



Gofal Cymdeithasol **Cymru**
Social Care **Wales**

**SOCIAL CARE WALES
(FITNESS TO PRACTISE HEARINGS)
RULES 2017**

APRIL 2017

The regulation of the registration and fitness to practise of the social care workforce by Social Care Wales is governed by three types of legal documents, which are **all** applicable to the registration and fitness to practise of registered persons:

- **Regulation and Inspection of Social Care (Wales) Act 2016 (the Act);**
- **National Assembly Regulations;**
- **Social Care Wales' suite of Registration Rules and Fitness to Practise Rules.**

Neither the content of the Act nor the Regulations are contained in these Rules. You should therefore read the content of the Act and the Regulations in conjunction with the Rules to provide a comprehensive understanding of the registration and fitness to practise procedures.

The Act is available at: <http://www.legislation.gov.uk/anaw/2016/2/contents/enacted>.

The Regulations are available at:

[Social Care Wales \(Extension of Meaning of Social Care Worker\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16524>

[Social Care Wales \(Constitution of Panels Prescribed Person\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16521>

[Social Care Wales \(Content of Register\) Regulations 2016 June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16523>

[Social Care Wales \(List of Persons Removed from Register\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16522>

[Social Care Wales \(Proceedings before Panels\) Regulations 2016 - June 2016](#)

<http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=17273>

[Social Care Wales \(Specification of Social Care Workers\) \(Registration\) Regulations 2016 - June 2016](#)

<http://senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=16525>

Social Care Wales, in exercise of its powers under sections 73(2) and (4), 128(2), 136(4) and (5), 137(6),(7) and (8) and 174(8) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”), The Social Care Wales (Proceedings before Panels) Regulations 2016, and of all other powers enabling Social Care Wales in that behalf, and after consulting in accordance with section 75 of the Act, hereby makes the following Rules:

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PART I

INTRODUCTION

Citation, commencement and transitional arrangements

1. (1) These Rules may be cited as the Social Care Wales (Fitness to Practise Hearings) Rules 2017 and shall come into force on 3 April 2017.
- (2) The Care Council for Wales (Conduct Rules) 2011 (“the 2011 Rules”) and The Care Council for Wales (Fitness to Practise) Rules 2014 (“the 2014 Rules”) are hereby revoked save that where a hearing before a Conduct Committee or a Fitness to Practise Committee has commenced before 3 April 2017 but has not been completed by that date, the Conduct Committee or the Fitness to Practise Committee (as the case may be) shall continue to hear the case and the 2011 Rules or the 2014 Rules shall continue to apply as if those Rules remain in force.

Interpretation

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

“**Act**” means the Regulation and Inspection of Social Care (Wales) Act 2016;

“**allegation**” means an allegation of impairment of fitness to practise;

“**case**” means proceedings relating to fitness to practise proceedings;

“**case management panel**” means a panel of one or three panel members, advised by a legal adviser, established to undertake a case management meeting under Part II of these Rules;

“**caution**” in relation to an offence, means:

- (a) a conditional caution given under section 22 of the Criminal Justice Act 2003 (c.44) (conditional cautions for adults) or under section 66A of the Crime and Disorder Act 1998 (c.37) (conditional cautions for children and young persons);
- (b) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, that person has admitted;
- (c) anything corresponding to a caution falling within paragraph (a) or (b) (however described) which:
 - (i) is given to a person in respect of an offence committed outside England and Wales which, if committed in England and Wales, would constitute a criminal offence, and
 - (ii) is not an alternative to prosecution (within the meaning of section 8AA of the Rehabilitation of Offenders Act 1974 (c.53));

“**clerk**” means the person responsible for the administrative arrangements for the meeting as defined in the Social Care Wales (Constitution of Panels) Rules 2017;

“Code of Professional Practice for Social Care” means the Code of Practice laying down the standards of conduct and practice expected of social care workers published by Social Care Wales under Section 112(1)(a) of the Act;

“complaint” means information relating to a registered person which forms the basis of an allegation against that person and includes information that has come to the attention of Social Care Wales 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 a registered person;

“conditional registration order” means an order made by the fitness to practise panel imposing conditions on a registered person’s registration;

“conduct committee” means the committee of that name constituted in accordance with the 2011 Rules;

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

“Directive 2005/36/EC” means the Directive on the Recognition of Professional Qualifications, as amended by EU Directive 2013/55/EU;

“duly authorised person” means an individual to whom authority has been delegated by Social Care Wales and can include:

- (a) one or more members of Social Care Wales’s staff, and/or
- (b) one or more persons appointed by Social Care Wales for that purpose;

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

“fitness to practise” shall be construed in accordance with section 117 of the Act and the terms **“impaired fitness to practise”** and **“impairment”** shall be construed accordingly;

“fitness to practise committee” means a committee established under the Care Council for Wales (Fitness to Practise) Rules 2014;

“fitness to practise hearing” means a hearing before a fitness to practise panel in fitness to practise proceedings;

“fitness to practise meeting” means a meeting before a fitness to practise panel in fitness to practise proceedings;

“fitness to practise panel” means a panel established by the Social Care Wales (Panel Constitution) Rules 2017 made under section 174 of the Act to:

- (a) make determinations in relation to the fitness to practise of persons registered in the register to practise as social care workers;
- (b) suspend, or attach conditions to, a person’s registration in the register pending a determination of the kind mentioned in paragraph (a);

"fitness to practise proceedings" means proceedings before a fitness to practise panel;

"Fitness to Practise Rules" means these rules or the Care Council for Wales (Fitness to Practise) Rules 2014;

"in camera" means in the absence of the parties and their representatives, and the public;

"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 Social Care Wales;

