



## **Northern Ireland Social Care Council**

### **NISCC Fitness to Practise Rules 2016**

May 2016

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# Northern Ireland Social Care Council (Fitness to Practise) Rules 2016

The Northern Ireland Social Care Council, with the consent of the Department of Health, Social Services and Public Safety, makes the following Rules in exercise of the powers conferred under sections 6<sup>1</sup>, 18(4) and (5) of the Health and Personal Social Services Act (Northern Ireland) 2001.

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<sup>1</sup> Section 6 was amended by section 1 of the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016

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## Part 1

### Introduction

#### Citation and commencement

1. (1) These Rules may be cited as the Northern Ireland Social Care Council (Fitness to Practise) Rules 2016 and shall come into operation on 13 May 2016 subject to the transitional arrangements at Schedule 4.
- (2) The Northern Ireland Social Care Council (Conduct) Rules 2014 are revoked.

#### Interpretation

2. (1) In these Rules, unless the context otherwise requires:
  - “**the Act**” means the Health and Personal Social Services Act (Northern Ireland) 2001;
  - “**Allegation**” means any information regarding a Registrant that raises a question as to whether the fitness to practise of a Registrant is impaired, and includes any information that has come to the attention of the Council by any means;
  - “**Appropriate person(s)**” means a Council Officer, solicitor or other person chosen by the Council to carry out further investigations into an allegation;
  - “**Approved course**” means a course for persons wishing to become social workers, approved by the Council and specified in SCHEDULE 1 to the Northern Ireland Social Care Council (Registration) Rules;
  - “**Clerk to Committee**” means the person who assists the Preliminary Proceedings, Fitness to Practise and Restoration Committees and is responsible for the administrative arrangements for Committee meetings and hearings;

**“Conditions of Practice Order”** means an Order made by the Fitness to Practise Committee imposing conditions on a Registrant’s registration with which the Registrant must comply;

**“the Council”** means the Northern Ireland Social Care Council;

**“Determination”** means a determination or decision made, or finding reached, by a relevant regulatory body;

**“the Disclosure and Barring Service”** means the body corporate established by section 87(1) of the Protection of Freedoms Act 2012;

**“the Employer”** means any employer of a Registrant (working in the capacity of a social worker or social care worker);

**“Fitness to practise”** shall be construed in accordance with Rule 4;

**“the Fitness to Practise Committee”** means the Committee of that name appointed by the Council under Rule 5;

**“Fitness to Practise Procedure”** is the procedure set out in SCHEDULE 2 (other than the procedure set out in paragraph 29 of that SCHEDULE);

**“the Health Procedure”** is the procedure set out in paragraph 29 of SCHEDULE 2;

**“Impaired fitness to practise”** and **“impairment”** refer to circumstances as set out in Rule 4 which call into question the suitability of a Registrant to remain on the Register without restriction or to be registered at all;

**“Interim Conditions of Practice Order”** means an Order made by the Preliminary Proceedings Committee imposing conditions on a Registrant’s registration with which the Registrant must comply;

**“Interim Order”** means an Interim Conditions of Practice Order or an Interim Suspension Order;

**“Interim Suspension Order”** means an Order made by the Preliminary Proceedings Committee for suspension of the Registrant’s registration with which the Registrant must comply;

**“Lay Person”** means a person who is not, and has not within 5 years of an appointment to the Fitness to Practise Committee ever been -

- (a) a social worker or social care worker; or
- (b) involved in the training, education, appointment, employment, supply, supervision, monitoring or representation of social workers or social care workers;

**“Legal Adviser”** means a barrister or a solicitor qualified to practise in Northern Ireland, with significant and suitable experience, who carries out the functions set out in Rule 12;

**“Medical Adviser”** means a registered medical practitioner appointed by the Council who carries out the functions set out in Rule 13;

**“Notice of Direct Transfer”** means a Notice sent to the Registrant and the Council by the Clerk to advise that the case has been directly transferred to the Fitness to Practise Committee in accordance with the procedure set out in Rule 19;

**“Notice of Hearing”** means a Notice sent to the Registrant and the Council by the Clerk to advise that a hearing before the Fitness to Practise Committee has been scheduled in accordance with the procedure set out in paragraph 5 of SCHEDULE 2;

**“Notice of Intention”** means a Notice sent to the Registrant by the Clerk to advise that a hearing to consider the imposition of an Interim Order on the

Registrant has been scheduled in accordance with the procedure set out in paragraph 6 (2) of SCHEDULE 1;

**“Notice of Referral”** means a Notice sent to the Registrant and the Council by the Clerk which sets out the referral to the Preliminary Proceedings Committee in accordance with the procedure set out in paragraph 3 of SCHEDULE 1;

**“Notice of Transfer”** means a Notice sent to the Registrant and the Council by the Clerk to advise that the case has been transferred to the Fitness to Practise Committee in accordance with the procedure set out in paragraph 7 of SCHEDULE 1;

**“ Officer of the Council”** means a person employed by the Council;

**“the Parties”** means the Presenter (and may include the Council’s representative) and the Registrant (or the Registrant’s representative) at a hearing before a Committee, and specifically excludes the person making the allegation;

**“the Preliminary Proceedings Committee”** means the Committee of that name appointed under Rule 5;

**“the Presenter”** means the person acting on behalf of the Council at a hearing before a Committee, and may include an officer of the Council or a solicitor or barrister engaged by the Council for that purpose;

**“Register”** means the Register maintained under Section 3 of the Act;

**“Registrant”** means a person registered in the Register;

**“Relevant Regulatory body”** means a body in the United Kingdom or elsewhere that has responsibility for the regulation, audit, inspection, licensing or review of social care, health or education provision, or the regulation or licensing



of a social care, health or teaching profession and is listed in the Council's Approved Regulatory Bodies Policy;

**“Removal by Agreement”** means removal from the Register under Rule 18;

**“Removal Order”** means an Order made by the Fitness to Practise Committee for the removal of the Registrant's registration from the Register;

**“the Restoration Committee”** means the Committee of that name appointed under Rule 5;

**“Restriction”** means warnings, being subject to undertakings or conditions or being suspended from the Register;

**“Sanctions”** means the measures the Council or Fitness to Practise Committee may use to restrict a Registrant's practice to ensure public protection and maintain the reputation of the profession as outlined in paragraph 26 (1) of SCHEDULE 2;

**“Standard of Acceptance”** means the criteria used by the Council to determine whether information meets the threshold for an allegation;

**“Standards of Conduct and Practice”** means the standards expected of social workers and social care workers published by the Council under Section 9 of the Act;

**“Student”** means an applicant or registrant who has been admitted by, or accepted an offer from, a university to participate in an approved course, or who is participating in such a course;

**“Suspension Order”** means an Order made by the Fitness to Practise Committee for suspension of the Registrant's registration;

**“Undertaking”** means an agreement made between the Registrant and the Council to comply with an undertaking in accordance with Rule 17;

**“Warning”** means an order made by the Council or a Fitness to Practise Committee resulting in an entry in the Register for a period of up to five years.

- (2) Unless the context otherwise requires, a reference:
- (a) in these Rules:
    - (i) to words in the singular include the plural and words in the plural include the singular;
    - (ii) to a numbered rule is a reference to the rule bearing that number in these Rules, and
    - (iii) to a numbered SCHEDULE is a reference to the SCHEDULE bearing that number in these Rules;
  - (b) in a rule in, or in a SCHEDULE to, these Rules to a numbered paragraph is a reference to the paragraph bearing that number in that rule or SCHEDULE;
  - (c) in a paragraph in a SCHEDULE to these Rules, to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that SCHEDULE.

### **Service of documents**

3. (1) In these Rules unless the context otherwise specifies, any reference to the sending of a notice or other document to any person is a reference to it being sent:
- (a) in the case of the Council, its committees or the Committee Clerk, to the offices of the Council;

- (b) in the case of a Registrant, to the Registrant's home address or electronic address as it appears on the Register or, if the last known address differs from the address in the Register, the Registrant's last known address; and
  - (c) in all other cases, to the last known address of that person.
- (2) Any reference to the sending of a Notice to a Registrant is a reference to it being sent by registered post or by a postal service in which delivery is recorded, or by electronic mail to an electronic mail address notified by a Registrant to the Council as an address for communications. Any such Notice shall be treated as having been served on the day after it was posted or electronically mailed.

### **Impairment of fitness to practise**

4. (1) A Registrant's fitness to practise may be impaired by one or more of the following reasons:
- (a) misconduct;
  - (b) lack of competence;
  - (c) physical or mental health;
  - (d) a conviction or caution in the United Kingdom for a criminal offence, or a conviction elsewhere for an offence which, if committed in the United Kingdom, would constitute a criminal offence;
  - (e) a determination by a relevant regulatory body that the Registrant's fitness to practise is impaired;
  - (f) inclusion on a list maintained by the Disclosure and Barring Service.

## **Part II**

### **Committees**

#### **Constitution of Committees**

5. (1) The Council shall appoint the following three Committees:
- (a) Preliminary Proceedings Committee;
  - (b) Fitness to Practise Committee; and
  - (c) Restoration Committee.

#### **Function of Committees**

##### **Preliminary Proceedings Committee**

6. (1) It shall be the duty of the Preliminary Proceedings Committee to consider any allegation against a Registrant referred to it by the Council and decide:
- (a) whether no further action should be taken in respect of the allegation;
  - (b) where no further action is taken, to give advice to the Registrant including reminding the Registrant of the terms of the Standards of Conduct and Practice for Social Workers and Social Care Workers;
  - (c) to direct that further investigations should be undertaken and adjourn the matter;
  - (d) to refer the matter back to the Council to seek consensual disposal of the case in accordance with Rules 16, 17 and 18;
  - (e) whether it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned, for the Committee to make an Interim Suspension Order in accordance with paragraph 6 of SCHEDULE 1;

- (f) whether it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned, to impose an Interim Conditions of Practice Order in accordance with paragraph 6 of SCHEDULE 1;
  - (g) whether the allegation should be transferred to the Fitness to Practise Committee, under the Fitness to Practise Procedure or the Health Procedure;
- (2) Subject to (3), where the Preliminary Proceedings Committee determines to transfer an allegation to the Fitness to Practise Committee, it shall usually transfer the allegation under the Fitness to Practise Procedure.
- (3) Where the Preliminary Proceedings Committee considers that a Registrant's fitness to practise may have been impaired by reason of the Registrant's physical or mental ill health, it shall transfer the allegation to the Fitness to Practise Committee under the Health Procedure.
- (4) The Preliminary Proceedings Committee shall also consider applications made by the Council, at any time, that an Interim Order should be imposed on the Registrant's registration, on the grounds that such an Order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned.

