



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

**SOCIAL CARE WALES
(FITNESS TO PRACTISE HEARINGS)
RULES 2022**

October 2022

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);**
- **Welsh Government 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 listed below and can be found at - <http://www.legislation.gov.uk/wsi>

- The Social Care Wales (Extension of Meaning of “Social Care Worker”) Regulations 2016
- The Social Care Wales (Specification of Social Care Workers) (Registration) Regulations 2016
- The Social Care Wales (Content of Register) Regulations 2016
- The Social Care Wales (List of Persons Removed from the Register) Regulations 2016
- The Social Care Wales (Constitution of Panels: Prescribed Persons) Regulations 2016
- The Social Care Wales (Proceedings before Panels) Regulations 2016
- The Social Care Wales (Proceedings before Panels) (Amendment) Regulations 2017
- The Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2018
- Social Care Wales (Specification of Social Care Workers) (Registration) (Amendment) Regulations 2020
- The Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2022

The Social Care Wales rules are available at:

<https://socialcare.wales/dealing-with-concerns/how-do-hearings-work>

<https://socialcare.wales/registration/why-we-register>

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, as amended, and of all other powers enabling Social Care Wales on that behalf, and, in accordance with section 75(3) of the Act, hereby makes the following Rules:

ARRANGEMENT OF RULES

PART I

INTRODUCTION

- | | | |
|----|--|---|
| 1. | Citation, commencement and transitional arrangements | 4 |
| 2. | Interpretation | 4 |

PART II

PROCEDURE PRIOR TO A FITNESS TO PRACTISE HEARING

- | | | |
|----|---|----|
| 3. | Pre-hearing review | 8 |
| 4. | Conduct of the proceedings | 9 |
| 5. | Witness summons | 9 |
| 6. | Case management | 10 |
| 7. | Notice of Hearing | 12 |
| 8. | Postponement of the hearing | 13 |
| 9. | Disclosure of case and service of documents | 13 |

PART III

PROCEDURE AT A FITNESS TO PRACTISE HEARING

- | | | |
|-----|---|----|
| 10. | Absence of registered person at a fitness to practise hearing | 15 |
| 11. | Burden and standard of proof | 15 |
| 12. | Fitness to plead | 15 |
| 13. | Procedure at the hearing | 16 |
| 14. | Joinder | 16 |
| 15. | Amendment of the allegations | 16 |
| 16. | Admissions | 16 |
| 17. | Evidence | 17 |
| 18. | Witnesses | 17 |
| 19. | Special measures | 18 |
| 20. | Adjournment of hearing | 18 |
| 21. | Voting | 18 |
| 22. | Finding of facts | 18 |

| | | |
|-----|---|----|
| 23. | Fitness to practise | 19 |
| 24. | Finding of no impairment: proposal of a warning | 20 |
| 25. | Oral hearing in relation to proposed warning | 20 |
| 26. | Finding of impairment: submissions on disposal | 21 |
| 27. | Other consensual disposals: undertakings | 21 |
| 28. | Decision | 23 |
| 29. | Notice of the decision | 23 |
| 30. | Transcript of the hearing | 23 |

PART IV

FITNESS TO PRACTISE PANEL MEETINGS

| | | |
|-----|--|----|
| 31. | Proceeding without a hearing | 24 |
| 32. | Notice of meeting | 24 |
| 33. | Procedure at fitness to practise meeting | 25 |

PART V

REVIEW

| | | |
|-----|---|----|
| 34. | Review proceedings | 26 |
| 35. | Notice of hearing | 26 |
| 36. | Disclosure of case and service of documents | 27 |
| 37. | Procedure at the hearing | 27 |
| 38. | Proceeding without a hearing | 28 |
| 39. | Notice of meeting | 28 |
| 40. | Procedure at a review meeting | 29 |

