

THE CARE COUNCIL FOR WALES (FITNESS TO PRACTISE) RULES 2014

April 2014

The Care Council for Wales (Cyngor Gofal Cymru), in exercise of its powers under sections 59(1) to 59(3), and 71(1) of the Care Standards Act 2000 and with the consent of the Welsh Ministers¹ as required by section 71(4) of the 2000 Act hereby makes the following Rules

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¹ The functions of the National Assembly for Wales under these sections were vested in the Welsh Ministers by the operation of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32)

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PART I
INTRODUCTION

Citation, commencement, transitional arrangements and relief from breaches

1. (1) These Rules may be cited as the Care Council for Wales (Fitness to Practise) Rules 2014 and shall come into force on 1 April 2014.
- (2) These Rules apply to any complaint made on or after the coming into force of these Rules.
- (3) The Care Council for Wales (Conduct) Rules 2011 (“the 2011 Rules”) are hereby revoked save that where a complaint has been received by the Council before the coming into force of these Rules, the Council shall deal with that complaint in accordance with the 2011 Rules as if those Rules remain in force.
- (4) A Committee established under Rule 4 may, in relation to proceedings before that Committee and subject to the requirements of a fair hearing, relieve any Party from the consequence of a failure to comply with a provision in these Rules on such conditions as it thinks fit.

Interpretation

2. (1) In these Rules, unless the context otherwise requires –

“**the Act**” means the Care Standards Act 2000;

“**admonishment**” means an order made by the Fitness to Practise Committee resulting in an entry in the Register for a period up to five years and which may be taken into account in any future Council proceedings;

“**allegation**” means any information regarding a Registrant that raises a question regarding 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;

“**Applicant**” means an Applicant for restoration to the Register;

“**Code of Practice for Social Care Workers**” means the Code of Practice laying down the standards of conduct and practice expected of social care workers published by the Council under Section 62(1)(a) of the Act;

“**charge(s)**” means the allegation(s) against the Registrant;

“**complaint**” means information relating to a Registrant which forms the basis of an allegation against that Registrant and includes information that has come to the attention of the Council by any means and information relating to criminal convictions and cautions;

“**Complainant**” means any person (including an employer or institution) who makes a complaint against the Registrant;

“complaint form” means the form approved by the Council for the purposes of Rule 12;

“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 Care Council for Wales;

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

“a Duly Authorised Officer” means an officer of the Council to whom authority has been delegated by the Council;

“the employer” includes employment agencies, the self employed, and any employer of a social care worker (working in the capacity of a social care worker) of whom the Council is aware;

“fitness to practise” shall be construed in accordance with Rule 5(4) and the terms **“impaired fitness to practise”** and **“impairment”** shall be construed accordingly;

“the Fitness to Practise Committee” means the Committee of that name established by the Council under Rule 4;

“in camera” means in the absence of the Parties and their representatives, and the public;

“Interim Conditions of Practice Order” means an order made by an Investigating 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 for suspension of the Registrant’s registration made by the Investigating Committee for a period up to two years;

“the Investigating Committee” means the Committee of that name established by the Council under Rule 4 below;

“lack of competence” means a lack of knowledge, skill or judgment which calls into question the suitability of a Registrant to remain on the Register without conditions;

“lay person” means a person who is not, and has not within five years of appointment to a Council Committee, been:

- (a) a social worker
- (b) engaged in any of the descriptions of social care work contained in

sub-paragraphs (a) to (d) of section 55(2) or in sub-paragraphs (a) or (c) to (g) of section 55(3) of the Act;

- (c) involved in the training, education, appointment, employment, supply, supervision, monitoring or representation of social care workers; or
- (d) a social work student;

“**Legal Adviser**” means a person with a ten year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990 who is entitled to practise law in England and Wales;

“**Medical Adviser**” means a medical practitioner registered under the Medical Act 1983, appointed by the Council in accordance with Rule 10;

“**medical practitioner**” means a medical practitioner registered under the Medical Act 1983;

“**misconduct**” means conduct which calls into question the suitability of a Registrant to remain on the Register without conditions;

“**part of the Register for students**” means the part of the Register for persons participating in a course approved by the Council under section 63 of the Act;

“**the Parties**” means the Presenter (and may include an officer of the Council instructing the Presenter) and the Registrant (or the Registrant’s representative) at a hearing before a Committee, and specifically excludes the Complainant;

“**Pre Hearing Review**” means a meeting with a Legal Adviser as Chair in accordance with Rule 32 of Part V for the purpose of issuing case management directions;

“**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 a barrister engaged by the Council for this purpose;

“**Register**” means the Register maintained under section 56 of the Act;

“**Registrant**” means a person registered in the Register and includes a person whose registration is suspended from the Register under section 59(1)(c) of the Act, whether by the Fitness to Practise Committee or the Investigating Committee, or under the corresponding provisions of the Care Council for Wales (Conduct) Rules 2005 and the Care Council for Wales (Conduct) Rules 2011;

“**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;

“**Removal by Agreement**” refers to removal from the Register under Rule 15;

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

“the Restoration Committee” means the Committee of that name established by the Council under Rule 4 below;

“social care worker” has the meaning in Section 55(1) of the Act as extended by Regulations made under Section 55(3) of the Act;

“social work student” means a person who has been admitted by, or received an offer from, a course provider to participate in a course approved by the Council under section 63 of the Act, or who is participating in such a course;

“Suspension Order” means an order for suspension of the Registrant’s registration made by the Fitness to Practice Committee for a period up to two years;

“undertaking” means an agreement by the Registrant to comply with an undertaking proposed by the Council in accordance with Rule 14;

“university” means the university or higher education institution providing the degree course.

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

Service of documents

3. (1) In these Rules
- (a) any reference to the sending of a notice to a Registrant is a reference to the sending of a notice:
 - (i) by registered post or by a postal service in which delivery or receipt is recorded to the Registrant’s address in the Register or, if the last known address differs from the address in the Register, the Registrant’s last known address; or
 - (ii) by electronic mail to an electronic mail address that the Registrant has notified to the Council as an address for communications.

- (b) any reference to the sending of a notice to an Applicant, in the case of an application for restoration, is a reference to the sending of a notice:
 - (i) by registered post or by postal service in which delivery or receipt is recorded to the Applicant's address as recorded in the Register prior to the removal of the Applicant's name or, if the last known address differs from the address previously recorded in the Register, the Applicant's last known address; or
 - (ii) by electronic mail to an electronic mail address that the Applicant has notified to the Council as an address for communications.
- (2) Subject to paragraph (1) above, any correspondence or document required to be sent to an Applicant or Registrant under these Rules may be sent by -
 - (a) ordinary post; or
 - (b) electronic mail to an electronic mail address that the Applicant or Registrant has notified to the Council as an address for communications.
- (3) Any notice, document or correspondence shall be treated as served –
 - (a) on the day after it was posted; or
 - (b) where it was sent by electronic mail, on the day it was sent if sent before 5pm, otherwise on the day after it was sent.

PART II COMMITTEES

Constitution of Committees

4. (1) The Council shall establish the following three Committees:
 - (a) Investigating Committee;
 - (b) Fitness to Practise Committee;
 - (c) Restoration Committee.