### **Fitness to Practise Committee**

7. (1) It shall be the duty of the Fitness to Practise Committee to consider any allegation against a Registrant transferred to it, and to decide:

- (a) whether and for what reason the Registrant's fitness to practise is impaired;
- (b) where it is decided that the Registrant's fitness to practise is impaired, what sanction may be imposed on the Registrant in accordance with paragraph 26 (1) of SCHEDULE 2;
- (c) where the Registrant is unfit to plead, as outlined in paragraph 16 of SCHEDULE 2, whether the Registrant should be suspended from the Register.

### **Restoration Committee**

8. (1) It shall be the duty of the Restoration Committee to consider any application for restoration to the Register referred to it, and to decide:
- (a) whether, in all the circumstances of the case, and having regard to the matters set out in paragraph 7(2) of SCHEDULE 3, the Registrant should be restored to the Register; and
  - (b) where the Registrant is to be restored, whether conditions should be placed on the Registrant's registration.

### **Procedure of Committees**

9. (1) The Preliminary Proceedings Committee shall follow the procedure set out in SCHEDULE 1.
- (2) The Fitness to Practise Committee shall follow the procedure set out in SCHEDULE 2.
- (3) The Restoration Committee shall follow the procedure set out in SCHEDULE 3.

## **Membership and quorum of Committees**

10. (1) The Council shall maintain a pool of persons from which members of the individual Committees hearing a particular case shall be appointed.
- (2) Each Committee may consist of up to five Committee members and the quorum shall be three.
- (3) Each Committee shall include at least two Lay Persons as Committee members.
- (4) The Council shall appoint a Chair of each Committee. The Chair shall be one of the Lay members.
- (5) No member of the Council shall sit on or be a member of any Committee.
- (6) Where a Committee consists of three members, the Council shall endeavour to appoint one Committee member who is registered in the same part of the Register as the Registrant whose case is under consideration. Where the Committee consists of five members, the Council shall endeavour to appoint two Committee members who are registered in the same part of the Register as the Registrant whose case is under consideration. Where the Council is unable to appoint such Committee members, the Council shall ensure that a Committee member or Committee members are appointed who have experience or understanding of the area of social work or social care work, practised by the Registrant whose case is under consideration, unless the Registrant is registered only in the part of the Register for students.

- (7) Committee members shall be appointed for a period not exceeding 4 years and shall be eligible for re-appointment for a further period not exceeding 4 years.
- (8) No Committee member shall sit as such on the hearing of a Registrant's case before the Fitness to Practise Committee, if that member has previously been a member of the Preliminary Proceedings Committee concerned with the case.

## **Voting**

11. Decisions of the Committees shall be taken by simple majority. No Chair of any Committee may exercise a casting vote. Any abstention shall be deemed to be a vote in favour of the Registrant.

## **The Legal Adviser**

12. (1) A Legal Adviser shall be present at the sitting of each Committee. The Legal Adviser shall also be present whenever a Committee deliberates in private.
- (2) The role of the Legal Adviser shall be to advise a Committee on questions of law, and to ensure that proceedings before a Committee are conducted fairly. To this end, the Legal Adviser shall inform a Committee immediately of any irregularity in the conduct of proceedings before that Committee.
- (3) Where the proceedings of a Committee are held in private, that Committee shall maintain a record of any advice tendered by the Legal Adviser.



- (4) Where the proceedings of a Committee are held in public, the advice of the Legal Adviser shall be given before the Parties. Any advice given by the Legal Adviser during the private deliberations of the Committee shall subsequently be repeated before the Parties.
- (5) The Parties shall have the opportunity to make representations on the contents of the advice given by the Legal Adviser. The Legal Adviser will then assess whether the advice tendered requires to be altered in the light of the submissions made by the Parties and will advise the Committee accordingly.
- (6) The Legal Adviser shall not be entitled to vote.

## **Medical Adviser**

13. (1) Where it appears to the Council that a Registrant's fitness to practise may be impaired by reason of the Registrant's physical or mental ill health, the Council may appoint a Medical Adviser to advise each Committee.
- (2) A Medical Adviser may be present whenever a Committee's proceedings are held under the Health Procedure. The Medical Adviser may also be present whenever a Committee deliberates in private.
- (3) Where the Registrant or former Registrant is not present during the proceedings of a Committee, that Committee shall maintain a record of any advice given by the Medical Adviser.

- (4) Where the Parties are present during the proceedings of a Committee, the advice of the Medical Adviser shall be given before the Parties. Any advice given by the Medical Adviser during the private deliberations of the Committee shall subsequently be repeated before the Parties.
- (5) The Parties shall have the opportunity to make representations on the contents of the advice given by the Medical Adviser and where the representations have been made on the contents of the advice given by the Medical Adviser, the Medical Adviser shall consider whether the advice should be amended and shall advise the Committee accordingly.
- (6) The Medical Adviser shall not be entitled to vote.

### **Clerk to the Committee**

14. (1) Each Committee shall be assisted by a Clerk who shall be responsible for the administrative arrangements for the hearing.
- (2) The Clerk shall not participate in the decision making of the Committee.

## **Part III**

### **Allegations**

#### **Procedure upon receipt of information about a Registrant**

15. (1) On receipt of information about a Registrant, the Council shall first consider whether such information is capable of amounting to an allegation.
  
- (2) Information shall only be considered to be capable of amounting to an allegation where such information:
  - (a) relates to an identifiable Registrant; and
  - (b) forms the basis of an allegation of impaired fitness to practise against a Registrant; and
  - (c) meets the Council's Standard of Acceptance.
  
- (3) Where information is capable of amounting to an allegation, the Council may not act on that information where more than 5 years have elapsed since the most recent events referred to in the allegation unless it considers it necessary for the protection of the public or otherwise in the public interest for the allegation to be progressed.
  
- (4) Where the information is capable of amounting to an allegation, the Council may send the person making the allegation, a copy of the Council's guidance about making an allegation. The Council may also inform the person of alternative methods of resolving the matter, including remedies through a Registrant's Employer or other Regulatory Bodies.

- (5) For the purpose of establishing whether any information received is capable of amounting to an allegation, the Council may make such preliminary enquiries as it considers necessary in the circumstances, including seeking further information or clarification from the Registrant, the Registrant's Employer, the person making the allegation and any other source deemed appropriate.
- (6) Where the information received is not capable of amounting to an allegation within the meaning of paragraph (2) above or the matter is closed under paragraph (3), the Council shall inform the provider of the information that no further action will be taken and that the matter will be closed. The Council may take such information into account if a further allegation is made against that Registrant.
- (7) The Council may also inform the person of alternative methods of resolving the matter, including remedies available through a Registrant's Employer or other Regulatory Bodies.
- (8) Where the Council receives information about a Registrant which is capable of amounting to an allegation, the Council:
  - (a) shall write to the Registrant informing them of the allegation and invite them to respond to the allegation with written representations as soon as possible but normally within 28 days from the date of the letter;
  - (b) may make such enquiries as it considers necessary in the circumstances, including seeking further information or clarification from the Registrant, the

Registrant's Employer, the person making the allegation and any other source deemed appropriate;

(c) may make an application under Rule 6(1)(e) and (f) to the Preliminary Proceedings Committee to consider the necessity for an Interim Order.

(9) Where the Council has received information about a Registrant, and that Registrant is already the subject of an inquiry or an investigation by the police, any statutory inquiry or tribunal, the Disclosure and Barring Service, or other regulatory body, into the circumstances of the allegation, the Council may defer further investigation or referral of the allegation to the Preliminary Proceedings Committee until that inquiry or investigation has been concluded.

(10) Where an allegation arises from information received anonymously by the Council, or the person making the allegation does not wish to proceed, the Council shall be able to proceed with investigation of the matter.

(11) Where the Council considers that there is no real prospect of a finding of impaired fitness to practise the Council may:

(a) close the case;

(b) issue advice to the Registrant, including reminding the Registrant of the terms of the Standards of Conduct and Practice and inform the Registrant that a record of this reminder and the reasons thereof, will be kept by the Council.

(12) Where the Council considers that there is a real prospect of a finding of impaired fitness to practise, the Council may:

- (a) pursue a consensual disposal as set out in Rules 16, 17 and 18;
- (b) refer the allegation to the Preliminary Proceedings Committee for consideration;
- (c) refer the allegation to the Fitness to Practise Committee as set out in Rule 19.

## **Warnings**

16. (1) The Council may, where it considers it appropriate to do so, issue a warning to the Registrant and retain a record of that warning on the Registrant's entry in the Register for a period of up to 5 years.
- (2) Where the Council considers it appropriate to issue a warning, the Council shall provide to the Registrant, a Notice stating:
- (a) the allegation and containing any documentation in support;
  - (b) the Council's intention to issue a warning;
  - (c) the proposed terms and duration of the warning;
  - (d) that any response to the Notice must be received by the Council within 28 days of service of the Notice;
  - (e) that the warning may be issued without the Registrant's agreement if the Registrant fails to respond to the Notice under paragraph (6).
- (3) Service of the Notice and documentation referred to in paragraph (2) shall be in accordance with Rule 3.

- (4) If the Registrant responds to the Notice but does not agree to the issuing of the warning proposed, the case shall be referred to the Preliminary Proceedings Committee for consideration under SCHEDULE 1.
- (5) Where the Registrant agrees to the issuing of the warning proposed, the Council shall issue the warning in the terms set out in the Notice.
- (6) Where the Registrant fails to respond to the Notice within the specified timescale, the Council shall, where it is satisfied that the Notice has been duly served on the Registrant, proceed to issue the warning in the terms set out in the Notice.
- (7) Where the Registrant seeks to propose alternative terms of consensual disposal, the Council may agree consensual disposal in such terms as may be agreed between the Registrant and the Council, or may refer the case to the Preliminary Proceedings Committee for consideration under SCHEDULE 1.
- (8) Where the case is disposed of by issuing a warning, the Council shall inform:
  - (a) the Registrant;
  - (b) the Council;
  - (c) the person making the allegation;
  - (d) the Registrant's employer(s) if any;
  - (e) the university, where the Registrant is registered in the part of the Register for students,of the outcome within seven days.

- (9) Where a warning is issued without the agreement of the Registrant, the Council shall inform the Registrant of the right to appeal to the Care Tribunal within 28 days of the Notice of Decision.
- (10) The Council may inform:
- (a) the Disclosure and Barring Service;
  - (b) any relevant regulatory body,
- of its decision.
- (11) The Council shall:
- (a) amend the Registrant's entry in the Register to record the issuing of a warning;
  - (b) publish the decision to issue a warning in accordance with the Council's Disclosure Policy.

