinarily disclosed by the **PDB** to the **local parties** (unless the **pathologist** requests that the details of the **interim measures** are disclosed by the **PDB** to the **local parties**) and does not form part of the **public record**.

Section H: The Review Committee

The composition of the committee

99. The members of the **committee** shall be appointed by the **PDB chair** and shall comprise at least:
 - 99.1 Two **professional members**;
 - 99.2 One person to represent the interests of coroners;
 - 99.3 One additional **legally qualified lay member**; and
 - 99.4 One **lay member** nominated by the NPCC lead for forensic pathology or equivalent;
100. The **secretary** shall maintain a list of senior and experienced forensic pathologists to sit as substitute members of the **committee** in circumstances arising under **Rule 125** or if a **professional member** of the **committee** or a pathologist member is not able to attend a **committee** meeting.
101. During the course of considering a complaint or taking action on a complaint the membership of the **committee** may change and this shall not invalidate any decision taken by the **committee** at any time.
102. The following may not be members of the **committee**:
 - 102.1 Officials or employees of the Home Office;
 - 102.2 The **responsible officer**;
 - 102.3 The **PDB's** independent **responsible officer**; or
 - 102.4 The Forensic Science Regulator.

Meetings of the committee

103. The **committee** shall meet as required by the **secretary**.
104. The **committee** shall choose its chair from its own members save that the **committee** may not be chaired by a **professional member**.
105. The **examiner** shall not be a member of the **committee** but may attend meetings where any report of his is presented to the **committee**.

106. The **secretary** shall not be a member of the **committee** but shall attend all meetings apart from when the **committee** retires to consider representations by a **pathologist** at a personal appearance or in writing in lieu of a personal appearance.
107. Save as set out elsewhere in these rules meetings and minutes of the **committee** are private and confidential.
108. The **committee** shall meet in public session (unless on application from the **secretary** or the **pathologist** it agrees to meet in private) when:
 - 108.1 The **pathologist** makes a personal appearance; or
 - 108.2 The **pathologist** makes written representations in lieu of a personal appearance (in which case the committee can 'meet' via secure video/audio conference facilities if appropriate).
109. Appointment to the **committee** shall be in accordance with any terms of reference of the **committee** set by the **PDB**.
110. The home secretary reserves the right to appoint members of the **committee** to serve for such period as he shall determine.
111. Any three members will constitute a quorum.
112. Where a quorate **committee** meets in the absence of the chair the members present shall select a member to chair the meeting.
113. In the event that the chair has to withdraw from the meeting he may ask any member to chair that part, or parts, of the meeting from which he is absent. Where the chair does not select a person to act as chair those members present may select a member to act as chair.
114. Where a meeting of the committee is not quorate for the consideration of a particular complaint (perhaps because of the number of persons who withdrew due to issues of conflict) the chair has the following options:
 - 114.1 To postpone the consideration of the matter to the next meeting of the **committee**.
 - 114.2 To continue consideration and make a preliminary recommendation on the matter. This recommendation shall be circulated to those members of the **committee** who were not present at the meeting but would have been eligible to vote had they been at the meeting. The letter shall remind members of the provisions regarding withdrawal from consideration and set a

deadline for response. The recommendation will not take effect unless the majority (taking account of the chair's casting vote) of those voting do so in favour of the recommendation within the specified time.

115. Which course of action to take is a matter at the discretion of the chair, taking into account the interest in having a fair and speedy process.
116. No member or members of the **committee** may participate in the investigation of any complaint unless they have information relating to the complaint in which case they shall recuse themselves from the **committee** meeting dealing with the complaint.
117. In the event that a forensic pathologist member has to recuse himself from consideration of a particular complaint the **PDB chair** may appoint another **professional member** to replace that person on the **committee** to consider the particular complaint from the **secretary's** list.
118. The **committee** shall act upon a simple majority of those voting, the chair of the **committee** (or person acting as chair) having a casting vote in addition to his normal vote in the event of a tie.
119. The **committee** may permit persons to attend its meetings as observers for training purposes etc.; and may invite persons to attend to provide it with relevant information. Such persons may include officials or employees of the Home Office and the **examiner**. Any such person may not participate in the determination of the **committee**.
120. Where a **pathologist** makes a personal appearance, the **committee** shall adopt such procedures it deems appropriate to allow the **pathologist** to make representations.
121. Where a **pathologist** has made a personal appearance before the **committee** or has provided written representations in lieu of a personal appearance and the **committee** is considering imposing a **sanction** no one other than members of the **committee** shall be present when the **committee** considers what **sanction** (if any) to propose save that the **committee's** legal adviser may be present.
122. The legal or other representatives appointed by the **committee** shall be paid a reasonable remuneration for the work done on the **committee's** behalf.
123. The **secretary** will prepare formal minutes of all meetings of the **committee**. The minutes will record the nature of the allegation in each case, the figures in any matters put to the vote and the decision of the **committee** as to the disposal of each case.

