



General
Social Care
Council

THE GENERAL SOCIAL CARE COUNCIL (CONDUCT) RULES 2008

The General Social Care Council, in exercise of its powers under sections 59(1), 59(2), 59(3), and 71(1) of the Care Standards Act 2000, and of all other powers enabling the Council in that behalf, and with the consent of the Secretary of State, hereby makes the following Rules:

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PART I INTRODUCTION

Citation, commencement, revocation and transitional arrangements

1. (1) These Rules may be cited as the General Social Care Council (Conduct) Rules 2008 and shall come into force on 4th March 2008.
- (2) The General Social Care Council (Conduct) Rules 2003 (“the 2003 Rules”) are hereby revoked, save that they shall continue to apply in respect of any Complaint referred to a Preliminary Proceedings Committee prior to the date upon which these Rules come into force.

Interpretation

2. (1) In these Rules, unless the context otherwise requires –
 - “**the Act**” means the Care Standards Act 2000;
 - “**Care Standards Tribunal**” means the Tribunal established under Section 9 of the Protection of Children Act 1999;
 - “**Complaint**” means any information which is considered to be a Complaint by virtue of the provisions of Rule 12(2);
 - “**Complainant**” means any person (including an employer or institution) who makes a Complaint against the Registrant;
 - “**the Conduct Procedure**” is the procedure set out in SCHEDULE 2 (other than the procedure set out in paragraph 28 of that SCHEDULE);
 - “**the Council**” means the General Social Care Council;
 - “**the Employer**” means an employer of a social care worker;
 - “**the Formal Allegation**” means the allegation of Misconduct prepared in accordance with Rule 12(12);
 - “**the Health Procedure**” is the procedure set out in paragraph 28 of SCHEDULE 2;

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

“Lay Person” means a person who is not, and who has not within five years of appointment to the Conduct Committee, been:

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

“Legal Adviser” means a barrister or a solicitor qualified to practise in England and Wales;

“Medical Adviser” means a registered medical practitioner appointed by the Council;

“Misconduct” means conduct which calls into question the suitability of a Registrant to remain on the Register;

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

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

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

“Registrant” means a person registered in the Register;

“Removal Order” means an Order for the removal of the Registrant’s registration from the Register, made by the Conduct Committee;

“Suspension Order” means an Order for suspension of the Registrant’s registration made by the Conduct Committee;

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

Service of documents

- 3. In these Rules –
 - (a) any reference to the sending of a notice to a Registrant or to a former Registrant is a reference to the sending of a notice by registered post or by a postal service in which delivery or receipt is recorded to the Registrant's or former Registrant's address in the Register or, if the last-known address differs from the address in the Register, the Registrant or former Registrant's last-known address;
 - (b) where any notice is to be sent to a Registrant or former Registrant, it shall be treated as having been served on the day after it was posted.

PART II COMMITTEES

Constitution of committees

4. (1) The Council shall establish the following three Committees:
 - (a) Preliminary Proceedings Committee;
 - (b) Conduct Committee; and
 - (c) Restoration Committee.

Function of committees

Preliminary Proceedings Committee

5. (1) It shall be the duty of the Preliminary Proceedings Committee to consider an application by the Council for an Interim Suspension Order and decide whether the making of such an Order is:
 - (a) necessary for the protection of members of the public;
 - (b) otherwise in the public interest;
 - (c) in the interests of the Registrant concerned.
- (2) Where the Preliminary Proceedings Committee decides that it should impose an Interim Suspension Order on a Registrant's registration, the initial duration of such an Order shall not exceed six months.
- (3) Where the Preliminary Proceedings Committee decides to impose a further Interim Suspension Order in accordance with the provisions set out in paragraph 5 of SCHEDULE 1, the total period of suspension shall not exceed a period of 2 years including the period specified in the original Order.

Conduct Committee

- (4) It shall be the duty of the Conduct Committee to consider any Formal Allegation against a Registrant served on it, and to decide:

- (a) whether the facts are proven,
- (b) whether the Registrant has committed Misconduct,
- (c) where it is decided that the Registrant has committed Misconduct, what sanction (if any) should be imposed upon the Registrant,
- (d) whether the Registrant is unfit to plead.

Restoration Committee

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

Procedure of committees

- 6.
 - (1) The Preliminary Proceedings Committee shall follow the procedure set out in SCHEDULE 1.
 - (2) The Conduct Committee shall follow the procedure set out in SCHEDULE 2.
 - (3) The Restoration Committee shall follow the procedure set out in SCHEDULE 3.

Membership and quorum of committees

- 7.
 - (1) The Council shall maintain a pool of members from which members of the individual Committees hearing a particular case shall be appointed.
 - (2) Each Committee shall consist of up to five members, appointed by the Council.

