



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

# **THE SOCIAL CARE WALES (REGISTRATION APPEALS PANEL) 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 latest available (revised) version of the Act can be found at:

<https://www.legislation.gov.uk/anaw/2016/2/contents>

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 (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) Regulations 2016
- 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) and 91(2) of the Regulation and Inspection of Social Care (Wales) Act 2016 (“the Act”) and of all other powers enabling Social Care Wales in that behalf, and in accordance with section 75(3) of the Act, hereby makes the following Rules:

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## PART I

### INTRODUCTION

#### Citation, commencement and revocation

1. (1) These Rules may be cited as the Social Care Wales (Registration Appeals Panel) Rules 2022, and shall come into force on 1 October 2022.
- (2) The Social Care Wales (Registration Appeals) Rules 2017 (“the 2017 Rules”) and the Social Care Wales (Registration Appeals) Rules 2018 (“the 2018 Rules”) are hereby revoked.
- (3) The Social Care Wales (Registration Appeals) Rules 2020 (“the 2020 Rules”) are hereby revoked save that where a hearing before a Registration Appeals Panel has commenced on or after 1 April 2020, and has not been completed by 1 October 2022, 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;
  - “**appellant**” means a person who brings a registration appeal under Part III;
  - “**applicant**” means a person who makes an application under Part IV or V;
  - “**case**” means proceedings relating to a registration appeal before a registration appeals panel;
  - “**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 hearing or meeting;
  - “**days**” means calendar days;
  - “**electronic process**” means a process approved by Social Care Wales for the electronic submission of an application or confirmation of information submitted in connection with an application;
  - “**employer**” means an employer of a social worker or social care worker (working in the capacity of a social worker or social care worker);
  - “**fitness to practise proceedings**” means proceedings before a fitness to practise panel;

**“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) to suspend, or attach conditions to, a person’s registration in the register pending a determination of the kind mentioned in paragraph (a);

**“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 relating to a registered person’s registration issued by the registrar or the registered person (or their representative), or information in relation to the proceedings of a registration appeals panel;

**“parties”** means the appellant or applicant 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;

**“register”** means the register kept by Social Care Wales under section 80 of the Act;

**“registered person”** means a person who is registered in a part of the register, and it includes a person:

- (a) 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;
- (b) in respect of whom a suspension order has effect;
- (c) in respect of whom an interim suspension order has effect;
- (d) in respect of whom an indefinite suspension order has effect;

**“registrar”** means the person appointed in accordance with section 81(1) and (2) of the Act;

**“registration”** means the entry in the register relating to a particular registered person;

**“registration appeal”** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016 as amended, namely:

- (a) an appeal made in accordance with section 101 of the Act against a decision of the registrar;
- (b) an application made in accordance with section 97(5) of the Act for review of a direction under section 98(4) of the Act;
- (c) an application made in accordance with section 97(2) of the Act for restoration of a person's entry in a part of the register following fitness to practise proceedings;

**“registration appeals hearing”** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016, as amended, namely a hearing before a registration appeals panel in registration appeals proceedings;

**"registration appeals proceedings"** has the meaning in regulation 3 of The Social Care Wales (Proceedings before Panels) Regulations 2016 as amended, namely proceedings before a registration appeals panel in respect of which section 98(1), 99(2) or 103 of the Act apply;

**"Registration Rules"** means the Social Care Wales (Registration) Rules 2022 or, if applicable, the corresponding provision(s) of an earlier version of those Rules;

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

**“tribunal”** means the First-tier Tribunal.

- (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**  
**REMIT OF THE PANEL**

**Remit**

3. (1) These rules apply to the following proceedings before the registration appeals panel:
  - (a) an appeal against a decision of the registrar under section 83 of the Act not to grant an application for registration (which shall include a decision not to grant an application for return to the register);
  - (b) an appeal against a decision of the registrar under section 86 of the Act, not to grant an application for renewal of registration;
  - (c) an appeal against a decision of the registrar under section 94(1) of the Act to remove a registered person's entry from the register or an annotation to an entry (where the entry or annotation has been included in the register on the basis of false or misleading information);
  - (d) an appeal against a decision of the registrar under section 96(1) of the Act not to grant an application for restoration to the register (where the applicant was removed by agreement or as a result of an entry based on false or misleading information);
  - (e) an application for restoration to the register under section 97(2) of the Act where a fitness to practise panel has made a removal order under sections 138(9), 152(8)(e), 153(9)(d) or 154(8)(d) of the Act;
  - (f) an application under section 97(5) of the Act for review of a direction given by a registration appeals panel under section 98(4) of the Act.
- (2) Part II of these rules shall apply to appeals under paragraph (1)(a) to (d).
- (3) Part III of these rules shall apply to applications under paragraph (1)(e).
- (4) Part IV of these rules shall apply to applications under paragraph (1)(f).