124. The minutes of the **committee's** meetings are confidential save in relation to its public sessions.
125. Any member of the **committee** must withdraw from consideration of a complaint where there is reason to believe his involvement would reasonably bring the impartiality of the body into question. Examples of circumstances which may prevent a person serving include, but are not limited to, the following:
 - 125.1 He has a vested interest in the outcome of the action.
 - 125.2 He was involved, in any way, in a case that gave rise to the complaint.
 - 125.3 He was, in any way, involved in making the complaint.
 - 125.4 He investigated the complaint on behalf of the **committee**.
 - 125.5 He has a professional or personal relationship with persons that could reasonably lead to his impartiality being questioned.
 - 125.6 He is subject to disciplinary action under the **procedures**.
 - 125.7 He is involved with a review of the matter in any other arena e.g. **GMC** hearing.
 - 125.8 He has within the last five years sat on a body other than the **committee** considering a complaint against the same **pathologist**.
126. A member should also withdraw if he falls into any of the categories above in relation to a different complaint against the same **pathologist** that is, or is likely to come, under consideration by the **committee**
127. The **committee** shall have the authority to adopt such procedures, rules or conventions etc. that it believes are appropriate or desirable for the effective implementation and application of the **procedures**.

Delegation to the secretary

128. The **committee** may delegate to the **secretary** the day to day instruction of legal representatives in relation to and the conduct of any **tribunal** or appeal to an **adjudicator**. For the avoidance of doubt the decision to appeal against a **sanction** on grounds of leniency can only be made by the **committee**.
129. Presentation of the **examiner's** written report. The **committee** shall consider the written report and, where provided, any written submissions by the **pathologist**.

130. If no written submissions are received from the **pathologist**, the **committee** shall proceed as if the **pathologist's** response had been to deny the substance and the validity of the complaint in its entirety.

Section I: The Review Committee's Consideration of a Complaint

Dismiss as “not live”

131. The committee may dismiss the complaint as no longer being live as set out in **section G** at **Rule 90** in which case it must:
 - 131.1 Notify the **pathologist**;
 - 131.2 Notify the **responsible officer**;
 - 131.3 Notify the **local parties**;
 - 131.4 Notify the complainant; and
 - 131.5 Ensure the matter is recorded on the **private record**.

Postpone

132. The **committee** may postpone further consideration of the complaint pending further investigation or enquiry in which case it must:
 - 132.1 Notify the **pathologist**;
 - 132.2 Notify the **responsible officer**;
 - 132.3 Notify the **local parties**;
 - 132.4 Notify the complainant.
133. The **committee** may postpone further consideration of the complaint pending resolution of criminal proceedings in which case it must:
 - 133.1 Notify the **pathologist**;
 - 133.2 Notify the **responsible officer**;
 - 133.3 Notify the **local parties**;
 - 133.4 Notify the complainant.

Refer to GMC

134. The **committee** may refer the matter to the **GMC** (regardless of any other action it may take) in which case it must:
 - 134.1 Notify the **pathologist**;
 - 134.2 Notify the **responsible officer**;
 - 134.3 Notify the **local parties**;
 - 134.4 Notify the complainant; and
 - 134.5 Notify the **GMC**.

Make external recommendations

135. The **committee** may regardless of any other finding or action conclude that there are issues raised by the complaint which go beyond the conduct of the **pathologist** and may make recommendations to any persons as it sees fit.

No action

136. The committee may find that the **pathologist's suitability for the register** is not questioned and that no action is required in which case it must:
 - 136.1 Notify the **pathologist**;
 - 136.2 Notify the **responsible officer**;
 - 136.3 Notify the **local parties**;
 - 136.4 Notify the complainant; and
 - 136.5 Ensure the matter is recorded on the **private record**.
137. 'No action' would only be appropriate if the **committee** was satisfied that any failure or concern identified was already being adequately addressed.

Action short of sanctions

138. The **committee** may find that the **pathologist's suitability for the register** is not questioned but that his conduct is nevertheless such as to give cause for concern in which case it must:

- 138.1 Give **private advice** to the **pathologist**;
- 138.2 Require the **pathologist** within 28 days of the **private advice** to attend a **private interview** with the **responsible officer** or the **PDB's** independent **responsible officer** or another person determined by the **committee**;
- 138.3 Notify the **local parties**; and
- 138.4 Notify the complainant.
139. **Private advice** and **private interview** will normally only be appropriate where the essential facts are clear and not in dispute and the **committee** has concerns that are not sufficiently serious to warrant a **sanction**.
140. The **pathologist** shall acknowledge the **private advice** in writing and shall confirm in writing that he shall accept the advice.
141. At the **private interview**, the **pathologist** will seek to agree with the interviewer a mechanism to ensure the **private advice** is followed and to undertake any remedial action relating to the **committee's** concerns.
142. The interviewer shall keep a note of the **private interview** which shall form part of the **private record** and shall circulate that to the **pathologist** and to the **committee**.
143. The interviewer may refer the matter to the **committee** for further action if he is concerned that the **pathologist** has not taken appropriate remedial action. Such further action may include making a finding that the **pathologist's suitability for the register** is questioned (irrespective of its earlier finding to the contrary).
144. There is no right of appeal against the **committee's** decision to give **private advice** or to require the **pathologist** to attend a **private interview**.