- (3) The quorum of each Committee shall be three, and each Committee shall sit with either three or five members present.
- (4) The majority of members of each Committee shall be Lay Persons.
- (5) The Council shall appoint a Chair of each Committee. The Chair of the Committee shall be a Lay Person, and shall not be a member of the Council.
- (6) The Chair of the Council shall not sit as a member on any Committee.
- (7) The Council shall ensure that a member is appointed to the Committee who has experience or understanding of the area of social care work practised by the Registrant whose case is under consideration.
- (8) Members of each Committee shall be appointed for a period not exceeding 4 years and shall be eligible for re-appointment for a further period not exceeding 4 years.
- (9) Subject to paragraph (10), no member of any Committee shall sit as such on the hearing of a Registrant's case, if that member has previously been concerned with the case.
- (10) Members of the Preliminary Proceedings Committee may sit as such, at both the initial and subsequent considerations of a Registrant's case, by that Committee.

Voting of committees

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

Legal adviser

9. (1) A Legal Adviser shall be present at the proceedings of each Committee. The Legal Adviser shall also be present during the deliberations of each Committee.
- (2) The role of the Legal Adviser shall be to advise each Committee on questions of law, and to ensure that proceedings before each Committee are conducted fairly. To this end, the Legal Adviser shall inform a Committee immediately of any irregularity in the conduct of proceedings before that Committee.
- (3) Where the proceedings of a Committee are held in private, that Committee shall maintain a record of any advice tendered by the Legal Adviser.
- (4) Where the proceedings of a Committee are held in public, the advice of the Legal Adviser shall be given in the presence of the Parties. Any advice given by the Legal Adviser during the private deliberations of the Committee shall subsequently be repeated before the Parties.
- (5) The Parties shall have the opportunity to make representations on the contents of the advice given by the Legal Adviser before any decision has been taken by the committee.
- (6) The Legal Adviser shall not be entitled to vote.
- (7) The Legal Adviser may also advise a Committee in relation to the drafting of the reasons for any findings, determinations or decisions of that Committee.
- (8) The Legal Adviser shall, if so authorised by the Council, conduct a pre-hearing review in accordance with paragraph 2 of SCHEDULE 2.

Medical adviser

10. (1) Where it appears to the Council that the alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Council shall appoint a Medical Adviser to advise each Committee that is to consider the allegations of Misconduct.
- (2) A Medical Adviser shall be present whenever a Committee's procedures are held under the Health Procedure.

- (3) Where the Registrant or former Registrant is not present during the proceedings of a Committee, that Committee shall maintain a record of any advice given by the Medical Adviser.
- (4) Where the Parties are present during the proceedings of a Committee, the advice of the Medical Adviser shall be given in the presence of the Parties. Any advice given by the Medical Adviser during the private deliberations of the Committee shall subsequently be repeated before the Parties.
- (5) The Parties shall have the opportunity to make representations on the contents of the advice given by the Medical Adviser.
- (6) The Medical Adviser shall not be entitled to vote.

Clerk to the committee

11. (1) Each Committee shall be assisted by a Clerk to the Committee who shall be responsible for the administrative arrangements for the hearing.
- (2) The Clerk to the Committee shall not participate in the decision making of the Committee.
- (3) The Clerk to the Committee shall keep records relating to any pre-hearing review in accordance with paragraph 2(4) of SCHEDULE 2.

PART III COMPLAINTS

Procedure upon receipt of information about a registrant

12. (1) On receipt of information about a Registrant, the Council shall first consider whether such information is a Complaint.
- (2) Information shall only be considered to be a Complaint if such information:
 - (a) relates to an identifiable Registrant; and
 - (b) makes a specific allegation or allegations of Misconduct against the Registrant.
- (3) If the information is not considered to be a Complaint, the Council shall inform the provider of the information that no further action will be taken and that the matter will be closed.
- (4) If the information is considered to be a Complaint, the Council shall send the Complainant a copy of the Council's guidance about making a Complaint and may also inform the Complainant of alternative methods of resolving disputes, including mediation or remedies available through a Registrant's employer.
- (5) If the Complainant does not wish to proceed with a Complaint, the Council may in the interest of public protection act as the Complainant.
- (6) Where anonymous allegations are received by the Council, the Council shall investigate the matter and if satisfied that the allegations amount to a Complaint, the Council shall act as the Complainant.
- (7) Where the Council has received information about a Registrant, and that Registrant is already the subject of an inquiry by the police, any statutory inquiry or tribunal, or other regulatory body set out in SCHEDULE 4, the Council may defer the investigation or referral of a Complaint until the inquiry by the police or other regulatory body has concluded.