**Conduct of proceedings**

4. (1) The registration appeals panel will conduct its proceedings in accordance with the requirements of these Rules and the requirements of the Social Care Wales (Proceedings before Panels) Regulations 2016 as amended.

## PART III

### PROCEDURE IN RELATION TO APPEALS AGAINST DECISIONS OF THE REGISTRAR

#### Submitting an appeal to the registrar

5. (1) Notice of appeal to the registrar under section 101 of the Act must be given in writing (which may include by electronic process).

#### Witness summons

6. (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 7 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 7(8)(g) 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

7. (1) A case management meeting will be convened:
  - (a) where following a request by one of the parties a duly authorised officer considers that a case management meeting would be appropriate;
  - (b) at the direction of a duly authorised person;
  - (c) at the direction of a panel
- (2) A case management meeting may be conducted by personal attendance at the meeting or participation by telephone or video conference.
- (3) Subject to paragraph (4), the 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) a duly authorised person determines that the panel should consist of three members; or
  - (b) where a panel directs that a case management meeting should be held, and 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) Directions may be given at the case management meeting 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) a particular witness should be treated as requiring special measures and, if so, what special measures should be put in place;
  - (c) a hearing or part of it should be held in private in accordance with regulation 9 of the Social Care Wales (Proceedings before Panels) Regulations 2016;
  - (d) the appellant may be represented at the hearing before the registration appeals panel by a person other than a solicitor, counsel or a representative from a professional body;
  - (e) the proceedings can be conducted without a hearing where the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply in accordance with rule 20;
  - (f) the health of the appellant will be raised as an issue in the proceedings;
  - (g) a direction for a witness summons should be given;
  - (h) whether the hearing before the registration appeals panel should be conducted as a virtual or in-person hearing.

- (9) The procedure at the case management meeting will be determined solely by the panel.
- (10) A case management meeting will be held in private, unless the panel directs otherwise.
- (11) Where a party fails to comply with the directions given at a case management meeting a registration appeals 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**

- 8. (1) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
  - (a) state the date, time and venue of the meeting of the registration appeals panel;
  - (b) set out any reasons for refusing an application for registration or renewal of registration or for removal of registration or to return to the register or for restoration to the register (under rule 3(1));
  - (c) inform the appellant of the right to attend the hearing and make oral submissions to the panel or to be represented by:
    - (i) a solicitor or counsel,
    - (ii) a representative from any professional organisation, or
    - (iii) if the registration appeals panel agrees, any other person;
  - (d) inform the appellant that any application to be represented by a person other than those listed in paragraph (c)(i) or (ii) above, should be sent to the clerk no later than seven days in advance of a meeting of the panel;
  - (e) request confirmation of whether the appellant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing;
    - (iii) agree to the proceedings being determined without a hearing if the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply;
  - (f) request the appellant to inform the panel whether the appellant wishes to apply for all or part of the proceedings to be heard in private under regulation 9(2) or (3) of the Social Care Wales (Proceedings before Panels) Regulations 2016
  - (g) inform the appellant that a person who proposes to attend and give evidence at the hearing cannot be present during the proceedings until such evidence has been given, without the leave of the panel;
  - (h) inform the appellant that, in the event that they do not wish to attend the hearing, they may submit written representations not later than five days before the date of the hearing for consideration by the panel;
  - (i) inform the appellant of the possible outcomes open to the panel;
  - (j) inform the appellant of the panel's power to proceed in the absence of the appellant or the appellant's representative at the hearing;
  - (k) enclose copies of any documents to be put before the registration appeals 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 in paragraph (1) except with the agreement of the parties.
- (3) No later than 28 days before the meeting of the registration appeals panel, the parties shall serve on each other and lodge with the clerk, copies of any documents on which they intend to rely.
- (4) No later than seven days before the meeting of the registration appeals panel, the clerk shall send to each panel member:
  - (a) a copy of the notice of the hearing;
  - (b) copies of all the documents, including evidence and representations, which the appellant has submitted;
  - (c) any information, or copies of any documents obtained by Social Care Wales which are relevant to the appeal.