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 2022 and shall come into force on 1 October 2022.
- (2) The Care Council for Wales (Fitness to Practise) Rules 2014 (“the 2014 Rules”) are hereby revoked save in relation to any case where a referral to Social Care Wales was made before 3 April 2017, the 2014 Rules shall continue to apply as if those rules remain in force.
- (3) The Social Care Wales (Fitness to Practise Hearings Rules) 2017 (“the 2017 Rules”) are hereby revoked save that where a referral to Social Care Wales was made on or after 3 April 2017 but before 1 April 2018, the Fitness to Practise Panel shall continue to hear the case and the 2017 Rules shall continue to apply as if those Rules remain in force.
- (4) The Social Care Wales (Fitness to Practise Hearings Rules) 2018 (“the 2018 Rules”) are hereby revoked save that where a referral to Social Care Wales was made on a date on or after 1 April 2018 but before 1 April 2020, the Fitness to Practise Panel shall continue to hear the case and the 2018 Rules shall continue to apply as if those Rules remain in force.
- (5) The Social Care Wales (Fitness to Practise Hearings Rules) 2020 (“the 2020 Rules”) are hereby revoked save that where a referral to Social Care Wales was made on a date on or after 1 April 2020 but before 1 October 2022, the Fitness to Practise Panel shall continue to hear the case and the 2020 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 (as amended);
 - “**allegation**” means an allegation of impairment of fitness to practise;
 - “**case**” means proceedings relating to fitness to practise proceedings;
 - “**case management meeting**” means a meeting before a panel comprised of one or three panel members, advised by a legal adviser, established 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));

"civil procedure rules" means the rules of court made under section 2 of the Civil Procedure Act 1997;

"clerk" means the person responsible for the administrative arrangements for the meeting or hearing as defined in the Social Care Wales (Constitution of Panels) Rules 2022 or, if applicable, the corresponding provision(s) of an earlier version of those rules;

"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;

"days" means calendar days;

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

"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 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 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;

"hearing" means a fitness to practise hearing;

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

"Investigation Rules" means the Social Care Wales (Investigation Rules) 2020 or, if applicable, the corresponding provision(s) of an earlier version of those rules ;

"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 a fitness to practise panel;

"oral hearing" means a hearing held following a request in response to a notice under section 128(1) of the Act and Rule 7 of the Investigation Rules.

"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 2022 or, if applicable, the corresponding provision(s) of an earlier version of those rules;

"parties" means the registered person to whom the fitness to practise 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 a person in respect of whom the referral to the fitness to practise panel has been made who is registered in a part of the register, including a person whose registration would have lapsed under section 87(1) of the Act, but for the fact that subsection (2) of that section applies to the person.,

“**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;

“**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 registered person 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 virtually, by telephone or video conferencing or by such other 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 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.
- (9) 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 (as amended) 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.

Witness summons

5. (1) Where one of the parties requires the attendance of a witness or the production of a material document or evidence by a witness who has refused to attend or produce the document before the hearing or failed to confirm that they will do so, that party may make a written application for Social Care Wales to apply to the County Court or the High Court to issue a witness summons in accordance with Rule 34.4 of the Civil Procedure Rules 1998.
- (2) A written application made under paragraph (1) above, shall be considered by a duly authorised person who may determine that:
- (a) the application should be granted;
 - (b) the application should be refused; or

- (c) the application should be considered by a panel at a case management meeting under rule 6 or at a hearing convened under Part III of these rules.
- (3) In making a determination, the duly authorised person or the panel (as the case may be) shall consider the relevance and importance of the evidence of the witness or document concerned and whether it is fair and appropriate to make the direction sought.
 - (4) Where an application under paragraph (2) above is granted by a duly authorised person or a direction is given by a panel under rule 6(8)(j) Social Care Wales will apply to the County Court or High Court and obtain the appropriate witness summons.
 - (5) Where Social Care Wales made the application for a direction for the witness summons, Social Care Wales will arrange for the witness summons to be served on the witness concerned.
 - (6) Unless otherwise directed, where the application for a direction was made by or on behalf of the registered person, Social Care Wales will provide the registered person or his representative with the witness summons after it has been issued and the registered person or their representative will arrange to serve the witness summons on the witness concerned.
 - (7) Unless otherwise directed, the party serving the witness summons shall be responsible for payment of any travelling expenses and/or compensation for loss of time as required by Rule 34.7 of the Civil Procedure Rules.