Function of Committees

Investigating Committee

5. (1) It shall be the duty of the Investigating Committee to consider any complaint(s) against a Registrant referred to it and decide:
 - (a) whether the complaint(s) should be referred to the Fitness to Practise Committee;
 - (b) 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 Order;
 - (c) whether further investigations should be undertaken;
 - (d) whether no further action should be taken in respect of the complaint;
 - (e) where no further action is taken, whether to remind the Registrant of the terms of the Code of Practice for Social Care Workers.
- (2) The Investigating 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 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

- (3) It shall be the duty of the Fitness to Practise Committee to consider any charge against a Registrant referred to them, and to decide:
 - (a) whether the Registrant's fitness to practise is impaired;
 - (b) where it is decided that the Registrant's fitness to practise is impaired, what sanction should be imposed on the Registrant;

- (c) where an issue arises as to whether the Registrant is unfit to plead, whether the Registrant is unfit to plead accordingly, and should be suspended from the Register.
- (4) A Registrant's fitness to practise may be impaired by reason of one or more of the following:
 - (a) misconduct;
 - (b) lack of competence;
 - (c) physical or mental health;
 - (d) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
 - (e) a determination;
 - (f) inclusion on a list maintained by the Disclosure and Barring Service.

Restoration Committee

- (5) 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 Rule 72(2) of Part VI, 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

- 6. (1) The Investigating Committee shall follow the procedure set out in Part IV.
- (2) The Fitness to Practise Committee shall follow the procedure set out in Part V.
- (3) The Restoration Committee shall follow the procedure set out in Part VI.

Membership and Quorum of Committees

- 7. (1) The Council shall maintain a pool of members from which members of the individual Committees hearing a particular case shall be appointed.
- (2) Each Committee shall consist of up to five members, appointed by the Council.
- (3) The quorum of each Committee shall be three, and each Committee shall sit with either three or five members present.
- (4) Each Committee shall include at least one lay person as a member.
- (5) The Council shall appoint a Chair of each Committee. The Chair shall be a lay person.

- (6) Council Members shall not sit as members on any Committee referred to in Rule 4(1).
- (7) The Council shall ensure that a member is appointed to each Committee who has experience or understanding of the area of social care work practised by the Registrant or Applicant whose case is under consideration unless the Registrant is registered in the part of the Register for students.
- (8) Members of each Committee shall be appointed for a period not exceeding four years and shall be eligible for re-appointment for a further period not exceeding four years.
- (9) No member of any Fitness to Practise Committee shall sit as such on the hearing of a Registrant's case, if that member has previously been a member of an Investigating Committee considering the complaint against the Registrant.
- (10) Notwithstanding (9) above, members of the Investigating Committee may sit as such at an initial and any subsequent considerations of a Registrant's case, by that Committee.

Voting

8. (1) Decisions of all Committees shall be taken by simple majority.
- (2) No Chair of any Committee may exercise a casting vote.
- (3) Any abstention shall be deemed to be a vote in favour of the Registrant or Applicant.

Legal Adviser

9. (1) A Legal Adviser shall be present at the sitting of each Committee. The Legal Adviser shall also be present during the deliberations of each Committee.
- (2) The role of the Legal Adviser shall be to advise each Committee on questions of law, and to ensure that proceedings before each Committee are conducted fairly. To this end, the Legal Adviser shall inform a Committee immediately where in his or her opinion there is an 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 deliberations of the Committee held *in camera* 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

representations made by the Parties and will advise the Committee accordingly, in the presence of the Parties.

- (6) The Legal Adviser shall not participate in the decision making of the Committee considering a case and shall not be entitled to vote.
- (7) The Legal Adviser shall, if so authorised by the Council, conduct a pre-hearing review in accordance with Rule 32 of Part V.

Medical Adviser

10. (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 health the Council may appoint a Medical Adviser to advise the Committee that is to consider the allegations.
- (2) The Medical Adviser may be present during the deliberations of each Committee.
- (3) Where the Registrant or Applicant 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 deliberations of the Committee held *in camera* 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 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, in the presence of the Parties.
- (6) The Medical Adviser shall not participate in the decision making of the Committee considering a case and shall not be entitled to vote.

Clerk

11. (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, and shall not be entitled to vote.

PART III
COMPLAINTS

Procedure upon receipt of information about a Registrant

12. (1) On receipt of information about a Registrant, a Duly Authorised Officer shall first consider whether such information is capable of amounting to a complaint.
- (2) Information shall only be considered to be capable of amounting to a complaint where such information:
- (a) relates to an identifiable Registrant; and
 - (b) forms the basis of an allegation of impaired fitness to practise against the Registrant.
- (3) Where the information is not considered to amount to a complaint, the Council shall inform the provider of the information that no further action will be taken and that the matter will be closed.
- (4) Where the information is capable of amounting to a complaint and where no complaint form has been received, the Council may send to any person whom the Council considers appropriate a copy of the Council's guidance about making a complaint and a complaint form and may also provide information on alternative methods of resolving a complaint, including mediation or remedies available through a Registrant's employer(s).
- (5) Where the Council receives information about a Registrant which is capable of amounting to a complaint, the Council shall write to the Registrant
- (a) informing them of the complaint;
 - (b) inviting them to respond to the complaint with written representations within the period of 28 days from the date of the letter.

The Council shall provide them with information as to the progress of the Council's investigation.

- (6) Where the Council receives information about a Registrant which is capable of amounting to a complaint, the Council shall inform the provider of the information, the Registrant and the Registrant's employers (if any), where the Registrant is registered in the part of the Register for students, the university, of the information and shall provide them (and any employer by whom the Registrant is subsequently employed) with information as to the progress of the Council's investigation.
- (7) For the purpose of establishing whether any information received is capable of amounting to a complaint, the Council may make such preliminary inquiries as it considers necessary in the circumstances, including instructing solicitors to investigate the matter, and seeking further information or clarification from the Registrant, the Registrant's employer(s) (if any), where the Registrant is

registered in the part of the Register for students, the university, the Disclosure and Barring Service or any other source.

- (8) Where anonymous allegations are received by the Council, or Complainants are not wishing to proceed with the complaint, the Council shall investigate the matter and if satisfied that the allegations amount to a complaint, the Council shall act as the Complainant.
- (9) Where the Council has received information about a Registrant, and that Registrant is already the subject of an inquiry by the police, any statutory inquiry or tribunal, the Disclosure and Barring Service, or other regulatory body, the Council may defer investigation or referral of a complaint to the Investigating Committee, until such inquiry has been concluded.
- (10) In respect of each complaint, a Duly Authorised Officer shall consider whether there is a real prospect of a finding of impaired fitness to practise in relation to the allegation or allegations which forms the basis of the complaint.
- (11) Where the Duly Authorised Officer considers that there is no real prospect of a finding of impaired fitness to practise the Council shall give notice of that decision within seven days to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.
- (12) Where the Duly Authorised Officer considers that there is a real prospect of a finding of impaired fitness to practise, he or she shall consider whether:
 - (a) the case should be referred to the Investigating Committee for consideration under Rules 16 to 21 of Part IV; or
 - (b) the case should be referred to the Fitness to Practise Committee under Rule 13; or
 - (c) the case should be dealt with under Rule 14; or
 - (d) the case should be dealt with under Rule 15; or
 - (e) an application should be made for an Interim Order under Rule 25 of Part IV.
- (13) For the purposes of:
 - (a) establishing whether any information received amounts to a complaint;
 - (b) establishing whether there is a real prospect of a finding of impaired fitness to practise in relation to the allegation or allegations which form the basis of the complaint; or
 - (c) determining whether an application should be made for an Interim Order,

the Council may make such inquiries and seek such advice as it considers necessary in the circumstances, including instructing solicitors, seeking further information or clarification from the Registrant or the Registrant's employer.

