

Licensing appeals: an evaluation

Strategic delivery: Setting standards Increasing and informing choice Demonstrating efficiency economy and value

Details:

Meeting Audit and Governance Committee

Agenda item 12

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For information or decision? Information and comment.

Recommendation AGC is invited to consider the evaluation of the recent licensing appeals process

Resource implications Low, unless a decision is taken to review regulations

Implementation date n/a

Organisational risk Low Medium High

Annexes Annex 1: Representations regulations
Annex 2: Appeals regulations

1. Introduction

- 1.1. As the committee will be aware, the HFEA is a licensing authority. Fertility treatment and research cannot be practised in the UK without the appropriate licence granted by the HFEA.
- 1.2. Decisions about whether to grant or refuse, vary, revoke, or apply conditions to a licence are subject to a statutory right of appeal by the applicant clinics. It is rare that licensing decisions are challenged; indeed, it is rare that a suitably punitive decision is taken that might invite challenge. The HFEA has recently been challenged on one particular licensing decision, which proceeded through both statutory stages of appeal. The Audit and Governance Committee asked for a 'lessons learned' exercise to be carried out on the running of those two stages of appeal.
- 1.3. This paper reflects on the regulations, process and operational running of the representations and appeals hearings. It does not consider the specifics of the case in question, nor address the lessons learned by the inspectorate in the way in which they approached that particular case.

2. Background and statutory footing

- 2.1. The Human Fertilisation and Embryology Act 1990 (as amended, 'the Act') sets out in some detail the process that must be gone through by the HFEA in taking licensing decisions. Although the Act refers to the HFEA as a whole, the HFEA has delegated its licensing functions to the Licence Committee and the Executive Licensing Panel – as either could take a the decision that would lead to an appeal being heard, these are referred to throughout as 'a licensing committee'.
- 2.2. Sections 16-20 of the Act dictate the process that any decision must go through. In short, the process is as follows:
 - 2.2.1. A licensing committee takes a 'proposed decision' and issues a notice of that proposed decision to the applicant clinic;
 - 2.2.2. The clinic has 28 days within which to give notice of its intention to make representations against that proposed decision, or to acknowledge and accept it;
 - 2.2.3. If the clinic serves notice of its intention to make representations against the proposed decision, the regulations governing this process are activated (see section 3 below) and the first stage of appeal – referred to here as the 'representations' stage – is undertaken. By our own construct, these representations are considered by a Licence Committee;
 - 2.2.4. In the case where the representations made by the clinic are unsuccessful (ie, the proposed decision by the licensing committee is upheld) then the 'proposed decision' becomes a 'decision' and notice is given to the clinic;

- 2.2.5. The clinic then has a further 28 days in which give notice of its intention to appeal against the decision, or to acknowledge and accept the decision;
- 2.2.6. If the clinic serves notice of its intention to appeal, the regulations governing the appeals stage are activated (see section 4 below). This appeal is considered by the Appeals Committee;
- 2.2.7. In the event of the appeal failing and the decision being upheld, that decision comes into effect.
- 2.3.** It is important to note that the statutory scheme is such that no decision can be put into effect until the full two-stage process has been completed, or the clinic has acknowledged and accepted the proposed decision. A judicial review judgment against the HFEA in 2013 reinforced this point.
- 2.4.** This process has only been employed to its full extent once, culminating in an appeals hearing in July this year. There had been a few previous cases that had progressed to the representations stage in the past, but none to the appeals hearing.
- 2.5.** While this paper will not consider the particulars of the arguments on each side of the recent appeal, it is germane to be aware of the basic facts of the case. The clinic's licence was due for renewal in December 2013. At that time, the inspectorate could not recommend renewal given a number of concerns it had, and a decision regarding the licence was adjourned (twice) until May 2014, at which point the Licence Committee took the proposed decision to refuse to grant a renewed licence to the clinic. The clinic gave notice of its intention to make oral representations against this proposed decision – this hearing was held over five days in September and October 2014. The committee that heard the representations rejected them, and upheld the Licence Committee's proposed decision. The clinic then exercised its right of appeal, which was considered over a further five days at a hearing in July 2015. The committee that heard the appeal overturned the decision, and granted the renewed licence to the clinic, with a number of conditions attached.

3. Representations hearing

- 3.1.** As mentioned above, the first stage of appeal for a clinic is to make representations against a proposed licensing decision. Once the clinic gives notice that it wishes to make representations, the regulations governing that process are invoked.

The regulations

- 3.2.** The Human Fertilisation and Embryology (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009 dictate the procedure governing the representations process (and are attached at Annex 1). For ease, these will be referred to as the 'representations regulations' in this paper. They are the HFEA's regulations (as opposed to the Secretary of State) in that they were made by the HFEA using its power under the Act to make regulations about the

representations process. It should be noted now, then, that it is also within our power to revoke/amend these regulations.

- 3.3.** The representations regulations, among other things, stipulate that:
- 3.3.1. The Licence Committee that considers representations must sit with three or five members and be advised by a legal adviser;
 - 3.3.2. The Committee must be assisted by a secretary who is not a member of the Authority nor the Secretary to the Appeals Committee;
 - 3.3.3. A strict timetable must be adhered to and can only be deviated from by a direction from the chair of the committee;
 - 3.3.4. If the representations are to be made orally, the procedure to be followed is a quasi-judicial one, akin to civil proceedings hearing;
 - 3.3.5. The appellant and the HFEA may be represented by a barrister, advocate or solicitor;
 - 3.3.6. Witnesses may be called to give evidence (but cannot be compelled to give evidence); and
 - 3.3.7. The hearing must be recorded and transcripts made available to either party.

The regulations in practice

- 3.4.** The representations hearing process is run by the HFEA Executive – specifically, the governance and licensing team, which ensures complete independence from the inspectorate. At the latest hearing the Head of Governance and Licensing acted as the Secretary to the representations committee, although in previous hearings committee secretaries have fulfilled that role. It was judged, given the importance of the hearing, that a more senior member of the team should fulfil that role, which is a model we should continue with.
- 3.5.** The resource impact of adhering to the regulations is significant, and unpredictable. The administrative work involved in finding an appropriate portion of time – in the last case, four days was thought to be enough but wasn't – for which members of the committee and the legal adviser was difficult and led to delay. Both parties instructed senior counsel, whose availability added to the challenge. It is difficult to get around this issue, without the chair of the committee being absolutely inflexible with dates, and expecting both to find other counsel if their chosen ones are not available. This approach itself could be open to challenge.
- 3.6.** The financial costs were not insignificant. As mentioned earlier, as the HFEA does not have many licensing challenges, there are no economies of scale to be achieved. When they occur, they are a significant portion of the annual budget. From an operational point of view, when factoring in venue hire, committee members fees and travel/subsistence, legal advisor fees, and transcription costs, the total cost of simply running the hearing was over £30,000. This does not account for the governance and licensing team's time, which would be considerable. Nor does it account for the HFEA's costs as a party to the hearing (inspectorate and legal time, and solicitors' and counsel's fees), which are

estimated to run to £150,000. This last figure sounds excessive; in fact, these are reasonable costs for defending a legal challenge. They do, however, beg the question as to whether mounting this sort of defence at the representations stage is a proportionate approach.