### **Postponement of the hearing**

9. (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) The party served with the application may submit a written response to Social Care Wales.
- (4) The application shall be considered by the chair of the panel who, subject to paragraph (5), 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) 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 7; or
  - (b) where the application for postponement is made less than seven days prior to the hearing, the application should be determined by the panel convened to hear the appeal.
- (6) 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 of the new hearing date, as soon as possible.

### **Absence of an appellant at a hearing before a registration appeals panel**

10. (1) A hearing before a registration appeals panel may proceed even if the appellant is not present and not represented if the panel is satisfied that all reasonable efforts have been made to give notice of the hearing to the person.
- (2) If the appellant 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 appellant in accordance with rule 8; and
  - (b) enquire whether any reasons for the appellant's non-attendance have been communicated to Social Care Wales.
- (3) Where paragraph (1) applies, the panel shall determine whether to exercise the discretion under regulation 12(4) of the Social Care Wales (Proceedings before Panels) Regulations 2016 to proceed with the hearing in the absence of the appellant or adjourn and shall give reasons for the decision.

### **Burden and standard of proof**

11. (1) The burden of proof in proceedings under rule 3(1)(a), (b) or (d) before the registration appeals panel shall rest upon the appellant.
- (2) The burden of proof in proceedings under rule 3(1)(c) before the registration appeals panel shall rest upon Social Care Wales.
- (3) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

### **Order of proceedings at hearings**

12. (1) Where a hearing is to be held with oral evidence and/or oral submissions, the order of proceedings before the registration appeals panel shall be as follows:
  - (a) the presenter shall make an opening statement of the reasons for the registrar's decision;
  - (b) the appellant shall have a right of reply, either in person or through a representative (if present);
  - (c) the presenter may produce evidence in support of the registrar's decision;
  - (d) the appellant, either in person or through a representative, may produce evidence;
  - (e) where the appellant gives evidence, the presenter and the registration appeals panel shall have the opportunity to ask questions of that appellant;
  - (f) the parties shall have the opportunity to make closing submissions;
  - (g) after receiving legal advice, the panel will make a determination of the appeal *in camera*;
  - (h) the chair of the registration appeals panel will announce the decision, and the reasons for its decision, in the presence of the parties.

## Evidence

13. (1) Subject to regulation 8(2) of the Social Care Wales (Proceedings before Panels) Regulations 2016, a panel may receive oral, documentary or other evidence.
- (2) In addition to the admission of the certificates referred to in regulation 20(3)<sup>1</sup>, (4)<sup>2</sup> and (5)<sup>3</sup> of the Social Care Wales (Proceedings before Panels) Regulations 2016, 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(3):
  - (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

14. (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) 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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

## Special measures

15. (1) Where a panel gives a direction under regulation 11(10) 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

16. (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 of the date fixed for the hearing to be resumed.

## Voting

17. (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 appellant.

## Notice of the decision

18. (1) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant, which shall:
- (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable<sup>4</sup>, set out the right of the appellant to appeal to the tribunal.
- (2) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant's employer (if any), which shall be limited to the decision of the registration appeals panel.
- (3) Social Care Wales may provide the information in paragraph (2) to:

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<sup>4</sup> Section 104(1) and (2) provide that an appeal to the tribunal may be made where a registration appeals panel –

- (a) makes a determination under section 98(1)(b) that an entry in the register should not be restored for a reason that relates to the person's fitness to practise;
- (b) directs under section 98(4) that a person may not make further applications for restoration to a part of the register, or confirms such a direction under section 99(2);
- (c) make a determination in respect of an application for restoration referred to it by virtue of rules made under section 100(2)(e) for a reason that relates to the person's fitness to practise;
- (d) makes a determination under section 103 in respect of an appeal against a decision of the registrar.

- (a) the Welsh Government;
- (b) any regulatory body.

### **Transcript of the hearing**

- 19. (1) Arrangements shall be made for the recording of a hearing before a panel.
- (2) Upon application, Social Care Wales shall send the appellant a transcript and/or an electronic copy of the recording, of any part of the proceedings at which the appellant was entitled to be present.

### **Proceeding without a hearing**

- 20. (1) Where an appeal is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 21 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the appellant which shall:
  - (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the appellant of the possible outcomes;
  - (d) invite the appellant to provide any written submissions they wish to make about the case within 14 days of service of the notice;
  - (e) inform the appellant 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;
  - (f) inform the appellant that if they should wish to exercise any of the rights in paragraph (e) 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 registration appeals panel may proceed to deal with the case at a meeting on the specified date.
- (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) except with the agreement of the parties

### **Procedure at registration appeals panel meeting**

- 21. (1) A registration appeals 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 hearing.