- (14) Where the Council receives, by any means and from any source, information that a Registrant has been convicted of a criminal offence or been subject to caution or other criminal sanction and the offence is one which by reference to a list of offences maintained by the Council does not amount to a complaint, the Council will not refer the matter to the Investigating Committee unless the circumstances appear to the Council to raise a question as to whether the Registrant's actions amount to impaired fitness to practise.
- (15) Where the Council receives by any means and from any source information that a Registrant has had his or her driving licence endorsed under the Road Traffic Offenders Act 1988, as amended or substituted from time to time as a result of paying a fixed penalty, the Council will not refer the matter to the Investigating Committee unless the circumstances leading to the endorsement appear to the Council to raise a question as to whether the Registrant's actions amount to impaired fitness to practise.
- (16) Where under paragraphs (10), (12) or (14) of this Rule, the Council decides not to refer the matter to the Investigating Committee, the Council may remind the Registrant of the terms of the Code of Practice for Social Care Workers, and inform the Registrant that a record of this reminder and the reasons therefore, will be kept by the Council.

Fastrack referral to Fitness to Practise Committee

13. (1) Where a Duly Authorised Officer considers there is a real prospect of a finding of impaired fitness to practise in relation to an allegation or allegations he may refer the case directly to the Fitness to Practise Committee if:
 - (a) the findings of fact made by any regulatory body or by the Disclosure and Barring Service may be relied upon as prima facie evidence under Rule 40(7) of Part V; or
 - (b) the allegation is based upon a caution or conviction for a criminal offence in a UK Court ; or
 - (c) the allegation is based on a caution or conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence.
- (2) Where the case is referred to the Fitness to Practise Committee a Duly Authorised Officer shall within seven days send a Notice of Transfer to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.

- (3) The Notice of Transfer shall state that the case has been transferred to the Fitness of Practice Committee and the reasons why.
- (4) Where, in a case to which paragraph (1) of this Rule applies, the Duly Authorised Officer considers that there is a real prospect of a finding of impaired fitness to practise by reason of physical or mental health, 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 practitioner nominated by the Council; and
 - (b) that such medical practitioner provide the Fitness to Practise Committee with a report on the Registrant's physical or mental health.

Disposal of cases by undertakings

- 14. (1) Where a Duly Authorised Officer considers that there is a real prospect of a finding of impaired fitness to practise in relation to an allegation which forms the basis of the complaint, but that the case is appropriate for disposal by means of the Registrant agreeing to comply with an undertaking or undertakings, the Council shall within seven days inform the Registrant to that effect and provide the terms of the proposed undertaking(s).
- (2) Cases shall only be disposed of under paragraph (1) where the Registrant:
 - (a) admits the allegation;
 - (b) admits that that the actions amount to impaired fitness to practise; and
 - (c) confirms within 14 days of service of the notice referred to in paragraph (1) that he or she agrees to comply with the proposed undertaking(s).
- (3) Where the Registrant does not agree to disposal in accordance with paragraph (2) of this Rule, the case shall be referred to the Investigating Committee for consideration under Rules 16 to 21 of Part IV.
- (4) Where the case is disposed of by undertaking(s) in accordance with this Rule, the Council shall give notice of the outcome within seven days to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students..
- (5) The Council may inform:
 - (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) any relevant regulatory body of its decision.

- (6) Where a case is disposed of by means of an undertaking in accordance with this Rule, a Duly Authorised Officer may request from:
- (a) the Registrant; or
 - (b) the Registrant's employer(s) (if any)
- such information as will enable the Council to determine whether the undertaking has been complied with or continues to be complied with.
- (7) Where the case is disposed of by undertaking(s) in accordance with this Rule and a Duly Authorised Officer subsequently receives information that the requirements of the undertaking(s) have been fully complied with, the Council shall give notice to the Registrant that the undertaking(s) should no longer apply and may give notice to that effect to those other persons specified in paragraphs (4) and (5) of this Rule.
- (8) Where the case is disposed of by undertaking(s) in accordance with this Rule 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 (6)(a) of this Rule), the Council may:
- (a) refer the original allegation to the Investigating Committee under paragraphs 16 to 21 of Part IV; and
 - (b) treat the failure to comply with the undertaking(s) as a separate allegation of impaired fitness to practise and refer this allegation to the Investigating Committee.

Removal by agreement

15. (1) A Registrant in respect of whom a complaint has been received may apply for removal from the Register by agreement with the Council.
- (2) An application for removal by agreement shall not be granted other than in the circumstances described in paragraphs (3) and (4) of this Rule.
- (3) A Duly Authorised Officer of the Council must be satisfied that there is a real prospect of a finding of impaired fitness to practise in relation to the allegation which forms the basis of the complaint.
- (4) Where paragraph (3) applies, the Council may grant an application for removal by agreement provided that the Registrant:
- (a) admits the allegation;
 - (b) signs an agreed statement of facts;
 - (c) admits that his or her fitness to practise is impaired by reason of the matters set out in the agreed statement of facts;
 - (d) provides written confirmation of his understanding of the matters set out in paragraph (5) of this Rule.
- (5) Where an application for removal by agreement is granted:

- (a) the Registrant's name shall be removed from the register;
- (b) the Registrant may 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;
- (c) the Council shall give notice of this outcome within seven days to:
 - (i) the Registrant;
 - (ii) the Council;
 - (iii) the Complainant;
 - (iv) the Registrant's employer(s) if any
 - (v) the university, where the Registrant is registered in the part of the Register for students;
- (d) the Council may inform:
 - (i) the Welsh Government;
 - (ii) the Disclosure and Barring Service;
 - (iii) any relevant regulatory body;
- (e) the Council may publish details of the outcome and the agreed statement of facts by such means as it considers appropriate.

PART IV

PROCEDURE OF THE INVESTIGATING COMMITTEE

Interpretation

16. (1) In this Part, 'the Committee' means the Investigating Committee.

Public or Private Sitings

17. (1) Subject to (2) below, the proceedings of the Committee shall be held in private.
- (2) Where the Committee is considering whether or not to impose an Interim Order on the Registrant's registration, the Committee may sit in public, if:
- (a) the Registrant so requests, and
 - (b) the Committee does not decide, in accordance with Rule 38(2) and (3), that persons not connected with the hearing should withdraw from the whole or part of the hearing.

Notice of Referral

18. (1) No later 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 complaint and any documentation in support;
 - (b) a copy of these Rules.
- (2) The Notice of Referral shall:
- (a) set out the complaint which calls into question the Registrant's suitability to remain on the Register;
 - (b) invite the Registrant to make written representations upon the complaint within 14 days of service of the Notice;
 - (c) inform the Registrant of the date of the hearing;
 - (d) inform the Registrant that the Committee, and the Council, may seek further information about the complaint from the Registrant's employer(s), if any, where the Registrant is registered in the part of the Register for students, from the Registrant's university, or from any other source.

Postponement of the Hearing

19. (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Chair of the Committee.
- (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 Complainant of the new hearing date, as soon as possible.