## **Undertakings**

17. (1) The Council may, where it considers it appropriate to do so, agree undertakings with the Registrant.
- (2) Cases shall only be disposed of under paragraph (1) where the Registrant:
- (a) admits the allegation; and
  - (b) admits that the actions amount to impaired fitness to practise.
- (3) Where the Council considers it appropriate to agree undertakings, the Council shall provide to the Registrant, a Notice stating:



- (a) the allegation and containing any documentation in support;
  - (b) the Council's proposal to agree undertakings;
  - (c) the proposed terms of the undertakings;
  - (d) that any response to the Notice must be received by the Council within 28 days of service of the Notice.
- (4) Service of the Notice and documentation referred to in paragraph (3) shall be in accordance with Rule 3;
- (5) If the Registrant does not respond to or responds to the Notice but does not agree to undertakings, the case shall be referred to the Preliminary Proceedings Committee for consideration under SCHEDULE 1.
- (6) Where the Registrant agrees to the proposed undertakings, the Council shall confirm the agreed undertakings.
- (7) Where the Registrant seeks to propose alternative terms of consensual disposal, the Council may agree consensual disposal in such terms as may be agreed between the Registrant and the Council, or may refer the case to the Preliminary Proceedings Committee for consideration under SCHEDULE 1 .
- (8) Where the case is disposed of by agreeing undertakings, the Council shall inform:
- (a) the Registrant;
  - (b) the Council;

- (c) the person making the allegation;
- (d) the Registrant's employer(s) if any;
- (e) the university, where the Registrant is registered in the part of the Register for students,

of the outcome within seven days.

(9) The Council may inform:

- (a) the Disclosure and Barring Service
  - (b) any relevant regulatory body,
- of its decision.

(10) The Council:

- (a) shall amend the Registrant's entry in the Register to record that the Registrant "is subject to undertakings";
- (b) may publish details of the undertaking in accordance with the Council's Disclosure Policy.

(11) Where a case is disposed of by means of undertakings in accordance with this Rule, the Council may request from:

- (a) the Registrant;
- (b) the Registrant's employer(s) (if any);
- (c) any other relevant source,

such information as will enable the Council to determine whether the undertakings have been complied with or continue to be complied with.

(12) Where the case is disposed of by undertakings and the Registrant applies to be released from the undertakings, the Council, if satisfied that the Registrant has fully complied with the requirements of the undertakings, shall inform the Registrant and those other persons specified in paragraph (8) that the undertakings should no longer apply and may inform those other persons specified in paragraph (9) of this Rule and shall amend the Register accordingly.

(13) Where the case is disposed of by undertakings and the Council subsequently receives information that an undertaking has not been complied with (or the Registrant fails to provide relevant information in response to a request under paragraph (11) of this Rule), the Council may:

- (a) refer the original allegation to the Preliminary Proceedings Committee under SCHEDULE 1; and
- (b) treat the failure to comply with the undertakings as a separate allegation of impaired fitness to practise and refer this allegation to the Preliminary Proceedings Committee.

## **Removal by agreement**

18. (1) Notwithstanding Rule 10 (4) of the NISCC Registration Rules, the Council may, where it considers it appropriate to do so, grant the Registrant removal from the Register.

(2) Cases shall only be disposed of under paragraph (1) where the Registrant:

- (a) admits the allegation;
- (b) signs an agreed statement of facts;

- (c) admits that the facts amount to impaired fitness to practise;
  - (d) provides written confirmation of the matters set out above.
- (3) Where the Council is minded to grant removal from the Register, the Council shall provide to the Registrant, a Notice stating:
- (a) the allegation and containing any documentation in support;
  - (b) the Council's proposal to grant removal;
  - (c) that any response to the Notice must be received by the Council within 28 days of service of the Notice.
- (4) Service of the Notice and documentation referred to in paragraph (3) shall be in accordance with Rule 3.
- (5) If the Registrant responds to the Notice but does not agree to apply for removal, the case shall be referred to the Preliminary Proceedings Committee for consideration under SCHEDULE 1.
- (6) Where the Registrant agrees to apply for removal, the application must be made within 7 days and the Council shall grant removal.
- (7) Where the Registrant seeks to propose alternative terms of consensual disposal, the Council may agree consensual disposal in such terms as may be agreed between the Registrant and the Council, or may refer the case to the Preliminary Proceedings Committee for consideration under SCHEDULE 1 .

- (8) Where the case is disposed of by granting removal, the Council shall inform:
- (a) the Registrant;
  - (b) the Council;
  - (c) the person making the allegation;
  - (d) the Registrant's employer(s) if any;
  - (e) the university, where the Registrant is registered in the part of the Register for students,
- of the outcome within seven days.
- (9) The Council may inform:
- (a) the Disclosure and Barring Service;
  - (b) any relevant regulatory body,
- of its decision.
- (10) The Council shall:
- (a) remove the Registrant's name from the Register;
  - (b) publish the decision to grant removal from the register and the agreed statement of facts.
- (11) Where an application for removal by agreement is granted, the Registrant shall not make an application for restoration to the Register until the expiry of a period of 5 years from the date on which the Registrant's name is removed from the Register.

## Direct Transfer to the Fitness to Practise Committee

19. (1) Where the allegation against a Registrant concerns a criminal conviction or the findings of fact made by either of the following:
- (a) any relevant regulatory body; or
  - (b) the Disclosure and Barring Service,
- the Council may transfer the case directly to the Fitness to Practise Committee under SCHEDULE 2 provided that the Council considers there is a real prospect of a finding of impaired fitness to practise and the Council has:
- (i) a certificate or certificates of conviction where the allegation relates to a criminal conviction; or
  - (ii) a copy of the findings of fact of the relevant regulatory body, where the allegation relates to issues that have previously been considered by a relevant regulatory body or the Disclosure and Barring Service.
- (2) Where the case is directly transferred to the Fitness to Practise Committee, the Clerk shall within seven days send a Notice of Direct Transfer to:
- (a) the Registrant;
  - (b) the Council;
  - (c) the Person making the allegation;
  - (d) the Registrant's Employer, if any; and
  - (e) where the Registrant is registered in the part of the Register for students, the university.
- (3) The Notice of Direct Transfer shall:
- (a) give reasons for the Council's decision to transfer;

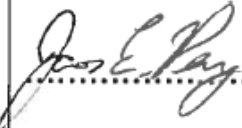
- (b) state whether the case has been transferred to the Fitness to Practise Committee under the Fitness to Practise Procedure or the Health Procedure and the reasons why.
- (4) Where the Council has determined under paragraph 29 of SCHEDULE 2 that the Health Procedure should be followed, the Notice of Direct Transfer shall inform the Registrant of that fact and additionally invite the Registrant to agree within 14 days from the date on which the Notice is sent to be examined (at the Council's expense) by a Medical Adviser nominated by the Council and that such Medical Adviser provide the Fitness to Practise Committee with a report on the Registrant's physical or mental health.
- (5) Where a Notice of Direct Transfer has been served upon a Registrant in accordance with paragraph (2) and paragraph (4) applies and the Registrant either declines to be examined, or fails to respond within the specified time, the case may, at the discretion of the Council, proceed to the Fitness to Practise Committee under the Fitness to Practise Procedure.

## **Part IV**

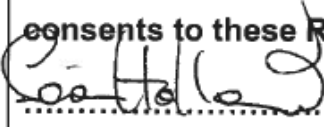
### **Removal and Suspension from the Register**

- 20. (1) The circumstances in which a Registrant may be removed or suspended from the Register are:
  - (a) that the Fitness to Practise Committee has made a finding of impaired fitness to practise against the Registrant (including a finding that the Registrant has failed to comply with conditions imposed under Section 5 (1) or 6 (1) of the Act, or that the Registrant has been found by the Council to have secured registration by fraud);

- (b) that an allegation against the Registrant has been transferred to the Fitness to Practise Committee and the Registrant has been found unfit to plead;
- (c) that the Council has granted the Registrant removal from the Register under Rule 18.

 ..... (Chair) Date... 18/04/2016

**The Department of Health, Social Services and Public Safety hereby consents to these Rules.**

 ..... (Senior Officer, DHSSPS)

**Dated this 18<sup>th</sup> day of MAY... Two thousand and sixteen**



# Schedule 1

## Procedure of the Preliminary Proceedings Committee

### Arrangement of Paragraphs

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## **Interpretation**

1. In this SCHEDULE, 'the Committee' means the Preliminary Proceedings Committee.

## **Public or private meetings**

2. (1) Subject to (2) below, the proceedings of the Committee shall be held in private.  
  
(2) Where the Committee is considering whether to impose an Interim Order on the Registrant's registration, the Committee may sit in public, if the Registrant so requests.

## **Notice of Referral**

3. (1) No less than 28 days before the consideration of the Registrant's case, the Clerk shall send the Registrant and the Council a Notice of Referral together with:
  - (a) a statement of the allegation and any documentation in support, including any Council recommendations for disposal;
  - (b) a copy of these Rules.
  
- (2) The Notice of Referral shall:
  - (a) set out the allegation;
  - (b) invite the Registrant to make written representations upon the allegation within 14 days of service of the Notice;
  - (c) inform the Registrant that the Committee shall meet to consider the matters referred to in paragraph 5 of this SCHEDULE;
  - (d) inform the Registrant of the date, time and venue of the meeting;
  - (e) inform the Registrant that the Committee may, at its discretion, allow the Registrant to attend the meeting and make oral submissions in person or

through a representative. At its discretion, the Committee may allow the Registrant to give oral evidence;

- (f) inform the Registrant that the Committee, and the Council, may seek further information about the allegation from the Registrant's Employer (if any), where the Registrant is registered in the part of the Register for Students, the university, or other source, and that the Council may instruct an appropriate person(s) to carry out any further Investigations.

### **Consideration by Preliminary Proceedings Committee**

- 4. (1) No less than 7 days before the consideration of the case, provided that in exceptional circumstances this period may be shortened, the Council shall provide the Clerk with:

- (a) a summary of the facts alleged in the allegation;
- (b) a copy of the allegation;
- (c) any relevant documents or witness statements;
- (d) recommendations for disposal;

and the Clerk shall, as soon as is possible, serve copies of the items referred to at (a) – (d) above on the members of the Committee for the consideration of the case.

- (2) The Committee may consider evidence or documents which have not been served in accordance with sub-paragraph (1) at their discretion.
- (3) At the meeting, the Committee shall consider the allegation against the Registrant, and any information obtained from the Registrant's Employer, or

where the Registrant is registered in the part of the Register for students, the university, and any other source.

- (4) At the meeting, the Committee shall then consider the Council's recommendation for disposal together with any further documentation provided by the Council, and any written representations and documentation provided by the Registrant.
- (5) The Committee may adjourn its consideration of the case at any stage for the purposes of seeking further information or for any other purpose.
- (6) Where the Registrant is to make oral submissions, or give oral evidence, the Registrant may be represented by:
  - (a) a solicitor; or
  - (b) a barrister; or
  - (c) a representative from the Registrant's trade union; or
  - (d) a representative from the Registrant's professional body; or
  - (e) a representative from a student body.
- (7) The Committee may, at its discretion, permit the Registrant to be represented by a person other than that listed in sub-paragraph (6) above, provided that this person will not be called as a witness at any subsequent hearing.