- 3.7.** Notwithstanding the costs and staff resource implications, the Executive judges the running of the representations hearing, generally, as a success. To put it bluntly – everyone was in the right place at the right time, and the hearing proceeded without administrative delay. There were, of course, learning points. For example, as the Executive was responsible for compiling papers for the committee, there was some confusion on occasion as to the ordering of the bundles provided to the committee members (although blame must be shared by the two parties who were responsible for providing their own bundles). With some clear leadership from the committee's legal adviser this was, however, soon solved. Similarly, once the hearing ran over its allotted four-day timetable, there was a challenge in finding a suitable date for all parties concerned in which to conclude matters. Once a date was found (resulting in another delay of over a month) it was only through the generosity of the legal adviser to the committee who offered his chambers as a venue that further venue hire costs were avoided.
- 3.8.** These, however, were solvable issues. Previous HFEA representations hearings have suffered from many worse administrative and operational issues and in that context the running of the hearing can be seen as a success. The committee members and legal adviser were complementary of the process and HFEA Executive staff after its conclusion.

4. Appeals hearing

- 4.1.** The Human Fertilisation and Embryology (Appeals) Regulations 2009 govern the procedure for the next stage of challenge – the appeal. These will be referred to as the appeals regulations for ease, and are attached at Annex 2. Unlike the representations regulations, the appeals regulations are made by the Secretary of State and it is not within our gift to change them. They are similar in form and procedure to the representations regulations.
- 4.2.** The appeals regulations stipulate, among other things, that:
- 4.2.1. The appeals committee must comprise seven members, the majority of whom should be lay, and the chair and deputy chair must be legally qualified;
 - 4.2.2. The committee may sit with advisers (but does not have to);
 - 4.2.3. Like the representations regulations, there is a strict procedure and timetable that must be followed, which can only be amended by directions from the chair;
 - 4.2.4. If the appeal is to be made orally (as opposed to on the papers only) the procedure to be followed is almost exactly the same as the representations regulations, with the both parties being able to appoint legal counsel and call witness evidence;

- 4.2.5. The appeal hearing shall be recorded and the transcripts available to both parties.

The regulations in practice

- 4.3.** Despite the similarities in the design of the regulations, there are subtle but significant differences between the representations and appeals stage. First, the 1990 Act specifically states that the HFEA will establish and maintain an Appeals Committee – no such specification is made for how the representations stage is handled, and by whom. Second, the appeal procedure is by way of full reconsideration of the case, rather than a consideration of whether the proposed decision was the right one (as is the case for the representations hearing). One of the Appeals Committee members reflected that this was beneficial to the committee in that it allowed them freedom to reconsider the whole case with new evidence, rather than to in effect pass judgement on the reasonableness of the Licence Committee's initial proposed decision.
- 4.4.** These differences, allied with the fact that these are the Secretary of State's regulations, and that the chair and deputy chair must be legally qualified, suggest to the Executive that the processes of challenging a licensing decision should be deliberately staggered in the judicial nature of their processes. The HFEA recognises this, to some extent, and keeps the appeals committee at arms length of all HFEA staff. The hearing process is managed by an external secretary (we used a barrister for the recent hearing) to ensure complete separation. Members of the governance and licensing team had no contact with the committee or its secretary with the exception of making venue hire arrangements, and administering fees and travel/subsistence.
- 4.5.** This approach has strength and was commended by the members of the committee. It also avoids some pitfalls of the administration of the representations hearing, such as inelegant preparation of legal documents, as these are done within the secretary's chambers.
- 4.6.** Financial costs are generally equivalent to those for the representations hearing. Both hearings were five days in duration, with comparable venue hire, transcription, and member costs. Although the cost of the external secretary for the appeals hearing is higher than the in-house approach of the representations hearing, this is off-set by the committee not requiring an external legal adviser (as it did for the representations hearing). The costs to the inspectorate of legal advice and counsel representation were lower at this stage, but still considerable. HFEA Executive time resource was less within the governance and licensing team, as the secretarial work was outsourced, but would have been roughly equivalent on the inspectorate side.

5. Lessons and conclusions

- 5.1.** The lessons from the running of the two processes – representations and appeals – are similar. Because there is no embedded process nor staffing to handle the administration of these rare events, when they do occur the costs are notably and disproportionately high. The representations process, being run in-house by the governance and licensing team, was extremely resource-intensive

(the appeals hearing less so, given the out-sourcing of the secretary role). In the event that two representations hearings ever occurred at the same time, the governance and licensing team would not have the capacity to run them and additional resource would need to be sought.

- 5.2.** The fact that the lessons from each process are similar goes to the heart of arguably the most striking point of the experience – the almost identical procedures (and similar costs) involved in both processes. The recent experience suggests that the representations process has attained almost the same quasi-judicial status and procedure as the appeals hearing itself. Barristers are hired, external venues are sought, a senior QC is used as legal adviser to the committee – these are all permitted in the representations regulations (drafted by the HFEA) but inevitably lead to increased complexity and cost. The Executive would observe that there may be a proportionate first step of right of challenge for clinics than moving straight to this quasi-judicial procedure. As a comparator, the Human Tissue Authority's representations stage is considered by its Director of Regulation, and cases are presented by Inspectors. We do not advocate this approach, but make the point to illustrate the scale of options available under the regulations.
- 5.3.** AGC is invited to consider and note the evaluation of the recent appeals experience. It is clearly a valuable and fair way of allowing clinics that suffer a detrimental decision to challenge that decision. In the context of the HFEA, though, which does not have the throughput of challenges of, say, the professional regulators and their Fitness to Practice Panels, it represents a significant drain on resources. As detailed above, it might be appropriate to reflect on, in particular, the representations process, considering whether it is a proportionate first step of appeal. The committee may want to consider whether there is a more proportionate model for the first stage of the challenge process, especially in light of the fact that the representations regulations are within the powers of the HFEA itself to change.
- 5.4.** However, as the Committee is aware, there are many and various resource pressures facing the HFEA Executive currently. Reviewing the representations regulations would be contentious within the sector – care would have to be taken to ensure that it was not seen to be a watering down of clinics' legitimate and statutory right to make representations against licensing decisions. It would be likely to require both legal advice and some consultation with the sector. The committee is invited to consider its appetite for such a review in light of the challenges and priorities facing the HEFA in the next year to eighteen months.