Refer to tribunal

145. The **committee** may find that the **pathologist's suitability for the register** is questioned and that the sanction of **removal** is appropriate in which case it:
- 145.1 Must refer the complaint to the **tribunal**;
- 145.2 Ask the **secretary** to convene the **tribunal** and to arrange the preparation of

charges for the **tribunal**;

145.3 Cannot make any other **sanction**;

145.4 Must inform the complainant and the **designated parties** of:

145.4.1 The referral to the **tribunal**;

145.4.2 The automatic **suspension** from the **register** which takes effect **14 days** after the date notification is sent to the **pathologist**;

145.4.3 The **pathologist's** right to apply within **seven days** to annul the automatic **suspension**;

145.4.4 A brief outline of the complaint referred;

145.4.5 The fact that the referral to the **tribunal** means that based on the material seen so far, the **committee** considers that **removal** would be appropriate but that the **tribunal** as an independent body may disagree with the **committee** and decide that the **pathologist's suitability for the register** is not questioned, to take no action or to impose lesser **sanctions** to secure the **pathologist's suitability for the register**.

145.5 Annotate the public version of the **register** with the fact of the referral

145.6 Annotate the public version of the **register** with the fact of the automatic suspension, unless lifted by the **PDB chair** under **Rule 19**.

145.7 Must inform the **pathologist** of:

145.7.1 The referral to the **tribunal**;

145.7.2 Its reasons for its finding that his **suitability for the register** is questioned;

145.7.3 The automatic **suspension** from the **register** takes effect **14 days** after the date of notification is sent to the **pathologist**;

145.7.4 His right to apply within **seven days** to the **PDB chair** to annul the automatic suspension.

146. There is no right of appeal against the **committee's** decision to refer a complaint to the **tribunal**.

Suggest and impose own sanctions (other than removal)

147. The **committee** may find that the **pathologist's suitability for the register** is questioned but that the sanction of **removal** is not appropriate in which case it must:
- 147.1 Notify the complainant;
 - 147.2 Notify the **responsible officer**;
 - 147.3 Notify the **local parties**;
 - 147.4 Write to the **pathologist**:
 - 147.4.1 Informing him of its reasons for its finding that his **suitability for the register** is questioned;
 - 147.4.2 Indicating which **sanction** or combination of **sanctions** (other than **removal**) it is considering imposing;
 - 147.4.3 Inviting him to either submit written representations to the **committee** or if the **pathologist** prefers, make a personal appearance before the **committee** at its next meeting (which shall be at least **21 days** after the letter to the **pathologist**);
 - 147.4.4 Advising him that after considering written representations or a personal appearance the **committee** may nevertheless subsequently decide that the sanction of **removal** is appropriate and refer the complaint to the **tribunal**.
148. Only after a further meeting at least **21 days** after the letter referred to in **Rule 145.7** above, finds that the **pathologist's suitability for the register** is questioned and that the sanction of **removal** would not be appropriate it may make any (alone or in combination) **sanction** (other than **removal**) in which case it shall:
- 148.1 Inform the **pathologist** in writing of:
 - 148.1.1 Reasons for its finding that his suitability for the **register** is questioned;
 - 148.1.2 The **sanctions** and its reasons for imposing the **sanctions**;
 - 148.1.3 His right to appeal in writing to the **secretary** within **14 days**; and
 - 148.1.4 The fact that the **sanctions** are not implemented until any appeal is concluded.
 - 148.2 Notify the complainant and **designated parties** of:

- 148.2.1 The **sanctions** imposed;
 - 148.2.2 The **pathologist's** right to appeal in writing to the **secretary** within 14 days; and
 - 148.2.3 The fact that the **sanctions** are not implemented until any appeal is concluded;
- 148.3 Annotate the public version of the **register** with details of the **sanctions**, the right of appeal and the fact that **sanctions** are not implemented until any appeal is concluded.

Section J: Avoidance of Jurisdiction

149. If at any stage of the disciplinary proceedings the **pathologist** fails or refuses to co-operate with the requirements of any person or body acting under the **procedures**, or fails or refuses to comply with any **sanction** imposed as part of a disciplinary process (whether under the **procedures** or any earlier form or disciplinary action) or with the requirements of these rules the **secretary** shall write to the **pathologist** and the rota coordinator:
- 149.1 Requesting an explanation for the **pathologist's** apparent non-cooperation or non-compliance within **14 days**; and
- 149.2 Informing the **pathologist** that the matter will be referred to the **committee** for consideration and that it has the power to remove him from the **register**.
150. The **secretary** shall convene the **committee** to meet after the expiry of the **14-day** deadline.
151. After the expiry of the **14-day** deadline the **committee** may remove the **pathologist** from the **register**.
152. If the **committee** considers that the **pathologist** is not deliberately failing or refusing to cooperate or comply it should warn him that any future failure to co-operate or comply will result in **removal**. There is no right of appeal against such a warning.
153. The presumption shall be in favour of **removal** where the **committee** considers that the **pathologist**:
- 153.1 Was deliberately refusing or had deliberately refused to co-operate or comply;
- 153.2 Has made a statement that is false, and he knew or ought to have known it was false;
- 153.3 Has made a statement reckless as to whether it was true;
- 153.4 Has made a statement which is intended to mislead the recipient, or
- 153.5 Has made a statement which is not sufficiently frank to avoid the recipient being misled.
154. If the **committee** does impose **removal** any other proceedings in relation to the **pathologist** shall be adjourned until any appeal has been concluded.