- (3) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the appellant.

### **Notice of the decision**

22. (1) Within seven days of the conclusion of the meeting, the clerk shall send a notice of decision to the appellant, which shall:
  - (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable,<sup>5</sup> set out the right of the appellant to appeal to the tribunal.
- (2) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant's employer (if any), which shall be limited to the decision of the registration appeals panel.
- (3) Social Care Wales may provide the information in paragraph (2) to:
  - (a) the Welsh Government;
  - (b) any regulatory body.

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<sup>5</sup> Section 104(1) and (2) provide that an appeal to the tribunal may be made where a registration appeals panel –  
(a) makes a determination under section 98(1)(b) that an entry in the register should not be restored for a reason that relates to the person's fitness to practise;  
(b) directs under section 98(4) that a person may not make further applications for restoration to a part of the register, or confirms such a direction under section 99(2);  
(c) make a determination in respect of an application for restoration referred to it by virtue of rules made under section 100(2)(e) for a reason that relates to the person's fitness to practise;  
(d) makes a determination under section 103 in respect of an appeal against a decision of the registrar.

**PART IV**

**APPLICATIONS FOR  
RESTORATION FOLLOWING FITNESS TO PRACTISE PROCEEDINGS**

**Application for restoration**

23. (1) Where a fitness to practise panel has previously made a removal order, an application for restoration may be made, unless any of the circumstances in section 97(3)(a)<sup>6</sup> or (b)<sup>7</sup> or 98(4)<sup>8</sup> of the Act apply.
- (2) A person applying for restoration under this rule must provide to the registrar in writing or by electronic process:
- (a) an application for registration satisfying the requirements of rules 3 to 9 and 19 (if applicable) of the Registration Rules;
  - (b) the appropriate fee (as set out on the Social Care Wales website); and
  - (c) any documentary evidence relied upon in support of the application.

**Notice and documentation for the hearing**

24. (1) As soon as reasonably practicable after receipt of a completed application for restoration to the register which complies with rule 23, the clerk shall send the applicant:
- (a) a copy of the transcript of the fitness to practise panel hearing at which the removal order was made;
  - (b) any documents to be relied upon by Social Care Wales;
  - (c) a notice of hearing before the registration appeals panel.
- (2) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
- (a) state the date, time and venue of the hearing;
  - (b) inform the applicant of the right to attend the hearing and make oral submissions to the panel or to be represented by:
    - (i) a solicitor or counsel,
    - (ii) a representative from any professional organisation, or
    - (iii) if the registration appeals panel agrees, any other person;
  - (c) inform the applicant that any application to be represented by a person other than those listed in paragraph (1)(b)(i) and (ii) above, should be

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<sup>6</sup> Section 97(3)(a) provides that the person may not make an application for restoration before the expiry of five years beginning with the date on which the order was made.

<sup>7</sup> Section 97(3)(b) provides that the person may not make an application for restoration if they have made an application for restoration to the register within a period of 12 months preceding the application.

<sup>8</sup> Section 98(4) provides that a registration appeals panel may give a direction that a person may not make an application for restoration to the register where the person has made two or more applications previously and, on the second or subsequent application, the registration appeals panel made a direction that the person may not make any further applications for restoration.

- sent to the clerk no later than seven days in advance of a meeting of the panel;
- (d) request confirmation of whether the applicant intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing;
    - (iii) agree to the proceedings being determined without a hearing if the circumstances in regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016 apply;
  - (e) request the applicant to inform the panel whether the applicant wishes to apply for all or part of the proceedings to be heard in private under regulation 9(2) or (3) of the Social Care Wales (Proceedings before Panels) Regulations 2016; as amended by the Social Care Wales (Proceedings before Panels (Amendment) Regulations 2017:
  - (f) inform the applicant that a person who proposes to attend and give evidence at the hearing cannot be present during the proceedings until such evidence has been given, without the leave of the panel;
  - (g) inform the appellant that, in the event that they do not wish to attend the hearing, they may submit written representations not later than five days before the date of the hearing for consideration by the panel;
  - (h) inform the applicant of the possible outcomes open to the panel;
  - (i) inform the applicant of the panel's power to proceed in the absence of the applicant or the applicant's representative, at the hearing;
  - (j) enclose copies of any documents to be put before the registration appeals 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 in paragraph (2) except with the agreement of the applicant.
  - (4) No later than 28 days before the meeting of the registration appeals panel, the applicant shall provide to the clerk, copies of any documents on which the applicant intends to rely.
  - (5) No later than seven days before the registration appeals panel hearing, the clerk shall send to each panel member:
    - (a) a copy of the notice of the hearing;
    - (b) copies of all the documents which the applicant has submitted;
    - (c) any information, or copies of any documents obtained by Social Care Wales which are relevant to the application; and
    - (d) any representations the applicant has submitted.