Case management meeting

6. (1) A case management meeting will be convened:
 - (a) where directed by the legal adviser at a pre-hearing review;
 - (b) where following a request by one of the parties a duly authorised officer considers that a case management meeting would be appropriate;
 - (c) at the direction of a duly authorised person;
 - (d) at the direction of a panel.
- (2) A case management meeting may be conducted by personal attendance at the meeting or participation virtually or by telephone or video conference.
- (3) Subject to paragraph (4), a clerk shall send an appropriate notice to the registered person and to the presenter not less than five days before the case management meeting.
- (4) The panel may dispense with the notice period referred to in paragraph (3) if the panel is satisfied that the public interest requires a shorter notice period.
- (5) A case management meeting will consist of one panel member unless:
 - (a) directions are given at a pre-hearing review that the panel should consist of three members;
 - (b) a duly authorised person determines that the panel should consist of three members; or

- (c) where a panel directs that a case management meeting should be held, the panel also directs that the panel for the case management meeting should consist of three members.
- (6) The panel member or members may or may not be the same member(s) who will be used for the full hearing.
- (7) The panel at a case management meeting will be advised by a legal adviser.
- (8) 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 panel, including whether:
 - (a) particular evidence should be admitted;
 - (b) if a person is entitled to special measures as of right in accordance with regulations 24(1)(a) and 24(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended), what special measures should be put in place;¹
 - (c) any other witness should be treated as requiring special measures and, if so, what special measures should be put in place;
 - (d) there should be a joint hearing involving two or more registered persons;
 - (e) 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 (as amended);
 - (f) 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;
 - (g) 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 (as amended) apply;
 - (h) the proceedings can be considered without a hearing at a meeting of a panel in accordance with rule 32;
 - (i) 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.
 - (j) a direction for a witness summons should be given.
- (9) The procedure at the case management meeting will be determined solely by the panel member(s).
- (10) A case management meeting will be held in private, unless the panel members direct otherwise.
- (11) 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.

¹ Under regulation 24(1)(a) a person giving evidence at an Interim Orders Panel hearing, including a registered person, is entitled to special measures if they are under 18. Under 24(2) a person is entitled to special measures if the matter to which the proceedings relate is of a sexual nature and the person is an alleged victim

Notice of the hearing

7. (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 the registered person which 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, subject to restrictions on the right to cross-examine witnesses under regulation 24(12)-(14) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended);²
 - (f) inform the registered person that any application to be represented by a person other than those listed in paragraph (d)(i) or (ii) above, must be sent to the clerk no later than seven days 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 three days 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.
- (2) 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.
- (3) Where a case is listed for hearing before a panel, at least 42 days before the hearing, unless an earlier hearing date is agreed by the parties in accordance with paragraph (2), the clerk shall send a notice of the hearing to:
- (a) the complainant;
 - (b) the registered person's employer(s) (if any);

² Under regulation 24 (12) if the matter to which the proceedings relates is of a sexual nature, the registered person may not personally cross-examine the alleged victim subject to limited exceptions. Regulation 24(13) and (14) provide how the proceedings are to be conducted in such circumstances.

(c) where the person is registered in the part of the register for students, the university.

- (4) The notice to be sent under paragraph (3) shall specify the date, time and venue of the hearing.