- (8) Where the Registrant is to make oral submissions, or give oral evidence, the Council's case may be presented to the Committee by an Officer of the Council, or by a solicitor, or barrister.

## **Disposal**

5. (1) The Preliminary Proceedings Committee may:
- (a) take no further action in respect of the allegation;
  - (b) where no further action is taken, give advice to the Registrant including reminding the Registrant of the terms of the Standards of Conduct and Practice for Social Workers and Social Care Workers and inform the Registrant that a record of this reminder and the reasons thereof, will be kept by the Council;
  - (c) direct that further investigations should be undertaken and adjourn the matter;
  - (d) refer the matter back to the Council to seek consensual disposal of the case in accordance with Rules 16, 17 and 18;
  - (e) where it is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant concerned, make an Interim Suspension Order in accordance with paragraph 6 of SCHEDULE 1;
  - (f) where it is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant concerned, make an Interim Conditions of Practice Order in accordance with paragraph 6 of SCHEDULE 1;
  - (g) transfer the allegation to the Fitness to Practise Committee under the Fitness to Practise Procedure or the Health Procedure.

- (2) The Committee shall not transfer an allegation to the Fitness to Practise Committee unless, after robust consideration of the evidence provided, it is satisfied that there is admissible, substantial and reliable evidence to provide a real prospect of a finding of impaired fitness to practise in relation to the allegation.
- (3) Where the Committee has disposed of the case in accordance with paragraph 5 (1) (a), (b) and (d), the Clerk shall send written notification, with the reasons for the Committee's decision, to the Registrant, the Council, the person making the allegation and the Employer (if any) and where the Registrant is registered in the part of the Register for Students, the university.

## **Interim Orders**

6. (1) The Council may apply to the Preliminary Proceedings Committee for an Interim Order at any time where it considers such action:
  - (a) is necessary for the protection of members of the public; or
  - (b) is otherwise in the public interest; or
  - (c) is in the interest of the Registrant.
- (2) Where the circumstances of the case are such that the Committee considers that an Interim Order is necessary or where an application for an Interim Order is made by the Council in accordance with sub-paragraph (1), the Clerk shall provide the Registrant with such Notice of Intention as is reasonable in the circumstances. Such Notice shall:
  - (a) inform the Registrant that the Committee may make an Interim Order;

- (b) inform the Registrant of the right to attend the Interim Order hearing;
- (c) inform the Registrant of the date, time and venue for the hearing;
- (d) request the Registrant to inform the Preliminary Proceedings Committee whether the Registrant wishes the proceedings to be heard in private or in public;
- (e) provide the Registrant with a brief statement of the matters which appear to raise the question whether-
  - (i) the Registrant's registration should be subject to an Interim Order;  
and
  - (ii) why such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;
- (f) inform the Registrant of the rights to give evidence in person, to call witnesses, and to cross examine any witnesses called by the Council;
- (g) inform the Registrant of the Registrant's right to make oral submissions to the Committee in person or to be represented by:
  - (i) a solicitor; or
  - (ii) a barrister; or
  - (iii) a representative from the Registrant's Trade Union; or
  - (iv) a representative from the Registrant's Professional Body; or
  - (v) where the Registrant is registered in the part of the Register for Students, a representative from a Student Body.
- (h) request confirmation as to whether the Registrant intends to:
  - (i) attend the hearing;
  - (ii) be represented at the hearing.

- (3) The Committee may, on the application of Council, dispense with service of a Notice of Intention.
- (4) Notwithstanding sub-paragraph (3) above, the Committee shall not impose an Interim Order on a Registrant's registration without first giving the Registrant notice of such intention as is reasonable in all the circumstances of the case, and allowing the Registrant, or the Registrant's representative, the opportunity to make oral submissions and written representations to the Committee. If necessary, the Committee shall adjourn for this purpose.
- (5) In addition to the procedure set out in sub-paragraph (6), paragraphs 6, 10(2) and (3), 11, 14, 15, 20 and 29 of SCHEDULE 2 shall apply where the Committee is considering whether or not to make an Interim Order.
- (6) Where the Committee is considering whether or not to make an Interim Order, the order of proceedings shall be as follows:
  - (a) the Presenter shall outline the facts of the case and set out the reasons why the Registrant's registration should be made subject to an Interim Order, together with any evidence in support;
  - (b) the Registrant, or the Registrant's representative (if present) shall set out the reasons why such application should not be granted by the Committee, together with any evidence in support;
  - (c) the Committee shall obtain advice from the Legal Adviser;
  - (d) the Committee shall deliberate in private;



- (e) the Committee shall determine the application and announce its decision, and the reasons for that decision, in the presence of the Parties.
- (7) Where the Committee decides that it is necessary to impose an Interim Order, the initial duration of such an Order shall not exceed six months.
- (8) Within 7 days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
  - (b) the Council;
  - (c) the Employer(s) (if any);
  - (d) where the Registrant is registered in the part of the Register for Students, the university.
- (9) The Notice of Decision shall:
- (a) record any advice given by the Legal Adviser or Medical Adviser;
  - (b) set out the Committee's decision;
  - (c) set out the reasons for the Committee's decision;
  - (d) where an Interim Order has been imposed, set out the period of suspension or the terms and duration of the Interim Conditions of Practice, beginning on the date on which the Order is made;
  - (e) inform the Registrant of the right of appeal to the Care Tribunal within 28 days from the date of the Notice of Decision.

## Notice of Transfer

7. (1) Where the Committee has determined that the case should be transferred to the Fitness to Practise Committee, the Clerk shall within seven days send a Notice of Transfer to:
  - (a) the Registrant;
  - (b) the Council;
  - (c) the person making the allegation;
  - (d) the Registrant's Employer (if any);
  - (e) where the Registrant is registered in the part of the Register for Students, the university.
  
- (2) The Notice of Transfer shall:
  - (a) give reasons for the Committee's decision;
  - (b) state whether the case has been transferred to the Fitness to Practise Committee under the Fitness to Practise Procedure or the Health Procedure, and the reasons why.
  
- (3) Where the Committee has determined that the Health Procedure should be followed, the Notice of Transfer shall inform the Registrant of that fact and additionally invite the Registrant to agree within 14 days from the date on which the Notice is sent:
  - (a) to be examined (at the Council's expense) by a Medical Adviser nominated by the Council; and
  - (b) that such Medical Adviser provide the Fitness to Practise Committee with a report on whether the Registrant's fitness to practise may be impaired by reason of the Registrant's physical or mental ill health.

- (4) Where a Notice of Transfer has been served upon the Registrant in accordance with sub-paragraphs (1) and (3) and the Registrant either declines to be examined, or fails to respond within the specified time, the case may, at the discretion of the Council, proceed to the Fitness to Practise Committee under the Fitness to Practise Procedure.

### **Further investigation by the Council**

8. Upon receipt of the Notice of Transfer, the Council shall take such steps as it deems necessary, to arrange for the investigation and preparation of the case against the Registrant for hearing by the Fitness to Practise Committee.

### **Cancellation of hearing**

9. Where, during the course of the Council's preparation of the case for hearing, it appears that the allegation no longer meets the real prospect test as set out in paragraph 5 (2), the Council shall refer the matter back to the Preliminary Proceedings Committee to re-consider whether or not the allegation should be referred to the Fitness to Practise Committee.

### **Amendment of the Register**

10. Where an Interim Order has been imposed on a Registrant's registration by the Committee, the Council shall amend the Registrant's entry in the Register.

## Review of Interim Orders

11. (1) The Council or any person in respect of whom an Interim Order has been made, may make an application to the Preliminary Proceedings Committee to review the Order at a review hearing.
- (2) Save in exceptional circumstances, the Committee shall not be obliged to review an Interim Order until 3 months after the date on which the Order was made.
- (3) Where the Committee determines to review an Interim Order, a Notice of Review shall be sent to the Registrant and the Council not less than 28 days before the review.
- (4) The Notice of Review shall:
  - (a) inform the Registrant of the right to attend the review hearing;
  - (b) inform the Registrant of the date, time and venue for the review hearing;
  - (c) inform the Registrant that the Committee may continue, vary, revoke or impose a further Interim Order;
  - (d) request the Registrant to inform the Committee whether the Registrant wishes the proceedings to be heard in private or in public;
  - (e) where the Council applies for the review, provide the Registrant with a brief statement of the matters which appear to raise the question whether:
    - (i) the Registrant's registration should be suspended for a further period or subject to conditions for a further period; and
    - (ii) why such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;

- (f) inform the Registrant of the right to give evidence in person, to call witnesses and to cross examine any witnesses called by the Council;
  - (g) inform the Registrant of the right to make oral submissions to the Committee in person or to be represented by;
    - (i) a solicitor; or
    - (ii) a barrister; or
    - (iii) a representative from the Registrant's Trade Union; or
    - (iv) a representative from the Registrant's Professional Body; or
    - (v) where the Registrant is registered in the part of the Register for Students, a representative from a Student Body.
  - (h) request confirmation as to whether the Registrant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing.
- (5) The procedure at the review hearing shall be the same as at the original hearing in which the Interim Order was made.
- (6) After reviewing an Interim Order under paragraph 11 the Committee may:
- (a) continue the Order;
  - (b) revoke the Order;
  - (c) vary the Order so as to change any Interim Conditions of Practice;
  - (d) impose a further Interim Order to commence upon the expiry of the existing Order (subject to paragraph 11(9));
  - (e) where it has found a material change of circumstances, subject to paragraph 11(9):

- (i) revoke an Interim Suspension Order and impose an Interim Conditions of Practice Order;
  - (ii) revoke an Interim Conditions of Practice Order and impose an Interim Suspension Order;
  - (iii) impose a further Order, to commence upon the expiry of the existing Order;
  
- (7) Within 7 days of the conclusion of the review hearing, the Clerk shall send a Notice of Decision to:
  - (a) the Registrant;
  - (b) the Council;
  - (c) the Registrant's Employer (s) (if any);
  - (d) where the Registrant is registered in the part of the Register for Students, the university.
  
- (8) The Notice of Decision shall contain the matters set out in sub-paragraph (6) above.
  
- (9) Save in exceptional circumstances, the Committee shall not impose an Interim Order for a specified period of longer than 2 years.
  
- (10) In the exceptional circumstances mentioned in sub-paragraph (9), shortly before the end of the specified period of two years, the Committee may:
  - (a) impose a further Interim Order to commence on the expiry of the existing Interim Order, for a period of no longer than two years;

- (b) impose an Interim Conditions of Practice Order to commence on the expiry of an Interim Suspension Order, for a period of no longer than two years;
- (c) impose an Interim Suspension Order to commence on the expiry of an Interim Conditions of Practice Order, for a period of no longer than two years.

