



Management Executive

Management and Personnel Directorate

HSS(TC8) 15/91

The General Manager, Director of Public
Health and Director of Dental Services
of each Health and Social Services Board
and General Manager of the Central Services Agency

A0205/1991

31st December 1991

Dear Sir

DISCIPLINARY PROCEDURES FOR HOSPITAL AND COMMUNITY MEDICAL AND DENTAL STAFF

SUMMARY

1. This circular consolidates previous guidance following the recommendations of a Joint Working Party on Disciplinary Procedures which was set up in England in 1987. Attached in the following annexes are:-

Annex A - Summary of Working Party recommendations

Annex B - Disciplinary Procedures in cases relating to Hospital Medical and Dental Staff, Doctors in Public Health Medicine and the Community Health Service, Administrative Dental Officers and Community Clinical Dental Officers.

Annex C - Revised version of Paragraph 190 of the Terms and Conditions of Service for Medical and Dental Staff.

Annex D - Professional Review Machinery

Annex E - Intermediate Procedure

2. The circular replaces HSS(TC8) 3/75 and sets out changes to paragraph 190 of the Terms and Conditions of Service for Hospital Medical and Dental Staff, Doctors in Community Medicine and the Community Health Service and Administrative and Community Dental Officers. It also introduces 2 new procedures;
 - i. **Professional Review Machinery:** whereby a professional panel reviews the conduct of hospital consultants who are alleged to have failed repeatedly to honour their contractual commitments.

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- ii. **Intermediate Procedure:** A new procedure for dealing with cases of professional misconduct and professional incompetence which warrant disciplinary action short of dismissal.

APPLICATION

3. The grades to which each procedure will apply are included in the appropriate annex. Discussions are continuing on the application of these procedures to other grades.

DEFINITIONS

4. The procedure(s) to be followed following allegations of misconduct will depend on the nature of the allegation. It is recognised that Employing Authorities sometimes have great difficulty defining the nature of the conduct which is the subject of an allegation, and the following definitions have been agreed between the Department and the professions:

PERSONAL CONDUCT - Performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills.

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

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

GENERAL

5. In respect of the Working Party's other recommendations, Employing Authorities should note that, in cases involving **personal conduct**, the position of doctors and dentists is similar to that of other Health Service staff. In such cases the provisions outlined in paragraphs 7 to 15 of Annex B to this circular apply.
6. The attached Annexes B-E will, in due course, be reproduced in the form of a booklet which will be issued to Employing Authorities for use by staff involved in the administration of these procedures.
7. Recommendation 14 provided for a review of these procedures within a period of 3 years and in the light of this, Employing Authorities are also asked to maintain records of the number of cases brought under the new procedures, together with details of the nature of the allegation, the procedure followed in each case, the stage reached in the procedure, and the outcome. These records are for monitoring purposes only, and anonymised returns only will be required. Employing Authorities will be asked, in due course, by the Management Executive for this information, and in addition, for views on the effectiveness of the procedures.

ACTION

8. With effect from 1 January 1992 Employing Authorities are asked to introduce the changes detailed in the annexes as follows:

HSS(TC8) 3/75: Annex B of this circular supersedes HSS(TC8) 3/75.

PARAGRAPH 190: Annex C details changes to paragraph 190 of the Terms and Conditions of Service for Hospital Medical and Dental Staff, Doctors in Community Medicine and the Community Health Service and Administrative and Community Dental Officers. These changes have been determined by the Department in accordance with paragraph 12 of Part II of Schedule I to the Health and Personal Social Services (Northern Ireland) Order 1972. The new procedure will apply to appeals lodged with the Department after 1 January 1992. Replacement pages for the respective handbooks will be issued in due course.

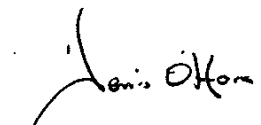
PROFESSIONAL REVIEW MACHINERY: Annex D introduces informal "pre-disciplinary" machinery for reviewing the conduct of hospital consultants who are alleged to have failed repeatedly to honour their contractual commitments. The procedure is in addition to, and does not replace, either Employing Authorities existing powers to take disciplinary action or the arrangements for dealing with sick doctors outlined in HSS(TC8) 1/84. This procedure shall apply from the date of this circular and may include the investigation of acts or omissions which have occurred before this date.

INTERMEDIATE PROCEDURE: Annex E introduces a new procedure for dealing with cases of professional misconduct and professional incompetence which warrant disciplinary action short of dismissal. This procedure shall apply from the date of this circular and may include the investigation of acts or omissions which have occurred before this date.

CIRCULAR CANCELLED

9. Circular HSS(TC8) 3/75 is cancelled from the date of this circular except where Employing Authorities have started proceedings on the basis of HSS(TC8) 3/75 before this date.
10. Enquiries on the implementation of these arrangements should be addressed to Mr A G Halligan, Management and Personnel Directorate, Castle Buildings, Stormont, Belfast BT4 3RA.

Yours faithfully


A G HALLIGAN

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SUMMARY OF WORKING PARTY RECOMMENDATIONS

Recommendation 1: The introduction of Professional Review Machinery in all health authorities.

Recommendation 2: Health authorities should review their disciplinary procedures in respect of personal misconduct to ensure that they include doctors and dentists adequately.