Postponement of the hearing

8. (1) Where either party wishes the hearing to be postponed, an application shall be made in writing to Social Care Wales.
- (2) The party making such application shall serve a copy of the application on the other party, together with any supporting documentation.
- (3) Where the parties agree to a postponement more than 7 days before the first date of a fitness to practise hearing, a duly authorised person may postpone the hearing.
- (4) In making a decision, the duly authorised person shall have regard to the general objective to deal fairly and justly with cases.
- (5) If an application for a postponement is made less than 7 days before the first date of hearing, the parties do not agree to a postponement or if the duly authorised person does not agree to the application, the application shall be considered by the chair of the panel who, subject to paragraph 7, 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.
- (6) The party served with the application may submit a written response to the chair of the panel.
- (7) Where the chair considers that a determination cannot be made without further information or submissions from one or more of the parties the chair may direct that:
- (a) the application be referred to a case management meeting for consideration under rule 6; or
 - (b) where the application for postponement is made less than seven days prior to the first date of hearing, that the application should be determined by the panel convened to hear the case.
- (8) 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 those listed in rule 7(3) of the new hearing date, as soon as possible.

Disclosure of case and service of documents

9. (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 ten days before the date of the hearing.
- (3) The presenter shall consider whether there are any further documents in the possession of Social Care Wales 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 ten 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

10. (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 7 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 (as amended) to proceed with the hearing in the absence of the registered person or adjourn and shall give reasons for its decision.³

Burden and standard of proof

11. (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

12. (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 consider submissions from the parties on this issue and may receive expert medical evidence before making a determination as to the registered person's fitness to plead.
- (3) Where a panel determines that the registered person is unfit to plead, it may make an interim order under section 144(3) of the Act.

³ Regulation 25(4) provides that a fitness to practise panel has discretion to proceed with a fitness to practise hearing even if the registered person is not present and not represented, if the fitness to practise panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.

Procedure at the hearing

13. (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 22.
- (3) Where facts are found proved at the first stage, the second stage shall proceed in accordance with rule 23.
- (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

14. (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 referral 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.
- (3) An application for a direction pursuant to rule 14(2) shall be referred to a case management meeting for consideration under rule 6.

Amendment of the allegation(s)

15. (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

16. (1) After the allegation(s) have been read by the clerk, the chair shall ask the registered person or their representative (if present) 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

17. (1) Subject to regulation 20(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended), a panel may receive oral, documentary or other evidence.
- (2) In addition to the admission of the certificates referred to in regulation 20(3)⁴, (4)⁵ and (5)⁶ of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended), 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 9(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

18. (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 personal details of the witness shall not be revealed in public.
- (3) Subject to regulation 24(12) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended), witnesses shall be examined by the party calling them and may then be cross-examined by the opposing party, subject to restrictions on the right to cross-examine witnesses under regulation 24(12)-(14) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended). 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.

⁴ Regulation 20(3) provides that a certificate signed by a competent officer of a court of any jurisdiction that a person has been convicted of a criminal offence, or in Scotland and extract conviction, is conclusive evidence of the offence.

⁵ Regulation 20(4) provides that a certificate that a person is included in a barred list (for the purposes of section 117(1)(c) of the Act), issued by the person responsible for maintaining the list, is conclusive evidence of that fact.

⁶ Regulation 20(5) provides that a certificate issued by a relevant body (for the purposes of section 117(1)(d) of the Act) that it has determined that a person's fitness to practise is impaired is conclusive evidence of that determination.

- (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

19. (1) Where a panel gives a direction under regulation 24(11) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended), 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

20. (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

21. (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

22. (1) The presenter 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 presenter, followed by the registered person or, where represented, the registered person's representative (if present) 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

23. (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. The panel may also have regard to any practice guidance issued by Social Care Wales which builds upon the Code of Professional Practice for Social Care and which 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 findings on the issue of impairment before the parties and shall give reasons for its decision.

Finding of no impairment: proposal of a warning

24. (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 panel determines that the registered person's fitness to practise is not impaired, but the panel proposes to give advice to the registered person and/or any other person involved in the proceedings, the chair shall announce the advice and the reasons for it.