Annex 1: The Human Fertilisation and Embryology (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009

Annex 2: The Human Fertilisation and Embryology (Appeals) Regulations 2009

2009 No. 1397

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology (Procedure for
Revocation, Variation or Refusal of Licences) Regulations 2009**

Made - - - - - *29th May 2009*

Coming into force - - - - - *1st October 2009*

CONTENTS

PART 1

General

1. Citation and commencement
2. Interpretation

PART 2

Procedure of Committee

3. Consideration of representations made under section 19(4) of the Act
4. Notice of exercise of right and accompanying documents
5. Action following receipt of notice of exercise of right
6. Notice of hearing
7. Case management meetings
8. Multiple representations
9. Evidence
10. Power to summons witnesses and require production of documents
11. Burden and standard of proof
12. Consideration on the papers
13. Procedure at hearings
14. Representation and entitlement to be heard
15. Witness evidence
16. Postponements and adjournments
17. Decision of the committee
18. Notes and transcripts of hearings
19. Report of committee's activities

The Human Fertilisation and Embryology Authority makes these Regulations in exercise of powers conferred by sections 19(6); 45(3) and (3A) of the Human Fertilisation and Embryology Act 1990(a).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Human Fertilisation and Embryology Authority (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009 and shall come into force on 1st October 2009.

Interpretation

2.—(1) In these Regulations—

“the 1991 Regulations” means the Human Fertilisation and Embryology Authority (Licence Committee and Appeals) Regulations 1991(b);

“the Act” means the Human Fertilisation and Embryology Act 1990(e);

“case officer” means the person representing the Authority in matters prior to any hearing (and may be the same person as the presenter);

“committee” means the Licence Committee;

“chair” means the chair of the committee;

“hearing” means proceedings of the committee which the parties to the proceedings may attend or at which they may be represented;

“Licence Committee” means the committee established under section 9A (2) of the Act, to which the Authority has delegated its functions under sections 18(2); 18A (3) and (5); and considering representations made under section 19(4) of the Act;

“notice of exercise of right” means the notice referred to in section 19(5) of the Act;

“notice of hearing” means a notice complying with the requirements of Regulation 6;

“person concerned” means a person who has the right to make representations to the Authority in accordance with section 19(4) of the Act or a licence holder in respect of whose licence a recommendation has been made that the licence be suspended;

“person with a professional interest” means a person who is—

(a) a registered medical practitioner,

(b) concerned with keeping or using gametes or embryos outside the body, or

(c) directly concerned with commissioning or funding any research involving such keeping or use, or who has actively participated in any decision to do so;

“parties” means the Authority and the person concerned (or, where appropriate, the representatives of the Authority and the person concerned);

“the presenter” means the representative of the Authority presenting the case at a hearing (and includes employees of the Authority); and

“secretary” means the secretary to the committee.

(2) For the purposes of these Regulations—

(a) 1990 c.37 section 19(6) was substituted by section 19 of the Human Fertilisation and Embryology Act 2008. c.22 (“the 2008 Act”). Sections 45(3) and (3A) were substituted by section 30(4) of the 2008 Act.

(b) S.I. No. 1991/1889.

(c) 1990 c.37 as amended by the Human Fertilisation and Embryology Act 2008 c.22.

- (a) a hearing of the committee, other than when it is deliberating in private, is considered to be “in private” if it is held in the presence of—
 - (i) the parties and any person representing a party (where present),
 - (ii) the person acting as secretary,
 - (iii) any witness giving evidence,
 - (iv) any legal, clinical, scientific or specialist adviser,
 - (v) any person responsible for the recording of the proceedings, or
 - (vi) any other person whose presence is deemed necessary by the chair, but excluding everyone else; and
- (b) the private deliberations of the committee are considered to be “in private” if they are held in the presence of—
 - (i) the person acting as secretary, or
 - (ii) any legal, clinical, scientific or specialist adviser, but excluding everyone else.

PART 2

Procedure of Committee

Consideration of representations made under section 19(4) of the Act

3.—(1) Representations received from the person concerned shall be considered by the committee.

(2) When considering representations received from the person concerned, the committee —

- (a) shall—
 - (i) sit with either 3 or 5 members, including the chair or deputy chair,
 - (ii) sit with a majority of members who are not persons with a professional interest,
 - (iii) participate in the decision making equally (and no member shall abstain from voting on any issue where a vote is required),
 - (iv) take decisions by simple majority (and the chair shall not have a casting vote),
 - (v) sit with a legal adviser,
 - (vi) be assisted by a secretary (provided that the secretary is not a member of the Authority or person acting as secretary to the Appeal Committee); and
- (b) may sit with a clinical, scientific or specialist adviser where the chair considers it desirable to do so.

(3) No member of the committee shall consider representations received from the person concerned, if that member has a conflict of interest in relation to that case.

(4) The legal, clinical, scientific or specialist advisers referred to in paragraph (2) above—

- (a) shall advise the committee on any areas within the adviser’s expertise;
- (b) may intervene to advise the committee on an issue where it appears that without an intervention there is the possibility of an error being made;
- (c) at the request of the chair, may be present during the private deliberations of the committee but shall not participate in the decision making of the committee (and are not entitled to vote);
- (d) subject to sub-paragraph (c), shall tender any advice at a hearing in the presence of each of the parties in attendance at that hearing;

- (e) where at a hearing the committee has begun to deliberate on its decision and needs to obtain advice in the course of its deliberations, may tender advice to the committee notwithstanding the absence of the parties; and
 - (f) where advice has been tendered in accordance with sub-paragraph (e), shall repeat the advice before the parties in attendance at the hearing.
- (5) Where any advice tendered by an adviser to the committee is not accepted by the committee—
- (a) if the advice is tendered at a hearing before the committee, the chair shall announce the reasons for not accepting the advice tendered;
 - (b) the chair shall ensure that a written record is kept of the advice tendered, and the reasons why the committee refused to accept that advice; and
 - (c) a copy of the record of the advice tendered and the reasons why the committee refused to accept that advice shall be sent to the parties.
- (6) The secretary shall—
- (a) not participate in the decision making of the committee (and is not entitled to vote); and
 - (b) keep a record of —
 - (i) the committee's decision and of the reasons for such decision,
 - (ii) any advice tendered by the legal, clinical, scientific or specialist advisers (or any interventions made by them when they are present during the private deliberations of the committee); and
 - (iii) any declarations of interest (or potential conflicts of interest) made by a member during the proceedings.
- (7) Subject to the Act and these Regulations, the committee may regulate its own proceedings.

Notice of exercise of right and accompanying documents

4.—(1) Where a person wishes to require the Authority to give him an opportunity to make representations, the person must provide to the Authority the information and documents specified in paragraph (2) at the same time as service of the notice of exercise of right required by section 19(5) of the Act.

- (2) The information and documents that must be provided are—
- (a) the full name and correspondence address of the person concerned;
 - (b) a daytime telephone number at which the person concerned can be contacted;
 - (c) the licence number of the person concerned (where applicable);
 - (d) a statement as to whether or not the person concerned is to be represented in the course of the proceedings, and if so, the contact details of any representative;
 - (e) any written representations that the person concerned wishes to make to the committee;
 - (f) copies of all material on which the person concerned intends to rely in the course of the proceedings before the committee;
 - (g) a skeleton argument setting out the submissions that the person concerned wishes to make to the committee;
 - (h) a statement as to whether the person concerned wishes to rely on any witness evidence, and if so, the names and occupations of such witnesses;
 - (i) a statement as to whether the person concerned wishes the matter to be considered on the papers or at a hearing; and
 - (j) in a case where the person concerned wishes a hearing to be held, a statement as to whether he wishes a case management meeting to be convened, and if so, the issues that the person concerned wishes to be considered at that meeting.
- (3) At a case management meeting, the chair may—

- (a) extend the time for delivery of the skeleton argument and any additional material necessary to determine the appeal; and
- (b) allow the person concerned to amend the details regarding representation.