## Schedule 2

### Procedure of the Fitness to Practise Committee

#### Arrangement of Paragraphs

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## **Interpretation**

1. In this SCHEDULE “the Committee” means the Fitness to Practise Committee.

## **Pre-hearing review**

2. (1) No later than 28 days after the matter has been transferred to the Fitness to Practise Committee, the Council may convene a pre-hearing review and shall invite the Parties to attend. The Council and the Registrant may attend the pre-hearing review in addition to any representatives acting on their behalf.  
  
(2) The Council shall authorise a Legal Adviser to conduct the pre-hearing review, and members of the Committee shall not attend the pre-hearing review.  
  
(3) The pre-hearing review may be conducted by telephone conferencing or by such method as is agreed between the Parties and the Legal Adviser.  
  
(4) A record of the directions issued by the Legal Adviser, any admissions, and decisions taken at the pre-hearing review shall be maintained by the Clerk.  
  
(5) The Registrant may attend in person or be represented by the persons set out in paragraph 11 below.  
  
(6) The following matters shall be considered at the pre-hearing review:
  - (a) particulars of the allegation against the Registrant;
  - (b) any admissions of facts;
  - (c) whether the Registrant wishes to admit impaired fitness to practise;

- (d) the number of witnesses to be called (if any);
  - (e) whether special provisions should be made for vulnerable witnesses at the hearing;
  - (f) whether expert evidence is to be adduced;
  - (g) whether the health of the Registrant will be raised as an issue in the proceedings, and if so, whether a report from a Medical Adviser should be obtained;
  - (h) any dates on which the Registrant or witnesses would be unable to attend a hearing;
  - (i) time estimate for the hearing;
  - (j) where the Registrant proposes to act in person and the allegation against him is sexual in nature he shall be advised of the provisions of paragraph 21 (4) below.
- (7) The Legal Adviser may issue directions to the Parties for the purpose of facilitating the hearing of the matter by the Fitness to Practise Committee and regarding the timetable for service of evidence, including medical and expert reports, and the agreed Statement of Facts (if any) (see sub-paragraph (10)).
- (8) The Legal Adviser may give a preliminary opinion to the Parties for the purpose of resolving questions of law or admissibility of evidence.
- (9) The decision as to whether or not to admit evidence at the hearing shall be made by the Committee at the hearing.

- (10) Where the Registrant wishes to admit either the facts of the allegation and the issue of impaired fitness to practise, or the facts of the allegation alone, the Legal Adviser may direct the Parties to prepare an agreed Statement of Facts.

### **Joinder of allegations against the same Registrant**

3. (1) Where an allegation against the Registrant has been transferred to the Fitness to Practise Committee and a new allegation is subsequently transferred to the Committee, the initial allegation may be amended in the light of the new allegation or allegations, subject to the requirements of a fair hearing.
- (2) Where a new allegation or allegations are joined to a pre-existing case pursuant to sub-paragraph (1), a Pre-Hearing Review shall be scheduled in accordance with paragraph 2.
- (3) The hearing may be postponed by the Chair of the Committee at the request of either the Council or the Registrant for such period of time as is reasonable in the circumstances of the case, in order to allow the Registrant adequate opportunity to consider the new allegation.
- (4) When deciding to postpone the hearing, the Chair of the Committee may receive written submissions from the parties as to the length of time to be allowed, and may direct that the matter be considered at a further pre-hearing review.

### **Joinder of allegations for a joint hearing**

4. (1) Where allegations against two or more Registrants have been transferred to a Fitness to Practise Committee and the allegation against each person

concerned arises out of the same circumstances, the Committee may consider and decide allegations against two or more persons at the same hearing, subject to the requirements of a fair hearing.

- (2) Where a joint hearing is held:
  - (a) this SCHEDULE is to have effect in relation to the hearing with the necessary modifications directed by the Chair; and
  - (b) each person concerned is to be able to exercise any of the rights granted to that person under these Rules whether or not any person concerned wishes to exercise that right.

### **Notice of hearing**

5. (1) As soon as practicable after the pre-hearing review has been held, the Clerk shall send the Registrant and the Council, a Notice of Hearing which shall:
  - (a) state the date, time and venue of the hearing;
  - (b) specify the particulars of the allegation against the Registrant;
  - (c) state whether the case is to proceed under the Fitness to Practise or the Health Procedure;
  - (d) inform the Parties of their respective rights to:
    - (i) attend the hearing;
    - (ii) give evidence to the Committee;
    - (iii) make oral submissions to the Committee either in person or through a representative as set out in paragraph 11 below;
    - (iv) call and cross examine witnesses;

- (e) inform the Registrant of the possible sanctions open to the Committee in the event of a finding of impaired fitness to practise and that any sanction imposed will be with immediate effect;
  - (f) inform the Registrant of the Committee's power to proceed in the absence of the Registrant, or the Registrant's representative, at the hearing;
  - (g) request confirmation as to whether the Registrant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing.
- (2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing except with the agreement of the Registrant.
- (3) The Clerk shall send a copy of these Rules with the Notice of Hearing.

### **Postponement of the hearing**

6. (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Chair of the Committee at least seven days before the date of a hearing, other than in exceptional circumstances.
- (2) The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.
- (3) The Party served with the application may submit a written response to the Chair of the Committee.

- (4) The application shall be considered by the Chair of the Committee who shall determine the application, taking into account:
  - (a) the submissions of both Parties;
  - (b) any likely prejudice to either Party;
  - (c) the public interest in the expeditious disposal of the case.
  
- (5) In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Clerk shall inform the Parties and the person making the allegation of the new hearing date, as soon as possible.

### **Notice to Person making the Allegation and to Employer, and to University**

7. The Clerk shall send a copy of the Notice of Hearing to the person making the allegation, and to the Registrant's Employer(s), (if any), and where the Registrant is registered in the part of the Register for Students, the university.

### **Disclosure of case and service of documents**

8.
  - (1) No later than 14 days before the date of hearing, the Parties shall serve on each other, and upon the Clerk to the Committee, copies of all documents and reports upon which they intend to rely.
  
  - (2) The Parties may make arrangements for original documents to be inspected no later than 7 days before the date of the hearing.
  
  - (3) Upon receipt of the Registrant's case, the Presenter shall consider whether there are any further documents in the Council's possession which may assist

the Registrant, and shall serve copies of such documents (if any) to the Registrant and to the Clerk.

- (4) No later than 7 days before the hearing, the Clerk shall send the Committee, copies of:
  - (a) the Notice of Hearing;
  - (b) any documents which the Parties agree may be provided to the Committee.

### **Procedure at the hearing**

9. (1) Subject to these Rules, and the requirements of a fair hearing, the Committee may decide its own procedures generally and may issue directions with regard to the just and expeditious determination of the proceedings.
- (2) If at any time during the hearing it appears to the Committee that a Registrant's fitness to practise may be impaired by reason of the Registrant's physical or mental ill health, the Committee may cease to consider following the Fitness to Practise Procedure and instead follow the Health Procedure. If necessary, the Committee may adjourn in order to enable initial or further expert reports to be obtained.
- (3) The hearing shall be conducted in 3 stages as follows:
  - (a) preliminaries and findings of fact;
  - (b) finding regarding fitness to practise;
  - (c) mitigation and sanction.

## Public and private hearings

10. (1) Subject to sub-paragraphs (2), (4) and (5) below, the hearing shall be conducted in the presence of the Parties and shall be held in public.
  
- (2) The Committee may, of its own volition, or upon the application of a witness or any of the Parties, decide that persons not connected with the hearing should withdraw from the whole or any part of the proceedings, provided always that:
  - (a) a decision to exclude the public causes no prejudice to either Party;
  - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
  - (c) the decision is made after hearing representations from both Parties.
  
- (3) In this paragraph, a person is not concerned with the hearing if that person is not:
  - (a) a member of the Committee;
  - (b) the Legal Adviser or the Medical Adviser to the Committee;
  - (c) the Clerk to the Committee;
  - (d) a Party or a representative of that Party;
  - (e) a witness;
  - (f) a shorthand writer;
  - (g) an audio technician;
  - (h) a translator;
  - (i) an interpreter.
  
- (4) Where the Health Procedure is to be followed, the Committee shall conduct its proceedings in private and in the presence of the Parties, unless:



- (a) the Registrant requests that the hearing be held in public; and
  - (b) the Committee is satisfied, having obtained advice from the Medical Adviser and/or the Legal Adviser, that a public hearing would be in the Registrant's best interests.
- (5) For the purpose of arriving at any decision in relation to the hearing, the Committee shall sit in private. However, the Committee shall announce any decision in public.

### **Representation and entitlement to be heard**

11. (1) The Presenter and the Registrant shall be entitled to be heard by the Committee.
- (2) The Registrant may be represented by:
- (a) a solicitor; or
  - (b) a barrister; or
  - (c) a representative from the Registrant's Trade Union; or
  - (d) a representative from the Registrant's Professional Body; or
  - (e) where the Registrant is registered in the part of the Register for Students, a representative from a Student Body.
- (3) Where the Registrant is acting in person, the Registrant may be accompanied by some other person. Such persons, however, shall not be entitled to address the Committee, without permission.
- (4) A person who represents or accompanies the Registrant shall not be entitled to be called as a witness at the hearing.

- (5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the Committee, has disrupted or is likely to disrupt the hearing.
- (6) The person making the allegation may be present at the hearing and may be called to give evidence by any Party, or by the Committee, of its own motion.

## **Evidence**

12. (1) Subject to the advice of the Legal Adviser, the requirements of a fair hearing, and of relevance, the Committee may:
  - (a) admit evidence whether or not it would be admissible in a Court of Law;
  - (b) exclude evidence in order to ensure fairness to the Registrant and between the Parties.
- (2) The Committee may receive oral, documentary or other evidence of any fact or matter which appears to it to be relevant to its consideration of the case.
- (3) The Committee may of its own volition, request the Parties to provide documentation or request any person to give oral evidence, which it considers might assist it in determining the particulars of the allegation against the Registrant.
- (4) The Committee may admit evidence adduced by a Party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing-

- (a) if the Parties consent; or
  - (b) where, after consultation with the Legal Adviser, it is satisfied that:
    - (i) the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the Party which has not previously seen such evidence; and
    - (ii) there is a good reason why such evidence was not previously disclosed.
- (5) Subject to sub-paragraph (7), where a Registrant has been convicted of a criminal offence, the findings of fact and certification of any UK Criminal Court or a conviction (at any time) elsewhere of an offence which, if committed in the United Kingdom would constitute a criminal offence, shall be conclusive proof of the facts or conviction so found.
- (6) Subject to sub-paragraph (7), the findings of fact by:
- (a) any relevant regulatory body or;
  - (b) the Disclosure and Barring Service,
- shall be regarded as prima facie evidence.
- (7) The only evidence that a Registrant may adduce to undermine any findings of fact to which sub-paragraphs (5) or (6) applies is:
- (a) evidence that the Registrant is not the individual against whom such findings of fact were made or;
  - (b) certification of a successful appeal against conviction from any UK Criminal Court, any relevant regulatory body or the Disclosure and Barring Service.