155. It would be possible for a **pathologist** to resign from the **register** to avoid a complaint being dealt with under the **procedures**.
156. Whilst such a resignation would, in part, meet the aims of the **register** it could allow a **pathologist** who was guilty of a serious error to continue to work with an apparently clean record. This is not in the interests of the criminal justice system.
157. To balance the needs of the criminal justice system with the need to be fair to all persons on the **register**, the following procedures shall be adopted.

Resignation prior to final committee determination

158. Where a **pathologist** resigns from the **register** after he has been notified of a complaint, and before the **committee** has finally determined what shall be done, the **committee** shall deal with the complaint under **section I** as far as possible.
159. In cases where the **committee** would, had the **pathologist** remained on the **register**, not have made a finding that his **suitability for the register** was questioned, it shall determine that no comment shall be recorded on the **register**, **public record** and **private record**.
160. In cases where the **committee** would, had the **pathologist** remained on the **register**, have made a finding that his **suitability for the register** was questioned, it shall determine that the **register**, the **public record** and the **private record** reflect that the **pathologist** resigned whilst subject to disciplinary action. In such cases the **pathologist** will be prohibited from applying for registration in the future.

Resignation after committee determination

161. Where the **pathologist** resigns from the **register** after the **committee** has decided to refer him to **tribunal** but before the proceedings have concluded the **PDB chair** shall determine that the **register**, the **public record** and **private record** reflect that the **pathologist** resigned whilst subject to disciplinary action. In such cases the **pathologist** will be prohibited from applying for registration in the future.
162. Upon the decision by the **committee** that the complaint shall form the subject matter of charges before a **tribunal** the steps set out in this **section L** shall be taken.

Section K: The Tribunal – Preparation for hearing

Setting out the committee's case

163. The **committee** or its legal representative on its behalf shall prepare and serve on the **pathologist** and the **tribunal clerk** at least **49 days** before the first day of the **tribunal** hearing:
- 163.1 Those document(s) setting out the charge or charges; and
- 163.2 A statement of the facts upon which the charges are founded and upon which the **committee** intends to rely.
164. The **committee** or its legal representative on its behalf shall prepare and serve on the **pathologist** and the **tribunal clerk** at least **49 days** before the first day of the **tribunal** hearing copies of any documents (excluding privileged material and the confidential minutes of the **committee**) in its possession which relates to the charges.
165. The service of documents and statements on the **pathologist** may be a continuing process, as documents become available.

The tribunal clerk

166. The **PDB chair** shall at least **49 days** before the first day of the **tribunal** appoint the **tribunal clerk** who shall perform the functions set down in these rules for the **tribunal clerk** and any other functions directed by the **PDB chair** or the **tribunal chair** and the **PDB chair** may appoint persons to deputise for the **tribunal clerk** and may at any time cancel the appointment of the **tribunal clerk** or deputy.

Membership of the tribunal

167. The **PDB chair** shall appoint the members of the **tribunal** as follows:
- 167.1 A **legally qualified lay member** as **tribunal chair**;
- 167.2 At least one additional **lay member**; and
- 167.3 At least one **professional member**, chosen, as far as reasonably practicable, with regard to the speciality of the **pathologist** (if this is relevant to the matter under consideration) unless the **PDB chair** determines that the **tribunal** shall

sit without a **professional member** if he considers that:

167.3.1 It is not reasonably practicable to form a sufficiently impartial **tribunal**;
or

167.3.2 The **pathologist**, or his representatives, may be seeking to frustrate
the activities of the **tribunal** by challenging professional members or

167.3.3 It is necessary to ensure a fair hearing and protect the public interest
and/or the integrity of the **register**

168. The following shall not be appointed to the **tribunal**:

168.1 An official or employee of the Home Office;

168.2 A member of the **committee, RTC or PDB**;

168.3 A member of the **group practice** of which the **pathologist** is a member;

168.4 The **responsible officer**;

168.5 The **PDB's** independent responsible officer; or

168.6 The Forensic Science Regulator.

Convening the tribunal

169. The **PDB chair** shall at least **49 days** before the first day of the **tribunal** hearing
issue a convening order to the **pathologist**, the members of the **tribunal** and the
tribunal clerk specifying:

169.1 The date, time and place of the sitting of the **tribunal** at which it is proposed
that the charge or charges should be heard;

169.2 The identities of those persons it is proposed should constitute the **tribunal** to
hear the case;

169.3 The identity of the **tribunal clerk**;

169.4 The **pathologist's** right to be represented at the hearing by counsel or
solicitor, or any other professional association representative he may choose;
and