(4) A person concerned may withdraw his notice of exercise of right at any time prior to the first day of the hearing, or the first day that the committee considers the case on the papers, as applicable, by written notice to the Chair.

(5) Where a person concerned has not fully provided the information and documents set out in paragraph (2), the committee shall not be required to consider his representations.

Action following receipt of notice of exercise of right

5.—(1) The Authority shall provide to the secretary any notice of exercise of right received by the Authority and the information and documents provided with that notice pursuant to regulations 4(1) and (2) within 7 days beginning with the date of receipt of the notice.

(2) Following receipt of the notice of exercise of right from the Authority, the secretary shall—

- (a) acknowledge receipt of the notice of exercise of right and any accompanying material submitted by the person concerned within 7 days beginning with the date of receipt of the notice;
- (b) (where not already provided) provide copies of the notice of exercise of right and any accompanying material to a case officer within 7 days beginning with the date of receipt of the notice;
- (c) require the case officer to provide him with copies of all documents on which the Authority intends to rely on in the proceedings before the committee within 21 days of receipt of papers by the case officer under sub-paragraph (b);
- (d) send copies of any documents provided by the case officer under paragraph (c) to the person concerned or (where applicable) the representative of the person concerned within 7 days of receipt from the case officer;
- (e) as soon as possible, serve notice on the parties of the date on which the committee will consider the matter (which, in the case of a hearing, unless the parties agree otherwise, shall be no less than 28 days after the date on which the secretary serves the notice of hearing);
- (f) where the person concerned has stated that he wishes the committee to consider the matter at a hearing, send a notice of hearing to the parties, which shall be in the format described in Regulation 6; and
- (g) require the parties to submit any further written submissions no later than 14 days before the date of the hearing or the date on which the committee is to meet.

Notice of hearing

6. The notice of hearing shall—

- (a) state the date, time and venue of the hearing;
- (b) inform the person concerned of his right to attend and to be represented or accompanied at the hearing in accordance with Regulation 14;
- (c) inform the person concerned that the committee may proceed with the hearing in his absence;
- (d) inform the person concerned of the provisions relating to—
 - (i) evidence set out in Regulation 9,
 - (ii) procedure at hearings set out in Regulation 13, and
 - (iii) witness evidence set out in Regulations 13(4) and 15(2); and
- (e) require the person concerned to inform the secretary, within 14 days of service of the Notice of Hearing, whether he intends to—

- (i) attend the hearing,
- (ii) be represented at the hearing, and if so, by whom, and
- (iii) seek to call any witnesses at the hearing, and if so, whom.

Case management meetings

7.—(1) Where a hearing is to be held, a case management meeting may be convened by the chair of his own motion or at the request of one or both of the parties.

(2) Where a case management meeting is to be convened, the secretary shall give the parties such notice of it as is reasonable (in the opinion of the chair) in all the circumstances of the case.

(3) The format of the case management meeting, the procedure to be followed and the persons required to attend that meeting shall be determined by the chair, in consultation with the parties.

(4) Case management meetings shall be held in private.

(5) At a case management meeting, the chair may issue such directions as he considers necessary for the just and expeditious management of the case.

Multiple representations

8. After obtaining the advice of the legal adviser, the committee may consider and determine together two or more representations made under section 19(4) of the Act by the same person concerned, or by different persons concerned, where it is satisfied that it would be fair and appropriate to do so.

Evidence

9.—(1) All questions of admissibility of evidence and law before the committee shall be decided by the committee, after obtaining the advice of the legal adviser.

(2) Upon obtaining the advice of the legal adviser, and subject only to the requirements of relevance and fairness, the committee may receive—

- (a) subject to paragraph (3), any documentary or physical evidence; and
- (b) subject to regulations 13(2)(d) and (e), 13(4), and 15(2), where a hearing is held, any oral evidence,

whether or not such evidence would be admissible in civil proceedings in that part of the United Kingdom where the meeting or hearing is to take place.

(3) Where a party wishes to adduce written evidence from a witness other than a letter of testimonial, the committee shall only receive such evidence if the document—

- (a) contains an attestation, in a format acceptable to the committee, that the statement is true; and
- (b) is signed by the person making it.

(4) Where a person concerned has been convicted of a criminal offence in the British Islands (and has not successfully appealed against the conviction), a copy of the certificate of conviction certified by a competent officer of the court (or in Scotland, an extract conviction) shall be admissible as conclusive proof of that conviction and the findings of fact on which it was based.

(5) The only evidence which may be adduced by the person concerned in rebuttal of a conviction certified or extracted in accordance with paragraph (4) is evidence for the purpose of proving that he is not the person referred to in the certificate or extract.

(6) A formal notification of a determination about a person concerned's fitness to practise made by a body responsible under any enactment for the regulation of a health or social care profession (in the United Kingdom or elsewhere), and signed by an officer authorised by that body to sign such a notification, shall be sufficient evidence, unless the contrary is proved, of any facts found proved by that regulatory body.

(7) The chair shall only allow a party to adduce written evidence at a hearing which has not been submitted in accordance with this regulation in exceptional circumstances which could not reasonably have been foreseen at the time of the service of the notice of exercise of right or of any case management meeting.

Power to summons witnesses and require production of documents

10.—(1) Subject to paragraph (3) and regulation 15(1), the committee may by summons require any person (P) in the United Kingdom to attend as a witness at a hearing before it at such time and place as may be specified in the summons and P must do so.

(2) Subject to paragraph (4) the committee may by summons require any person including the person concerned (P) in the United Kingdom to produce any documents in P's custody or control which the committee considers relevant to the proceedings before it and P must do so.

(3) P shall not be required in obedience to any summons issued in accordance with paragraph (1) to attend and give evidence or to produce any document unless—

- (a) he has been given at least 7 days notice of the hearing or, if less than 7 days, he has informed the committee that he accepts such notice as he has been given, and
- (b) he has been provided with confirmation that his reasonable and necessary travel and subsistence expenses will be paid by the Authority.

(4) P shall not be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of any action in a civil court of law in that part of Great Britain in which the proceedings before the committee are to take place.

(5) Each summons under paragraph (1) and (2) above must—

- (a) contain a statement to the effect that the person to whom it is addressed may apply to the committee to vary or set aside the summons; and
- (b) refer to the fact that by virtue of section 41(7) of the Act a person who without reasonable excuse fails to comply with the requirement of that paragraph is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale or both.

Burden and standard of proof

11.—(1) The Authority shall bear the burden of establishing that a licence should be revoked, varied (otherwise than on an application) or that a licence should be suspended.

(2) The person concerned shall bear the burden of establishing that a licence should not be refused.