"notice" means information issued in relation to the proceedings of an interim orders panel or a fitness to practise panel;

"panel" means a Social Care Wales fitness to practise panel constituted in accordance with section 174 of the Act before which the proceedings are brought;

"Panel Constitution Rules" means the Social Care Wales (Panel Constitution) Rules 2017;

"parties" means the registered person to whom the fitness to practise proceedings or interim order proceedings relate and Social Care Wales (or their representatives);

"presenter" means the person acting on behalf of Social Care Wales at a hearing before a panel, and may include an officer of Social Care Wales or a solicitor or a barrister engaged by Social Care Wales for this purpose;

"pre hearing review" means a meeting with a legal adviser as chair in accordance with rule 3 for the purpose of issuing case management directions;

"register" means the register maintained by Social Care Wales under section 80 of the Act;

"registered person" means the registered person in respect of whom the referral to the fitness to practise panel has been made;

"registration" means the entry in the register relating to a particular registered person;

"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 order" means an order made by the fitness to practise panel for the removal of an entry relating to the registered person in the register;

“Social Care Wales” means the body corporate known as Social Care Wales and which was previously known as the Care Council for Wales;

“student body” means the National Union of Students or other body representing the interests of students which is recognised by Social Care Wales;

“suspension order” means an order made by the fitness to practise panel for suspension of the registered person’s registration;

“tribunal” means the First-tier Tribunal;

“undertaking” means an agreement by the registrant to comply with an undertaking made under section 126(3)(d) or 136 of the Act;

“university” means the university or higher education institution providing the degree course approved by Social Care Wales under section 114(1)(a) of the Act for persons wishing to become social workers;

“warning” means a disposal made by the fitness to practise panel under section 138(6) of the Act.

(2) In these rules, unless the context otherwise requires:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) any reference to a numbered rule or part is a reference to the rule or part bearing that number in these rules, as the case may be;
- (c) any reference in a rule or a part to a numbered paragraph, is a reference to the paragraph bearing that number in that rule or part;
- (d) any reference in a paragraph in a rule or a part to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that rule or part.

PART II

PROCEDURE PRIOR TO A FITNESS TO PRACTISE HEARING

Pre-hearing review

3. (1) As soon as practicable after the case has been referred to the panel, Social Care Wales may convene a pre-hearing review and shall invite the parties and any representative to attend.
- (2) Social Care Wales shall authorise a legal adviser, who shall act independently of the parties, to conduct the pre-hearing review. Members of the panel 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 made by the clerk.
- (5) The registered person may attend in person and/or be represented by:
 - (a) a solicitor or counsel;
 - (b) a representative of any professional organisation; or
 - (c) if the legal adviser agrees, any other person.
- (6) The following matters shall be considered at the pre-hearing review:
 - (a) the allegation(s) against the registered person, prepared by Social Care Wales and sent to the legal adviser and the parties in advance of the pre-hearing review;
 - (b) any admissions of facts;
 - (c) any admission of any matter specified in section 117(1) (a) to (f) of the Act;
 - (d) any admission of impaired fitness to practise;
 - (e) whether the parties agree that the case may be determined by a fitness to practise panel without a hearing;
 - (f) whether the registered person will attend any hearing;
 - (g) the names of witnesses to be called (if any);
 - (h) whether particular provisions should be made for vulnerable witnesses at the hearing;
 - (i) whether expert evidence is to be adduced;
 - (j) whether the health of the registered person will be raised as an issue in the proceedings, and if so, whether a report from a medical practitioner should be obtained;
 - (k) any dates on which the registered person or witnesses would be unable to attend a hearing;
 - (l) time estimate for any hearing;
 - (m) whether a further pre-hearing review is required;
 - (n) whether a case management meeting is required.
- (7) The legal adviser may give a preliminary opinion to the parties for the purpose of resolving questions of law or admissibility of evidence.

- (8) The decision as to whether or not to admit evidence at the hearing shall be made by the panel, either at a case management meeting or at a hearing.
- (9) The legal adviser may give directions for the purpose of securing the just, expeditious and effective running of the case, which may include directions from the following non-exhaustive list:
- (a) directions for the service of evidence, including medical and expert reports;
 - (b) where the registered person wishes to admit the facts of the allegation(s) the legal adviser may direct the parties to prepare an agreed statement of facts within a specified timescale;
 - (c) where the parties agree that the case may be determined without a hearing, the legal adviser may direct the parties to prepare:
 - (i) an agreed statement of facts;
 - (ii) a written agreement to the final decision that is to be made by the panel (including details of that decision such as the period for which an order is to have effect or any conditions to be imposed on the registered person's registration);
 - (iii) a written agreement that the proceedings may be determined without a hearing;
 - (d) in relation to any witness statement to be served by either party, the legal adviser may give a direction that the statement to be served may be accompanied by a notice that the party serving the statement intends to rely on the witness statement without calling the maker of the statement unless the other party gives notice within 14 days of the service of the statement that he or she requires the witness concerned to attend and give evidence.
- (10) Where a party fails to comply with the directions given at a pre-hearing review, a panel may draw such inferences as it considers appropriate and/or take whatever decision it thinks is most appropriate in relation to the admissibility of evidence or any other relevant matter.

Conduct of proceedings

4. (1) Subject to the requirements of the Act and the Social Care Wales (Proceedings before Panels) Regulations 2016 the panel may vary the procedures set out in these Rules in order to deal fairly and justly with a case and may issue directions with regard to the just and prompt determination of the proceedings.