Oral hearing in relation to a proposed officer warning

25. (1) This rule shall apply where a registered person has requested an oral hearing.
- (2) A notice of the oral hearing will be sent to the registered person, which shall:
 - (a) state the date, time and venue of the oral hearing;
 - (b) state the proposal for the warning;
 - (c) state the reasons for the proposal;
 - (d) be accompanied by copies of any documents or evidence relied upon in support of the proposal;
 - (e) inform the registered person of their rights to:
 - (i) attend the oral hearing;
 - (ii) make oral submissions to the panel either in person or through a representative;
 - (iii) submit written evidence;
 - (f) inform the registered person of the procedure at the oral hearing;
 - (g) 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 oral hearing;
 - (h) invite the registered person to state whether the registered person and/or the registered person's representative will be attending the oral hearing.
- (3) The oral 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 oral hearing.
- (5) The oral 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 (if present) 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 the warning which, if given, shall be in the terms proposed in the notice of oral hearing issued under paragraph (2);
 - (d) the chair shall announce the decision of the panel as to whether to give the warning in the presence of the parties (where present) and shall give reasons for the panel's decision.

Finding of impairment: submissions on disposal

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

Other consensual disposal: undertakings

- 27. (1) This rule applies to a case that has been referred to the panel for hearing and to which rule 8 of the Investigation Rules 2022 (or, if applicable, the corresponding provision of an earlier version of those rules) does not apply, 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 under section 136 of the Act 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 shall 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. 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 the registered person which shall:
- (a) record any advice given by the legal adviser and/or the medical adviser (if present);
 - (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 registered person of the right of appeal to the tribunal;
 - (e) inform the registered person when any disposal imposed takes effect.
- (3) Within seven days after the conclusion of the hearing, the clerk shall send a notice of the decision, limited to the panel's findings of fact and any decisions on impairment of fitness to practise and disposal to:
- (a) the complainant;
 - (b) the registered person's employer(s) (if any);
 - (c) where the person is registered in the part of the register for students, the university.
- (4) Social Care Wales may provide the information in paragraph (3) to:
- (a) the Welsh Government;
 - (b) the Disclosure and Barring Service;
 - (c) a regulatory body.
- (5) Social Care Wales must inform other relevant Competent Authorities if required pursuant to any applicable reciprocal arrangements between European Economic Area states and the UK.

Transcript of the hearing

30. (1) Arrangements shall be made for the recording of a hearing before a panel.
- (2) Upon request by the registered person or the complainant, Social Care Wales shall send to the person making the request a transcript and/or an electronic copy of the recording, of any part of the proceedings at which that person was entitled to be present.⁷

⁷ The transcript might need to be provided in redacted form in order to exclude the name of any individual (e.g. a service user) whose name should not have been referred to in public. In addition, If part of the hearing was held in private, a complainant will not be entitled to receive a copy of the transcript relating to the part or parts of the hearing held in private.

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 (as amended) apply,⁸ and
 - (b) the registered person has admitted in writing that his or her fitness to practise is impaired.
- (2) A panel may also make a determination under rule 27 (consensual disposal by undertakings) 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.
- (3) Where the circumstances in paragraphs (1) or (2) 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 under rule 31 (1) or (2), the clerk shall send a notice of the meeting to the registered person, which 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 written agreement as to the final decision to be made by the panel;
 - (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, subject to restrictions on the right to cross-examine witnesses under regulation 24(12)-(14) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended);

⁸ Regulation 17(1) provides that fitness to practise proceedings may be determined without a hearing if –
(a) the parties agree in writing that the proceedings may be determined without a hearing;
(b) the parties agreed in writing to the final decision which is to be made by the panel (including details of the decision such as the period for which an order is to have effect or any condition to be imposed on the registered person's registration;

(c) a statement of agreed facts is made in writing by –
(i) Social Care Wales,
(ii) the registered person;
(iii) the panel, and

(d) the panel decides that it is not necessary to hold a hearing.