(3) Where facts are in dispute, the committee shall consider whether they have been established in accordance with the civil standard of proof.

Consideration on the papers

12.—(1) The committee shall determine a matter referred to it on the papers unless the person concerned has requested a hearing when providing notice of his exercise of right.

(2) No later than 7 days before the meeting, the secretary shall provide the committee with an agenda and the documents relevant to the proceedings before the committee.

(3) Before making its decision, in addition to considering the material submitted by the parties, the committee may obtain advice from a legal, clinical, scientific or specialist adviser.

(4) Before making its decision, the committee may adjourn and require the person concerned and the Authority to provide further information or documents.

(5) Before making its decision, the committee may adjourn and require—

- (a) an inspection to be made by employees of the Authority of any premises where the licensed activity is or is to be carried out;

- (b) an inspection to be made by employees of the Authority of any premises that are or will be relevant third party premises; and
 - (c) a report to be presented to it of any inspection made in accordance with sub-paragraphs (a) and (b).
- (6) The secretary shall record—
- (a) any advice tendered by a legal, clinical, scientific or specialist adviser (where present);
 - (b) any rulings on questions of law or admissibility made by the chair;
 - (c) the decision of the committee; and
 - (d) the reasons for the committee's decision.

Procedure at hearings

13.—(1) No later than 7 days before the hearing, the secretary shall provide the committee with an agenda and the documents relevant to the proceedings before the committee.

- (2) The order of proceedings at the hearing shall be as follows—
- (a) the chair shall declare the hearing open;
 - (b) where the person concerned is not present or represented at the hearing, the chair—
 - (i) shall require the secretary to adduce evidence that all reasonable efforts have been made to serve the notice of hearing on the person concerned, and
 - (ii) having consulted the committee, may—
 - (aa) if he is satisfied that the notice of hearing has been duly served, proceed with the hearing in the absence of the person concerned, or
 - (bb) adjourn the hearing and issue appropriate directions;
 - (c) the presenter shall make an opening statement, outlining what he considers to be the relevant circumstances of the case;
 - (d) the person concerned may adduce evidence, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (4));
 - (e) the presenter may adduce evidence in rebuttal of the position of the person concerned and in support of the position of the Authority, and may call witnesses (provided that the chair is satisfied that the witness is in a position to provide relevant testimony and subject to paragraph (4));
 - (f) the person concerned may make a closing statement;
 - (g) before making its decision, the committee may—
 - (i) seek advice from a legal, clinical, scientific or specialist adviser (provided that the parties are provided with an opportunity to comment on such advice before the committee makes its decision),
 - (ii) adjourn and require a party to provide further information or documents,
 - (iii) adjourn and require an inspection to be made by employees of the Authority of any premises where licensed activity is or is to be carried out,
 - (iv) adjourn and require an inspection to be made by employees of the Authority of any premises that are or will be relevant third party premises, and
 - (v) adjourn and require a report to be presented to it of any inspection made in accordance with (iii) and (iv) above;
 - (h) the committee shall deliberate in private and shall then announce its decision in the presence of the parties (where present), together with the reasons for its decision.
- (3) The conduct of the hearing shall otherwise be at the discretion of the chair, who may (amongst other matters) invite the parties to make additional submissions to those outlined in paragraph (2).

(4) The chair may refuse to allow a witness to give oral evidence, or to give evidence on a particular matter, if he is satisfied that all or part of the evidence that the witness is to provide, or is to provide on that matter, should have been disclosed to the party not calling the witness at an earlier stage in the proceedings.

(5) Subject to paragraph (6), hearings shall be held in public.

(6) After consulting with the legal adviser, the chair may require some or all of the hearing to be held in private, where he is satisfied that an interest of a party in maintaining privacy outweighs the public interest in holding the hearing or part of it in public.

(7) The chair may require any member of the public attending the hearing to be excluded from the hearing, where he considers that the continued presence of that person may disrupt the proceedings before the committee.

Representation and entitlement to be heard

14.—(1) The presenter shall be a person who is—

- (a) a barrister, advocate or solicitor; or
- (b) an employee of the Authority,

or both.

(2) The person concerned may be represented by a person who is—

- (a) a barrister, advocate or solicitor; or
- (b) a representative from his or its defence organisation or his trade union,

or both.

(3) Where the person concerned is not represented, he may be accompanied and advised by a supporter, but the supporter—

- (a) shall not be—
 - (i) a member or employee of the Authority, or
 - (ii) a witness at the hearing; and
- (b) shall only be entitled to address the committee with the permission of the chair.

(4) The presenter and the person concerned or his representative shall be entitled to attend any hearing before the committee of which notice is given in accordance with Regulation 6, and to be heard by the committee at that hearing.

Witness evidence

15.—(1) The Authority may not compel the person concerned to be a witness.

(2) A party may not call a person to be a witness unless that party has provided to the other party a written statement of evidence provided by the witness at least 7 days before the hearing (which meets the requirements of Regulation 9(3)), unless the chair determines otherwise.

(3) The committee may, upon the application of the party calling the witness, direct that any details which may identify that witness should not be revealed in public.

(4) Witnesses—

- (a) shall first be examined by the party calling them;
- (b) may be cross examined;
- (c) may then be re-examined by the party calling them;
- (d) may then be questioned by the committee through the chair, and with the leave of the chair, by a legal, clinical, scientific or specialist adviser.

(5) The parties may then question the witnesses on matters arising out of the committee's questions, with the party calling the witness being given the last opportunity to do so (as between the parties).

(6) Any further questioning of witnesses shall be at the discretion of the chair.

(7) Except for expert witnesses and the person concerned, witnesses shall not be allowed to attend the proceedings until after they have completed giving their evidence and been formally released by the chair.

Postponements and adjournments

16.—(1) The chair may, of his own motion, or upon the application of a party, postpone any meeting or hearing of which notice has been given under these Regulations before such meeting or hearing begins.

(2) The chair may, of his own motion or upon the application of a party, adjourn the proceedings at any stage, provided that—

- (a) no injustice is caused to the parties; and
- (b) the decision to adjourn is made after hearing representations from the parties (where present).

(3) In considering whether or not to grant a request for postponement or adjournment, the chair shall, amongst other matters, have regard to—

- (a) the public interest in the expeditious disposal of the proceedings;
- (b) the potential inconvenience caused to a party or any witnesses to be called by that party;
- (c) the conduct of the party seeking the postponement or adjournment; and
- (d) fairness to the parties.

(4) Where the proceedings have been postponed or adjourned, the secretary shall, as soon as practicable, notify the parties of the date, time and venue of the postponed or resumed meeting or hearing.

Decision of the committee

17.—(1) The committee shall provide the notice referred to in section 19A (2) to (5) of the Act, in writing, together with a statement of its reasons for the decision, no later than 7 days after the date on which it has made its decision.

(2) The committee may serve notice of its decision, and the statement of its reasons for that decision, on any other person whom it considers, in the public interest, ought to be informed of the committee's decision.

