

- (a) give a direction to the Admissions Board to make the decision concerned forthwith, or
- (b) make itself a decision on the application concerned referred to in *section 44* (and where the Appeals Board does so *section 54* shall apply to such a decision as it applies to any other decision of the Appeals Board).

PART 6

FITNESS TO PRACTISE

56.—(1) The registration body shall prepare a code (in this Part referred to as the “code”) specifying the standards of professional conduct and practice that shall be adhered to by registered professionals. Establishment of Professional Conduct Standards.

(2) The registration body shall review the code prepared by it from time to time and may amend its provisions if it thinks fit.

(3) A draft of the proposed code or any amendment of it shall be—

- (a) published by the registration body, in such manner as it may determine, together with an invitation to the public and any organisation or other body which appears to the registration body to have an interest in the matter to comment on the draft before a date specified by the registration body in the invitation,
- (b) submitted by the registration body to the Competition Authority with a request for the furnishing in writing (before a date specified by the registration body in the submission) by the Authority of its opinion as to whether any provision of the draft would be likely to result in competition being prevented, restricted or distorted.

(4) The registration body shall take into account any comment received by it in accordance with an invitation under *subsection (3)(a)* and any opinion in writing of the Competition Authority received by it in accordance with a request under *subsection (3)(b)* in relation to the draft code or any amendment of it before it prepares the code or the amendment.

(5) The registration body shall provide a copy of the code it has prepared to anyone who requests it, on payment of a reasonable charge, or without charge where it considers it appropriate.

57.—(1) Any person may complain to the Professional Conduct Committee (the “Committee”) concerning an action of a registered professional which is alleged to amount to professional misconduct or poor professional performance. Complaints to Professional Conduct Committee.

(2) Where the Committee is of the opinion that a *prima facie* case has not been established for an inquiry under *subsection (5)* with respect to the complaint, it shall so inform the complainant in writing and shall not proceed further.

(3) The Committee may, where it considers it appropriate to do so, request the complainant and the registered professional who is

the subject of the complaint to seek resolution of the complaint by mediation before a person or persons appointed under rules made by the relevant registration body and if the complainant and the registered professional consent to such mediation being conducted, such mediation shall be conducted accordingly.

(4) If the mediation does not result in the resolution of the complaint, the Committee shall proceed to consider the complaint.

(5) The Committee may decide to hold an inquiry with respect to a complaint and where it does so the chairperson of the Committee shall notify the other members of the Committee and the complainant and the registered professional of the date, time and place for the hearing, and the notice under this subsection to the registered professional shall be sent by prepaid registered post to the address given in the register, shall contain details of the nature of the alleged complaint against the registered professional and shall inform the registered professional of his or her right to appear before the Committee and to be represented at the hearing by a person of his or her choice.

(6) For an inquiry under this section, the Committee has the powers, rights and privileges vested in the High Court or a judge thereof in hearing an action, for the purpose of—

- (a) enforcing the attendance of witnesses and examining them on oath or otherwise, and
- (b) compelling the production of documents,

and, for such purposes, a summons signed by the chairperson of the Committee is equivalent to any formal procedure capable of being instituted in an action.

(7) Where a person summoned by the chairperson to attend before a hearing of the Committee or to produce a document—

- (a) makes default in attending,
- (b) fails or refuses to produce a document that is within that person's power to produce, or
- (c) refuses to take an oath or refuses to answer a question which the Committee may lawfully ask,

that person shall be guilty of an offence and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(8) If the contravention in respect of which a person is convicted of an offence under *subsection (7)* is continued after the conviction, the person shall be guilty of a further offence on every day on which the contravention continues and for each such offence the person shall be liable, on summary conviction, to a fine not exceeding €500.

(9) A witness at a hearing under this section has the same immunities and privileges as if he or she were a witness before the High Court.

(10) On completion of an inquiry, the Committee shall produce a report embodying its findings, including the nature of the complaint, the evidence before it, such other matters relating to the registered professional as it thinks fit and its opinion respecting whether a case

of professional misconduct or poor professional performance was established or not.

(11) The findings of the Committee on any matter referred to it shall not be made public, without the consent of the person who has been the subject of the inquiry, unless the Committee has found the person to be guilty of professional misconduct or poor professional performance.