Recommendation 3: The intermediate procedure should be introduced subject to detailed negotiation between the parties.

Recommendation 4: There should be improved guidance designed to make the HM(61)112 procedure less cumbersome and ensure that it is applied more uniformly.

Recommendation 5*: Legal representation at HM(61)112 hearings should be amended, so that both the practitioner and the health authority concerned employ solicitors rather than barristers.

* Following further consideration it has been agreed that this recommendation would not be implemented at this time. Authorities and practitioners are asked, however, to make efforts generally to reduce the formality of the proceedings and the time they take as a consequence.

Recommendation 6: Indicative time limits for HM(61)112 enquiries should be introduced.

Recommendation 7: There should be a central standing panel of lawyers acceptable to both sides and readily available - perhaps including those recently retired - to chair investigating panels in HM(61)112 cases.

Recommendation 8: Paragraph 190 rights should not apply to dismissal on grounds of personal misconduct.

Recommendation 9: Professional committees (in paragraph 190 cases) should in future be assisted by a legal assessor or adviser.

Recommendation 10: The professional committee in paragraph 190 cases to test the acceptability of a third solution with both parties to try to ensure that a decision is not delayed by the Secretary of State suggesting a third solution when it is unlikely to be feasible.

Recommendation 11: It is inappropriate for certain practitioners with a limited work commitment with health authorities and with a significant alternative source of medical or dental income, to retain rights under paragraph 190.

Recommendation 12: Time limits should be introduced for the paragraph 190 procedure.

Recommendation 13*: The possibility of arrangements for voluntary early retirement in the interests of the service should be considered in the appropriate negotiating forum.

Recommendation 14: Arrangements for monitoring the new procedures, including the regular collection of data, should be introduced and the effectiveness of the procedures should be reviewed after a period of 3 years from the date of implementation.

*Discussions on this recommendation are to take place soon between the Departments and the Profession. Details will be issued when these discussions are concluded.

DISCIPLINARY PROCEEDINGS IN CASES RELATING TO HOSPITAL MEDICAL AND DENTAL STAFF, DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE, ADMINISTRATIVE DENTAL OFFICERS AND COMMUNITY CLINICAL DENTAL OFFICERS

SUMMARY

Guidance is given on the procedure to be followed in serious disciplinary cases involving hospital, public health and community health doctors or dentists. The procedure does not apply to holders of joint appointments by the Employing Authority and the Queen's University of Belfast.

Disciplinary action for the purposes of this procedure shall include -

- a. formal warning or reprimand;
- b. withholding of an increment;
- c. downgrading; and
- d. dismissal.

GENERAL

1. This annex replaces HSS(TC8) 3/75 and outlines the procedures which Employing Authorities should use when handling serious disciplinary charges, for example, where the outcome of disciplinary action could be the dismissal of the medical or dental practitioner concerned. The lines of procedure proposed are designed to ensure that justice is done and seen to be done and injustice avoided in respect of all the parties concerned (patient, practitioner and employer).
2. The arrangements described below are without prejudice to the right of the Employing Authority to take immediate action (eg suspension from duty) where this is required in cases of a very serious nature.
3. There are broadly 3 types of case which may involve medical or dental staff:
 - a. cases involving personal conduct (paragraphs 6 to 15);
 - b. cases involving professional conduct (paragraphs 16 to 29);
 - c. cases involving professional competence (paragraphs 16 to 29).

It is for the Employing Authority to decide under which category a case falls. Guidance on the definition of each category is given in paragraph 3 of the circular.

GENERAL PRINCIPLES

4. The following general principles are applicable to all disciplinary cases;
 - a. a practitioner should immediately be made fully aware in writing of any adverse report giving rise to the question of disciplinary action and should be given every opportunity to answer it;
 - b. at an early stage of the proceedings he should be given a copy of this procedure;
 - c. at all stages disciplinary proceedings should be completed as quickly as is compatible with need to ensure that justice is done and is seen to be done;
 - d. any disciplinary action should be appropriate to the insubordination, incompetence, inefficiency or misconduct established; and

- e. any mitigating circumstances and the previous record of service of the practitioner concerned should be taken into account.

RESPONSIBILITY FOR DISCIPLINARY ACTION

5. Disciplinary action shall be the responsibility of the Disciplinary Authority (ie the Employing Authority). The Disciplinary Authority shall appoint a Disciplinary Committee of 3 persons to which disciplinary powers will be delegated. In cases involving professional conduct or professional competence the committee should include where possible a medical or dental representative as appropriate.

CASES INVOLVING PERSONAL CONDUCT

6. In cases involving personal conduct, the position of a doctor or dentist is similar to that of other health service staff. In such cases the provisions outlined in paragraphs 7 to 15 of this circular apply.
7. **Treatment of Minor Offences or Failings which may lead to Disciplinary Action**

Minor offences or failings should be dealt with by the Director of Public Health or the Director of Dental Services or the practitioner's head of department as appropriate as they come to notice. Repeated minor offences should be drawn to the practitioner's attention in writing and an opportunity to explain them should be given. In the event of failure on the part of the practitioner to give a satisfactory explanation, the matter should be reported to the appropriate Disciplinary Authority for consideration as to whether a formal warning or reprimand should be issued.

