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Code A

1393

**From:** Juliet Oliver [Code A]  
**Sent:** 26 November 2008 14:49  
**To:** Peter Swain [Code A]  
**Cc:** Anthony Omo [Code A]  
 [Code A]  
**Subject:** RE: FTP Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure Rules) - [REDACTED]

Peter

Thanks for your email.

Just to confirm the background, Sarah Ellison contacted me in early October as she had seen an early draft of the commencement order bringing in s112 Health and Social Care Act (HSCA) (civil SOP in regulatory proceedings) and was concerned that this appeared to apply only to new rules cases. I discussed with the solicitor at the DH, Hilary Stockwell. She clarified to me that she had drafted savings provisions to reflect the "transitional" position under the GMC order bringing in the amendment to rule 34 earlier this year.

The order amending rule 34 states:

In the General Medical Council (Fitness to Practise) Rules 2004<sup>1</sup> in rule 34 (evidence) after paragraph (11), add the following paragraph—

"(12) The standard of proof applicable in any proceedings—

(a) before a FTP Panel where the allegation and the alleged facts are read out by the person acting as secretary in accordance with rule 17(2)(c) on or after 31st May 2008; and

(b) before the Investigation Committee where the Presenting Officer begins to outline the allegation and the facts in accordance with rule 11(7) on or after 31st May 2008,"

is that applicable to civil proceedings.

Accordingly, from 31 May 2008, the civil SOP has applied to cases opened under rules 17 or 11 of the FTP rules 2004. The provision does not apply to cases opened under the old rules, whether opened before or after that date. I understand from discussions with [Code A] and Michael that this reflects the policy position reached during the process of finalising the order earlier this year.

S112 HSCA, which has been in force since 3 November, provides that the civil SOP applies to all proceedings to which s60A(1) Health Act 1999 applies (namely all proceedings before a regulatory body which relate to a person's "fitness to practise a profession"), save, in relation to the GMC, those which have been opened under the new rules prior to 31 May 2008. This terminology appears to limit the application of s112 to new rules cases only (the use of the phrase "fitness to practise"), and this interpretation is consistent with the policy position reached by the GMC (and set out in the amended rule 34) and the DH lawyer's intentions.

However, it is arguable that the wording covers old rules cases (ie. "fitness to practise" can be broadly interpreted to cover decisions regarding SPM/deficient professional performance etc.). This would allow all old rules cases, from 3 November onwards, to be considered under the civil SOP from. (Interestingly, part-heard old rules cases would not be expressly excluded, by this interpretation). However, the precedent set by the case of [REDACTED] would make such an interpretation difficult to adopt for the further old rules cases you identify in your email.

I hope this clarifies the position, and I would of course be happy to discuss if you have any comments or queries.

Juliet

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**From:** Peter Swain [Code A]  
**Sent:** 24 Nov 2008 15:16  
**To:** Juliet Oliver [Code A]

**Cc:** Anthony Omo [Code A]

**Subject:** FW: FTP Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure Rules) - [REDACTED]

**Importance:** High

Juliet

We adopted this position somewhat on the hoof this morning after Sarah Ellson said it was her recollection that we had had to agree with the DOH that any old rules cases would be heard under the criminal standard regardless of the date the case opens.

Could you confirm this is the position please? And is the alternative that the civil standard applies at all arguable?

Its too late for this case, but I have two further cases after this one to be opened under the old rules: In the case of Jane Barton, to open next year; Paul was of the very firm view the last time I spoke to him about the case that we should argue for the civil standard to apply on the basis that the standard of proof is not specified in the old rules, and it is a matter of council policy since May 08 that the civil standard applies.

In both of these cases, the political exposure is very high indeed so it will be helpful to be involved in decisions about the way we handle the standard of proof issue.

Peter

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**From:** [Code A]

**Sent:** 24 November 2008 15:05

**To:** New Rules Decisions (Public)

**Subject:** FW: FTP Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure Rules) - [REDACTED]

This case has now commenced.

At the outset the Mr Grundy, for the GMC, addressed the Panel on the standard of proof to be applied during these proceedings given that it is a case under the 1988 conduct rules. He submitted, and the defence agreed, that the case should be considered applying the criminal standard of proof. The Legal Assessor advised the Panel that it is a case whereby the standard of proof is the criminal standard. The Panel determined that the case will be heard in accordance with the criminal standard of proof.

The charge has been read and the following admissions have been made with respect to the following heads:

Heads 1, the stem of 2, 2(c)(i), (ii), (iii), (iv), (e), 3(a) and 6(b).

These were announced as found proved.

At the outset an amendment was made to the stem of head 2 which was agreed.

Please see amended agenda attached.

Mr Grundy is currently opening the case on behalf of the GMC.

Many Thanks

[Code A]

<< File: [REDACTED] (FTP under PCC) Agenda.doc >>

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**From:** [Code A]  
**Sent:** 24 Nov 2008 10:58  
**To:** New Rules Decisions (Public)

**Subject:** FTP Panel applying the General Medical Council's Preliminary Proceedings Committee and Professional Conduct Committee (Procedure Rules) - [REDACTED]

The Panel has convened to consider the case of [REDACTED]

[REDACTED] is present and is represented by [REDACTED]

Mr Nigel Grundy, Counsel, instructed by Field Fisher Waterhouse Solicitors, represents the GMC.

These proceedings will not commence until at least 2pm due to the late arrival of the Legal Assessor.

Many Thanks

**Code A**