Case management meeting

5. (1) Where directed by the legal adviser at a pre-hearing review or on request by one of the parties, a case management meeting may be convened at any time.
- (2) After inviting written representations from both parties, a duly authorised person of Social Care Wales will decide whether a case management meeting will be conducted and, if so, whether it should be conducted on the papers alone, by telephone, video conferencing or oral meeting. The duly authorised person will make arrangements and send an appropriate notice to the registered person and his or her representative and to the presenter at least five working days before the case management meeting.

- (3) The notice to the registered person must inform the registered person of their right to a hearing of the case before a panel, but that, in the absence of any response from the registered person, a direction may be given that the case be determined at a meeting of the panel by consideration of written evidence and submissions, without the attendance of the parties.
- (4) A case management meeting will consist of one or three panel members and be advised by a legal adviser. The panel member or members may or may not be the same member(s) who will be used for the full hearing.
- (5) The case management meeting may give directions for the purpose of securing the just, expeditious and effective running of the case, and may make a determination in relation to a preliminary matter that can only be determined by a case management panel, including whether:
 - (a) particular evidence should be admitted;
 - (b) a particular witness should be treated as requiring special measures and, if so, what special measures should be put in place;
 - (c) there should be a joint hearing involving two or more registered persons;
 - (d) a hearing or part of it should be held in private in accordance with regulation 21 of the Social Care Wales (Proceedings before Panels) Regulations 2016;
 - (e) the registered person may be represented at the hearing before the panel by a person other than a solicitor, counsel or a representative from a professional body;
 - (f) the proceedings can be conducted without a hearing where the circumstances in regulation 17(1) of the Social Care Wales (Fitness to Practise) Regulations 2016 apply;
 - (g) the proceedings can be considered without a hearing at a meeting of a panel in accordance with rule 31;
 - (h) whether the health of the registered person will be raised as an issue in the proceedings, and if so, whether a report from a medical practitioner should be obtained.
- (6) The procedure at the case management meeting will be determined solely by the case management panel members.
- (7) A case management meeting will be held in private, unless the case management panel members direct otherwise.
- (8) Where a party fails to comply with the directions given at a case management meeting a fitness to practise panel may draw such inferences as it considers appropriate and/or take whatever decision it thinks is most appropriate in relation to the admissibility of evidence or any other relevant matter.

Notice of the hearing

6. (1) Where a case is listed for hearing before a panel, at least 42 days before the hearing, the clerk shall send a notice of the hearing to:
 - (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any); or

- (d) where the registered person is registered in the part of the register for students, the university.
- (2) The notice of the hearing shall:
- (a) state the date, time and venue of the hearing;
 - (b) specify the allegation(s) against the registered person;
 - (c) state whether a medical adviser has been appointed to advise the panel;
 - (d) inform the registered person of the right to be represented by:
 - (i) a solicitor or counsel; or
 - (ii) a representative from any professional organisation; or
 - (iii) if the panel agrees, any other person;
 - (e) inform the registered person of the right to:
 - (i) attend the hearing;
 - (ii) give evidence to the panel;
 - (iii) make oral submissions to the panel either in person or through a representative;
 - (iv) call and cross examine witnesses;
 - (f) inform the registered person that any application to be represented by a person other than those listed in paragraph (d) above, must be sent to the clerk no later than 48 hours in advance of a hearing setting out the name of the proposed representative and confirming that the proposed representative will not be called as a witness;
 - (g) inform the registered person that a person representing or advising the registered person may not give evidence;
 - (h) inform the registered person, in the event that they do not wish to attend the hearing, that they may submit written representations not later than 24 hours before the date of the hearing for consideration by the panel;
 - (i) inform the registered person of the possible outcomes open to the panel in the event of a finding of impaired fitness to practise;
 - (j) inform the registered person of the panel's power to proceed in the absence of the registered person, or the registered person's representative, at the hearing;
 - (k) invite the registered person to state whether the registered person and/or the registered person's representative will be attending the hearing.
 - (l) enclose copies of any documents to be put before the panel, including a copy of these Rules.
- (3) The hearing shall not be fixed for any date earlier than 42 days after the sending of the notice of hearing except with the agreement of the parties.

Postponement of the hearing

7. (1) Where either party wishes the hearing to be postponed, such application shall be made in writing, to the chair of the panel.
- (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 panel.
- (4) The application shall be considered by the chair of the panel 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

8. (1) No later than 28 days before the date of the hearing or earlier if so required by directions given under rule 3 at a pre-hearing review or under rule 5 at a case management meeting, the parties shall serve on each other, and lodge with the clerk, 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) The presenter shall consider whether there are any further documents in Social Care Wales's possession which may assist the registered person that are not relied upon by Social Care Wales, and shall serve copies of such documents (if any) on the registered person.
- (4) No later than seven days before a hearing, the clerk shall send the panel, copies of:
- (a) the notice of the hearing;
 - (b) any documents lodged by the parties in terms of paragraphs (1) and (3) above.

PART III

PROCEDURE AT A FITNESS TO PRACTISE HEARING

Absence of a registered person at a fitness to practise hearing

9. (1) If the registered person is not present and is not represented at the hearing, the panel shall:
 - (a) require evidence that notice of the hearing has been sent to the registered person in accordance with rule 6 or of the efforts made to give notice of the hearing to the registered person, and
 - (b) enquire whether any reasons for the registered person's non-attendance have been communicated to Social Care Wales.
- (2) Where paragraph (1) applies, the panel shall determine whether to exercise the discretion under regulation 25(4) of the Social Care Wales (Proceedings before Panels) Regulations 2016 to proceed with the hearing in the absence of the registered person or adjourn and shall give reasons for its decision.

Burden and standard of proof

10. (1) The burden of proof in proceedings before the fitness to practise panel shall rest upon Social Care Wales.
- (2) Where facts are in dispute, the panel shall decide the facts on the civil standard, applying the balance of probabilities.