Preliminary Investigation

8. The Disciplinary Authority shall be responsible for establishing all the facts necessary to enable a balanced decision to be reached. The Disciplinary Authority shall ensure that the practitioner is notified immediately in writing of the alleged offence(s) and is given the opportunity to make an explanation either in writing or by personal interview if requested accompanied, by the representative of the practitioners' professional organisation. Wherever practicable, investigation, including where appropriate, the personal interview should be completed within 5 working days of the report of the alleged offence.

Formal Warnings and Reprimands

9. Formal warnings or reprimands must be accompanied or immediately followed by advice to the practitioner of the consequence of repetition or continuance of the offence giving rise to this disciplinary action. A final warning shall however not be given until the practitioner assisted, if desired, by a professional organisation representative, has had an opportunity to make representations at a personal hearing if requested against such final warning to the appropriate Disciplinary Authority. Such warnings or reprimands shall be deleted from the practitioner's records after a period not exceeding 12 months satisfactory conduct, or in the case of a final warning not exceeding 2 years satisfactory conduct.

Precautionary Suspension Pending a Decision

10. In special circumstances, precautionary suspension may be imposed immediately by the Disciplinary Authority pending formal investigation of the alleged offence or pending the outcome of an appeal. In all such cases the practitioner should continue to receive full normal remuneration even though in some cases suspension may necessarily be for a period which cannot be determined in advance.

Summary Dismissal

11. In cases of a very serious nature the Disciplinary Authority has the right of summary dismissal without notice or warning. A practitioner summarily dismissed may appeal against dismissal in the normal way, but the dismissal should not be set aside pending the outcome of the appeal.

Disciplinary Decisions

12. Disciplinary decisions together with the reasons therefore shall be notified in writing to the practitioner concerned who shall be informed of the right to appeal to the Management Executive of the Department of Health and Social Services. Any appeal to the Management Executive by the practitioner should be made through the Employing Authority stating the grounds of the appeal within 14 days. Where the disciplinary action results in the withholding of an increment the employee shall also be informed that its restoration shall be dependent upon and become effective after the satisfactory performance of duties over a specified period. In the event of appeal, disciplinary action other than summary dismissal (paragraph 11) and precautionary suspension (paragraph 10) shall be deferred until the appeal has been heard. The appeal should normally be held within 21 days of lodgement of the appeal.

Composition of Appeal Committee

13. An appeal to the Management Executive shall be heard by an Appeal Committee consisting of 3 members appointed by the Management Executive. The Appeal Committee shall consist of a Chairman (possibly a solicitor) nominated by the Management Executive a Director of Public Health or Director of Dental Services as appropriate from another Employing Authority and a doctor or dentist nominated by his/her professional organisation.

Appeal Hearing

14. The following procedures shall operate at the appeal hearing:-
 - a. no member of the Employing Authority or officer thereof, who is directly involved in the circumstances leading to the disciplinary proceedings, shall take any part in the hearing except as a witness or as the presenting officer;
 - b. the practitioner shall be given at least 21 days notice of the time and place of the appeal hearing, together with a clear statement of the right to appear there personally, either alone or with a professional organisation representative. The practitioner may be legally represented at his own expense;
 - c. at the hearing the case against the practitioner shall be presented first and any witnesses called in support of the case should also be examined at this stage; the Chairman of the Appeal Committee shall conduct the case and examine witnesses, although other members of the Appeal Committee may put further questions;
 - d. the practitioner shall be present during the hearing of all the evidence put before the Appeal Committee and shall have full opportunity, or through his/her representative, to question any witness; the practitioner should also be permitted to call witnesses and the Employing Authority should make available any member of staff required as a witness;
 - e. after all witnesses have been heard and the practitioner or the person accompanying the employee has had an opportunity of addressing the Appeal Committee, all parties except members of the Appeal Committee and its officers shall retire; it is important that the presenting officer and any employee who has

given evidence before the Appeal Committee shall retire from the room while the evidence is considered;

- f. the Appeal Committee shall have the right to recall any witness but if this is done, the presenting officer, the practitioner and representative shall have the right to be present while the witness is further questioned.

Decision of the Appeal Committee

- 15. The Employing Authority and the employee shall be notified in writing without delay of the decision of the Appeal Committee, and where the decision involves disciplinary action against the practitioner, the reasons for it and the operative date shall be stated. The decision of the appellate body shall be binding.

CASES INVOLVING PROFESSIONAL CONDUCT AND PROFESSIONAL COMPETENCE

i. Preliminary Investigation - Establishment of Prima Facie Case

- 16. The first step where an incident occurs or a complaint is made involving the professional conduct or competence of a medical or dental officer should be for the Chairman of the Employing Authority to decide whether there is a prima facie case which, if well founded, could result in serious disciplinary action such as dismissal. Such preliminary inquiries if any as are necessary before this decision is reached should be in the hands of the Director of Public Health or the Director of Dental Services as appropriate. In appropriate cases, the legal adviser or solicitor to the Employing Authority should be called in to assist.

Where the matter arises from an incident for which an accident report has been made the Chairman, before reaching his decision, should have regard to the accident report, but normally no subsequent use should be made of the report in the proceedings, except insofar as it is used by the appointing Authority's legal advisers in preparing the case to be presented to the investigating panel (see paragraph 19 below).