(3) When serving the notice referred to in section 19A of the Act, the committee shall at the same time serve a written record of—

- (a) any advice tendered by a legal, clinical, scientific or specialist adviser;
- (b) any rulings on admissibility of evidence made by the committee.

Notes and transcripts of hearings

18.—(1) Subject to paragraph (3), the Authority shall arrange for all hearings to be recorded in writing or electronic form.

(2) Any party to the proceedings shall, on application to the secretary, be furnished with a transcript of the record of any part of the hearing at which he was entitled to be present.

(3) The private deliberations of the committee shall not be recorded.

Report of committee's activities

19. The chair shall prepare an annual written report to the Authority detailing the activities of the committee.

Made by the Authority this 29th day of May 2009

Lisa Jardine

Chair,

29th May 2009

Human Fertilisation and Embryology Authority

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under Sections 19(6) and 45(3) and (3A) of the Human Fertilisation and Embryology Act 1990 (as amended by the Human Fertilisation and Embryology Act 2008).

The Regulations set out the procedure to be followed when a person wishes to make representations against certain decisions made by the Human Fertilisation and Embryology Authority.

Part 1 deals with preliminary matters, including commencement and interpretation (regulations 1 and 2).

Part 2 sets out the procedure for consideration of representations.

Regulation 3 provides that representations are to be considered by a Licence Committee of the Human Fertilisation Authority. This regulation sets out details of the quorum and voting procedure to be followed by the Committee, and provides for the Committee to be assisted by advisers and a secretary. This regulation further specifies the roles of the advisers and of the secretary.

Regulation 4 specifies the information and documents to be provided to the Authority at the same time that the person wishing to make representations serves the notice of exercise of right that is required by the Act.

Regulation 5 sets out the actions that need to be taken by the respective parties after service of the notice of exercise of right, and the required time limits for such actions. Regulation 6 sets out the information that must be contained in a notice of hearing (including information relating to the right to be represented and the procedure to be followed at a hearing) that is to be served on the person wishing to make representations, where that person has requested that a hearing be held.

Regulation 7 makes provision for case management meetings to be held, in order to ensure that hearings proceed smoothly and that effective use of time is made at the hearing. Regulation 8 provides for multiple representations to be considered by the same committee, where the committee are satisfied that it is fair and appropriate to do so.

Regulation 9 sets out detailed requirements relating to the evidence that the committee can consider. Regulation 10 provides for a power to summons witnesses (other than the person making representations) and to require production of documents. Regulation 11 sets out the burden and standard of proof to be considered by the committee.

Regulation 12 and 13 set out the respective procedures to be followed by the committee when it is considering representations on the papers, and when it is considering representations at a hearing.

Regulation 14 makes provision for representation and the entitlement of the person making representations to be heard before the committee and regulation 15 makes provision for witness evidence. Regulations 16-19 deal with administrative matters such as adjournments, format of decision notices, transcripts of hearings, and a requirement for the committee to provide an annual report of its activities to the Human Fertilisation and Embryology Authority.

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This Statutory Instrument has been made in consequence of defects in S.I. 2009/1397 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2009 No. 2088

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology (Procedure for
Revocation, Variation or Refusal of Licences) (Amendment)
Regulations 2009**

Made - - - - - *29th July 2009*
Coming into force - - - - - *1st October 2009*

The Human Fertilisation and Embryology Authority makes these Regulations in exercise of powers conferred by sections 19(6) and 45(3) and (3A) of the Human Fertilisation and Embryology Act 1990(a)—

Citation and commencement

1. These Regulations may be cited as the Human Fertilisation and Embryology Authority (Procedure for Revocation, Variation or Refusal of Licences) (Amendment) Regulations 2009 and shall come into force on 1st October 2009.

Amendment of the Human Fertilisation and Embryology Authority (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009

2.—(1) The Human Fertilisation and Embryology Authority (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009(b) are amended as follows.

(2) In regulation 4(1) (notice of exercise of right and accompanying documents), omit “required by section 19(5) of the Act”.

(3) Omit regulation 10 (power to summons witnesses and require production of documents).

(4) Omit regulation 15(1) (summonsing the person concerned to be a witness).

Made by the Authority this 29th day of July 2009

Lisa Jardine

29th July 2009

Chair,
Human Fertilisation and Embryology Authority

(a) 1990 c. 37 Section 19(6) was substituted by section 19 of the Human Fertilisation and Embryology Act 2008 (c. 22) (“the 2008 Act”). Section 45(3) and (3A) was substituted by section 30(4) of the 2008 Act.
(b) S.I. 2009/1397.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 19(6) and 45(3) and (3A) of the Human Fertilisation and Embryology Act 1990 (as amended by the Human Fertilisation and Embryology Act 2008) and correct errors in the Human Fertilisation and Embryology Authority (Procedure for Revocation, Variation or Refusal of Licences) Regulations 2009 (S.I. 2009/1397).

In particular, regulation 4 (which sets out the documents to accompany the notice of exercise of right) is amended to reflect the definition of the notice set out in regulation 2 (interpretation) and regulation 10 (power to summons witnesses and require production of documents) is omitted. Regulation 15(1) (which provides that the Authority may not compel the person concerned to be a witness) is omitted in consequence of the omission of regulation 10.

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2009 No. 1891

HUMAN FERTILISATION AND EMBRYOLOGY

**The Human Fertilisation and Embryology (Appeals)
Regulations 2009**

Made - - - - - *15th July 2009*

Coming into force

*Regulations 4 to 6, and 2 so far as it
relates to them* *16th July 2009*

Remainder *1st October 2009*

CONTENTS

PART 1

General

1. Citation and commencement
2. Interpretation
3. General

PART 2

The Committee

4. Composition of the Committee
5. Terms of office of members
6. Suspension and removal of Committee members
7. Quorum and voting
8. Validity
9. Annual Report

PART 3

Advisers to the Committee

10. Appointment of advisers to the Committee
11. Functions of advisers
12. Requirement to give or repeat advice in public
13. Requirement to keep records of advice and interventions
14. Refusal by a Committee to accept advice
15. Questioning of witnesses by advisers

PART 4
Procedure on reconsideration

16. Notice of exercise of right and accompanying documents
17. Action following receipt of notice of exercise of right and accompanying documents
18. Notice of hearing
19. Case management meetings
20. Multiple reconsideration
21. Evidence
22. Power to require witnesses and documents
23. Burden and standard of proof
24. Reconsideration on the papers
25. Procedure at hearings
26. Representation
27. Witness evidence
28. Postponement and adjournments
29. Decision of the Committee
30. Notes and transcripts of hearings
31. Powers and functions of the Chair
32. Revocation and saving

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 20A(3), 20B(2) and 45(1), (3) and (3A) of the Human Fertilisation and Embryology Act 1990(a).

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 45 of that Act.

PART 1
General

Citation and commencement

1.—(1) These Regulations may be cited as the Human Fertilisation and Embryology (Appeals) Regulations 2009 and subject to paragraph (2) shall come into force on 1st October 2009.

(2) Regulations 4 to 6, and regulation 2 so far as it relates to them, shall come into force on the day after that on which these Regulations are made.