Consideration by the Committee

20. (1) No later than 14 days before the consideration of the Registrant's case, the Registrant shall provide to the Clerk, copies of any documents on which the Registrant intends to rely.
- (2) Any documentary evidence to be considered by the Committee shall be lodged with the Clerk, seven days before the sitting.
- (3) Unless in the opinion of the Council the circumstances are exceptional, in which case the period of seven days referred to above may be reduced as the Council sees fit, no later than seven days before the consideration of the case, the Council shall provide the Clerk with:
 - (a) a statement of the complaint;
 - (b) a copy of the signed complaints form (if any);
 - (c) any relevant documents or witness statements;
 - (d) recommendations for disposal,and the Clerk shall serve copies of the items referred to in (a) to (d) above on the members of the Committee for the consideration of the case.
- (4) The Committee shall consider the complaint against the Registrant, and any information obtained from the Registrant's employer, where the Registrant is registered in the part of the Register for students, the university, or other source.
- (5) The Committee shall then consider the Council's recommendations for disposal together with any further documentation provided by the Council, and any written representations and documentation provided by the Registrant.
- (6) Except where the Committee is considering whether or not to make an Interim Order, the Committee shall not receive oral testimony.
- (7) The Committee may adjourn its proceedings at any stage for the purposes of seeking further information or for any other purpose.

Disposal

21. (1) The Investigating Committee may:

- (a) take no further action and conclude the case;
 - (b) refer the case to the Fitness to Practise Committee;
 - (c) direct that further investigations should be undertaken and adjourn the matter;
 - (d) where a Notice has been issued under Rule 25, impose an Interim Order on the Registrant's registration, if satisfied that 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.
- (2) The Committee shall not refer a complaint to the Fitness to Practise Committee unless it is satisfied that there is a real prospect of a finding of impaired fitness to practise by reason of one or more of the grounds set out in Rule 5(4)(a) to (f) of Part II of these Rules.
- (3) Where the Committee determines that there is a real prospect of a finding that the Registrant's fitness to practise may be impaired by reason of physical or mental health, the Committee shall direct that the Registrant be invited to agree to be examined (at the Council's expense) by a medical practitioner nominated by the Council.
- (4) Where under paragraph (1)(a) the Investigating Committee determines that no further action be taken, the Committee may remind the Registrant of the terms of the Code of Practice for Social Care Workers, and inform the Registrant that a record of this reminder and the reasons therefore, will be kept on the entry relating to the Registrant.
- (5) Where the Committee determines that a complaint shall not be referred to the Fitness to Practise Committee, or that further investigation is required, or that the matter is disposed with under Rule 21(4), the Clerk shall within seven days send written notification, with the reasons for the Committee's decision, to:
- (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s), (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.

Notice of Transfer

22. (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 Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.

- (2) The Notice of Transfer shall:
 - (a) give reasons for the Committee's decision;
 - (b) state that the case has been transferred to the Fitness to Practise Committee
- (3) Where the Committee has made the direction specified in Rule 21(3) 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 practitioner nominated by the Council; and
 - (b) that such medical practitioner provide the Fitness to Practise Committee with a report on the Registrant's physical or mental ill health.

Further investigation by the Council

23. (1) 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.

Cancellation of hearing

24. (1) Where, during the course of the Council's preparation of the case for hearing, it appears that the matter should no longer proceed to a hearing, or where the Legal Adviser makes such a recommendation at a pre-hearing review, the Council shall refer the matter back to the Investigating Committee to re-consider whether or not the complaint should be referred to the Fitness to Practise Committee.

Interim Orders

25. (1) The Council may apply for an Interim Order 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 Council wishes to apply for an Interim Order a Notice of Hearing shall be sent to the Registrant which shall:
 - (a) inform the Registrant of the right to attend the hearing;
 - (b) inform the Registrant of the time and venue for the hearing;
 - (c) request the Registrant to inform the Committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) 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 or be subject to conditions; 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;
 - (e) inform the Registrant of the rights to give evidence in person, to call witnesses and to cross examine any witnesses called by the Council;
 - (f) 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) a representative from a student body where the Registrant is registered in the part of the Register for students;
 - (g) inform the Registrant that the Committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (f) above;
 - (h) inform the Registrant that any application to be represented by a person other than those listed in paragraph (f) above, must be sent to the Clerk no later than 48 hours in advance of a meeting of the Committee;
 - (i) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing;
 - (j) inform the Registrant that a person that proposes to attend a meeting of the Committee to represent or accompany the Registrant and who is also to give evidence, shall not be entitled to be present during the proceedings until such evidence has been given, without leave of the Committee.
- (3) Subject to paragraphs (4) and (5) below where a Notice of Hearing under paragraph (2) is issued, an application for an Interim Order shall be heard no earlier than seven days after the date on which the Notice of Hearing was served upon the Registrant.
 - (4) Where an urgent application for an Interim Order is made by the Council on the grounds of protection of the public, the Committee may dispense with the notice period referred to in paragraph (3) above.
 - (5) Notwithstanding paragraph (4) 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.

- (6) In addition to the procedure set out in paragraph (7) below, the following Rules in Part V shall apply where the Committee is considering whether or not to make an Interim Order, namely: Rules 35, 38 (2) and (3), 39, 40, 42, 48 and 49.
- (7) 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 (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 camera*;
 - (e) where the Committee determines that an Interim Conditions of Practice Order should be imposed, the Committee shall announce the condition(s) to be included in that Order and invite the Registrant or the Registrant's representative (when present) and the Presenter to comment on the wording of the proposed condition(s) and the Registrant's ability to comply, prior to the Committee finalising the wording of the condition(s);
 - (f) the Committee shall determine the application and announce its decision, and the reasons for that decision, in the presence of the Parties;
 - (g) where Registrant the proceedings are held in public in accordance with Rule 17(2), the Committee shall announce its decision, and the reasons for that decision, in public.
- (8) Where the Investigating Committee decides that it is necessary to impose an Interim Order, the initial duration of such order shall not exceed six months.
- (9) Any decision of the Committee shall take effect as soon as it is made.
- (10) Within seven days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s), (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.

- (11) The Council may inform:
 - (a) the Welsh Government;
 - (b) any relevant regulatory body of its decision.

- (12) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser or the Medical Adviser;
 - (b) set out the Committee's decision;
 - (c) specify the reasons for the Committee's decision;
 - (d) where an Interim Suspension Order has been imposed, set out the period of suspension, beginning on the date on which the Order is made;
 - (e) where an Interim Conditions of Practice Order has been imposed, set out the duration of the Order and the condition or conditions with which the Registrant must comply;
 - (f) inform the Registrant of the right of appeal to the First-tier Tribunal (Care Standards).

Notes and Transcript of the Proceedings

- 26. (1) A recording shall be made of the proceedings before the Committee.
- (2) Upon application, the Council shall send the Registrant a transcript of any part of the proceedings at which the Registrant was present.

Amendment of the Register

- 27. (1) Where an Interim Order has been imposed on a Registrant's registration by the Committee, the Council shall enter the particulars of the Order against the name of the Registrant in the Register.

Review of Interim Orders

- 28. (1) The Council, or any person in respect of whom an Interim Order has been made, may request the Investigating 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 three months after the date on which the Order was made.
- (3) Where the Committee decides to review an Interim Order, a Notice of Review shall be sent to the Registrant and the Council, no later than 28 days before the review hearing.
- (4) The Notice of Review shall:
 - (a) inform the Registrant of the right to attend the hearing;
 - (b) inform the Registrant of the time and venue for the hearing;

- (c) request the Registrant to inform the Committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) where the Committee has requested a review of the Interim Order, for the purpose of imposing a further Interim Order, 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;
 - (e) inform the Registrant of the rights to give evidence in person, to call witnesses and to cross examine any witnesses called by the Council;
 - (f) 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) a representative from a student body, where the Registrant is registered in the part of the Register for students;
 - (g) inform the Registrant that the Committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (f) above;
 - (h) inform the Registrant that any application to be represented by a person other than those listed in paragraph (f) above, shall be sent to the Clerk no later than 48 hours in advance of a meeting of the Committee;
 - (i) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing;
 - (j) inform the Registrant that a person who proposes to attend a meeting of the Committee to represent or accompany the Registrant and who is also to give evidence, shall not be entitled to be present during the proceedings until such evidence has been given, without leave of the Committee.
- (5) The procedure at the review hearing shall be the same as at the original hearing.
 - (6) After reviewing an Interim Order under paragraph (1) the Committee may:
 - (a) continue the Interim Order;
 - (b) revoke the Interim Order;
 - (c) impose a further Interim Order, to commence upon the expiry of the existing Order;

and any such decision shall be treated as that of the Council.