- 17. Unless the Chairman decides forthwith that there is no prima facie case, the doctor or dentist should be warned in writing immediately of the nature of the incident which has been alleged, or of the complaint which has been made, and that the question of an inquiry, which might lead to serious disciplinary action, is under consideration. Copies of all relevant correspondence should be sent to the practitioner, and he should be informed that any comments made by him will be placed before the Chairman and any investigating panel which may be appointed. The practitioner should be given reasonable time to make representations and to seek advice if he so wishes before any final decision is taken on whether an inquiry is necessary.
- 18. If, on considering the allegation or complaint made and the practitioner's comments, if any, in reply to the written warning given in accordance with paragraph 17, the Chairman decides that a prima facie case exists, and that there is a dispute as to the facts, the Employing Authority should proceed to an inquiry, as in paragraphs 19-26. If the Chairman decides that a prima facie case exists, but there is no substantial dispute as to the facts, any subsequent disciplinary action which the Employing Authority may take should comply with the guidance contained in paragraphs 7-15. An inquiry on the lines laid down in paragraphs 19-26 below would normally be unnecessary also where, in a matter affecting the practitioner's professional conduct or competence, the facts in question have been the subject of a criminal charge on which he has been found guilty in a court of law or have been established by a public inquiry set up by the Government. Where the facts have been established by a public enquiry and there is a dispute as to whether further facts need to be established or as to the conclusion to be drawn from the facts, an investigating panel set up in accordance

with paragraphs 19 and 20 below will consider if a further inquiry is required (in which case they will proceed in accordance with paragraphs 21-26 below). Where the panel consider that no further inquiry is required they will proceed in accordance with paragraphs 25-29 below.

ii. Inquiry

19. An investigating panel, the composition of which should differ with the type of inquiry, should be set up by the Employing Authority responsible for appointing the practitioner. No member of the panel should be associated with the hospital(s) in which he works, or, in the case of a doctor in Public Health Medicine or the Community Health Service or community dentist, in the Employing Authority in which the practitioner concerned works. In all cases the panel should be small, normally of 3 persons, including a legally qualified Chairman, not being either an officer of the Department of Health and Social Services or a member or officer of the Employing Authority concerned, who will be nominated in each case which arises by the Department of Health and Social Services from a panel appointed by the Lord Chief Justice. In cases involving professional conduct, the members other than the Chairman should contain an equal proportion of professional and lay persons, unless the charges relate only to relationships between a doctor or a dentist and his professional colleagues, when it would clearly be appropriate to have a panel wholly or predominantly of professional members, apart from the Chairman. In cases involving solely professional competence, all the other members should be professionally qualified, and it will probably be appropriate that at least one of their number should be in the same specialty as the practitioner whose professional competence has been called in question; it may also be appropriate that one of them should be a practitioner from another hospital in the same grade. Before the professional members are chosen, there should be consultation in the case of a medical practitioner with the British Medical Association and in the case of a dental practitioner with the British Dental Association.
20. Payment should be made by the Employing Authority to the Chairman and members of the panel at a rate determined from time to time. This fee covers any preparatory work required and any time spent on preparation of reports. Travelling and subsistence expenses of both the Chairman and members of the panel should be payable in accordance with the Payment of Travelling and other Allowances to Members Determination (Northern Ireland) 1989.
21. The terms of reference of the panel should include the nature of the incident or complaint against the practitioner, who should be informed of the setting up of the panel and its terms of reference and given not less than 21 days' notice in order to prepare his case. He should be provided as soon as possible with any copies of correspondence or written statements made. A copy of the list of witnesses referred to in paragraph 23, and the main points on which they can give evidence, should be furnished to the practitioner as long as possible before the hearing if he so requests, unless for any exceptional reason the Chairman of the panel gives authority for the names of the witnesses not to be provided in advance of the hearing.
22. The investigating panel should be held in private, and should establish all the relevant facts of the case. To that end, the panel should ensure, as far as possible, that colleagues of the practitioner should be asked to give factual evidence, rather than personal impressions or opinions. A list of witnesses should be drawn up with the main points on which they are to give evidence; this task might with advantage be undertaken by the legal adviser or solicitor to the Employing Authority assisted by the Director of Public Health or the Director of Dental Services as appropriate. Subsequently at the hearing, the case should be presented by the legal adviser or solicitor, who should conduct an examination of the witnesses before the investigating panel. The Employing Authority and/or the practitioner may be represented before the panel by a

lawyer, although both sides should make efforts to reduce the formality of the proceedings and the consequent time they take.