Interpretation

2. In these Regulations—

“the 1991 Regulations” means the Human Fertilisation and Embryology Authority (Licence Committee and Appeals) Regulations 1991(b);

“the Act” means the Human Fertilisation and Embryology Act 1990;

(a) 1990 c. 37. Sections 20A and 20B were inserted by section 21 of the Human Fertilisation and Embryology Act 2008 c. 22 (“the 2008 Act”). Section 45(3) was substituted by section 30(4) of the 2008 Act.
(b) S.I. No.1991/1889.

“adviser” means an adviser appointed by the Authority in accordance with regulation 10;

“an appeal” means the reconsideration of a licensing decision;

“the appellant” means the person requiring the Authority to reconsider a licensing decision in accordance with section 20(1), (2) or (4) of the Act (right to reconsideration of licensing decisions)(a);

“the Chair” means the Chair of the Committee;

“the Committee” means an appeals committee as defined by section 20A(2) of the Act (appeals committee);

“the Deputy Chair” means the Deputy Chair of the Committee;

“hearing” means proceedings of the Committee which the parties to the proceedings may attend or at which they may be represented;

“legally qualified” means holding at least a ten year general qualification (within the meaning of section 71(3)(c) of the Courts and Legal Services Act 1990(b) (qualification for judicial and certain other appointments)) or being an advocate or solicitor in Scotland of at least ten years standing;

“licence holder” means a person granted a licence by the Authority under section 16 of the Act (grant of licences)(c);

“notice of exercise of right” means the notice referred to in section 20(3) or (5) of the Act (right to reconsideration of licensing decisions);

“notice of hearing” means a notice complying with the requirements of regulation 18;

“parties” means the Authority and the appellant (or where appropriate, the Authority’s or the appellant’s representatives);

“person responsible under a licence” has the meaning given by section 17(1) of the Act (the person responsible)(d);

“person with a professional interest” means a person who is—

- (a) a registered medical practitioner,
- (b) concerned with keeping or using gametes or embryos outside the body, or
- (c) directly concerned with commissioning or funding any research involving such keeping or use, or who has actively participated in any decision to do so;

“private deliberations” means meetings of the Committee held in the presence of any adviser and any person acting as secretary to the Committee, but excluding everyone else;

“the presenter” means the representative of the Authority presenting the case at a hearing (and includes employees of the Authority); and

“witness” means a person giving oral evidence at a hearing, and includes an appellant giving oral evidence.

General

3. Subject to the provisions of the Act and of these Regulations, the Committee may regulate its own proceedings.

(a) Section 20 was substituted by section 21 of the 2008 Act.
 (b) 1990 c. 41.
 (c) Section 16 was amended by section 16 of the 2008 Act.
 (d) Section 17(1) was amended by section 17 of the 2008 Act.

PART 2

The Committee

Composition of the Committee

4.—(1) Except where provided for in paragraph (2), the Committee shall have seven members appointed by the Authority including a Chair and Deputy Chair.

(2) Subject to paragraph (3) the Authority may appoint an additional member or members to the Committee for the purposes of a particular case where in the opinion of the Chair it is necessary or desirable to do so.

(3) The majority of members of the Committee must not be persons appointed under paragraph (2).

(4) A person must not be appointed as a member of the Committee if that person is—

- (a) a current employee or member of the Authority;
- (b) a former employee or member of the Authority;
- (c) fulfilling, or has fulfilled, any function of the Authority pursuant to arrangements under section 8B (agency arrangements and provision of services) or 8C (contracting out functions of the Authority) of the Act^(a);
- (d) a licence holder; or
- (e) a person responsible under a licence.

(5) The Chair and Deputy Chair must be legally qualified.

(6) The majority of members of the Committee must not be persons with a professional interest.

(7) The Committee may continue to act even if there is a temporary vacancy amongst its members.

Terms of office of members

5.—(1) Members of the Committee shall not serve more than two consecutive terms in office.

(2) Each term of office shall be for three years.

(3) Paragraphs (1) and (2) shall not apply to a member appointed under paragraph (2) of regulation 4 who shall hold office until the case is determined by the Committee and the notice of decision is provided under regulation 29.

(4) A member of the Committee may at any time resign office by notifying the Authority in writing.

Suspension and removal of Committee members

6.—(1) The Authority shall remove from the Committee any member who, in the Authority's opinion—

- (a) has seriously or persistently failed to meet the standards of performance, conduct or attendance required of a member of the Committee in the ordinary course of duties;
- (b) is unable to perform duties because of ill health;
- (c) has improperly disclosed confidential information obtained in the course of membership of the Committee;
- (d) has brought the Authority into disrepute;
- (e) should no longer continue to be a member of the Committee in the public interest;

(a) Sections 8B and 8C were inserted into the Act by section 8 of the 2008 Act.

- (f) has otherwise ceased to be an appropriate person (for example, by reason of misconduct or criminal conviction); or
 - (g) falls within any of the categories set out in regulation 4(4)(a) to (e).
- (2) The Authority may suspend a member of the Committee while investigations are being undertaken as to whether that person is suitable to remain as a member.
- (3) The Authority shall afford any member of the Committee who is under investigation the opportunity to make written and oral representations before reaching a decision on whether that person should be removed from the Committee.
- (4) The procedure for the suspension or dismissal of a member of the Committee shall otherwise be determined by the Authority.

Quorum and voting

- 7.—(1) Subject to paragraph (2) the quorum for any hearing of the Committee to determine an appeal or meeting, apart from a case management meeting, is three and must include—
- (a) the Chair or Deputy Chair; and
 - (b) at least one member who is a person with a professional interest.
- (2) The Committee, when determining an appeal, may not consist of an even number of members.
- (3) A member who has not been present throughout a hearing of an appeal may not take part in the determination of the appeal and will not count towards the quorum (or for the purpose of paragraph (2)).
- (4) Decisions of the Committee shall be taken by a simple majority of the members.
- (5) A member of the Committee may not abstain from voting.

Validity

8. The validity of any proceedings of the Committee shall not be affected by any defect in the appointment of a Committee member.

Annual Report

- 9.—(1) The Chair shall ensure that an annual written report on the activities of the Committee is prepared for—
- (a) the period beginning the 1st October 2009 and ending on 31st March 2011; and
 - (b) each succeeding period of 12 months ending with 31st March.
- (2) The Chair shall ensure that the annual report under paragraph (1) is provided to the Authority as soon as is practicable after the end of the relevant period.

PART 3

Advisers to the Committee

Appointment of advisers to the Committee

10. The Authority may make arrangements to appoint one or more advisers to the Committee as it deems appropriate from time to time.

Functions of advisers

- 11.—(1) At the request of the Chair an adviser may attend any meeting of the Committee or any hearing before the Committee.

- (2) The function of an adviser shall be to—
 - (a) advise the Committee on any areas within the adviser’s expertise; and
 - (b) intervene to advise the Committee on an issue where it appears that without an intervention there is the possibility of an error being made.
- (3) At the request of the Chair, an adviser who is present at a meeting or hearing referred to in paragraph (1) may be present during the private deliberations of the Committee, but the adviser shall not participate in the decision making of the Committee (and is not entitled to vote).