- (7) Where the Investigating Committee decides to impose a further Interim Order in accordance with the provisions set out in paragraph 6(c) above, the total period of suspension or conditions of practice shall not exceed a period of two years, including the period specified in the original Order.
- (8) Within seven 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 Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.
- (9) The Council may inform:
 - (a) the Welsh Government;
 - (b) any relevant regulatory body of its decision.
- (10) The Notice of Decision shall contain the matters set out in Rule 25(12) above.

Notes and Transcript of the Proceedings

29. (1) A recording shall be made of the proceedings before the Committee.
- (2) Upon application, the Council shall send the Registrant a transcript of any part of the proceedings at which the Registrant was present.

Amendment of the Register

30. (1) Where a review of an Interim Order has been undertaken, and a decision to continue, revoke or impose a further Order has been made, the Council shall amend the Register accordingly.

PART V
PROCEDURE OF THE FITNESS TO PRACTISE COMMITTEE

Interpretation

31. (1) In this Part, unless otherwise stated, “the Committee” means the Fitness to Practise Committee.

Pre-hearing Review

32. (1) As soon as practicable after the matter has been referred to the Committee, the Council shall 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 decided by the Legal Adviser, after consultation with the Parties.
- (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 and/or be represented by the persons set out in Rule 39 below.
- (6) The following matters shall be considered at the pre-hearing review:
- (a) the charge(s) against the Registrant, prepared by the Council and sent to the Legal Adviser and the Parties in advance of the pre-hearing review;
 - (b) any admissions of facts;
 - (c) the names of witnesses to be called (if any);
 - (d) whether particular provisions should be made for vulnerable witnesses at the hearing;
 - (e) whether expert evidence is to be adduced;
 - (f) whether the health of the Registrant will be raised as an issue in the proceedings, and if so, whether a report from a medical practitioner should be obtained;
 - (g) any dates on which the Registrant or witnesses would be unable to attend a hearing;
 - (h) time estimate for the hearing.
- (7) The Legal Adviser may issue directions to the Parties for the purpose of facilitating the hearing of the matter and regarding the timetable for service of evidence, including medical and expert reports, and the Statement of Facts (if any) and the Parties will comply with such directions.
- (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 the facts of the charge the Legal Adviser shall direct the Parties to prepare an agreed Statement of Facts within a specified timescale.

Joinder

- 33. (1) Where a charge(s) against the Registrant has been referred to the Committee and a new complaint or complaints are subsequently referred to the Committee, the charge(s) may be amended in the light of the new complaint or complaints, subject to the requirements of a fair hearing.

Notice of Hearing

- 34. (1) As soon as practicable after the pre-hearing review has been held, save when the matter has been referred back to the Investigating Committee in accordance with Rule 24 of Part IV, the Clerk shall send the Registrant, the Council, the Complainant, 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 Hearing which shall:
 - (a) state the date, time and venue of the hearing;
 - (b) specify the charge against the Registrant, which may be amended by the Council following the pre-hearing review;
 - (c) state whether, in a case which has been transferred to the Committee under Rule 13(1) of Part III or Rule 21(1)(b) of Part IV to the Rules, that a Medical Adviser has been appointed to advise the Committee;
 - (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 Rule 39 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;
 - (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) invite the Registrant to state whether the Registrant and/or the Registrant's representative will be attending 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.

Postponement of the Hearing

35. (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Chair of the Committee.
- (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 Complainant of the new hearing date, as soon as possible.

Disclosure of Case and Service of Documents

36. (1) No later than 14 days before the date of hearing, the Parties shall serve on each other, and lodge with the Clerk to the Committee, copies of all documents and reports upon which they intend to rely.
- (2) The Parties shall make arrangements for original documents to be inspected no later than seven days before the date of the hearing.
- (3) Upon receipt of the Registrant's documents and reports (if any), 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) on the Registrant and lodge copies with the Clerk.
- (4) No later than seven days before the hearing, the Clerk shall send the Committee, copies of:
- (a) the Notice of Hearing;
 - (b) any documents lodged by the Parties in terms of paragraphs (1) and (3) above.

Procedure at the Hearing

37. (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 prompt determination of the proceedings.

- (2) The hearing shall be conducted in three stages as follows:
 - (a) preliminaries and findings of fact;
 - (b) finding regarding fitness to practise ;
 - (c) sanction.

Public and Private Hearings

- 38. (1) Subject to 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 connected 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 only allegation is that the Registrant's fitness to practise is impaired by reason of the Registrant's physical or mental health, the hearing shall be conducted in private.
- (5) For the purpose of arriving at any decision in relation to the hearing, the Committee shall sit *in camera*. The Committee shall announce any decision in the presence of the Parties.

Representation and Entitlement to be Heard

- 39. (1) The Presenter and the Registrant shall be entitled to be heard by the Committee.
- (2) The Registrant may be represented by:
 - (a) a barrister; or
 - (b) a solicitor; 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) The Committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (2) above. The Registrant must apply to the Clerk no later than 48 hours in advance of a meeting of the Committee to be represented by such a person.
- (4) Where the Registrant is acting in person, the Registrant may be accompanied and advised by some other representative. Such representative however shall not be entitled to address the Committee without permission.
- (5) A person attending a meeting of the Committee to represent or accompany the Registrant and who is also to be called as a witness, shall not be entitled to be present during the proceedings until such evidence is given without leave of the Committee.
- (6) 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.
- (7) The Complainant may be present at the hearing and may be called to give evidence by any Party, or by the Committee, of its own motion.
- (8) Where the Complainant is to give evidence, the Complainant shall not be entitled to be present during the proceedings until such evidence is given.
- (9) Subject to Rule 50, where the Complainant has been called to give evidence by the Committee, the Parties shall have the opportunity to question the Complainant.

Evidence

- 40. (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 or between the Parties.
- (2) The Committee may receive oral, documentary or other evidence 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 any other evidence or request any person to give oral evidence, which it considers might assist it in determining 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) Production of a record of a caution shall be prima facie evidence of the underlying facts and the offence giving rise to the caution.
 - (6) The findings of fact and certification of conviction of any UK Criminal or Civil Court shall be conclusive proof of the facts or conviction so found.
 - (7) The Committee may admit the determination of a regulatory body or the decision of the Disclosure and Barring Service or the First-tier Tribunal (Care Standards) or the Upper Tribunal (Administrative Appeals) in proceedings against a Registrant, as prima facie evidence of any facts found proved by that body.
 - (8) Notwithstanding paragraph (7), the Registrant shall be entitled to adduce evidence to the Committee in rebuttal of any findings made by a regulatory body or the Disclosure and Barring Service or the First-tier Tribunal (Care Standards) or the Upper Tribunal (Administrative Appeals).

Burden and Standard of Proof

- 41. (1) The burden of proof shall rest upon the Council.
- (2) Where the facts are in dispute, the Committee shall decide the facts on the civil standard, applying the balance of probabilities.