23. The practitioner should have the right to appear personally before the investigating panel and to be represented (either by a lawyer in accordance with paragraph 22 above, or otherwise), and to hear all the evidence presented to the panel. He should have the right to cross-examine all witnesses and to produce his own witnesses, and they and he may also be subjected to cross-examination. The question of what is to happen upon any application for adjournment in the event of the illness or unavoidable absence of the practitioner, or any witness, should be a matter for the Chairman of the Panel to decide in accordance with the normal procedures for similar inquiries.
24. The procedure and rules as regards the admission of evidence before the investigating panel should be determined by the Chairman who may, if he wishes, hold a preliminary hearing with the parties (or their representatives) for the purpose.
25. The report of the investigating panel should be presented in 2 parts. The first part should set out the committee's findings and all the relevant facts of the case, but contain no recommendations as to action. The second part should contain a view as to whether the practitioner is at fault, and may, at the request of the Authority appointing the panel, contain recommendations as to disciplinary action. In no circumstances should the investigating panel itself be given disciplinary powers.
26. The panel should send the practitioner a copy of the first part of their report, and should allow a period of 4 weeks for the submission to them of any proposals for corrections of fact, or for setting out in greater detail the facts on any particular matter which has arisen. It would be for the panel to decide whether to accept any proposed amendments and whether any further hearing was necessary to enable them thus to decide. Subject to this procedure, the facts as set out in the panel's report should be accepted as established in any subsequent consideration of the matter.
27. The Employing Authority should then receive the full report of the investigating panel and decide what action to take. In the event of the investigating panel finding that the practitioner is at fault, the substance of their views on the case and recommendations in the second part of their report should be made available to him in good time in order to allow him/her adequate time to make any plea in mitigation before the Employing Authority reach any conclusion as to action.
28. The Management Executive and the professions are concerned at the length of time some hearings take before conclusion. In all cases, it has been agreed with the professions that the following time limits will apply to each stage, and in all cases, the time taken from the decision that there is a prima facie case to referral to the Employing Authority should not exceed 32 weeks:
 - a. Chairman decides that there is a prima facie case and informs the practitioner.
 - b. Practitioner comments on the case - within 4 weeks.
 - c. After receipt of comments, Employing Authority decide to follow this procedure - within 2 weeks.
 - d. Employing Authority appoints Chairman and rest of inquiry panel; and panel meets - within 3 months.
 - e. Hearing is concluded - within 1 week.

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- f. Report is produced and factual part sent to practitioner - within 4 weeks.
 - g. Practitioner makes comments - within 4 weeks.
 - h. Report goes to Employing Authority - within 4 weeks.
29. These provisions are without prejudice to the provisions of paragraph 190 of the Terms and Conditions of Service of Hospital Medical and Dental Staff, Doctors in Community Medicine and the Community Health Service and Administrative and Community Dental Officers.

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

190. a. Subject to sub-paragraph (c), a consultant, SHMO, SHDO, AS or Hospital Practitioner who considers that his appointment is being unfairly terminated may appeal to the Department against the termination by sending to the Department a notice of appeal at any time during the period of notice of termination of his appointment.
- b. A practitioner appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Department within:
- i. the period of 4 months beginning with the date on which he received notice of termination of his contract, or
 - ii. where the Department is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the Department may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

- c. There is no right of appeal under sub-paragraph (a) where -
- i. the practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 5 NHDS and he has income from other Health Service medical or dental work equal to or greater than the income from the appointment being terminated*, or
 - ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.*

"Personal Misconduct": for the purposes of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills".

* Paragraphs 7 to 15 of Annex B of Circular HSS(TC8) 15/91 provide a mechanism for appeal where the practitioner is excluded by this provision from an appeal under paragraph 190.

- d. A practitioner who considers that his appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of 1 month beginning with the date on which he received notice of termination of his employment, require the Department to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.
- e. The panel shall comprise the Chief Medical Officer or Chief Dental Officer of the Department (as appropriate), the Chairman of the NICHMS, or HDSC (as appropriate), or their deputies, and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the Employing Authority terminating the appointment accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner may (if he has

not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed for the purposes of sub-paragraph (b) shall be 2 months from the date of such notification.

- f. On receipt of a notice of appeal from a practitioner entitled under sub-paragraph (a) and (c) to appeal the Department shall -
 - i. request the Employing Authority to give its written views on the case;
 - ii. refer the case for advice to a professional committee consisting of representatives of the Department and representatives of the practitioner's profession and chaired by the Chief Medical Officer or his deputy or Chief Dental Officer of the Department.
- g. The Employing Authority shall send to the Department its written views within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the Employing Authority fails to do so and unless the Department extends the period for such further period as it thinks reasonable in a case where it is satisfied that it was not reasonably practicable for the Employing Authority's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's appointment be continued.
- h. The professional committee -
 - i. shall be assisted by a barrister or solicitor;
 - ii. may, if it thinks fit, interview the practitioner and representatives of the Employing Authority.
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than 3 months, after receipt by the Department of the Employing Authority's views;
 - iv. shall give its advice to the Department.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:
 - i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Employing Authority; and
 - ii. include in any advice given to the Department to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Employing Authority.
- j. In the light of the professional committee's advice, the Department shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
 - i. confirm the termination of the practitioner's appointment;
 - ii. direct that the practitioner's appointment continue; or
 - iii. arrange some other solution agreeable to the practitioner and the Employing Authority.
- k. The termination of the practitioner's appointment shall not have effect while an appeal duly made in accordance with

sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Employing Authority until the decision is given (and in the case of a referral under sub-paragraph (d) until any time allowed by sub-paragraph (e) for appealing has expired. If the Department so directs, the period of notice shall be further extended as it may direct in a case where it gives a decision to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.