Fitness to plead

11. (1) Where an issue arises as to the registered person's fitness to plead, a panel shall consider:
 - (a) whether the registered person can understand the issues in the case;
 - (b) whether the registered person can appreciate the effect of any advice received from the registered person's representatives (if any);
 - (c) whether the registered person can give instructions accordingly.
- (2) A panel shall receive expert evidence and submissions on these issues.
- (3) Where a panel determines that the registered person is unfit to plead, it shall make an order for suspension of the registered person's registration from the register, until such time as the registered person becomes fit to plead.

Procedure at the hearing

12. (1) The hearing shall be conducted in three stages as follows:
 - (a) preliminaries and findings of fact;
 - (b) finding regarding fitness to practise;
 - (c) disposal.
- (2) At the first stage, the panel shall hear and determine any preliminary applications, and subject to any findings made in relation to the preliminary

applications, the parties may present evidence, including calling witnesses in accordance with rule 21.

- (3) Where facts are found proved at the first stage, the second stage shall proceed in accordance with rule 22.
- (4) Where, at the second stage, a finding is made that the registered person's fitness to practise is impaired, the third stage shall proceed in accordance with rule 25.

Joinder

13. (1) Subject to the requirements of a fair hearing, a panel may consider and determine in one hearing allegations involving two or more grounds of impairment specified in section 117(1)(a) to (f) of the Act, whether those allegations were the subject of a single or separate referrals to the panel.
- (2) Subject to the requirements of a fair hearing, a panel may consider allegations against two or more registered persons at a joint hearing where the allegation(s) against each registered person arises from the same circumstances or the panel considers that a joint hearing is appropriate.

Amendment of the allegation(s)

14. (1) Subject to the requirements of a fair hearing, the panel may amend the allegation(s) at any stage prior to the panel making findings of fact.
- (2) The panel shall first hear representations from the parties, and take advice from the legal adviser, before deciding whether or not the allegation(s) should be amended.

Admissions

15. (1) After the allegation(s) have been read by the clerk, the chair shall ask the registered person 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 panel shall determine the issue of impaired fitness to practise.
- (3) Where no admissions of facts are made, or some facts remain disputed, the presenter shall present the case against the registered person to the panel and adduce evidence in support of those facts which are not admitted.

Evidence

16. (1) Subject to regulation 20(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016, a panel may receive oral, documentary or other evidence.
- (2) Production of a record of a caution shall be prima facie evidence of the underlying facts of the offence giving rise to the caution.

- (3) A panel may admit evidence adduced by a party notwithstanding that such evidence has not been disclosed in accordance with rule 8(1):
 - (a) if the parties consent; or
 - (b) where, after hearing submissions by the parties and receiving legal advice from the legal adviser, it is satisfied that the evidence is relevant and that it would be fair to admit it.
- (4) A panel may of its own volition, request the parties to provide documentation or other evidence or request any person to give oral evidence which it considers might assist in making a determination.

Witnesses

17. (1) Witnesses shall be sworn or required to affirm.
- (2) A panel 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 regulation 24(12) of the Social Care Wales (Proceedings before Panels) Regulations 2016, 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 a panel, 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 panel's questions. The party calling the witness shall question the witness last.
- (6) Any further questioning of witnesses shall be at the discretion of a panel.
- (7) Witnesses shall not be allowed to attend and observe the proceedings until they have completed giving evidence to a panel and have been formally released by the chair.

Special measures

18. (1) Where a panel gives a direction under regulation 24(11) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the special measures to be implemented or provided 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.

Adjournment of the hearing

19. (1) Subject to the requirements of a fair hearing, and after hearing representations from the parties, a panel may, at any stage of the 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 registered person is registered in the part of the register for students, the university, of the date fixed for the hearing to be resumed.

Voting

20. (1) Decisions of the panel shall be taken by simple majority.
- (2) The chair of the panel may not exercise a casting vote.
- (3) Any abstention shall be deemed to be a vote in favour of the registered person.

Finding of facts

21. (1) The presenting officer shall open the case and may present evidence, including calling witnesses.
- (2) The registered person, or where he or she is represented, the registered person's representative, may open the registered person's case and may present evidence, including calling witnesses.
- (3) The presenting officer, followed by the registered person (or, where represented, the registered person's representative) may make representations to the panel as to whether the alleged facts have been proved.
- (4) The panel shall consider *in camera* whether the facts of the allegation(s) have been proved on the balance of probabilities
- (5) The chair will announce before the parties, the panel's findings of fact. If no facts have been found proved, the case will be dismissed.
- (6) The panel shall give reasons for its findings on the facts.

Fitness to practise

22. (1) The parties may make representations to the panel and may adduce evidence on the question of whether the registered person's fitness to practise is impaired.
- (2) In deciding upon the issue of impairment of fitness to practise, the panel shall have regard to the Code of Professional Practice for Social Care issued by Social Care Wales that was in force at the time of the actions or omissions giving rise to the alleged impairment of fitness to practise.

- (3) Where the panel is considering whether a registered person's fitness to practise is impaired by reason of deficient performance as a social worker or social care worker, it shall take into account whether the alleged deficiency in performance is such as to make the registered person suitable to perform the whole or part of the work of a person registered in the register.
- (4) Where the panel is considering whether a registered person's fitness to practise is impaired by reason of adverse physical or mental health, it:
 - (a) shall take into account whether the registered person 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 registered person to agree to any reasonable invitation by Social Care Wales to be examined by a registered medical practitioner nominated by Social Care Wales;
 - (c) may take into account:
 - (i) the registered person's current physical or mental condition,
 - (ii) any continuing or episodic condition suffered by the registered person, and
 - (iii) a condition suffered by the registered person which, although currently in remission, may be expected to cause a recurrence of impairment of fitness to practise;
 - (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 registered person's physical or mental ill health;
 - (e) shall not receive any medical reports or other medical evidence unless the registered person has consented to be examined and to allow such reports to be provided to the panel.
- (5) The panel shall consider *in camera* whether, on the facts found proved, the registered person's fitness to practise is impaired.
- (6) The panel shall announce its finding on the issue of impairment before the parties and shall give reasons for its decision.