169.5 His right, within **seven days**, to object to the membership of the **tribunal**.

169.6 The timetable of deadlines set by these rules for the preparation of the matter
for hearing.

170. The **PDB chair** may alter the date, time and place or **tribunal clerk** set out in the convening order. Such alteration shall be notified to the **pathologist**. Any alteration bringing the date forward shall not provide less than **49 days'** notice. Any alteration delaying the date or changing the time or place shall not, unless the parties agree, provide less than **48 hours'** notice.
171. The **pathologist** shall have the right, upon receipt of the convening order to give notice to the **PDB chair** objecting to any one or more of the proposed members of the **tribunal**. The notice must be served within **seven days** of the date of the convening order and must specify the ground of objection. If satisfied that there are valid grounds of objection, the **PDB chair** may remove one or more of the proposed members of the **tribunal** and replace such members as he sees fit.
172. Where the **PDB chair** exercises his right to alter the composition of the **tribunal** the **pathologist** shall have the right, by like process to that set out in **Rule 167**, to object to any newly appointed member of the **tribunal**.
173. The **PDB chair** shall select another member of the relevant background to fill any vacancy in the **tribunal** membership that has arisen prior to the substantive hearing of the charge.
174. Any person selected to serve on a **tribunal** must declare themselves as unavailable for selection where there is reason to believe his involvement would reasonably bring the impartiality of the body into question. Examples of circumstances which may prevent a person serving include, but are not limited to, the following:
- 174.1 He has a vested interest in the outcome of the action;
- 174.2 He was involved, in any way, in a case that gave rise to the complaint;
- 174.3 He was, in any way, involved in making the complaint;
- 174.4 He has a professional or personal relationship with persons that could reasonably lead to his impartiality being questioned;
- 174.5 He is subject to disciplinary action under the **procedures** himself;
- 174.6 He is involved with a review of the matter in any other arena e.g. **GMC** hearing;
or
- 174.7 He has previously sat on a body considering a complaint against the same **pathologist**.

Advanced disclosure of the pathologist's case

175. The **pathologist** shall at least **28 days** before the first day of the **tribunal** hearing provide to the **committee**:
- 175.1 Copies of any documents that he intends to place in evidence before the **tribunal** whether in relation to the charges or in relation to any potential **sanction** or mitigation;
- 175.2 Copies of any expert evidence or reports that he intends to present to the **tribunal**; and
- 175.3 Copies of any academic literature that he or any expert witness on his behalf intends to refer to in evidence.
176. The **pathologist** shall at least **28 days** before the first day of the **tribunal** hearing provide to the **committee** and the **tribunal clerk**:
- 176.1 A statement setting out which charges he admits and which charges he denies;
- 176.2 A statement setting out which facts in the **committee's** statement of facts are agreed and which are not agreed; and
- 176.3 A statement setting out whether the **pathologist** will be making any assertion in his evidence that any alleged deficiencies of his were caused by or contributed to in any way by any actions of other persons (including, without limitation, the coroner, the **police**, other pathologists, other medical professionals, ambulance or paramedic staff) and if such assertion is to be made setting out the details of the assertion.

Hearing bundle

177. At least **21 days** before the first day of the **tribunal** hearing the **committee** shall serve on the **pathologist** and the **tribunal clerk** an index for the hearing bundle and on the **pathologist** copies of any additional documents not previously disclosed for inclusion in the hearing bundle.
178. At least **14 days** before the first day of the **tribunal** hearing the **pathologist** shall serve on the **committee** and the **tribunal clerk** any amendments to the **committee's** index for the hearing bundle.
179. The **committee** shall prepare at its cost sufficient copies of the paginated hearing bundle for the **tribunal** members and the witness stand.

180. The **committee** shall exclude from the hearing bundle material (whether supplied by the **pathologist** or the **committee**) that would be relevant to **sanction** (such as the **private record**) which could be prejudicial to a fair hearing of the complaint and may introduce such material to the hearing bundle if the **tribunal** indicates that the threshold for imposing **sanction** has been met.
181. If there is any dispute about whether a document should be admitted in the hearing bundle it may be resolved by a case management discussion or at the commencement of the **tribunal** hearing.

Exchange of witness statements

182. No person (including the **pathologist** and any expert witness called by either side) shall be able to give evidence to the **tribunal** (save with exceptional leave from the **tribunal**) unless a written statement setting out their evidence (preferably by reference to the relevant parts of the hearing bundle) has been served at least **seven days** before the first day of the **tribunal** hearing on the other party and on the **tribunal clerk**.
183. This requirement does not apply to any representative of the home secretary who may attend the hearing to make representations.

Case management discussions

184. Before the sitting of the **tribunal** at which the charge or charges are to be heard, the **tribunal chair** may hold one, or more, case management discussions for the purpose of giving directions and of taking such other steps as he considers necessary for the clarification of the issues before the **tribunal**, and generally for the just and expeditious handling of the proceedings.
185. The **tribunal clerk** shall take a note of the case management discussion and shall draw up a record to be served on the parties setting out the directions given or admissions made.
186. Case management discussions shall be held in private by the **tribunal chair** sitting alone and shall normally be heard by telephone conference call.
187. The hearing or part of a hearing (other than case management discussions) before the **tribunal** shall be in public unless the **tribunal chair** decides otherwise. He shall normally only do so if:
- 187.1 The **pathologist** has made an application that the hearing or part of the hearing shall be in private and the public interest does not otherwise require.