(12) Where the Committee has not found the registered professional guilty of professional misconduct or poor professional performance it shall so notify the complainant and inform the complainant of his or her right of appeal to the Appeals Board against its finding.

58.—(1) Where the Professional Conduct Committee (the “Committee”) finds there has been no professional misconduct or poor professional performance on the part of the registered professional, it shall take no further action in the matter and shall so inform the registered professional.

Decision of the
Professional
Conduct
Committee.

(2) Where the Committee determines that a registered professional is guilty of professional misconduct or poor professional performance, it may, subject to the other provisions of this Act, do one or more of the following:

- (a) advise, admonish or censure the registered professional in relation to the conduct or performance complained of;
- (b) impose on the registered professional a fine of a specified amount and failing payment by him or her of the fine to the registration body within 2 months of his or her being notified of its imposition, the Registrar may erase the person’s name from the register;
- (c) direct that during a specified period, registration of the person’s name in the register shall not have effect;
- (d) erase the person’s name from the register;
- (e) direct that the person’s name remain on the register but impose such conditions for the name remaining on the register as it considers appropriate, to be complied with by the registered professional,

and the chairperson of the Committee shall forthwith notify the person by prepaid registered post sent to the person’s address as given in the register, of the Committee’s decision, the date thereof and the reasons therefor and of the person’s right of appeal to the Appeals Board against the decision.

(3) Without prejudice to the operation of the other provisions of this Act in relation to appeals against decisions to exercise such powers, none of the powers under *subsection (2)(b) to (e)* may be exercised by the Committee unless the decision to exercise the power has been confirmed by the High Court under *subsection (6)* or, as the case may be, on an appeal to that Court under *section 26, 40 or 54* as appropriate, and then may only be exercised subject to the terms (if any) of such confirmation.

(4) Where a registered professional appeals against a decision of the Committee to the Appeals Board within the period provided for

under this Act, the decision of the Committee is stayed until the appeal is disposed of, including any period provided for a further appeal to the High Court.

(5) *Subsection (6)* applies if—

(a) no appeal under this Act is taken against the decision of the Committee mentioned in that subsection, or

(b) (i) such an appeal taken against the decision has been disposed of and the decision has been confirmed (with or without amendment of it), and

(ii) that confirmation is not a confirmation of the High Court under *section 26, 40 or 54*, as appropriate.

(6) The Registrar may apply to the High Court for confirmation of a decision of the Committee to exercise the powers under *subsection (2)(b), (c), (d) or (e)* and, if the Registrar so applies, the High Court, on the hearing of the application, shall, unless it sees good reason to the contrary, declare accordingly and, where the declaration relates to a decision to exercise the powers under *subsection (2)(d)*, either (as the Court may consider proper) direct the Registrar to erase the name of such person from the register concerned or direct that during a specified period (beginning not earlier than 7 days after the decision of the Court) registration of the person's name in that register shall not have effect.

(7) On erasing the name of a person from any register under this section, the Registrar shall forthwith send by prepaid registered post to such person, at the person's address as stated in the register, notice in writing of the erasure.

(8) Where a direction is given under this section that during a specified period registration of the name of a person in any register shall not have effect, the Registrar shall, before the commencement of that period, send by prepaid registered post to such person, at the person's address as stated in the register, notice in writing of such direction.

(9) The name of any person that has been erased under this section may be restored to the register concerned on the direction of the Committee, but not otherwise, and the Committee may attach such conditions as it sees fit to the restoration (including payment of a fee not exceeding the fee provided for an application for registration in the first instance).

(10) Where the registration of a person in a register has ceased to have effect under this section for a period of specified duration, the Committee may, if it thinks fit, on application made to it by such person, by direction terminate the suspension and the Committee may attach such conditions as it sees fit to the termination (including payment of a fee not exceeding the fee provided for an application for registration in the first instance).

Proceedings
privileged.

59.—Proceedings of or communications to or by a Professional Conduct Committee in the course of an inquiry, and reports of the Committee made in the exercise or performance of its powers, duties or functions, under this Part shall, in any action for defamation, be absolutely privileged.