Finding of no impairment: proposal of a warning

23. (1) Where the panel determines that the registered person's fitness to practise is not impaired, but the panel proposes to give a warning to the registered person, the following procedure will be followed:
 - (a) the chair shall announce the proposal and the reasons for the proposal;
 - (b) where the registered person or his or her representative is present, the chair will provide the registered person or his or her representative with the opportunity to make representations;
 - (c) the panel will decide, in the light of any representations made, whether to give a warning and the chair will announce the decision of the panel.
- (2) Where the registered person is neither present nor represented, the panel shall consider whether, having regard to the reason for the registered person's absence, the registered person should have the opportunity to make representations and, if so, whether the representations should be limited to written representation or whether the registered person should have the opportunity to attend an oral hearing.

- (3) Where the panel determines in accordance with paragraph (2) that the registered person should have the opportunity to make written representations only, notice shall be sent to the registered person, which shall contain the following information:
 - (a) notice of the panel's proposal for a warning;
 - (b) the reason(s) for the proposal;
 - (c) the right of the registered person to make representations in writing within 21 days of the date of the notice.
- (4) Where the panel determines that the registered person should have the opportunity to attend an oral hearing, notice shall be sent to the registered person, which shall contain the following information:
 - (a) notice of the panel's proposal for a warning;
 - (b) the reason(s) for the proposal;
 - (c) the right of the registered person to make representations either in writing or in person at an oral hearing, subject to giving written notice to Social Care Wales of the wish to exercise such right within 21 days of the date of the notice;
 - (d) an explanation of the procedure at an oral hearing.
- (5) Where the registered person does not respond to a notice under paragraphs (3) or (4) or responds confirming that he or she does not wish to make any representations, the warning may be given without the need for a further meeting of the panel.
- (6) Where the registered person responds to a notice under paragraph (4) that he or she does not wish to attend an oral hearing but the registered person submits written representations or where a registered person responds to a notice under paragraph (3) by submitting written representations, the panel shall meet to consider any written representations submitted to Social Care Wales before deciding whether to give a warning.
- (7) Where the panel convenes under paragraph (6) the panel shall meet in private to determine whether to give a warning.
- (8) Notice of the panel's decision under paragraph (7) shall be sent to the registered person within seven days of the meeting of the panel.

Oral hearing in relation to proposed warning

24. (1) This rule shall apply where a registered person has requested an oral hearing in response to a notice:
 - (a) under rule 23(4), or
 - (b) under section 128(1) of the Act.
- (2) A notice of the hearing will be sent to the registered person, which shall:
 - (a) state the date, time and venue of the hearing;
 - (b) state the proposal for the warning and the reasons for the proposal;
 - (c) be accompanied by copies of any documents or evidence relied upon in support of the proposal;

- (d) inform the registered person of their rights to:
 - (i) attend the hearing;
 - (ii) make oral submissions to the panel either in person or through a representative;
 - (iii) submit written evidence;
 - (e) inform the registered person of the procedure at the oral hearing;
 - (f) inform the registered person of the panel's power to proceed in the absence of the registered person, or the registered person's representative at the hearing;
 - (g) invite the registered person to state whether the registered person and/or the registered person's representative will be attending the hearing.
- (3) The hearing shall not be fixed for any date earlier than 28 days after the sending of the notice of hearing except with the agreement of the parties.
 - (4) Subject to the requirements of a fair hearing, the panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the hearing.
 - (5) The hearing shall be conducted as follows:
 - (a) the presenter shall outline the proposal for a warning, the reasons for it and draw attention to any relevant written evidence;
 - (b) the registered person or his or her representative shall make submissions in response, and refer to any written evidence relied upon;
 - (c) the panel shall consider *in camera* whether, in the light of the submissions and written evidence presented, it is appropriate to give a warning;
 - (d) the chair shall announce the decision of the panel in the presence of the parties and shall give reasons for the panel's decision.

Finding of impairment: submissions on disposal

- 25. (1) Where a fitness to practise panel has determined that a registered person's fitness to practise is impaired, the chair will announce the available methods of disposal to the panel set out in section 138(3) to (9) of the Act and shall invite representations from the presenter and the registered person as to the appropriate disposal.
- (2) The presenter shall provide the panel with details of the registered person's previous record with Social Care Wales (if any) and may adduce evidence and make submissions in relation to the appropriate disposal if any, to be made by the panel.
- (3) The registered person may then address the panel 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 panel.
- (5) Where the registered person has chosen not to attend the hearing, the registered person may provide submissions in writing, in advance, to the clerk. The clerk shall provide such submissions to the panel.

- (6) After hearing the registered person's submissions, the panel shall decide, *in camera*, as to the appropriate disposal.