## **Burden and standard of proof**

13. (1) The burden of proof to prove the facts alleged shall rest upon the Council.
- (2) The standard of proof shall be the balance of probabilities.

## **Adjournment of the hearing**

14. (1) Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Committee may, at any stage of hearing, adjourn the proceedings.
- (2) Where the hearing has been adjourned, the Clerk shall, as soon as practicable, notify the Parties, the person making the allegation and the Employer(s) (if any), and where the Registrant is registered in the part of the Register for Students, the university, of the date fixed for the hearing to be resumed.

## **Stage 1 Preliminaries and findings of fact**

### **Attendance at the hearing**

15. (1) Where the Registrant fails to attend and is not represented at the hearing, the Chair shall:
  - (a) require evidence that the Registrant has been served with the Notice of Hearing in accordance with these rules, and that reasonable efforts have been made to inform the Registrant of the hearing;
  - (b) inquire whether any reasons for the Registrant's non-attendance have been communicated to the Clerk or the Council.

- (2) Where the Committee is satisfied that the Notice of Hearing has been duly served on the Registrant, it may:
  - (a) hear and determine the case in the absence of the Registrant; or
  - (b) adjourn the hearing and give directions.

### **Fitness to plead**

16. (1) Where an issue arises as to the Registrant's fitness to plead, the Committee shall proceed under the Health Procedure and shall consider:
  - (a) whether the Registrant can understand the issues in the case;
  - (b) whether the Registrant can appreciate the effect of any advice received from the Registrant's representatives (if any);
  - (c) whether the Registrant can give instructions accordingly.
- (2) The Committee shall receive expert evidence and submissions on these issues.
- (3) Where the Committee determines that the Registrant is unfit to plead, it shall make an Order for suspension of the Registrant's registration from the Register, until such time as the Registrant becomes fit to plead.

### **Introduction of Committee and reading of the Particulars of the Allegation**

17. (1) At the opening of the hearing, the Chair shall introduce the members of the Committee and the Parties.
- (2) The Chair shall ask the Registrant to confirm the Registrant's name and registration number.

- (3) The Clerk shall then read out the particulars of the allegation against the Registrant.

### **Amendment of the Particulars of the Allegation**

18. (1) Subject to sub-paragraph (2) and the requirements of a fair hearing, the Committee may amend the particulars of the allegation at any stage prior to any findings of fact.
- (2) The Committee shall first hear representations from the Parties, and take advice from the Legal Adviser, before deciding whether or not the particulars of the allegation should be amended.

### **Admissions**

19. (1) After the particulars of the allegation have been read, the Chair shall ask the Registrant whether any facts (or convictions) alleged are admitted.
- (2) Where any facts (or convictions) are admitted, the Presenter shall read out any agreed Statement of Facts.
- (3) Following the reading of the Statement of Facts, the Chair shall announce that such facts (or convictions) have been found proved.
- (4) The Chair shall ask the Registrant whether the Registrant admits that their fitness to practise is impaired by reason of one or more of the reasons set out in Rule 4.

- (5) Notwithstanding any admission of impaired fitness to practise, the Committee shall determine the issue of impairment in accordance with Stage 2.
- (6) Where no admissions are made, or some facts remain disputed, the Presenter shall present the case against the Registrant to the Committee and adduce evidence in support of those facts which are not admitted.

## **Witnesses**

20. (1) Witnesses shall be sworn or required to affirm.
- (2) The Committee may, on the application of the Party calling the witness, agree that the witness' personal details shall not be revealed in public.
- (3) Subject to paragraph 21, witnesses shall be examined by the Party calling them and may then be cross-examined by the opposing Party. The Party calling the witness may then re-examine the witness.
- (4) Witnesses may then be questioned by the Committee, or by the Legal Adviser, with the leave of the Chair.
- (5) The Parties may then question the witnesses on matters arising out of the Committee's questions. The Party calling the witness shall question the witness last.
- (6) Any further questioning of witnesses shall be at the discretion of the Committee.

- (7) Witnesses shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the Committee and been formally released by the Chair.

## **Vulnerable witnesses**

21. (1) The following shall be treated as vulnerable witnesses:
- (a) any witness under the age of 17;
  - (b) any witness with a mental disorder within the meaning of the Mental Health (Northern Ireland Order) 1986;
  - (c) any witness who is significantly impaired in relation to intelligence and social functioning;
  - (d) any witness with physical disabilities who requires assistance to give evidence;
  - (e) the person making the allegation and/or any individual against whom the Registrant's alleged behaviour was directed, where the allegation against the Registrant is of a sexual nature;
  - (f) any witnesses who complain of intimidation.
- (2) Subject to the advice of the Legal Adviser, and upon hearing representations from the Parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from vulnerable witnesses.
- (3) Measures adopted by the Committee may include, but shall not be limited to:
- (a) use of video links;



- (b) use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross examination and questioning by the Committee;
  - (c) use of screens;
  - (d) use of interpreters (including signers and translators) or intermediaries.
- (4) Where:
- (a) the allegation against a Registrant is based on facts which are sexual in nature;
  - (b) a witness is an alleged victim; and
  - (c) the Registrant is acting in person,
- the Registrant shall only be allowed to cross-examine the witness in person with the written consent of the witness.
- (5) Where a witness does not provide written consent, the Registrant shall, not less than 14 days before the hearing, appoint a legally qualified person to cross-examine the witness on his behalf and, in default, the Council shall appoint such a person on behalf of the Registrant.

## **Registrant's evidence**

22. At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and call witnesses.

## **Findings of fact**

23. (1) The Committee shall then consider in private whether the facts in the particulars of the allegation have been proved on the balance of probabilities.

- (2) The Chair will then announce before the Parties, the Committee's findings of fact. If no facts have been found proved, the case will be dismissed.
- (3) The Committee shall give reasons for its findings on the facts.

## **Stage 2 Fitness to Practise**

24. (1) Where the Committee has found some or all of the facts proven, the Chair shall ask the Registrant whether, on the facts found proven, the Registrant admits impaired fitness to practise.
- (2) Notwithstanding any admission of impaired fitness to practise made for the purposes of this paragraph, the Parties may make representation to the Committee and may adduce evidence on the question of impairment.
- (3) In deciding upon the issue of impairment of fitness to practise, the Committee shall have regard to:
  - (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
  - (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
  - (c) whether the impairment is capable of remediation;
  - (d) whether the impairment has been remediated;
  - (e) the risk of repetition; and
  - (f) the public interest.

- (4) The Committee shall consider in private whether, on the facts found proved, the Registrant's fitness to practise is impaired.
- (5) The Committee shall announce its findings on the issue of impairment in public and shall give reasons for its decision.
- (6) If the Registrant's fitness to practise is not found to be impaired, the case will be dismissed and the hearing concluded.

### **Stage 3 Mitigation**

25. (1) Where the Committee finds that the Registrant's fitness to practise is impaired, the Chair shall require the Presenter to provide the Committee with details of the Registrant's previous disciplinary record with the Council (if any).
- (2) The Chair will then announce the sanctions available to the Committee and shall invite representations from the Presenter and Registrant as to the sanction to be imposed:
  - (a) the Registrant may address the Committee in mitigation and may produce references and testimonials and may call witnesses in support;
  - (b) where witnesses are called, they may be questioned by the Presenter and the Committee.
- (3) Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Clerk. The Clerk shall provide such mitigation documents to the Committee at this stage.

- (4) After hearing the Registrant, the Committee shall decide, in private, what sanction it should impose.

## **Sanctions**

26. (1) Upon a finding of impairment of fitness to practise, the Committee may:
  - (a) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
  - (b) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
  - (c) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years ('a Suspension Order'); or
  - (d) make an Order for removal of the Registrant's registration from the Register ('a Removal Order');
  - (f) revoke any Interim Order imposed by the Preliminary Proceedings Committee.
  
- (2) In deciding what sanction is to be imposed, the Committee shall take into account:
  - (a) the seriousness of the particulars of the allegation;
  - (b) the degree to which the Registrant has fallen short of any expected standards;
  - (c) the protection of the public;
  - (d) the public interest in maintaining confidence in social care services; and

- (e) the issue of proportionality.
- (3) The Committee shall announce its decision on sanctions in public, and shall give reasons for its decision.
- (4) Any decision of the Committee shall take effect as soon as it is made.

## **Notice of Decision**

27. (1) Within 7 days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
  - (b) the Council;
  - (c) the person making the allegation ; and
  - (d) the Registrant's Employer (if any);
  - (e) where the Registrant is registered in the part of the Register for Students, the university.
- (2) The Notice of Decision shall:
- (a) record any advice of the Legal Adviser and the Medical Adviser;
  - (b) set out the Committee's findings of fact, and its decisions on impairment and sanction;
  - (c) give reasons for the Committee's decisions;
  - (d) where a warning has been imposed, set out the period of warning;
  - (e) where a Conditions of Practice Order has been imposed, set out the period of the Order and the details of the conditions imposed;

- (f) where a Suspension Order has been imposed, set out the period of suspension;
- (g) where appropriate, inform the Registrant of the right of appeal to the Care Tribunal. Such appeal must be lodged within 28 days from the date of the Notice of Decision;
- (h) inform the Registrant that any sanction imposed by the Committee took effect from the date on which it was made.

### **Notes and transcript of the proceedings**

28. (1) The Council shall arrange for all hearings to be recorded in written or electronic form.
- (2) Upon application, the Council shall send to the Registrant and the person making the allegation, a record, of any part of the proceedings at which the Registrant or, as the case may be, the person making the allegation, was entitled to be present.