187.2 It is necessary to protect the privacy of those involved in cases under consideration; or

187.3 The interests of the criminal justice system require that the hearing be held in private.

Preparing for attendance of others at the substantive hearing

188. The **tribunal chair** may arrange for one, or more, specialist advisers to be present to advise on issues where the **tribunal** lacks the necessary expertise. Such a situation might arise, for example, when the evidence suggests a **pathologist** is suffering from a physical or mental condition that requires medical supervision or treatment, or where particular technical issues require specialised scrutiny. Such advisers may attend all of the hearing, but not any discussion the **tribunal** may have in private.
189. Meetings of the **tribunal** where evidence is heard will be recorded verbatim and the **secretary** shall take steps to ensure this occurs, at the PDB's cost. The transcripts shall be made available to members of the **tribunal**, the **committee** and the **pathologist**.

Section L: The Tribunal – The Substantive Hearing

The conduct of the hearing

190. The **tribunal** is not strictly adversarial in its consideration of charges brought before it. It also has an inquisitorial function. A **tribunal** therefore has the power to enquire into the matter under its consideration beyond the evidence adduced by the parties.
191. The **tribunal** shall have the authority to adopt such procedures, rules or conventions etc. that it believes are appropriate or desirable for the effective implementation and application of the **procedures**.
192. The **tribunal chair** shall have responsibility for the management of the **tribunal**. In particular he shall be responsible for:
 - 192.1 Ensuring the process is fair to all parties;
 - 192.2 Ensuring the matter is dealt with expeditiously; and
 - 192.3 Determining all issues of law and procedure.
193. The proceedings of the **tribunal** shall be governed by the rules of natural justice subject to which the **tribunal** may:
 - 193.1 Admit any evidence, whether oral or written, whether direct or hearsay, and whether or not the same would be admissible in a court of law;
 - 193.2 Give such directions with regard to the conduct of and procedure at the hearing, and with regard to the admission of evidence, as it considers appropriate for ensuring that the **pathologist** has a proper opportunity of answering the charge and the matter is dealt with expeditiously;
 - 193.3 Proceed in the absence of the **pathologist** if satisfied that he has been duly notified of the charge or charges and of the hearing; and
 - 193.4 Commission or direct further investigations.
194. Evidence to the **tribunal** shall be given on oath or affirmation.

195. The **tribunal** may after asking a witness to confirm the contents of his statement on oath, take the statement as read and proceed to allow any supplemental examination in chief.
196. A **tribunal** shall sit from day to day (Saturdays, Sundays, and bank holidays excepted) until it has arrived at a finding and, if any charge has been found proved, until the appropriate **sanction** is determined save that a **tribunal** may, if it decides that an adjournment is appropriate for any reason, adjourn the hearing for such period as it may decide.

Amendment of charges

197. The **tribunal** may at any time before or during the hearing direct that the charge or charges shall be amended provided that:
 - 197.1 The **tribunal** is satisfied that the **pathologist** will not suffer substantial prejudice in the conduct of his defence; and
 - 197.2 The **tribunal** shall, if so requested by the **pathologist**, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges so amended.
198. An amendment of the charges may include the addition of a new charge and in particular a new charge arising from the evidence presented to the **tribunal**, without the need to follow the process for handling complaints set out in these rules.
199. The **tribunal** may amend the charges in line with its findings of fact but consider any representations from the pathologist.

Alteration of membership during hearing

200. If, after the beginning of the substantive hearing, members withdraw from the **tribunal** the composition shall not be altered unless it becomes inquorate. If this occurs the **PDB chair** may nominate replacement members and the substantive hearing shall be started afresh.
201. The proceedings of the **tribunal** shall be valid notwithstanding that one or more of the members other than the **tribunal chair** withdraws, so long as the **tribunal** does not become inquorate and at least one **lay member** is present.
202. A member of the **tribunal** who has been absent for any period during the substantive hearing shall take no further part in the proceedings. They may however take part if the substantive hearing of the matter is re-started.

The tribunal's findings

203. Where the **tribunal** has to establish whether a fact is proved, the standard of proof shall be the "balance of probabilities".
204. Except as provided for in the **procedures** the burden of proof shall rest on the representatives of the **committee**.
205. Firstly, it is the duty of a **tribunal** to come to a finding with respect to each particularised allegation in a charge (including any amended charge) on the basis of any evidence placed before the **tribunal**.
206. Secondly, it is the duty of the **tribunal** to make a finding whether the home secretary's continued personal recommendation of a **pathologist** to be on the **Register** is brought into question (whether or not on the basis of its findings on the charges and on the basis of any other matter before the **tribunal**). In coming to the findings under **Rule 205** the **tribunal** is not required to consider evidence of mitigation or remediation.
207. The findings of the **tribunal** shall be announced during the hearing and shall be set down in writing and signed by the **tribunal chair** and all members of the **tribunal**.
208. The setting down in writing and signing of the findings on each charge and its determination may be done during the hearing, at the conclusion of the hearing or, if the **tribunal** wish to reserve judgment, at some later date. If the members are not unanimous as to the finding on any charge, the finding to be recorded on the charge shall be that of the majority of those voting, the **tribunal chair** having a casting vote in addition to his ordinary vote in the event of a tie.