Disposal by removal by agreement: procedure

26. (1) The rule applies where:
- (a) the registered person has applied under section 92 of the Act for the entry relating to that person to be removed by agreement, and
 - (b) the registered person has been referred to the panel under rule 9(3) to (5) of the Social Care Wales (Investigation) Rules 2017.
- (2) Where a duly authorised person:
- (a) is satisfied that there is a real prospect of a finding of impaired fitness to practise in relation to the allegation against the registered person, but
 - (b) the public interest does not require a full hearing of the allegation(s) against the registered person

the registered person may be invited by a duly authorised person to:

- (i) admit the allegation(s);
 - (ii) sign an agreed statement of facts;
 - (iii) admit that his or her fitness to practise is impaired by reason of the matters set out in the agreed statement of facts.
- (3) Where the requirements of paragraph (3) are met, a panel may be invited to make an order for the entry relating to the registered person to be removed from the register by agreement under section 135(2) of the Act.
- (4) A panel considering an application under this rule shall not order that the entry relating to the registered person be removed from the register if the panel considers that the public interest requires a full hearing of the allegations.

Disposal: undertakings

27. (1) This rule applies to a case that has been referred to the panel for hearing, where a duly authorised person:
- (a) is satisfied that there is a real prospect of a finding of impaired fitness to practise in relation to the allegation(s) against the registered person, but
 - (b) the public interest does not require a full hearing of the allegation(s) against the registered person.
- (2) Where paragraph (1) applies, the registered person may be invited by a duly authorised person to:
- (a) admit the allegation(s);
 - (b) sign an agreed statement of facts;
 - (c) admit that his or her fitness to practise is impaired by reason of the matters set out in the agreed statement of facts;
 - (d) agree the terms of a proposed undertaking(s).

- (3) Where paragraph (2) applies, a fitness to practise panel may dispose of the case by agreeing the proposed undertaking(s) with the registered person, provided that the panel is satisfied that this would not be contrary to the public interest.
- (4) Where the case is disposed of by undertaking(s) in accordance with this rule, Social Care Wales shall give notice of the outcome within seven days to:
- (a) the registered person;
 - (b) the complainant;
 - (c) the registrant's employer(s) (if any);
 - (d) where the registrant is registered in the part of the register for students, the university.
- (5) Social Care Wales must consider whether to exercise its discretion under section 159 of the Act to disclose information about its decision to:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) any relevant regulatory body.
- (6) Where a case is disposed of by means of an undertaking(s) in accordance with this rule, a duly authorised person may request from:
- (a) the registered person; or
 - (b) the registered person's employer(s) (if any)
- such information as will enable a duly authorised person to determine whether the undertaking(s) 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 person subsequently receives information that the requirements of the undertaking(s) have been fully complied with, a duly authorised person shall give notice to the registered person 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 Social Care Wales subsequently receives information that an undertaking(s) has not been complied with (or the registered person fails to provide relevant information in response to a request under paragraph (6)(a) of this rule), a duly authorised officer shall refer the case to a fitness to practise panel to carry out a review in accordance with section 133(3) of the Act.
- (9) Section 152 of the Act shall apply to any review of undertakings by a fitness to practise panel.

Decision

28. (1) The chair shall announce its decision on disposal in the presence of the parties, and shall give reasons for the panel's decision.

Notice of the decision

29. (1) Within seven days after the conclusion of the hearing, the clerk shall send a notice of the decision to:
- (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any);
 - (d) where the registered person is registered in the part of the register for students, the university.
- (2) The notice of the decision to the registered person shall:
- (a) record any advice given by the legal adviser and/or the medical adviser;
 - (b) set out the panel's findings of fact, and its decisions on impairment of fitness to practise and disposal;
 - (c) specify the reasons for the panel's decisions;
 - (d) inform the registrant of the right of appeal to the tribunal;
 - (e) inform the registrant when any disposal imposed takes effect.
- (3) Social Care Wales may inform:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) a regulatory body
- of its decision.
- (4) Social Care Wales must inform other relevant Competent Authorities in the EU of the decision as required under Directive 2005/36/EC.

Transcript of the hearing

30. (1) Arrangements shall be made for the recording of a hearing before a panel.
- (2) Upon application, Social Care Wales shall send the registered person and the complainant a transcript of the recording, of any part of the proceedings at which the registered person or, as the case may be, the complainant was entitled to be present.

PART IV

FITNESS TO PRACTISE PANEL MEETINGS

Proceeding without a hearing

31. (1) Proceedings may be determined without a hearing in accordance with rules 32 to 33 where:
- (a) the circumstances in regulation 17(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply, and
 - (b) the registered person has admitted in writing that his or her fitness to practise is impaired.
- (2) Fitness to practise proceedings, except review proceedings under section 151 of the Act, may also be determined by a panel without a hearing if:
- (a) directions have been given under rule 3 or 5 that witness statements be served on the registered person accompanied by a notice that Social Care Wales intends to rely on the witness statements without calling the makers of the statements unless the registered person gives notice within 14 days of the service of the statements that the witness concerned is required to attend and give oral evidence; and
 - (b) pursuant to the directions referred to in paragraph (a), Social Care Wales has served all witness statements and the registered person has not given notice that the witnesses are required to attend and give oral evidence; and
 - (c) notice has been given to the registered person under rule 5(3) that in the absence of any communication from the registered person, a direction may be given that the case be determined at a meeting of the panel by consideration of written evidence and submissions without the attendance of the parties; and
 - (d) no communication has been received by Social Care Wales from the registered person or the registered person has confirmed in writing that he or she does not intend to appear or be represented at an oral hearing; and
 - (e) a direction has been given by a fitness to practise panel under rule 5(5)(g).
- (3) A panel may also make a determination under rule 26 or 27 without a hearing if the registered person has agreed in writing to the case being determined at a meeting of the fitness to practise panel without the attendance of the parties.
- (4) Where the circumstances in paragraphs (1), (2) or (3) apply, the case may be referred for consideration by a panel at a meeting in accordance with rules 32 and 33.