## Health procedure

29. (1) Subject to the following provisions, the Health Procedure shall be the same as the Fitness to Practise Procedure, and the foregoing provisions of this SCHEDULE shall apply.
- (2) The Committee shall sit in private unless:
- (a) the Registrant requests that the hearing be held in public; and
  - (b) the Committee is satisfied, having obtained advice from the Legal Adviser, that a public hearing would be in the Registrant's best interests.
- (3) Where the Committee is considering whether a Registrant's fitness to practise is impaired by reason of health, the Committee:
- (a) shall take into account whether the Registrant is physically and mentally fit to perform the whole or part of the work of a person registered in the Register;
  - (b) may take into account any failure of the Registrant to agree to any reasonable invitation by the Council to be examined by a registered medical practitioner nominated by the Council; and
  - (c) may take into account:
    - (i) the Registrant's current physical or mental condition;
    - (ii) any continuing or episodic condition suffered by the Registrant; and
    - (iii) a condition suffered by the Registrant which, although currently in remission, may be expected to cause a recurrence of impairment of fitness to practise;

- (d) shall, subject to sub-paragraph (e) below, consider any medical reports or other medical evidence on which the alleged impairment of fitness to practise has been caused or substantially contributed to, by the Registrant's physical or mental ill health;
  - (e) shall not receive any medical reports or other medical evidence unless the Registrant has consented to be examined and to allow such reports to be provided to the Committee.
- (4) If at any time during the hearing, it appears to the Committee that the impaired fitness to practise has not been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Committee may cease to consider the allegation following the Health Procedure and instead follow the Fitness to Practise Procedure.

### **Amendment to the Register**

30. The Council shall amend the Registrant's entry in the Register to record the finding of impaired fitness to practise and the sanction imposed, as appropriate.



## **Publication of decisions**

31. (1) The Council shall publish the Committee's findings of fact, and the Committee's determination, by such means as it considers appropriate, as soon as is reasonably practicable following any finding of fact and determination.
- (2) The Council may also, at any time, provide a copy of the Committee's findings of fact and the Committee's determination, to any relevant regulatory body.

## **Early review hearings**

32. (1) Where the Fitness to Practise Committee has imposed a Conditions of Practice Order or a Suspension Order, a Committee may, upon application by the Registrant, review the Order before the end of the period for which the conditions of practice or suspension has been ordered.
- (2) To request an early review, a Registrant shall submit a written application to the Council which must:
- (a) specify the condition(s) concerned or state that they are suspended;
  - (b) specify whether the Registrant is seeking variation or revocation of the condition(s) or suspension and, in the case of variation, the terms of the variation applied for;
  - (c) state the grounds of the application; and
  - (d) provide every document relied upon in support of the application.
- (3) Where the Fitness to Practise Committee has imposed a Conditions of Practice Order or a Suspension Order, the Committee may, upon application by the

Council, review the Order before the end of the period for which the conditions of practice or suspension has been ordered.

- (4) The Council may make application for an early review where it has received information which suggests that the Conditions of Practice Order has not been complied with.
- (5) Before making such an application, the Council shall:
  - (a) provide to the Registrant, details of the information it has received which suggests that the Conditions of Practice Order has not been complied with;
  - (b) specify the condition(s) concerned;
  - (c) specify whether the Council is seeking variation of the condition(s) or a Suspension Order and, in the case of variation, the terms of the variation to be requested;
  - (d) provide every document relied upon in support of the request;
  - (e) allow the Registrant 28 days to respond to the Council.
- (6) The Chair of the Committee will seek advice from the Legal Adviser before deciding whether or not to hold an early review of the Order.
- (7) The Chair of the Committee shall not hold an early review unless satisfied that there has been a material change of circumstances since the Order was imposed.

- (8) Where the Conditions of Practice or Suspension Order was imposed following the Health Procedure, the Council may require the Registrant to provide up to date medical reports from a Medical Adviser nominated by the Council, at the Registrant's own expense.
- (9) Early review hearings shall be considered by a Fitness to Practise Committee which shall be constituted by persons who were not members of the Committee who made the Order.
- (10) Where the Committee agrees to hold an early review upon application by the Registrant or by the Council, not less than 28 days before the consideration of the Registrant's case, the Clerk shall send the Registrant, the Council, the person making the allegation, the Registrant's employer(s) if any, or where the Registrant is registered in the part of the Register for students, the university, a Notice of Review Hearing which shall:
- (a) state the date, time and venue of the review hearing;
  - (b) state that the case is to proceed to the Fitness to Practise Committee;
  - (c) inform the Registrant of the right to:
    - (i) attend the review hearing;
    - (ii) give evidence to the Committee;
    - (iii) make oral submission to the Committee either in person or through a representative as set out in paragraph 11;
    - (iv) call and cross examine witnesses;
  - (d) inform the Registrant of the possible outcomes;

- (e) inform the Registrant of the Committee's power to proceed in the absence of the Registrant, or the Registrant's representative at the hearing;
  - (f) invite the Registrant to state whether the Registrant and/or the Registrant's representative will be attending the hearing;
  - (g) have annexed to it a copy of the Committee's decision at the hearing when the Conditions of Practice or Suspension Order was made.
- (11) Not less than seven days before the hearing, the Clerk shall send the Committee copies of:
- (a) the Notice of Review Hearing;
  - (b) any documents lodged by the Registrant;
  - (c) any documents lodged by the Council.
- (12) The procedure at the hearing shall be as follows:
- (a) the Presenter shall outline the facts of the case and the circumstances in which the Order was imposed and, where the Council has applied for the early review, then make submissions as to why the Order should be revoked, replaced or varied, and, in the case of variation, the terms of the variation applied for, and may provide supporting evidence, and call witnesses;
  - (b) the Registrant shall then make submissions, and, in the case of any variation, the terms of the variation applied for or proposed, and may provide supporting evidence, and call witnesses in support;

- (c) save as provided for in this paragraph, the procedure shall be the same as the Fitness to Practise procedure, and the foregoing provisions of this SCHEDULE shall apply.
- (13) Where the Conditions of Practice or Suspension Order was imposed following the Health Procedure, the resumed hearing shall be held under the Health Procedure.
- (14) The burden of proof shall rest upon;
- (a) the Registrant where he has applied for review;
  - (b) the Council where it has applied for review.
- (15) In considering the application, the Committee may:
- (a) refuse the application;
  - (b) grant the application;
  - (c) replace a Suspension Order with a Conditions of Practice Order;
  - (d) replace a Conditions of Practice Order with a Suspension Order;
  - (e) vary or revoke the terms of an existing Conditions of Practice Order;
  - (f) in the case of an application for variation of conditions, vary the terms of the conditions in a manner different to that specified in the application.
- (16) Within 7 days of the conclusion of the early review hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
  - (b) the Council;

- (c) the Registrant's Employer(s) (if any);
  - (d) where the Registrant is registered in the part of the Register for students, the university.
- (17) The Notice of Decision shall contain the matters set out in sub-paragraph (15) above and shall, where appropriate, inform the Registrant of the right of appeal to the Care Tribunal. Such appeal must be lodged within 28 days from the date of the Notice of Decision.
- (18) If the application to vary or revoke a condition or suspension specified is refused, no further application to vary or revoke a condition or suspension specified in that Order may be made by the Registrant within 12 calendar months of the date on which the original application was determined, or within such other time limit as the Committee shall determine.

### **Review process at conclusion of sanction**

33. (1) Towards the end of a period of Conditions of Practice or a Suspension Order the Council shall:
- (a) seek information from the Registrant or relevant others as to whether there has been compliance with any Conditions of Practice;
  - (b) invite the Registrant to provide documents or information as to whether the fitness to practise of the Registrant remains impaired.
- (2) Where the Council receives information in accordance with sub-paragraph (1) and they are of the opinion that;

- (a) any Conditions of Practice have been fully complied with; and
  - (b) the Registrant can be considered fit to practise without restriction, the Council shall give notice to the Registrant and may give notice to the other persons specified in paragraph 27 that the Council is satisfied that the conditions have been complied with and that the Registrant may resume unrestricted practice on the expiry of the term of the Conditions of Practice Order or Suspension Order.
- (3) Where:
- (a) the Council receives information requested in accordance with sub-paragraph (1) and they are of the opinion that the condition(s) have not been complied with; or
  - (b) the Registrant fails to comply with a reasonable request made in accordance with sub-paragraph(1); or
  - (c) the Council is not able to determine whether the Registrant's fitness to practise is no longer impaired; or
  - (d) the Council considers it is in the public interest for the matter to be dealt with by a Fitness to Practise Committee,
- the Council shall refer the matter to a Fitness to Practise Committee.
- (4) Where a case is referred in accordance with sub-paragraph (3), the Fitness to Practise Committee shall be constituted by persons who were not members of the Committee which made the Order, who shall make a determination as to:
- (a) whether the Registrant has failed to comply with any Conditions of Practice;

- (b) whether the Registrant's fitness to practise can be considered no longer impaired.
- (5) No later than 28 days before any review of the Registrant's case, the Clerk shall send the Registrant, the Council, the person making the original allegation, the Registrant's employer(s) (if any) or, where the Registrant is registered in the part of the Register for students, the university, a Notice of Review Hearing which shall:
- (a) state the date, time and venue of the hearing (which must be before the expiry of the extant sanction);
  - (b) state that the case is to proceed to the Fitness to Practise Committee;
  - (c) explain that the Committee will determine whether the Registrant has failed to comply with any Conditions of Practice and whether the Registrant's fitness to practise can be considered no longer impaired.
  - (d) state any ground(s) on which it is alleged that there has been a failure to comply with the condition(s);
  - (e) inform the Parties of their respective rights to:
    - (i) attend the hearing;
    - (ii) give evidence to the Committee;
    - (iii) make oral submissions to the Committee either in person or through a representative as set out in paragraph 11 above;
    - (iv) call and cross examine witnesses;
  - (f) inform the Registrant of the possible sanctions available to the Committee in the event of a finding that there has been a failure to comply with any Conditions of Practice and/or a finding that the Registrant's fitness to practise remains impaired;



- (g) inform the Registrant of the Committee's power to proceed in the absence of the Registrant, or the Registrant's representative, at the hearing;
  - (h) invite the Registrant to state whether the Registrant and/or the Registrant's representative will be attending the hearing;
  - (i) have annexed to it a copy of the Committee's decision at the hearing when the Conditions of Practice Order or Suspension Order was made.
- (6) The procedure at the resumed hearing shall be as follows:
- (a) the Presenter shall outline the facts of the case and the circumstances in which it is alleged that there has been a failure to comply with any conditions of practice, and as to whether the Registrant's fitness to practise remains impaired and may provide supporting evidence and call witnesses in support;
  - (b) the Registrant shall then make submissions and may provide supporting evidence, and call witnesses in support;
  - (c) the Committee will determine:
    - (i) where it has been alleged, whether it is satisfied that there has been a failure to comply with a Conditions of Practice Order;
    - (ii) whether the Registrant's fitness to practice remains impaired.
- (7) Save as provided in sub-paragraphs (1) to (5) above, paragraphs 6, 10(2) and (3), 11, 14, 15, 20 and 29 of SCHEDULE 2 shall apply to the hearing.
- (8) If the Committee is satisfied that there has been a failure to comply with Conditions of Practice and/or where the Committee makes a determination that

the Registrant's fitness to practise remains impaired, the Committee may in these circumstances:

- (a) impose a further Conditions of Practice Order to commence upon the expiry of the existing Conditions of Practice Order, for a specified period of no longer than three years;
  - (b) impose a further Suspension Order to commence upon the expiry of the existing Suspension Order, for a specified period of no longer than two years;
  - (c) impose a Conditions of Practice Order to commence on the expiry of the Suspension Order, for a specified period of no longer than three years;
  - (d) impose a Suspension Order to commence on the expiry of the existing Conditions of Practice Order, for a specified period of no longer than two years;
  - (e) vary the terms of the Conditions of Practice Order;
  - (f) in the case of a Conditions of Practice Order, revoke the Order, and impose a Removal Order; or
  - (g) in the case of a Suspension Order, revoke the Order, and impose a Removal Order.
- (9) The decision of the Committee and the reasons for the decision shall be given in the presence of the Parties.
- (10) Within 7 days of the conclusion of the review hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
  - (b) the Council;

- (c) the Registrant's Employer(s) (if any);
  - (d) where the Registrant is registered in the part of the Register for students, the university.
- (11) The Notice of Decision shall contain the matters set out in sub-paragraph (8) above and shall, where appropriate, inform the Registrant of the right of appeal to the Care Tribunal. Such appeal must be lodged within 28 days from the date of the Notice of Decision.