### **Burden and standard of proof**

- 25. (1) The burden of proof in proceedings before the registration appeals panel under rule 3(1)(e) shall rest upon the applicant.
- (2) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

## **Procedure at hearings**

26. (1) Rules 7, 9, 10 and 12 to 19 shall apply to applications under this part as they apply to appeals under Part III.
- (2) The presenter shall outline the history of the applicant's case and the circumstances in which the removal order was made.
- (3) The presenter may adduce any documents which were considered by the fitness to practise panel that made the removal order and any documents that have since come into the possession of Social Care Wales which relate to the applicant's fitness to practise and may call witnesses to give evidence.
- (4) The applicant or his or her representative may address the panel as to why registration should be restored and may call witnesses in support of the application.
- (5) Witnesses shall be examined by the party calling them and may be questioned by the other party, by the panel and by the legal adviser.
- (6) The registration appeals panel shall obtain legal advice from the legal adviser before determining the application.
- (7) The registration appeals panel shall obtain medical advice from the medical adviser before determining the application where the removal order was made on the ground that the applicant's fitness to practise was impaired by reason of health.
- (8) In making a determination, the registration appeals panel shall have regard to:
- (a) the reasons why the applicant was removed from the register;
  - (b) evidence as to the applicant's current fitness to practise;
  - (c) evidence as to the applicant's conduct since removal from the register;
  - (d) the need for protection of the public;
  - (e) the public interest in maintaining confidence in social care services.

## **Proceeding without a hearing**

27. (1) Where an application under this Part is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 28 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the applicant which shall:
- (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the applicant of the possible outcomes;
  - (d) invite the applicant to provide any written submissions they wish to make about the case;

- (e) inform the applicant 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;
  - (f) inform the applicant that if they wish to exercise any of the rights in paragraph (e) 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 registration appeals panel may proceed to deal with the case at a meeting on the specified date.
- (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) except with the agreement of the parties.

### **Procedure at registration appeals panel meeting**

28. (1) A registration appeals panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the applicant has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for 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 hearing.
- (4) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the applicant.
- (5) The decision of a registrations appeals panel and the reasons for the decision shall be announced in public.

### **Notice of the decision**

29. (1) Within seven days of the conclusion of the hearing or meeting, the clerk shall send a notice of decision to the applicant, which shall:
- (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the applicant to appeal to the tribunal.
- (2) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant's employer (if any), which shall be limited to the decision of the registration appeals panel.
- (3) Social Care Wales may provide the information in paragraph (2) to:
- (a) the Welsh Government;
  - (b) any regulatory body.

## PART V

### PROCEDURE IN RELATION TO REVIEW OF SUSPENSION OF RIGHT TO APPLY FOR RESTORATION

#### Application for review of direction

30. (1) A person applying for a review of the direction under this Part must provide the registrar with a written application together with copies of all documents relied upon in support of the application.

#### Notice of hearing documentation

31. (1) As soon as reasonably practicable after receipt of an application for a review of the direction, the clerk shall send the applicant:
- (a) a copy of the transcript of the fitness to practise hearing at which the removal order was made (if available);
  - (b) a copy of the decision of the registration appeals panel, containing the direction given under section 98(4) of the Act;
  - (c) any other documents to be relied upon by Social Care Wales;
  - (d) a notice of hearing before the registration appeals panel.
- (2) At least 42 days before the registration appeals panel hearing, the clerk shall send to the appellant a notice which shall:
- (a) state the date, time and venue of the hearing;
  - (b) set out the right of the applicant, within 21 days of the date of the notice, to send to Social Care Wales in support of the application for review:
    - (i) written representations; and
    - (ii) any documentary evidence to be relied upon.
- (3) The hearing shall not be fixed for any date earlier than 42 days after the sending of the notice of hearing in paragraph (2) except with the agreement of the applicant.
- (4) Not less than seven days before the hearing, the clerk shall send to the registration appeals panel copies of:
- (a) the notice of hearing;
  - (b) the application for review of the direction and any documents provided by the applicant in support;
  - (c) a copy of the transcript of the fitness to practise hearing at which the removal order was made;
  - (d) a copy of the decision of the registration appeals panel, containing the direction given under section 98(4) of the Act;
  - (e) any documents relied upon by Social Care Wales;
  - (f) any documents relied upon by the applicant.