Notice of meeting

32. (1) Where a case is listed for consideration at a meeting of a panel, the clerk shall send a notice of the meeting to:
- (a) the registered person;
 - (b) the complainant;

- (c) the registered person's employer(s) (if any); or
 - (d) where the registered person is registered in the part of the register for students, the university.
- (2) In the case of a referral under rule 31(1), the notice of the meeting shall:
- (a) state the date, time and venue of the meeting;
 - (b) specify the allegation(s) against the registered person;
 - (c) be accompanied by all documents to be considered by the fitness to practise panel, including the statement of agreed facts and any written submissions by Social Care Wales as to impairment of fitness to practise and/or disposal;
 - (d) inform the registered person of the possible methods of disposal open to the panel in the event of a finding of impaired fitness to practise;
 - (e) invite the registered person to provide any written submissions they wish to make about the case, including any mitigating factors within 28 days of the date of the notice;
 - (f) enclose a copy of these Rules.
- (3) In the case of a referral under rule 31(2), the notice of the meeting shall:
- (a) state the date, time and venue of the meeting;
 - (b) specify the allegation(s) against the registered person;
 - (c) be accompanied by all written statements and evidence relied upon by Social Care Wales together with any written submissions by Social Care Wales as to the alleged facts, impairment of fitness to practise and/or sanction;
 - (d) inform the registered person of their rights to:
 - (i) attend an oral hearing;
 - (ii) give evidence to the panel;
 - (iii) make oral submissions to the panel either in person or through a representative;
 - (iv) call and cross examine witnesses;
 - (e) inform the registered person that if they should wish to exercise any of the rights in paragraph (d) written notification must be given to Social Care Wales within 14 days of the date of the notice of meeting and that in the absence of such notification that the fitness to practise panel may proceed to deal with the case at a meeting on the specified date;
 - (f) inform the registered person of the possible methods of disposal open to the panel in the event of a finding of impaired fitness to practise;
 - (g) invite the registered person to provide any written information they wish to make about the case, including any mitigating factors within 28 days of the date of the notice;
 - (h) enclose a copy of these Rules.
- (4) In the case of a referral under rule 31(3), the notice of the meeting shall:
- (a) state the date, time and venue of the meeting;
 - (b) specify the allegation(s) against the registered person;
 - (c) be accompanied by documents relied upon by Social Care Wales, including a statement of agreed facts signed by the registered person (and in the case of an application under rule 27, a copy of the proposed undertaking);

- (d) inform the registered person of their rights to:
 - (i) attend an oral hearing;
 - (ii) give evidence to the panel;
 - (iii) make oral submissions to the panel either in person or through a representative;
 - (iv) call and cross examine witnesses;
 - (e) inform the registered person that if they should wish to exercise any of the rights in paragraph (d) written notification must be given to Social Care Wales within 14 days of the date of the notice of meeting and that in the absence of such notification that the fitness to practise panel may proceed to deal with the case at a meeting on the specified date;
 - (f) inform the registered person of the effect of rule 26(4) or 27(3), as the case may be;
 - (g) in the case of an application under rule 27, inform the registered person of the effect of rule 27(6) to (9);
 - (h) enclose a copy of these Rules.
- (5) The meeting shall not be fixed for any date earlier than 42 days after the sending of the notice of meeting in paragraph (1), (2) or (3) except with the agreement of the parties.

Procedure at fitness to practise panel meeting

33. (1) A panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the registered person has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for a hearing.
- (3) If the panel considers at any stage of the meeting that the case should be dealt with at a hearing, taking into account the interests of justice and the public interest, the case shall be referred for a hearing.
- (4) The panel shall consider the case based on the written statements or agreed statement of facts (as the case may be) and any written submissions made by Social Care Wales and by or on behalf of the registered person.
- (5) Save as provided in paragraphs (1) to (4) of this rule, the following rules shall apply to a fitness to practise meeting as they apply to a fitness to practise hearing, namely; rule 10 (burden and standard of proof); rule 12(1) (procedure at the hearing); rule 16 (evidence); rule 19 (adjournment of hearing); rule 20 (voting); rule 22(2) to (4) (fitness to practise); rule 23 (proposal of a warning); rule 24 (oral hearing in relation to proposed warning) and rule 29 (notice of the decision).
- (6) The decision of the panel and the reasons for the decision at each stage shall be announced in public, either at the conclusion of the meeting or on a subsequent date.

PART V

REVIEW

Review proceedings

34. (1) These rules apply to review proceedings conducted by a fitness to practise panel under section 133 or 151 of the Act where any of the following have effect:
- (a) undertakings agreed between a registered person and Social Care Wales under section 126(3)(d);
 - (b) undertakings agreed between a fitness to practise panel and a registered person under section 136(1), 152(5) or (6), 153(4) or 155(7);
 - (c) a conditional registration order made (or confirmed or varied) under section 138(7), 152(8)(c), 153(6) or (7), 154(8)(c) or 155(10)(c) in relation to a registered person;
 - (d) a suspension order made (or confirmed or varied) under section 138(8), 152(8)(d), 153(9)(c) or 154(6) or (7) in relation to a registered person.

