

Title:	Natural Justice – Information for Decision Makers	Ref. No.	ETA-SET-027
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1. BACKGROUND

- 1.1. This document is to assist RACS “decision makers” of RACS committees and boards. If particular issues arise, please seek formal advice or assistance from RACS leadership or management. Formal legal advice can be obtained for you if necessary.
- 1.2. A range of College committees, panels and individuals (“decision-makers”) make decisions about Fellows, trainees, IMGs and others in relation to competence, assessment, discipline and training.
- 1.3. Such decisions have the potential to affect the professional careers of those under consideration. It is therefore important that decisions-makers carefully consider all relevant information, follow all relevant College policies and Specialty Board regulations, and observe the requirements of natural justice.
- 1.4. This document is intended to assist decision-makers with the process of making these important decisions. It does not replace the relevant or applicable College policies and Specialty Board regulations. It adds to and is intended to provide information and assistance to decision makers in applying College policies.

2. NATURAL JUSTICE/PROCEDURAL FAIRNESS

- 2.1. Decision-makers are subject to legal rules and principles, including the possible application of the rules of 'natural justice' (also known as procedural fairness), being the right to a fair hearing and lack of bias.
- 2.2. The rules of 'natural justice' are more likely to apply where an allegation is made against a particular individual, where some harm is likely to be occasioned or disciplinary action is likely to be taken against an individual, or where the individual's rights will be affected.
- 2.3. The general principles underlining 'natural justice' include a) the right to a fair hearing and b) lack of bias.

3. RIGHT TO A FAIR HEARING

- 3.1. The right to a fair hearing can be achieved by a written submission to the decision maker for consideration before the decision is made. It can also be achieved by receiving a verbal submission at a planned meeting or interview. The decision maker has the discretion to decide whether the individual will be considered by a written or a verbal submission, or both. For the purpose of this position paper, the meeting at which the written or verbal submission will be received and considered is referred to as the “hearing”.
- 3.2. The individual should have notice of any hearing and have the opportunity to put his/her views. This right is one of the fundamental principles underlining 'natural justice'.
- 3.3. Appropriate notice should be given to the individual, setting out the nature of the hearing, the substance of any allegations being made against him/her or of any material adverse to him/her, and the evidence or factual material the decision-maker will rely on when considering the allegations.
- 3.4. Sufficient notice should be given to the individual to enable consideration of the material and preparation of submissions. The individual may wish to obtain legal advice and representation (where permitted in the case of the latter).
- 3.5. Obviously, the more damaging or important the allegations, or the more severe the consequences, the more detail will be required of the allegations.

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- 3.6. If the individual does not believe there is sufficient opportunity to prepare for a hearing, it may be necessary to adjourn the hearing for a period of time to permit the party to properly prepare their case.
- 3.7. If the hearing does not accept verbal submissions, the individual should be given time to prepare written submissions to be considered by the decision-maker.

4. LACK OF BIAS

- 4.1. The decision-maker should be free of bias . That is, the general situation is that the decision maker should not be or include any person who has taken part in any prior related substantive decision affecting the individual which would preclude, or be perceived to preclude, them from dealing with the matter with an open mind.
- 4.2. In addition, members of a decision making board or committee who have a relationship with the individual capable of inducing bias, as defined in the Conflict of Interest Policy, should exclude themselves from participation in the decision making process.

5. THE APPLICATION OF NATURAL JUSTICE WITHIN RACS

- 5.1. The rule against bias is applied less restrictively to a private body like RACS (i.e., a decision-maker who is not established by an Act of Parliament).
- 5.2. RACS is a private organisation whose members are involved in making decisions relevant to the Surgical Education and Training (SET) Program and pathways to Fellowship. Therefore of necessity every member will have at least a broad interest in such a decision. It is not possible to produce a person from among the membership who will be completely disinterested and impartial in the sense that a judge or statutory tribunal is. Further, in relation to surgical training and IMG clinical assessment in particular, the structure of the College is such that the specialty training boards and other committees are charged with making many decisions about trainees and IMGs.
- 5.3. Of necessity, it will frequently be the case that a specialty training board or other education committees will be required to make a decision about an individual despite having made a decision previously that may be adverse to them. While membership of the boards does change over time, the reality is that during a particular individual's interaction with the board/committee, membership may not change sufficiently (or at all) to allow a quorum to be maintained if all decision-makers with prior involvement with the individual were excluded. If in doubt about these issues, RACS can provide advice and assistance.
- 5.4. Given the above matters, a RACS decision-maker which has made a substantive decision (such as confirming an unsatisfactory assessment rating) about a person previously, or which includes a member who has done so, is not necessarily prevented from making any subsequent decision about the person, such as dismissing the person from surgical training.
- 5.5. In addition, where published RACS policies and regulations (including those of specialty training boards) indicate that an individual's membership of the training program or IMG process may lapse with the efflux of time, boards and committees may confirm that position without conducting a hearing.

6. RELEVANT CONSIDERATIONS

- 6.1. There are other legal principles applicable to administrative decision-making apart from natural justice, including the obligation on the decision-maker to take into account only relevant considerations. The decision-maker should only consider material relating to the making of the decision.

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- 6.2. Legislation ensures that circumstances such as race, religion, gender and a range of other grounds can form no part of a decision regarding employment, education and training.
- 6.3. The decision-maker should not allow consider irrelevant material, and where irrelevant material is presented, should make it clear that the material is not being considered or relied upon in any way.

7. DECISION-MAKING PROCEDURE

- 7.1. Committees (and similar decision-makers) are normally formal bodies and a meeting should be conducted in a formal manner, including taking appropriate notes of the proceedings. It is important for each body to decide on the criteria for a decision before proceeding with deliberations. Members of the body should make themselves aware of any relevant requirements, regulations or policies, applicable criteria or guidelines of the College or Specialty Board.

Approver CEO
Authoriser Education Board