### **Amendment to the Register following a Review Hearing**

34. (1) The Council shall amend the Registrant's entry in the Register as may be appropriate:
- (a) under paragraph 32(15) where the Committee has replaced, varied or revoked the sanction on application;
  - (b) under paragraph 33(2) where the Council is satisfied that relevant conditions have been complied with and fitness to practise is no longer impaired; or
  - (c) on the determination of the Committee following referral under paragraph 33(3).

## **Schedule 3**

### **Procedure of the Restoration Committee**

#### **Arrangement of Paragraphs**

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## **Interpretation**

1. (1) In this SCHEDULE -  
“Applicant” means a former Registrant applying for restoration to the Register, following a Removal Order imposed by the Fitness to Practise Committee.
  
- (2) An application for restoration shall be deemed to be an initial application for registration under Sections 4 and 5 of the Act, and should comply with the provisions of the Northern Ireland Social Care Council (Registration) Rules or any subsequent amendments thereafter.

## **Documents to be provided to the Council**

2. In addition to documents specified in Rule 4 of the Northern Ireland Social Care Council (Registration) Rules, the Applicant may send to the Council any report, statement or other document which, in the Applicant’s opinion, supports the application for restoration.

## **Documents to be provided to the Applicant**

3. (1) As soon as practicable after receipt of a completed application for restoration to the Register, the Clerk shall send the Applicant:
  - (a) a copy of the transcript of the Fitness to Practise Committee hearing at which the Removal Order was made or details of the removal by agreement under Rule 18;
  - (b) any documents to be relied on by the Council;
  - (c) a Notice of Hearing before the Restoration Committee; and

- (d) a copy of these Rules.

### **Notice of hearing before the Restoration Committee**

- 4. (1) The Notice of Hearing before the Restoration Committee shall:
  - (a) state the date, time and venue of the hearing;
  - (b) inform the Applicant of the right to attend the hearing and make oral submissions to the Committee or to be represented by:
    - (i) a solicitor; or
    - (ii) a barrister; or
    - (iii) a representative from the Applicant's Trade Union; or
    - (iv) a representative from the Applicant's Professional Body; or
    - (v) where the Applicant is a Student, a representative from a Student Body.
  
- (2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing before the Restoration Committee except with the agreement of the Applicant.
  
- (3) A copy of the Notice of Hearing before the Restoration Committee shall be provided to the Council by the Clerk.

### **Documents to be provided to the Committee**

- 5. (1) Seven days before the hearing, the Clerk shall send to the Committee, copies of:
  - (a) the Notice of Hearing before the Restoration Committee;

- (b) the application for restoration and any documents provided by the Applicant in support of the application.

### **Procedure at a restoration hearing**

- 6. (1) Subject to sub-paragraphs (2) and (3) below, proceedings of the Restoration Committee shall be held in public.
  
- (2) Proceedings of the Restoration Committee shall be held in private where the Removal Order was made under the Health Procedure, unless:
  - (a) the Applicant requests that the hearing be held in public; and
  - (b) the Committee is satisfied, having obtained advice from the Medical Adviser, that a public hearing would be in the Applicant's best interests.
  
- (3) The Restoration Committee, upon the application of the Parties or of a witness, or of its own motion may sit in private, provided always that:
  - (a) no prejudice is caused to the Applicant;
  - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
  - (c) the decision to sit in private is made after hearing representation from the Parties.
  
- (4) Notwithstanding the above, the deliberations of the Committee shall be held in private.

- (5) The Presenter shall outline the history of the Registrant's case and the circumstances in which the Order for removal of the Registrant's registration was made.
- (6) The Presenter may adduce to the Committee any documents which were exhibited to the Fitness to Practise Committee which made the Removal Order (or to the Council in the event of removal under Rule 18); and any documents which have since come into the possession of the Council and which relate to the Applicant's good character; conduct; competence; and health, and may call witnesses to give testimony on these issues.
- (7) The Applicant or the Applicant's representative shall then address the Committee as to the reasons why an Order for restoration should be made.
- (8) The Applicant may adduce evidence and call witnesses in support of the application for restoration.
- (9) Witnesses shall be examined by the Party calling them, and may be questioned by the other Party, by the Committee, and by the Legal Adviser.
- (10) The Committee shall obtain advice from the Legal Adviser before determining the application for restoration.

### **Decision of the Committee**

7. (1) The Committee shall determine an application for restoration in two stages.



- (2) The Committee shall first consider whether the Applicant should be restored to the Register, having regard to:
  - (a) the reasons why the Applicant was removed from the Register;
  - (b) evidence that the Applicant's fitness to practise is no longer impaired;
  - (c) evidence as to the Applicant's conduct, competence and health since removal from the Register;
  - (d) the protection of the public; and
  - (e) the public interest in maintaining confidence in social care services.
- (3) Where the Committee is minded to restore an Applicant's registration, it shall then, with reference to the Northern Ireland Social Care Council (Registration) Rules, consider whether the Applicant's registration should be made subject to conditions for a specified period not exceeding 3 years.
- (4) Where the Committee is minded to impose conditions on the Applicant's registration, it shall invite specific representations from the Applicant before making its decision.
- (5) In deciding whether to restore an Applicant's registration, and if so, whether an Applicant's registration should be made subject to conditions, the Committee shall take into account the principle of proportionality.
- (6) The Committee shall give reasons for its decision.

## **Notice of Decision**

8. (1) Within 7 days of the conclusion of the proceedings, the Clerk shall send a Notice of Decision to the Applicant and to the Council.

- (2) The Notice of Decision shall:
- (a) record any advice from the Legal Adviser and the Medical Adviser;
  - (b) set out the Committee's decision;
  - (c) specify the reasons for the Committee's decision;
  - (d) clearly set out any conditions imposed on the Applicant's registration;
  - (e) set out the Applicant's right of appeal to the Care Tribunal. Such appeal must be lodged in writing within 28 days from the date of the Notice of Decision.

### **Time limits for making application**

9. (1) No application for restoration to the Register under this SCHEDULE shall be made to the Council:
- (a) within 5 years from the date of removal; or
  - (b) in any period of 12 months in which an application for restoration has already been made by or on behalf of the person who has been removed.

## **Schedule 4**

### **Transitional arrangements**

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## **Membership of Committees**

1. The pool of persons referred to in Rule 10 immediately before these Rules come into operation are to be treated as being members available to be appointed to the Preliminary Proceedings Committee, Fitness to Practise Committee and Restoration Committee.

## **Registration and Restoration**

2. Where immediately before these Rules come into operation, there are outstanding applications for restoration to the Register, the application will be disposed of by the Restoration Committee applying these Rules.

## **Conduct matters**

3.
  - (1) Where information about a Registrant has been received but the Council has yet to determine whether it is a complaint, from the day these Rules come into operation, the Council will apply these Rules and consider instead whether the information is capable of amounting to an allegation.
  - (2) Where necessary, references under the previous Rules to the Conduct Committee, may be treated as references to the Fitness to Practise Committee appointed under Rule 5.
  - (3) Proceedings in respect of an allegation relating to misconduct which, immediately before these Rules come into operation:
    - (a) are yet to be referred to the Preliminary Proceedings Committee;

- (b) are pending before the Preliminary Proceedings or Conduct Committees;
- (c) which involve an Interim Order which is subject to review; or
- (d) have begun but in respect of which, the Committee dealing with the case, has not communicated its decision to the person who is the subject of the proceedings,

will be concluded by the Council, Preliminary Proceedings Committee or the Fitness to Practise Committee as appropriate, applying these Rules.

- (4) Any Registrant to which these transitional provisions apply, shall be given reasonable notice of the changes implemented under the Health and Personal Social Services (Amendment) Act (Northern Ireland) 2016 and these Rules.
- (5) The Council when applying these Rules in such cases, shall be able to utilise the options for consensual disposal in accordance with Rules 16, 17 and 18.
- (6) A Preliminary Proceedings Committee applying these Rules in such cases, shall proceed in accordance with SCHEDULE 1 and shall consider under paragraph 5(2) whether there is a real prospect of a finding of impaired fitness to practise and may take any of the actions in accordance with paragraph 5(1).
- (7) A Preliminary Proceedings Committee applying these Rules in such cases, which is considering an application for, or review of, an Interim Order shall be able to make an Interim Conditions of Practice Order or to make/renew an Interim Suspension Order.

- (8) Where, on the day these Rules come into operation, a misconduct case has been transferred to the Conduct Committee, the Chair of the Preliminary Proceedings Committee shall be asked to identify the nature of any alleged impairment of fitness to practise or to indicate that the matter should be referred back to the Preliminary Proceedings Committee to re-consider whether or not the allegation should be referred to the Fitness to Practise Committee.
- (9) Where Notice of Hearing has been sent, the Council shall prepare and send a revised Notice of Hearing identifying the nature of any alleged impaired fitness to practise and provide at least 28 days notice of the hearing date.
- (10) The Council may convene a pre-hearing review where it considers this would assist with the application of the transitional provisions.
- (11) A Fitness to Practise Committee applying these Rules in such cases shall:
- (a) proceed in accordance with SCHEDULE 2 and will have to determine the issue of impaired fitness to practise having regard to Stage 2 of its procedures;
  - (b) have available to it all the sanctions set out at paragraph 26 of SCHEDULE 2.
- (12) Where the person appeals to the Care Tribunal against a decision of the Council made before the coming into operation of these Rules (or any amendment of the Rules), these Rules are to be treated as having been in operation at the time of that decision for the purposes of the Care Tribunal being

able to substitute for the decision appealed against, any other decision that could have been made.