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

190. a. Subject to sub-paragraph (c), a Director of Public Health, a consultant in Public Health Medicine, a Senior Clinical Medical Officer, or a Clinical Medical Officer on or above the 6th point of the salary scale who considers that his appointment is being unfairly terminated may appeal to the Department against the termination by sending to the Department a notice of appeal at any time during the period of notice of termination of his appointment.
- b. A practitioner appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Department within:-
- i. the period of 4 months beginning with the date on which he received notice of termination of his contract, or
 - ii. where the Department is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the Department may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

- c. There is no right of appeal under sub-paragraph (a) where -
- i. the practitioner is ordinarily required to work in the hospital and community health service (HCHS) for no more than 17½ hours and he has income from other Health Service medical or dental work equal to or greater than the income from the appointment being terminated,* or
 - ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.*

"Personal Misconduct": for the purpose of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills".

* Paragraphs 7 to 15 of Annex B of Circular HSS(TC8) 15/91 provide a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190.

- d. A practitioner who considers that this appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of one month beginning with the date on which he received notice of termination of his employment, require the Department to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.
- e. The panel shall comprise the Chief Medical Officer of the Department, the Chairman of the NICCM/CH or their deputies, and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the Employing Authority terminating the appointment accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner may (if he has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed

for the purposes of sub-paragraph (b) shall be 2 months from the date of such notification.

- f. On receipt of a notice of appeal from a practitioner entitled under sub-paragraph (a) and (c) to appeal the Department shall -
 - i. request the Employing Authority to give its written views on the case;
 - ii. refer the case for advice to a professional committee consisting of representatives of the Department and representatives of the practitioner's profession and chaired by the Chief Medical Officer of the Department or his/her deputy.
- g. The Employing Authority shall send to the Department its written views within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the Employing Authority fails to do so and unless the Department extends the period for such further period as it thinks reasonable in a case where it is satisfied that it was not reasonably practicable for the Employing Authority's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's appointment be continued.
- h. The professional committee -
 - i. shall be assisted by a barrister or solicitor;
 - ii. may, if it thinks fit, interview the practitioner and representatives of the Employing Authority;
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than three months, after receipt by the Department of the Employing Authority's views;
 - iv. shall give its advice to the Department.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:
 - i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Employing Authority, and
 - ii. include in any advice given to the Department to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Employing Authority.
- j. In the light of the professional committee's advice, the Department shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
 - i. confirm the termination of the practitioner's appointment;
 - ii. direct that the practitioner's appointment continue; or
 - iii. arrange some other solution agreeable to the practitioner and the Employing Authority.
- k. The termination of the practitioner's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of

termination of the appointment, the notice shall be extended by the Employing Authority until the decision is given (and, in the case of a referral under sub-paragraph (d) until any time allowed by sub-paragraph (e) for appealing has expired). If the Department so directs, the period of notice shall be further extended as it may direct in a case where it gives a decision to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his appointment continue.

REVISED VERSION OF PARAGRAPH 190 OF THE TERMS AND CONDITIONS OF SERVICE
FOR ADMINISTRATIVE DENTAL OFFICERS AND COMMUNITY CLINICAL DENTAL OFFICERS

190. - a. Subject to sub-paragraph (c), an administrative or clinical dental officer who considers that his appointment is being unfairly terminated may appeal to the Department against the termination by sending to the Department a notice of appeal at any time during the period of notice of termination of his appointment.
- b. An administrative or clinical dental officer appealing under sub-paragraph (a) shall also send a full statement of the facts of his case to the Department within -
- i. the period of 4 months beginning with the date on which he received notice of termination of his contract, or
 - ii. where the Department is satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as the Department may permit.

If he fails to do so, the appeal shall be treated as having been determined by a decision confirming the termination of his appointment.

- c. There is no right of appeal under sub-paragraph (a) where -
- i. the administrative or clinical dental officer is ordinarily required to work in the community dental service for no more than 17½ hours and he has income from other Health Service dental work equal to or greater than the income from the appointment being terminated,* or
 - ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct.*

"Personal Misconduct"; for the purposes of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills".

* Paragraphs 7 to 15 of Annex B of Circular HSS(TC8) 15/91 provides a mechanism for appeal where an administrative or clinical dental officer is excluded by this provision from an appeal under paragraph 190.

- d. An administrative or clinical dental officer who considers that his appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his conduct could reasonably be described as personal misconduct may, within the period of one month beginning with the date on which he received notice of termination of his employment, require the Department to refer to a panel the question whether his appointment is being terminated on the sole ground of personal misconduct.
- e. The panel shall comprise the Chief Dental Officer of the Department, the Chairman of the Community Dental Services Committee and a barrister or solicitor not in the employment of the government legal service or any Health and Social Services Board. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the officer and the Employing Authority terminating the appointment accordingly. If the

panel decides that the termination is not on the sole ground of personal misconduct, the officer may (if he has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to him of the panel's decision and the time allowed for the purposes of sub-paragraph (b) shall be 2 months from the date of such notification.