Notice of Hearing

35. (1) The clerk shall send a notice of the review hearing to:
- (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any); or
 - (d) where the registered person is registered in the part of the register for students, the university.
- (2) The notice of the hearing to the registered person shall:
- (a) state the date, time and venue of the hearing;
 - (b) specify the reason for the referral for review;
 - (c) inform the registered person of the right to be represented by:
 - (i) a solicitor or counsel; or
 - (ii) a representative from any professional organisation; or
 - (iii) if the panel agrees, any other person;
 - (d) inform the registered person of their rights to:
 - (i) attend the hearing;
 - (ii) give evidence to the panel;
 - (iii) make oral submissions to the panel either in person or through a representative;
 - (iv) call and cross examine witnesses;
 - (e) inform the registered person that any application to be represented by a person other than those listed in paragraph (c) above, must be sent to the clerk no later than 48 hours in advance of a hearing setting out the name of the proposed representative and confirming that the proposed representative will not be called as a witness;
 - (f) inform the registered person that a person representing or advising the registered person may not give evidence;
 - (g) inform the registered person, in the event that they do not wish to attend the hearing, that they may submit written representations not later than 24 hours before the date of the hearing for consideration by the panel;

- (h) inform the registered person of the possible outcomes under Chapter 5 of the Act;
 - (i) inform the registered person of the panel's power to proceed in the absence of the registered person, or the registered person's representative, at the hearing;
 - (j) invite the registered person to state whether the registered person and/or the registered person's representative will be attending the hearing;
 - (k) enclose copies of any documents to be put before the panel, including a copy of these Rules.
- (3) The hearing shall not be fixed for any date earlier than 42 days after sending the notice of hearing except with the agreement of the parties.

Disclosure of case and service of documents

36. (1) No later than 28 days before the date of hearing or earlier if so required by directions given under rule 3 at a pre-hearing review or under rule 5 at a case management meeting, the parties shall serve on each other, and lodge with the clerk, copies of all documents and reports upon which they intend to rely.
- (2) If a party wishes to inspect original documents held by the other party, arrangements for the inspection shall be made with the other party no later than seven days before the date of the hearing.
- (3) The presenter shall consider whether there are any further documents in Social Care Wales's possession which may assist the registered person that are not relied upon by Social Care Wales, and shall serve copies of such documents (if any) on the registered person.
- (4) No later than seven days before a hearing, the clerk shall send the panel, copies of:
- (a) the notice of the hearing;
 - (b) any documents lodged by the parties in terms of paragraphs (1) and (3) above.

Procedure at the hearing

37. (1) The review hearing shall be conducted as follows:
- (a) the presenter shall outline the facts of the case and the circumstances in which the undertakings were given or the conditional registration order or suspension order was made (as the case may be);
 - (b) the presenter may adduce documents and call witnesses;
 - (c) where section 133(3) of the Act applies, the presenter shall outline the basis on which it is alleged that the registered person has breached the undertaking or conditional registration order (as the case may be);
 - (d) the registered person may adduce documents and call witnesses and make submissions;
 - (e) the panel shall receive legal advice from the legal adviser and medical adviser (if present);
 - (f) for the purpose of arriving at any decision in relation to the hearing, the panel shall sit *in camera*;

- (g) the panel shall announce any decision in the presence of the parties.
- (2) Save as provided in paragraphs (1) (a) to (g) of this rule, the following rules shall apply to review hearings, namely: rule 3 (pre-hearing review); rule 5 (case management); rule 7 (postponement of the hearing); rule 9 (absence of registered person); rule 10 (burden and standard of proof); rule 16 (evidence); rule 17 (witnesses); rule 18 (special measures); rule 19 (adjournments); rule 20 (voting); rule 22(2) to (4) (fitness to practise); rule 23 (proposed warning); rule 24 (oral hearing in relation to proposed warning); rule 25 (finding of impairment: submissions on disposal); rule 28 (decision); rule 29 (notice of decision) and rule 30 (transcript of the hearing).

Proceeding without a hearing

- 38. (1) Review proceedings may be determined without a hearing where the circumstances in regulation 17(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply.
- (2) Where the circumstances in paragraph (1) apply, the case may be referred for consideration by a panel at a meeting in accordance with rules 39 and 40.

Notice of meeting

- 39. (1) Where a case is listed for consideration at a meeting of a panel, the clerk shall send a notice of the meeting to:
 - (a) the registered person;
 - (b) the complainant;
 - (c) the registered person's employer(s) (if any); or
 - (d) where the registered person is registered in the part of the register for students, the university.
- (2) The notice of the meeting shall:
 - (a) state the date, time and venue of the meeting;
 - (b) specify the reason for the referral for review;
 - (c) be accompanied by all documents to be considered by the fitness to practise panel, including the written agreement of the registered person to one of the decisions referred to in regulation 17(3)(a) to (c) and any written submissions by the parties;
 - (d) inform the registered person of the possible methods of disposal open to the panel.
 - (e) enclose a copy of these Rules.
- (3) The meeting shall not be fixed for any date earlier than 42 days after sending the notice of hearing except with the agreement of the parties.

Procedure at a review meeting

- 40. (1) A panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the registered person has requested that the review be conducted at a hearing, the panel shall adjourn the meeting and refer the case for a hearing.

- (3) If the panel considers at any stage of the meeting that the review should be conducted at a hearing, taking into account the interests of justice and the public interest, the case shall be referred for a hearing.
- (4) The panel shall consider the case based on the registered person's agreement in writing and any written submissions made by the parties.
- (5) Save as provided in paragraphs (1) to (3) and (5) of this rule, the following rules shall apply to review meetings, namely: rule 3 (pre-hearing review); rule 5 (case management); rule 7 (postponement of the hearing); rule 10 (burden and standard of proof); rule 19 (adjournment of hearing); rule 20 (voting); rule 22(2) to (4) (fitness to practise) and rule 29 (notice of the decision).
- (6) The decision of the panel and the reasons for the decision shall be announced in public, either at the conclusion of the meeting or on a subsequent date.

Signed on behalf of Social Care Wales

Arwel Ellis Owen

17 March 2017

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Arwel Ellis Owen
Chair Social Care Wales

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Date