Adjournment of the Hearing

- 42. (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 for the purposes of seeking further information or for any other purpose.
- (2) Where the hearing has been adjourned, the Clerk shall, as soon, as practicable, notify the Parties, the Complainant 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

- 43. (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; and
 - (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 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

44. (1) Where an issue arises as to the Registrant's fitness to plead, the Committee 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 Charge(s)

45. (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 Committee will consider any application under Rule 38(2) that persons not connected with the hearing should withdraw from the whole or any part of the proceedings.
- (4) The Clerk shall then read out the charge(s) against the Registrant.

Amendment of the Charge(s)

46. (1) Subject to the requirements of a fair hearing, the Committee may amend the charge(s) at any stage prior to the Committee making 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 charge(s) should be amended.

Admissions

47. (1) After the charge(s) have been read, the Chair shall ask the Registrant whether any facts (or convictions) alleged are admitted, and may receive an agreed Statement of Facts.
- (2) Where any facts (or convictions) are admitted, the Chair shall announce that such facts (or convictions) have been found proved and the Committee shall determine the issue of impaired fitness to practise in accordance with stage 2.
- (3) Where no admissions of facts 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

48. (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 Rule 50, 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 they have completed giving evidence to the Committee and have been formally released by the Chair.

Vulnerable Witnesses

49. (1) The following shall be treated as vulnerable witnesses:
 - (a) any witness under the age of 17;
 - (b) any witness with a mental disorder;
 - (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 Complainant and/or any individual against whom the Registrant's alleged behaviour was directed, where the charge(s) against the Registrant is of a sexual nature;
 - (f) any witness whose evidence is likely to be diminished by reason of fear or distress in connection with testifying in the proceedings.
- (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 of a witness;
 - (c) use of screens;
 - (d) use of interpreters (including signers and translators) or intermediaries.
- (4) Where the charge(s) against a Registrant is sexual in nature and the Complainant is the alleged victim, and where the Registrant is acting in person, the Registrant shall not be allowed to cross examine the Complainant. Any questioning of the Complainant in these circumstances shall be undertaken by the Legal Adviser.

Registrant's Evidence

50. (1) At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and witnesses in support.

Finding of Facts

51. (1) The Committee shall then consider *in camera* whether the facts in the charge(s) 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 be required to give reasons for its findings on the facts.

Stage 2 – Fitness to Practise

52. (1) The Parties shall make representations to the Committee and may adduce evidence on the question of whether the Registrant's fitness to practise is impaired.
- (2) In deciding upon the issue of impairment of fitness to practise, the Committee shall have regard to any Code of Practice for Social Care Workers issued by the Council under Section 62 of the Act.

- (3) Where the Committee is considering whether a Registrant's fitness to practise is impaired by reason of lack of competence, it shall take into account whether the Registrant's competence is such as to make them suitable to perform the whole or part of the work of a person registered in the Register.
- (4) Where the Committee is considering whether a Registrant's fitness to practise is impaired by reason of health, it:
 - (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 by 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 practice;
 - (d) shall, subject to paragraph (e) below, consider any medical reports or other medical evidence on whether 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.
- (5) The Committee shall consider *in camera* whether, on the facts found proved, the Registrant's fitness to practise is impaired.
- (6) The Committee shall announce its finding on the issue of impairment before the Parties and shall give reasons for its decision.
- (7) If the Registrant's fitness to practise is found not to be impaired, the case will be dismissed and the hearing concluded. Where the Committee considers it appropriate to do so, the Committee may remind the Registrant of the terms of the Code of Practice for Social Care Workers, and inform the Registrant that a record of this reminder and the reasons therefore, will be kept by the Council.

Stage 3 - Sanction

Submissions on Sanction

53. (1) Where the Committee finds that the Registrant's fitness to practise is impaired, the Chair will announce the sanctions available to the Committee and shall invite

representations from the Presenter and the Registrant as to the sanction to be imposed.

- (2) The Presenter shall provide the Committee with details of the Registrant's previous record with the Council (if any) and may adduce evidence and make submissions in relation to the appropriate sanction if any, to be made by the Committee.
- (3) The Registrant may then address the Committee in response and may adduce references and testimonials, and may call character witnesses in support.
- (4) Where character witnesses are called, they may be questioned by the Presenter and the Committee.
- (5) Where the Registrant has chosen not to attend the hearing, the Registrant may provide submissions in writing, in advance, to the Clerk. The Clerk shall provide such submissions to the Committee.
- (6) After hearing the Registrant's submissions, the Committee shall decide, *in camera*, what sanction it should impose.

Sanctions

54. (1) Upon a finding of impaired fitness to practise, the Committee may:
 - (a) close the case without imposing a sanction (in which case the Committee may remind the Registrant of the terms of the Code of Practice for Social Care Workers); or
 - (b) admonish the Registrant and make a direction that a record of the admonishment shall be placed on the Registrant's entry in the Register for a period of up to five years; or
 - (c) make a Conditions of Practice Order; or
 - (d) make an order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order') with or without conditions; or
 - (e) make an order for removal of the Registrant's registration from the register ('a Removal Order'); or
 - (f) revoke any Interim Order imposed by the Investigating Committee,

and that the Registrant be informed that details of the sanction shall remain in the Council's records and may be taken into account in future Council proceedings.
- (2) In deciding what sanction is to be imposed, the Committee shall take into account:
 - (a) the seriousness of the matter;

- (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 consider any medical reports or other medical evidence on whether the alleged impairment of fitness to practise has been caused or substantially contributed to, by the Registrant's physical or mental ill health.
 - (4) Where the Committee determines that a Conditions of Practice Order or a Suspension Order with condition(s) should be imposed, the Committee shall announce the condition(s) to be included in that order and invite the Registrant or the Registrant's representative (when present) and the Presenter to comment on the wording of the proposed condition(s) and the Registrant's ability to comply, prior to the Committee finalising the wording of the condition(s).
 - (5) The Committee shall announce its decision on sanctions in the presence of the Parties, and shall give reasons for its decision.
 - (6) Any decision of the Committee shall take effect as soon as it is made.

Notice of Decision

- 55. (1) Within seven days after the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.
- (2) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser and the Medical Adviser;
 - (b) set out the Committee's findings of fact, and its decisions on impairment of fitness to practise and sanction;
 - (c) specify the reasons for the Committee's decisions;
 - (d) where an admonishment has been imposed, set out the period of admonishment;
 - (e) where a Suspension Order has been imposed with or without conditions, set out the period of suspension and the details of any conditions imposed;

- (f) where a Conditions of Practice Order has been imposed, set out the period of the Order and the details of the conditions imposed;
 - (g) inform the Registrant of the right of appeal to the First-tier Tribunal (Care Standards);
 - (h) inform the Registrant that any sanction imposed by the Committee took effect from the date on which the hearing was concluded.
- (3) The Council may inform:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) any relevant regulatory body of its decision.

Notes and Transcript of the Proceedings

56. (1) A person shall be appointed by the Council to take a verbatim note and/or arrangements shall be made for the recording of the proceedings before the Committee
- (2) Upon application, the Council shall send the Registrant and the Complainant a transcript of the verbatim note or recording, of any part of the proceedings at which the Registrant or, as the case may be, the Complainant was entitled to be present.

Amendment of the Register

57. (1) The Council shall amend the Registrant's entry in the Register to record the sanction imposed, as appropriate.