### **Burden and standard of proof**

32. (1) The burden of proof in proceedings before the registration appeals panel under rule 3(1)(f) shall rest upon the applicant.
- (2) Where facts are in dispute, a panel shall decide the facts on the civil standard, applying the balance of probabilities.

### **Procedure at hearings**

33. (1) Rules 7, 9, 10 and 12 to 19 shall apply to applications under this Part as they apply to appeals under Part III.
- (2) The presenter shall outline the history of the applicant's case, the circumstances in which the removal order was made and the direction given.
- (3) The presenter may adduce any documents which were considered by the fitness to practise panel that made the removal order, the decision of the registration appeals panel containing the direction given under section 98(4) of the Act, and any documents that have since come into the possession of Social Care Wales which relate to the applicant's fitness to practise and may call witnesses to give evidence.
- (4) The applicant or his or her representative may address the panel as to why the direction should be revoked.
- (5) Witnesses shall be examined by the party calling them and may be questioned by the other party, by the panel and by the legal adviser.
- (6) The registration appeals panel shall obtain legal advice from the legal adviser before determining the application.
- (7) The registration appeals panel shall obtain medical advice from the medical adviser before determining the application where the order was made on the ground that the appellant's fitness to practise was impaired by reason of health.

### **Proceeding without a hearing**

34. (1) Where an application under this Part is to be determined at a meeting and without the need for a hearing in accordance with Regulation 6(1) of the Social Care Wales (Proceedings before Panels) Regulations 2016, the following requirements of this rule shall apply and rule 35 shall apply in relation to the procedure to be followed.
- (2) The clerk shall send a notice of the meeting to the applicant which shall:
- (a) state the date, time and venue of the meeting;
  - (b) be accompanied by all documents to be considered by the panel;
  - (c) inform the applicant of the possible outcomes;
  - (d) invite the applicant to provide any written submissions they wish to make about the case;

- (e) inform the applicant 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;
  - (f) inform the applicant that if they should wish to exercise any of the rights in paragraph (e) 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 registration appeals panel may proceed to deal with the case at a meeting on the specified date.
- (3) The meeting shall not be fixed for any date earlier than 42 days after the sending of the notice of meeting in paragraph (2) except with the agreement of the parties

### **Procedure at registration appeals panel meeting**

35. (1) A registration appeals panel shall meet in private with a legal adviser, but no party shall be present.
- (2) Where the applicant has requested that the case be considered at a hearing, the panel shall adjourn the meeting and refer the case for 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 hearing.
- (4) The panel shall consider the case based on the written evidence and written submissions made by Social Care Wales and by or on behalf of the applicant.

### **Notice of the decision**

36. (1) Within seven days of the conclusion of the hearing or meeting, the clerk shall send a notice of decision to the applicant, which shall:
- (a) set out the decision and reasons of the registration appeals panel;
  - (b) where applicable, set out the right of the applicant to appeal to the tribunal.
- (2) Within seven days of the conclusion of the hearing, the clerk shall send a notice of decision to the appellant's employer (if any), which shall be limited to the decision of the registration appeals panel.
- (3) Social Care Wales may provide the information in paragraph (2) to:
- (a) the Welsh Government;
  - (b) any regulatory body.

## **Service of Notices**

37. (1) The notices required by these rules to be sent to a Registered person, may be sent:
- (a) by electronic mail to an electronic mail address that the Applicant, Appellant Registered Person has notified to Social Care Wales as an address for communications or such other latest electronic mail address known to Social Care Wales, or
  - (b) by a postal service or other delivery service in which delivery or receipt is recorded to, or by leaving it at, the postal address of the Applicant, Appellant or Registered Person as specified in the register (where applicable) or such other latest address known to Social Care Wales.

**Signed on behalf of Social Care Wales**

A handwritten signature in black ink, appearing to read 'Mick Giannasi', written over a faint horizontal line.

**Mick Giannasi  
Chair  
Social Care Wales  
21/07/2022**