Considering Sanctions

209. Where the home secretary's continued personal recommendation of the **pathologist** for the **register** is brought into question, the threshold for the imposition of a **sanction** is attained and it is the duty of the **tribunal**, in the light of any relevant mitigating factors, to take the action which it deems necessary in the interests of the public and, where not in conflict with the public interest, of the **pathologist**.
210. Where the home secretary's continued personal recommendation of the **pathologist** for the **register** is brought into question, evidence may be given on any previous finding recorded on the **pathologist's private record** or of any other matter or matters relevant to the imposition of any **sanction**.

211. Where the **tribunal** has found more than one charge proved against the **pathologist** it has the power to consider all of these together when determining the appropriate **sanction**.
212. After hearing any representations by or on behalf of the **pathologist**, the **tribunal** shall set down in writing its decision as to the **sanction**. If the members of the **tribunal** are not unanimous as to the **sanction**, the **sanction** to be recorded shall be that decided by the majority of those voting, the **tribunal chair** having a casting vote in addition to his ordinary vote in the event of a tie. The **tribunal chair** shall, either at the conclusion of the hearing or later in writing, deliver the **tribunal's** decision and shall give the reasons for the decision.
213. If the **tribunal** finds that the **pathologist's suitability for the register** is brought into question it may impose any **sanction** alone or in combination.
214. The **tribunal** may impose more than one **sanction** in relation to a charge found to have been proved.
215. In any case where a charge has been found proved, the **tribunal** may determine that no action should be taken against the **pathologist**.
216. The **tribunal** may, regardless of the finding in relation to charges brought before it, conclude that the evidence before them raises issues that reflect on the **pathologist's** registration to act as a medical practitioner. In such cases the **tribunal** may refer the matter, and any appropriate evidence, to the **GMC**.

Records and papers

217. **Tribunal** papers (including minutes, transcripts and all material put before the **tribunal**) shall be made available (subject to the Rules), on request, to the parties to the **tribunal**. The papers, except those relating to issues dealt with in private or otherwise excluded by the **tribunal chair** or **PDB chair**, shall be made available to the public.
218. The **tribunal chair** has the power to order that the records prepared of the meetings of the **tribunal** (including preliminary hearings) which are to be made available to **tribunal** members and parties shall be edited to ensure that any material, which he has directed shall not be available to (a) other members of the panel or (b) the parties, is not published. Such an order shall have force until (a) the **tribunal chair** alters his order; (b) the **tribunal** has finished its consideration of the case or (c) indefinitely if the **tribunal chair** so orders. Where the **tribunal chair** exercises his authority to edit the records of meetings, unedited versions of the records shall also be prepared. Unedited versions shall be held by the **tribunal clerk** and provided to the **tribunal chair** and the Home Office.

Notification of outcome of tribunal

219. The **secretary** shall write to the **pathologist** to notify him formally of the outcome of the **tribunal**. In particular the letter shall (to the extent appropriate in the case):
- 219.1 Inform him of the finding;
 - 219.2 Inform him of the **sanction**, if any, imposed and the implications;
 - 219.3 Explain the right to appeal in writing to the **secretary** within **14 days**;
 - 219.4 Explain that the **sanction** shall not be imposed:
 - 219.4.1 Until the date by which an appeal has to be lodged has passed or,
 - 219.4.2 If an appeal is lodged within that period, until that appeal has been determined;
 - 219.5 Where a **tribunal** has imposed **removal** explain he is automatically suspended from the **register** until either the period for lodging an appeal expires or the appeal is concluded.
220. The **secretary** shall write to the complainant and **designated parties** to inform them of the finding of the **tribunal** and the **sanction** imposed and that the **pathologist** has the right of appeal.
221. The **secretary** shall take such other steps as are, in his opinion, appropriate to implement the findings and Sanction.

Section M: Appeals to the Appeal Adjudicator

Grounds of appeal

222. A **pathologist** may appeal against **removal** imposed by the **committee** under the **non-co-operation procedure** on the grounds that:
- 222.1 The disciplinary process was materially unfair to the **pathologist**; and/or
 - 222.2 The finding that the **pathologist** had not co-operated was manifestly wrong.
223. A **pathologist** may appeal against **removal** by the **committee** following failure to meet the requirements in a **suspension order** on the grounds that:
- 223.1 The disciplinary process was materially unfair to the **pathologist**; and/or
 - 223.2 The finding that the **pathologist** has failed to meet the requirements in the **suspension order** was manifestly wrong.
224. A **pathologist** may appeal against **removal** by the **committee** following failure to satisfy the **committee** of his competence following an **assessment order** or within the period set down in a **supervision order** or a **restriction order** that:
- 224.1 The disciplinary process was materially unfair to the **pathologist**; and/or
 - 224.2 The finding that the **pathologist** had failed to satisfy the **committee** of his competence was manifestly wrong.
225. A **pathologist** may appeal against **removal** imposed by the **PDB chair** under the **criminal conviction procedure** on the grounds that:
- 225.1 The finding that the **pathologist** had been convicted was manifestly wrong; and/or
 - 225.2 The finding that the **pathologist's** conviction was sufficiently serious to warrant **removal** was perverse.
226. A **pathologist** may appeal against any other **sanction** imposed by the **tribunal** or the **committee** on the grounds that:
- 226.1 The disciplinary process was materially unfair to the **pathologist**;
 - 226.2 A finding of a material fact relating to a charge found proven was manifestly

wrong;

226.3 The finding that the home secretary's continued personal recommendation of the **pathologist** for the **register** was brought into question was perverse; and/or

226.4 The **sanction** imposed was excessive.

227. The **committee** may appeal against the ruling of the **tribunal** on the grounds that the **sanction** imposed by the **tribunal** was too lenient.