- f. On receipt of a notice of appeal from an administrative or clinical dental officer entitled under sub-paragraph (a) and (c) to appeal the Department shall -
 - i. request the Employing Authority to give its written views on the case;
 - ii. refer the case for advice to a professional committee consisting of representatives of the Department and representatives of the profession and chaired by the Chief Dental Officer of the Department.
- g. The Employing Authority shall send to the Department its written views within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the Board fails to do so and unless the Department extends the period for such further period as it thinks reasonable in a case where it is satisfied that it was not reasonably practicable for the Employing Authority's views to be presented within 2 months from the request date, the appeal shall be treated as having been determined by a decision to direct that the officer's appointment be continued.
- h. The professional committee -
 - i. shall be assisted by a barrister or solicitor;
 - ii. may, if it thinks fit, interview the practitioner and representatives of the Employing Authority;
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than 3 months, after receipt by the Department of the Employing Authority's views;
 - iv. shall give its advice to the Department.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:
 - i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the Employing Authority, and
 - ii. include in any advice given to the Department to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Employing Authority.
- j. In the light of the professional committee's advice, the Department shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
 - i. confirm the termination of the officer's appointment;
 - ii. direct that the officer's appointment continue; or

- iii. arrange some other solution agreeable to the officer and the Employing Authority.
- k. The termination of the officer's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the Employing Authority until the decision is given (and, in the case of a referral under sub-paragraph (d) until any time allowed by sub-paragraph (e) for appealing has expired). If the Department so directs, the period of notice shall be further extended as it may direct in a case where it gives a decision to arrange a solution other than confirming the termination of the officer's appointment or directing that his appointment continue.

PROFESSIONAL REVIEW MACHINERY**Summary**

This Annex introduces informal machinery for reviewing the conduct of hospital consultants who are alleged to have repeatedly failed to honour their contractual commitments.

Procedure:

1. The Area Medical Advisory Committee (AMAC) or the Area Dental Advisory Committee (ADAC) as appropriate, or their equivalent, will establish a professional panel to operate the procedure. The panel will normally consist of the Chairman of the AMAC or ADAC, and two other consultants nominated by the AMAC or ADAC for a period of not more than two years. A fourth member will be added to assist with each case, as set out in paragraph 5 below.

Referral

2. Allegations may be brought to the attention of the panel as follows:
 - i. directly:
 - by consultants
 - by the Director of Public Health or Director of Dental Services (or the equivalent medical or dental officer in other employing authorities)
 - ii. all other staff should submit allegations to their manager who will submit them to the Director of Public Health or Director of Dental Services. Medical or dental staff other than consultants may choose to make their allegations via a consultant.
3. When the Director of Public Health or Director of Dental Services receives an allegation, he will decide whether any action is needed and, if so, under which procedure. He may decide to use the intermediate procedure, to institute formal disciplinary procedures, to use the procedure set out in HSS(TC8) 1/84, or to refer the matter to the chairman of the professional panel constituted in accordance with paragraph 1 above. Directors of Public Health or Directors of Dental Services notifying allegations to the panel, and consultants making allegations direct to the panel will do so in writing.
4. The Director of Public Health or Director of Dental Services will preserve the anonymity of those making the allegations, if they so wish. The legal position of those who pass on information is that an action for defamation is not likely to succeed against persons passing on information which in their opinion should be brought to the notice of the recipients, since these persons would, unless actuated by malice, be able to rely on the defence of qualified privilege. This defence applies to a statement made in pursuance of a legal, moral or social duty to a person who has a corresponding duty to receive it.

If proceedings are brought which establish that the defendants have acted in accordance with the recommended procedure, in good faith, and with reasonable care, the Employing Authority should meet the cost of their defence and of any damages or costs ordered to be paid in those proceedings.
5. When the Chairman of the panel receives an allegation, he will inform the consultant concerned verbally, and provide him with a copy of any written representations received. The panel will co-opt a fourth member, from the same or an allied specialty as the consultant against whom the allegations have been received, but employed in

another area: he will be co-opted on the recommendation of the Chairman of the AMAC or ADAC, or equivalent in that area.

6. The consultant will then be invited to meet the panel and discuss the allegation. The matter will be discussed informally with the consultant, and no friends or representatives will be present. In the light of these informal discussions, the panel may conclude that the allegation is unfounded, in which case no further action will be necessary. If they conclude that there is substance to the allegations, the consultant will be advised accordingly, and invited to meet the panel within six months to review the advice given. If, after this second meeting, the panel considers that there has been no improvement, and there remains a problem, the matter will be referred to the Director of Public Health or Director of Dental Services.
7. The Director of Public Health or Director of Dental Services will be informed of all referrals to the panel and the outcome in each case, including those where the consultant concerned refused to meet the panel.
8. The Chairman will keep a note of the meeting, consisting of a factual statement of the complaint received, and a statement that the consultant has been advised by the panel. No other record of the meeting should be kept.

INTERMEDIATE PROCEDURE

Introduction

This new procedure involves the use of independent professional assessors, nominated by the British Medical Association or British Dental Association who would be invited by the Director of Public Health or Director of Dental Services (on behalf of the employing authority) to investigate and advise him on matters involving professional conduct or competence. The assessors themselves would have no disciplinary powers. The procedure could be used both in cases where there is a specific disciplinary allegation against a consultant or consultants and where there are problems arising from differing professional views within a department.

The following procedure will require commitment from the profession in that they would have to find suitable assessors speedily and there would have to be sufficient volunteers to act as assessors; there will also need to be commitment from Employing Authorities in releasing assessors, including perhaps by allowing locum cover. Travelling and subsistence expenses of the assessors are payable in accordance with the Payment of Travelling and other Allowances to Members Determination (Northern Ireland) 1989.