Regulation 17(1) does not apply to cases where there is no engagement by the registered person. Where a registered person is not present and not represented at a scheduled fitness to practise hearing the hearing may proceed in the absence of the registered person under rule 10(2) above.

- (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) enclose a copy of these Rules.
- (2) In the case of a referral under rule 31(2), in addition to the matters set out in paragraph (1)(a) to (f) above, the notice of the meeting to the registered person shall inform the registered person of the effect of rule 27(3) and (6) to (9);
 - (3) 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.
 - (4) Where the registered person gives notice under paragraph (1)(e) of this rule, the meeting shall be cancelled and the case shall be referred for a hearing.

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) 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.
- (3) The panel shall consider the case based on the agreed statement of facts and written agreement as to the final decision to be made by the panel.
- (4) Save as provided in paragraphs (1) to (3) 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 11 (burden and standard of proof); rule 13(1) (procedure at the hearing); rule 17 (evidence); rule 20 (adjournment of hearing); rule 21 (voting); rule 23(2) to (4) (fitness to practise), rule 24 (proposed warning), rule 25 (oral hearing in relation to proposed warning); and rule 29 (notice of the decision).

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 the registered person which shall:
- (a) state the date, time and venue of the review 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 review hearing;
 - (ii) give evidence to the panel;
 - (iii) make oral submissions to the panel either in person or through a representative;
 - (ii) call and cross examine witnesses, subject to restrictions on the right to cross-examine witnesses under regulation 24(12)-(14) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended);
 - (e) inform the registered person that any application to be represented by a person other than those listed in paragraph (c) (i) or (ii) above, must be sent to the clerk no later than seven days in advance of a review 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 review hearing, that they may submit written representations not later than five days before the date of the review 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 review hearing;
 - (j) invite the registered person to state whether the registered person and/or the registered person's representative will be attending the review hearing;
 - (k) enclose copies of any documents to be put before the panel, including a copy of these Rules.
- (2) The review 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 the review 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 review 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 review hearing, the clerk shall send the panel, copies of:
- (a) the notice of the review hearing;
 - (b) any documents lodged by the parties in terms of paragraphs (1) and (3) above.

Procedure at the review 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 or their representative (if present) 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 review 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 6 (case management); rule 8 (postponement of the hearing); rule 10 (absence of registered person); rule 11 (burden and standard of proof); rule 17 (evidence); rule 18 (witnesses); rule 19 (special measures); rule 20 (adjournments); rule 21 (voting); rule 23(2) to (4) (fitness to practise); rule 24 (proposed warning); rule 25 (oral hearing in relation to proposed warning); rule 26 (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 (as amended) apply.
- (2) Where the circumstances in paragraph (1) applies, 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 the registered person which 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 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, subject to restrictions on the right to cross-examine witnesses under regulation 24(12)-(14) of the Social Care Wales (Proceedings before Panels) Regulations 2016 (as amended);
 - (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.
 - (g) 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.

- (4) Where the registered person gives notice under paragraph (1)(e) of this rule, the meeting shall be cancelled and the case shall be referred for a hearing.

Procedure at a review meeting

40. (1) A panel shall meet in private with a legal adviser, but no party shall be present.
- (2) If the panel considers at any stage of the meeting that the review should be conducted at a review hearing, taking into account the interests of justice and the public interest, the case shall be referred for a review hearing.
- (3) The panel shall consider the case based on the registered person's agreement in writing and any written submissions made by the parties.
- (4) Save as provided in paragraphs (1), (3) and (4) of this rule, the following rules shall apply to review meetings, namely: rule 3 (pre-hearing review); rule 6 (case management); rule 8 (postponement of the hearing); rule 11 (burden and standard of proof); rule 20 (adjournment of hearing); rule 21 (voting); rule 23(2) to (4) (fitness to practise) and rule 29 (notice of the decision).

Signed on behalf of Social Care Wales



Mick Giannasi
Chair

Social Care Wales

21/07/2022