Publication of Decisions

58. (1) The Council shall publish the Committee's findings of fact, and the Committee's determination, by such means as it considers appropriate.
- (2) On the determination of the Committee, the Council may also provide a copy of the Committee's findings of fact and the Committee's determination, to a regulatory body and to the Disclosure and Barring Service.

Review of Findings of Impairment of Fitness to Practise

59. (1) A Committee may on application by a Party or of its own motion, review a finding of impairment of fitness to practise and revoke any sanction imposed where:
- (a) the only or main reason for making the finding was that the Registrant had been convicted of a criminal offence and, after the date of the finding, the conviction in question was quashed; or

- (b) after the order was made, the Committee obtains material evidence not considered by it before it made the finding or order in question and the Committee is satisfied that, had it been aware of the evidence before it made the order it would not have made it.

Amendment of the Register

- 60. (1) If the determination of the Committee following an application under Rule 59 is that the finding of impairment of fitness to practise is revoked the Council shall amend the Registrant's entry in the Register accordingly.

Applications to vary or revoke a condition(s) in a Conditions of Practice Order or Suspension Order

- 61. (1) A Registrant in relation to whom a Conditions of Practice Order or Suspension Order was made may apply to the Council for a variation or revocation of any condition(s) specified in the Order by submitting a written application which must:
 - (a) specify the condition(s) concerned;
 - (b) specify whether the Registrant is seeking variation or revocation of the condition(s) and, in the case of variation, the terms of the variation applied for;
 - (c) state the grounds of the application; and
 - (d) be accompanied by every document relied upon in support of the application.
- (2) On receipt of the application the Council shall refer the application to a Fitness to Practise Committee which shall be constituted by persons who were not members of the Committee which made the Order.
- (3) No later than 28 days before the consideration of the Registrant's case, the Clerk shall send the Registrant, the Council, the Complainant, 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 Hearing which shall:
 - (a) state the date, time and venue of the 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 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 Rule 39 above;
 - (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 Order or Suspension Order was made.
- (4) No later than seven days before the hearing, the Clerk shall send the Committee copies of:
- (a) the Notice of Hearing;
 - (b) any document lodged by the Registrant in terms of paragraph (1);
 - (c) any document lodged by the Council in response to the Registrant's application.
- (5) 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 may adduce documents, and call witnesses;
 - (b) the Registrant shall then make submissions as to why the order should be revoked or varied, and, in the case of variation, the terms of the variation applied for, and may adduce documents, and call witnesses in support.
- (6) Save as provided in paragraphs (1) to (4) above, the following Rules in Part II shall apply to the hearing, namely Rule 7 (Membership and quorum of Committees), Rule 8 (Voting), Rule 9 (Legal Adviser), Rule 10 (Medical Adviser), Rule 11 (Clerk) and the following Rules in Part V: Rule 35 (Postponement of Hearing), Rule 37(1) (Procedure at Hearing), Rule 38 (Public and Private Hearings), Rule 39 (Representation and Entitlement to be Heard), Rule 40 (Evidence), Rule 42 (Adjournment of Hearing), Rule 43 (Attendance at Hearing), Rule 45 (Introduction of Committee), Rule 48 (Witnesses), Rule 49 (Vulnerable Witnesses), Rule 50 (Registrant's Evidence), Rule 56 (Transcript of Proceedings), Rule 58 (Publication of Decision).
- (7) Where the Committee that imposed the Order considered that the Registrant's fitness to practise was impaired by reason of health, the Committee may require the Registrant to provide up to date medical reports from a medical practitioner nominated by the Council, at the Registrant's own expense.
- (8) The burden of proof shall rest upon the Registrant.
- (9) Where the facts are in dispute, the Committee shall decide the facts on the civil standard, applying the balance of probabilities.
- (10) The Committee shall consider the application *in camera*.
- (11) In considering the application, the Committee may:

- (a) refuse the application for revocation or variation;
 - (b) grant the application for revocation or variation;
 - (c) in the case of an application for revocation of conditions, vary the terms of a condition as an alternative to revocation; or
 - (d) in the case of an application for variation of conditions, vary the terms of a condition(s) in a manner different to that specified in the application for variation.
- (12) The decision of the Committee and the reasons for the decision shall be given in the presence of the Parties.
- (13) Within seven days of the conclusion of the hearing, the Clerk shall send a Notice of Decision, containing the reasons for the Committee's decision, to:
- (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Registrant's employer(s) (if any);
 - (e) the university, where the Registrant is registered in the part of the Register for students.
- (14) The Council may inform:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) any relevant regulatory body of its decision.
- (15) If the application to vary or revoke a condition specified is refused, no further application to vary or revoke a condition specified in that Order may be made 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.

Amendment of the Register

62. (1) If the determination of the Committee following an application under Rule 61 is that a condition(s) should be varied or revoked the Council shall amend the Registrant's entry in the Register accordingly.

Compliance with condition(s) specified in a Conditions of Practice Order or Suspension Order

63. (1) Where a Conditions of Practice Order or a Suspension Order with conditions has been made, a Duly Authorised Officer may request from:
- (a) the Registrant; or
 - (b) the Registrant's employer

such information as will enable the Council to determine whether the condition(s) of the Order has been complied with or continues to be complied with.

- (2) Where a Duly Authorised Officer receives information in accordance with paragraph (1) and he or she is of the opinion that the condition(s) has been fully complied with the Council shall give notice to the Registrant and may give notice to the other persons specified in paragraphs (13) and (14) of Rule 61 that the Council is satisfied that the relevant condition(s) has been complied with.
- (3) Where:
- (a) a Duly Authorised Officer receives information requested in accordance with paragraph (1) and he or she is 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 paragraph (1),
- the Duly Authorised Officer shall refer the matter to a Fitness to Practise Committee
- (4) Where a case is referred in accordance with paragraph (2) 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 whether the Registrant has failed to comply with the condition or conditions.
- (5) No later than 28 days before the consideration of the Registrant's case, the Clerk shall send the Registrant, the Council, the Complainant, 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 Hearing which shall:
- (a) state the date, time and venue of the hearing;
 - (b) state that the case is to proceed to the Fitness to Practise Committee;
 - (c) specify the condition or conditions concerned;
 - (d) state the 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 Rule 39 above;
 - (iv) call and cross examine witnesses;
 - (f) inform the Registrant of the possible sanctions open to the Committee in the event of a finding that there has been a failure to comply with a condition(s);

- (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 the relevant condition and may adduce documents and call witnesses in support;
 - (b) the Registrant shall then make submissions and may adduce documents, and call witnesses in support.
- (7) Save as provided in paragraphs (1) to (5) above, the following Rules in Part II shall apply to the hearing, namely Rule 7 (Membership and quorum of Committees), Rule 8 (Voting), Rule 9 (Legal Adviser), Rule 10 (Medical Adviser), Rule 11 (Clerk) and the following Rules in Part V, Rule 35 (Postponement of Hearing), Rule 37(1) (Procedure at Hearing), Rule 38 (Public and Private Hearings), Rule 39 (Representation and Entitlement to be Heard), Rule 40 (Evidence), Rule 41 (Burden and Standard of Proof), Rule 42 (Adjournment of hearing), Rule 43 (Attendance at Hearing), Rule 44 (Fitness to Plead), Rule 45 (Introduction of Committee), Rule 46 (Amendment of the Charge), Rule 47 (Admissions), Rule 48 (Witnesses), Rule 49 (Vulnerable Witnesses), Rule 50 (Registrant's Evidence), Rule 51 (Findings of Fact), Rule 53 (Mitigation), Rule 56 (Transcript of Proceedings), and Rule 58 (Publication of Decision).
- (8) If the Committee is satisfied that there has been a failure to comply with a condition(s) the Committee may:
 - (a) make no order; or
 - (b) vary the terms of the condition(s) and /or extend the term of the Conditions of Practice Order or Suspension Order, as the case may be; or
 - (c) in the case of a Conditions of Practice Order, revoke the Order and impose a Suspension Order or a Removal Order; or
 - (d) 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 seven days of the conclusion of the hearing, the Clerk shall send a Notice of Decision, containing the reasons for the Committee's decision, to:

- (a) the Registrant;
- (b) the Council;
- (c) the Complainant;
- (d) the Registrant's employer(s) (if any);
- (e) the university, where the Registrant is registered in the part of the Register for students.