Procedure

1. On receiving an allegation from any source the Director of Public Health or Director of Dental Services will need to make some preliminary enquiries in order to determine whether:
 - a. there was no substance in the allegations and therefore no further action was necessary.
 - b. the case was a minor one which the Director of Public Health or Director of Dental Services thought suitable to deal with on an informal basis.
 - c. it was a case appropriate to Professional Review Machinery.
 - d. the procedures set out in HSS(TC8) 1/84 might be appropriate, or the Director of Public Health or Director of Dental Services wished to advise that it was a suitable case to refer to the sick doctors' scheme.
 - e. it was personal misconduct, in which case the disciplinary guidance outlined in paragraphs 7 to 15 of annex B would be followed.
 - f. it involved serious allegations about professional conduct or competence and, if so, whether or not it was serious enough to warrant procedures under annex B of this circular.
 - g. it involved less serious allegations about professional conduct or competence, and was suitable for the intermediate procedure.

During these preliminary enquiries, the Director of Public Health or Director of Dental Services will normally wish to have a discussion with the doctor involved.

2. If the Director of Public Health or Director of Dental Services decides that the case(s) falls into category 1(g), he will normally write to the BMA or BDA with details of the practitioner's specialty and the Area(s) and the hospital(s) where he/she works, together with a very brief indication of the problem (eg whether there are doubts about a consultant's clinical practice or a clash of professional views). At the same time, the Director of Public Health or Director of Dental Services will inform the doctor(s) or dentist(s) involved and others he thinks appropriate that he has taken this action.

3. The BMA or BDA will nominate impartial assessors from another Area/Region (normally two, with at least one from the same specialty as the consultant concerned and at least one from outside Northern Ireland), and agree their appointment with the Director of Public Health or Director of Dental Services. The BMA or BDA will aim to provide the names of assessors within one month.
4. When the Director of Public Health or Director of Dental Services receives notification of the assessors and agrees their appointment, he will provide them with a detailed statement of the case within one month, copying it at the same time to the doctor(s) or dentist(s) involved. The assessors will examine the statement and first consider whether or not it is appropriate to this procedure.
5.
 - i. The assessors may wish to meet the Director of Public Health or Director of Dental Services at this stage for a preliminary discussion or if they need further background information.
 - ii. If they consider that it falls into categories 1(c), (d) or (e) or is so serious that Annex B procedure is clearly appropriate, they will discuss with the Director of Public Health or Director of Dental Services how best to proceed.
 - iii. Otherwise, the assessors will determine whom they wish to interview: through the Director of Public Health or Director of Dental Services they will provide the doctor(s) or dentist(s) involved with the list of those to be interviewed and ask the doctor(s) whether he/she/they would like anybody to be interviewed by the assessors.
 - iv. The assessors will visit the Employing Authority area and undertake the necessary investigations. They will not be able to compel anybody - including the doctor(s) involved - to meet them, and refusal to do so should not frustrate the enquiry. Anybody who is interviewed should be informed that they will be expected to provide a written statement or to sign an agreed record of the interview, and that copies of these records and statements will be passed to the doctor(s) involved.
 - v. The doctor(s) or dentist(s) involved will be invited to meet the assessors and may do so either alone or accompanied by a representative of their professional organisation or a friend.
 - vi. During the period of the investigation and preparation of the report, the Director of Public Health or Director of Dental Services will arrange for the provision of secretarial and administrative assistance for the assessors.
6. As far as possible, the investigation will be completed within three months of the assessors receiving the statement of the case from the Director of Public Health or Director of Dental Services. The assessors will prepare a report, which shall be divided into 2 parts. The first part shall set out the assessors' findings on all the relevant facts of the case, but contain no recommendations as to action. The second part shall contain a view as to whether and to what degree the doctor(s) involved is/are at fault and may also contain recommendations regarding, eg organisational matters within the department or advice to be given to the consultant. In no circumstances should the assessors themselves be given disciplinary powers.
7. The assessors will send the doctor(s) or dentist(s) involved and the Director of Public Health or Director of Dental Services a copy of the first part of their report and should allow a period of 14 days for the submission to them of the doctor(s) or dentist(s) comments on its factual accuracy. The assessors will then submit the full report to the Director of Public Health or the Director of Dental Services.

8. The Director of Public Health or Director of Dental Services will then decide what further action is necessary, and will inform the doctor(s) or dentist(s) involved accordingly. If he decides that disciplinary action is necessary eg a warning is appropriate, the local procedures based on paragraphs 12(i) and (ii) of the LRA Code of Practice would be followed. If the doctor(s) or dentist(s) involved wishes to appeal against any disciplinary action, the appeal will be to the Employing Authority using similar procedures as set out in paragraphs 14-15 of Annex B. It is recommended that the Appeal Committee might be made up of the Chairman of the Board (or a deputy), a non executive member of the Board (if possible a doctor or dentist as appropriate), and another doctor or dentist in the same or associated specialty as the doctor or dentist involved. The appointment of the latter would normally be made from outside the Employing Authority area but, in appropriate cases, could be made from within the Employing Authority area.
9. This procedure shall also apply to Directors of Public Health and Directors of Dental Services, other consultants in public health medicine and administrative dental officers and community clinical dental officers. Where the subject of the allegation is the Director of Public Health or Director of Dental Services a reference to "Director of Public Health or Director of Dental Services" shall be to "General Manager" who will seek appropriate professional advice.