Requirement to give or repeat advice in public

12.—(1) Subject to paragraph (2), any advice tendered by an adviser at a hearing shall be tendered in the presence of each of the parties in attendance at the hearing.

(2) Where the Committee has begun to deliberate on its decision and needs to obtain advice in the course of its deliberations, an adviser may tender advice to the Committee notwithstanding the absence of the parties.

(3) Where the advice is tendered in the absence of the parties in accordance with paragraph (2)—

- (a) the adviser shall repeat the advice tendered to the Committee before the parties in attendance at the hearing; and
- (b) the parties in attendance at the hearing shall be provided with reasonable opportunity to comment on the advice given by the adviser, before the Committee makes its decision on the issue under consideration.

Requirement to keep records of advice and interventions

13.—(1) The Chair shall ensure that a written record is kept of any advice tendered to the Committee by an adviser.

(2) The Chair shall ensure that a written record is kept of any interventions made by an adviser during the private deliberations of the Committee.

(3) The Chair shall ensure that a copy of any advice tendered by an adviser to the Committee is sent to the parties to the proceedings.

Advice of an adviser not accepted by the Committee

14. Where any advice tendered by an adviser to the Committee is not accepted by the Committee—

- (a) if the advice is tendered at a hearing before the Committee, the Chair shall announce the reasons for not accepting the advice tendered;
- (b) the Chair shall ensure that a written record is kept of the advice tendered, and the reasons why the Committee did not accept that advice; and
- (c) a copy of the record of the advice tendered and the reasons why the Committee did not accept that advice shall be sent to the parties.

Questioning of witnesses by advisers

15. An adviser advising the Committee in accordance with these Regulations may, with the permission of the Chair, question any witness appearing before the Committee.

PART 4

Procedure on reconsideration

Notice of exercise of right and accompanying documents

16.—(1) Where a person wishes to make an appeal, the person must provide to the Authority the information and documents specified in paragraph (2) at the same time as service of the notice of exercise of right.

(2) The information and documents that must be provided are—

- (a) the full name, address and telephone number of the appellant;
- (b) the appellant's licence number (where applicable);
- (c) whether or not the appellant intends to be represented at any hearing and if so, the full name, address and telephone number of any representative and whether the Committee should send replies or notices concerning the appeal to the representative rather than the appellant;
- (d) a copy of the original decision to be reconsidered;
- (e) the grounds on which the appellant requires the Committee to reconsider the decision;
- (f) a copy of the material submitted by the appellant to the Authority prior to the decision which is the subject of reconsideration;
- (g) a copy of new material not submitted by the appellant to the Authority which the appellant wishes the Committee to consider;
- (h) a skeleton argument;
- (i) whether the appellant intends to call any witnesses and if so the names and occupations of those witnesses;
- (j) whether the appellant wishes the reconsideration to be considered on the papers or at a hearing; and
- (k) in a case where a hearing is requested, whether the appellant would like a case management meeting and the issues to be considered at such a meeting.

(3) The Authority must provide to the Committee any notice of exercise of right received by the Authority and the information and documents provided with that notice pursuant to paragraphs (1) and (2) within 7 days beginning with the date of receipt.

(4) An appellant may withdraw a notice of exercise of right by written notice to the Chair at any time prior to the first day of the hearing, or the first day the Committee considers the case on the papers, as applicable.

Action following receipt of notice of exercise of right and accompanying documents

17.—(1) Following receipt of the notice of exercise of right and the information and documents specified in regulation 16(2) the Committee must—

- (a) acknowledge receipt of the notice of exercise of right and accompanying information and documents to the appellant or, where appropriate, the appellant's representative within 7 days beginning with the date of receipt of the notice;
- (b) require the Authority to provide to the Committee within 21 days of receipt by the Authority of the notice of exercise of right and the information and documents specified in regulation 16(2) copies of any documents the Authority intends to rely on in relation to the reconsideration; and
- (c) provide to the appellant or, where appropriate, the appellant's representative copies of any papers received under sub-paragraph (b) within 7 days of receipt from the Authority.

Audit and Governance Committee Paper

| | |
|---|--|
| Paper Title: | AGC Forward Plan |
| Paper Number: | [AGC (09/12/2015) 485] |
| Meeting Date: | 9 December 2015 |
| Agenda Item: | 13 |
| Author: | Sue Gallone |
| For information or decision? | Decision |
| Resource Implications: | None |
| Implementation | N/A |
| Communication | N/A |
| Organisational Risk | Not to have a plan risks incomplete assurance, inadequate coverage or unavailability key officers or information |
| Recommendation to the Committee: | The Committee is asked to review and make any further suggestions and comments and agree the plan. |
| Evaluation | Annually, at the review of Committee effectiveness (but the forward plan is reviewed briefly by the Committee at each meeting) |
| Annexes | N/A |

AGC Forward Plan

| Item↓ Date: | Mar 2016 | June 2016 | October 2016 | 9 December 2016 |
|--|-----------------------------------|---|---|---|
| Following Authority Date: | May 2016 | July 2016 | November 2016 | January 2017 |
| Meeting 'Theme/s' | Finance and Resources | Annual Reports, Information Governance, People | Strategy & Corporate Affairs, AGC review | Register and Compliance, Business Continuity |
| Reporting Officers | Sue Gallone | Peter Thompson | Juliet Tizzard | Nick Jones |
| High Level Risk Register | Yes | Yes | Yes | Yes |
| Information for Quality (IfQ) Programme | Yes | Yes | Yes | |
| Annual Report & Accounts (inc Annual Governance Statement) | Plan & review any drafts | Approval | | |
| External audit (NAO) strategy & work | Interim Feedback | Audit Completion Report | Audit Planning Report | Update |
| Information Assurance & Security | | Yes | | |
| Internal Audit Recommendations Follow-up | Yes | Yes | Yes | Yes |
| Internal Audit | Early Results, approve draft plan | Results, annual opinion | Update | Update |
| Whistle Blowing, fraud (report of any incidents) | Update as necessary | Update as necessary | Update as necessary | Update as necessary |
| Contracts & Procurement including SLA management | Update as necessary | Update as necessary | Update as necessary | Update as necessary |
| HR, People Planning & Processes | | Yes | | |
| Strategy & Corporate Affairs management | | | Yes | |

| Item↓ Date: | Mar 2016 | June 2016 | October 2016 | 9 December 2016 |
|--|-----------------|------------------|---------------------|------------------------|
| Regulatory & Register management | | | | Yes |
| Resilience & Business Continuity Management | | | | Yes |
| Finance and Resources management | Yes | | | |
| Reserves policy | | | Yes | |
| Review of AGC activities & effectiveness, terms of reference | | | | Yes |
| AGC Forward Plan | Yes | Yes | Yes | Yes |
| Session for Members and auditors | Yes | Yes | Yes | Yes |
| Other one-off items | | | | |