Time for presenting an appeal

228. Any notification of intention to appeal must be made to the **secretary** within **14 days** of the **sanction** being notified to the **pathologist**.

229. The **secretary** shall notify the complainant and the **designated parties** if there has been an appeal and that the **sanctions** shall not be implemented until the appeal has concluded.

230. The **secretary** shall update the public version of the **register** to note that appeal.

Appointment of an adjudicator

231. The home secretary shall appoint an **adjudicator** and shall set a provisional date for oral argument before the **adjudicator**.

232. Either party may object to the home secretary in relation to the appointment of **adjudicator** within **seven days** of notification.

233. The **adjudicator** must recuse himself in the event of any actual conflict of interest and the home secretary may appoint another **adjudicator**.

Timetable for consideration of appeal

234. At least **49 days** before the date set for provisional oral argument the appellant shall provide to the **adjudicator**, the respondent and the home secretary full grounds of appeal which must refer to the relevant extract from the record of the proceedings and the relevant documents before the original decision maker. These full grounds of appeal stand as the appellant's written submissions.

235. At least **28 days** before the date set for provisional oral argument the respondent shall provide to the **adjudicator**, the appellant and the home secretary the respondent's response which must refer to the relevant extract from the record of

- the proceedings and the relevant documents before the original decision maker. The response shall stand as the respondent's written submissions.
236. At least **21 days** before the date set for provisional oral argument the home secretary may provide written submissions to the **adjudicator**, the appellant and the respondent.
237. At least **14 days** before the date set for provisional oral argument the appellant may reply to the respondent's response and the home secretary's submissions.
238. At least **seven days** before the date set for provisional oral argument the **adjudicator** will review the relevant material and determine what, if any grounds of appeal he wishes to hear oral argument on and shall inform the appellant, respondent and home secretary.
239. Oral argument shall last no more than **three hours** in total and shall be heard in public (unless the **adjudicator** on the application of any party agrees to hear oral argument in private).

Powers of the adjudicator

240. The review by the **adjudicator** will be limited in its scope to consideration of the specific complaints made to the **adjudicator**.
241. The **adjudicator** may at any time determine that the appeal or a particular ground of appeal shall not proceed if he considers:
- 241.1 That the appeal was presented out of time; or
- 241.2 That the notice of appeal or grounds of appeal do not disclose a valid ground of appeal.
242. Regardless of the finding in respect of any appeal the **adjudicator** has the right to decline to intervene.
243. The **adjudicator** shall have the authority to adopt such procedures, rules or conventions etc. that he believes are appropriate or desirable for the effective implementation and application of the **procedures** and to exercise the equivalent powers to those of the **tribunal chair** in relation to **tribunal** proceedings.
244. The **adjudicator** shall have the power to reverse any **sanction** and impose any **sanction** that he believes appropriate.

Fresh evidence

245. Fresh evidence will not be admitted unless the party seeking to adduce it satisfies the **adjudicator** that it is necessary in the interests of justice to do so and that the evidence could not have been presented with reasonable diligence to the original decision maker.

Appendix 1: The Home Secretary's Guidance to Members of the Tribunal

1 September 2012

This guidance does not form part of the rules.

It is the responsibility of the members of the tribunal to ensure that they have read and understood the contents of this guidance which outlines the principles for the conduct of tribunals.

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 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 tribunal clerk. If similar concerns arise once the tribunal hearing has commenced he should immediately arrange to speak to the Tribunal Chair without mentioning the matter to anyone else.

Where a member raises concerns about contact with persons involved in the case, the tribunal chair 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 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.

Throughout the 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.

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

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.

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 tribunal chair.

It is possible that a member of the 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 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 Tribunal for personal or professional advantage.

After the conclusion of the matter under the 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 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.

Appendix 2: The Home Secretary's Guidance to the PDB on Health Matters

In the event that the PDB becomes aware that a pathologist has been absent from a rota in a group practice on the grounds of (non-maternity related) ill health, the expectation would be that the pathologist be suspended from the register pending a confirmation of medical fitness.

If such absence lasted twelve or more months, the home secretary would consider that prima facie evidence of unsuitability for the register and would, subject to written representations from the pathologist, expect to remove the pathologist from the register.

Version Control

Version Number	Date Approved	Approved By	Brief Description
1.00	01/01/2013	Pathology Delivery Board	First issue of rules under the name Suitability Rules which replaced both the Disciplinary Rules and Guidance.
2.00	13/11/2018	Pathology Delivery Board	Rewrite of rules which adds and subtracts from version 1.00 as well as removing section N.