(11) The Council may inform:

- (a) the Welsh Government;
- (b) the Disclosure and Barring Service;
- (c) any relevant regulatory body of its decision.

Amendment of the Register

64. (1) The Council shall amend the Registrant's entry in the Register as may be appropriate:
- (a) under paragraph (2) of Rule 63 where the Council is satisfied that relevant condition(s) have been complied with, or
 - (b) on the determination by the Committee of an application under paragraphs (3) to (9) of Rule 63.

PART VI

PROCEDURE BEFORE THE RESTORATION COMMITTEE

Interpretation

65. (1) In this Part:
- “Applicant” means a former Registrant applying for restoration to the Register, following a Removal Order imposed by the Fitness to Practise Committee or by agreement under Rule 15.
- (2) An application for restoration shall be deemed to be an initial application for registration under Sections 57 and 58 of the Act, and should comply with the provisions of the Care Council for Wales (Registration) Rules as amended from time to time.

Time limits for making an application

66. (1) No application for restoration to the Register under this Rule shall be made to the Restoration Committee:
- (a) within five 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.

Documents to be provided to the Council

67. (1) In addition to documents specified in Rule 5 of the Care Council for Wales (Registration) Rules as amended from time to time, 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

68. (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, where the removal was made under Rule 15, a copy of the agreed statement of facts;
- (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

69. (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) a representative from the Applicant's student body;
 - (c) inform the Applicant that the Committee may, at its discretion, permit the Applicant to be represented by a person other than those listed in paragraph (b) above;
 - (d) inform the Applicant that any application to be represented by a person other than those listed in paragraph (b) above, should be sent to the Clerk no later than 48 hours in advance of a meeting of the Committee;
 - (e) request confirmation as to whether the Applicant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing;
 - (f) inform the Applicant that a person who proposes to attend a meeting of the Committee to represent or accompany the Applicant who is also intending to give evidence, shall not be entitled to be present during the proceedings until such evidence is given, without leave of the Committee.
- (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 Applicant.
 - (3) A copy of the Notice of Hearing before the Restoration Committee shall be provided to the Council, original Complainant (if any), and/or the Applicant's employer(s) (if any) by the Clerk.

Documents to be provided to the Committee

- 70. (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;
 - (c) a copy of the transcript of the Fitness to Practise Committee hearing at which the Removal Order was made or, where the removal was made under Rule 15, a copy of the agreed statement of facts;
 - (d) any documents to be relied upon by the Council.

Procedure at the Hearing

71. (1) Subject to paragraphs (2) and (3) below, proceedings of the Restoration Committee shall be held in public.
- (2) Any application for restoration relating to the imposition of a Removal Order where it was considered that the Registrant's fitness to practise was impaired by reason of health shall be heard in private.
- (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; and
 - (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 camera*.
- (5) The Presenter shall outline the history of the Applicant's case and the circumstances in which the Removal Order 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; 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.
- (11) The Committee shall obtain advice from the Medical Adviser before determining any application for restoration relating to the imposition of a Removal Order where it was considered that the Registrant's fitness to practise was impaired by reason of health.
- (12) Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Committee may, at any stage of the hearing adjourn the proceedings for the purposes of seeking further information. Where the hearing has been adjourned, the Clerk shall, as soon as practicable, notify the Parties,

the original Complainant (if any) and the Applicant's employer(s) (if any) of the date fixed for the hearing to be resumed.

- (13) Save as provided in paragraphs (1) to (12) above, the following Rules in Part II shall apply to the restoration hearing, namely Rule 7 (Membership and Quorum of Committees), Rule 8 (Voting), Rule 9 (Legal Adviser), Rule 10 (Medical Adviser), Rule 11 (Clerk) and the following Rules in Part V, namely Rule 35 (Postponement of Hearing), Rule 37(1) (Procedure at Hearing), Rule 39 (Representation and Entitlement to be Heard), Rule 40 (Evidence), Rule 42 (Adjournment of Hearing), Rule 43 (Attendance at Hearing), Rule 45 (Introduction of Committee), Rule 48 (Witnesses), Rule 49 (Vulnerable Witnesses) and Rule 50 (Registrant's Evidence).
- (14) The burden of proof shall rest upon the Applicant.
- (15) Where the facts are in dispute, the Committee shall decide the facts on the civil standard, applying the balance of probabilities.

Decision of the Committee

72. (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 as to the Applicant's current good character, competence and health;
 - (c) evidence as to the Applicant's behaviour 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 consider whether the Applicant's registration should be made subject to a condition(s) for a specified period not exceeding three years.
- (4) Where the Committee is minded to impose a condition(s) 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 a condition(s), the Committee shall take into account the principle of proportionality.
- (6) The Committee shall give reasons for its decision.

Notice of Decision

73. (1) Within seven days after the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Applicant;

- (b) the Council;
 - (c) the original Complainant (if any);
 - (d) the Applicant's employer(s) (if any);
 - (e) the university, where the Applicant is a student.
- (2) The Council may inform:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) any relevant regulatory body of its decision.
- (3) The Notice of Decision shall:
- (a) record any advice given by 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 condition(s) imposed on the Applicant's registration;
 - (e) set out the Applicant's right of appeal to the First-tier Tribunal (Care Standards).

Notes and Transcript of the Proceedings

74. (1) A person shall be appointed by the Council to take a verbatim note and/or arrangements shall be made for the recording of the proceedings before the Committee.
- (2) Upon application, the Council shall send the Applicant and the Complainant a transcript of the verbatim note or recording, of any part of the proceedings at which the Applicant or, as the case may be, the Complainant was entitled to be present.

Publication of the Decision

75. (1) The Council shall publish the Committee's determination by such means as it considers appropriate.

Amendment of the Register

76. (1) On the determination of the Committee that an Applicant can be restored, the Council shall enter the Applicant's registration details on the Register, entering any condition(s) imposed on the Applicant's registration as appropriate.

Barring Order

77. (1) Where an Applicant has made a previous unsuccessful application for restoration and the Committee has refused the current application for restoration, the Committee may order that the Applicant's right to make any further restoration applications be suspended indefinitely ("a Barring Order").

- (2) The Committee shall not make a Barring Order until it has heard representations on this issue from the Applicant.
- (3) In deciding whether or not to make a Barring Order, the Committee shall take into account the principle of proportionality.
- (4) Where a Barring Order has been made, the Applicant may apply to the Committee, in writing, for permission to make any further applications for restoration.

Signed on behalf of the Care Council for Wales

Arwel Ellis Owen

27 June 2013

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Arwel Ellis Owen
Chair Care Council for Wales

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Date

I consent to these Rules on behalf of the National Assembly for Wales

Gwenda Thomas
.....
Gwenda Thomas
Deputy Minister for Health and Social Services

7th September 2013
.....
Date