- (8) In respect of each Complaint, the Council shall consider whether, in their opinion, there is a real prospect of a finding of Misconduct in relation to each allegation which forms a basis of the Complaint, taking into consideration any documents and information provided under Rule 12(9) below.
- (9) In addition to any inquiries made and advice sought under paragraph (17) of this Rule, the Council shall, before making any decision as to the prospect of a finding of Misconduct in relation to each allegation, send to the Registrant -
- (a) a copy of the Complaint and any documentation in support, and
 - (b) a copy of these Rules,
- and shall invite the Registrant, within 14 days of receipt, to submit written representations upon the Complaint, together with any additional documentation.
- (10) If the Council considers that there is not a real prospect of a finding of Misconduct in relation to any allegation which forms a basis of the Complaint, it shall inform the Complainant, the Registrant and the Registrant's employer (if any) that no further action will be taken in relation to that allegation, providing an explanation for that decision.
- (11) If the Council considers that there is a real prospect of a finding of Misconduct in relation to any allegation which forms a basis of the Complaint, it shall refer that allegation to the Conduct Committee and shall inform the Complainant, the Registrant and the Registrant's employer (if any) of that referral -
- (a) giving reasons for the decision, and
 - (b) stating whether the case has been referred to the Conduct Committee under the Conduct Procedure or the Health Procedure, and the reasons why.
- (12) The Council shall include each allegation referred to the Conduct Committee in a Formal Allegation which the Council shall prepare and serve upon the Registrant and the Clerk to the Conduct Committee.

- (13) If the Council considers that alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, it may refer the allegation to the Conduct Committee under the Health Procedure.
- (14) Where the Council has determined that the Health Procedure should be followed, the Council shall invite the Registrant to agree, within 14 days:
 - (a) to be examined (at the Council's expense) by a registered medical practitioner nominated by the Council; and
 - (b) that such registered medical practitioner provide the Conduct Committee with a report on whether the alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health.
- (15) If, at any stage, following service of the Formal Allegation upon the Registrant, it appears to the Council that the matter should no longer proceed to a hearing, or where the Legal Adviser makes such a recommendation at a pre-hearing review held under paragraph 2 of SCHEDULE 2, the Council may withdraw the Formal Allegation and the referral to the Conduct Committee shall be thereby revoked.
- (16) The Council may, at any time, make an application to the Preliminary Proceedings Committee (in accordance with the provisions of SCHEDULE 1) that an Interim Suspension Order should be imposed on a Registrant's registration, on the grounds that such an Order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned.
- (17) For the purposes of -
 - (a) establishing whether any information received is a Complaint,
 - (b) establishing whether there is a real prospect of a finding of Misconduct in relation to each allegation which form the basis of the Complaint,

- (c) preparing a Formal Allegation for the Conduct Committee, or
- (d) determining whether an application should be made for an Interim Suspension Order,

the Council may make such inquiries and seek such advice as it considers necessary in the circumstances, including instructing solicitors, seeking further information or clarification from the Registrant or the Registrant's employer and convening a panel, including members of the pool of members referred to in Rule 7(1).

**PART IV
REMOVAL AND SUSPENSION FROM THE REGISTER**

Removal and suspension from the register

13. Where:
- (a) a Formal Allegation against a Registrant has been considered by the Conduct Committee and the Conduct Committee has found that the Registrant has committed Misconduct, the Registrant may be suspended or removed from the Register;
 - (b) a Formal Allegation against a Registrant has been considered by the Conduct Committee and the Conduct Committee has found that the Registrant is unfit to plead, the Registrant shall be suspended from the Register.

The Secretary of State having consented, the General Social Care Council hereby makes these Rules.

**Dated this day of two thousand and
eight.**

Chair

SCHEDULE 1
PROCEDURE OF THE PRELIMINARY PROCEEDINGS
COMMITTEE

ARRANGEMENT OF PARAGRAPHS

1. Interpretation
2. Public or private proceedings
3. Applications for Interim Suspension Orders
4. Interim Suspension Order hearings
5. Review of Interim Suspension Orders

Interpretation

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

Public or private proceedings

2. (1) Subject to (2) below, the proceedings of the Committee shall be held in private.

(2) The Committee may sit in public, for all or part of the proceedings, if the Registrant so requests.

Interim Suspension Orders

3. (1) Where the Council wishes to apply for an Interim Suspension Order, it shall apply to the Clerk to the Committee, providing:
 - (a) details of the allegations upon which the application is based; and
 - (b) a statement setting out why the registration of the Registrant should be suspended.
- (2) The Clerk to the Committee shall, upon receipt of an application, fix a date and time for the hearing of the application and write separately to the Parties to:
 - (a) inform the Parties of the right to attend the hearing;
 - (b) inform the Parties of the time and venue for the hearing;
 - (c) request the Registrant to inform the Committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) inform the Registrant of the rights to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council;
 - (e) inform the Registrant of the right to make oral submissions to the Committee in person or to be represented by:

- (i) solicitor;
 - (ii) barrister;
 - (iii) a representative from the Registrant's Trade Union; or
 - (iv) a representative from the Registrant's Professional Body;
- (f) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing.
- (3) Subject to paragraphs (4) and (5) below, where notice of the hearing is served upon the Registrant, an application for an Interim Suspension Order shall be heard no earlier than 7 days after the date upon which notice of the hearing was served upon the Registrant.
- (4) Where an urgent application for an Interim Suspension Order is made by the Council on the grounds of protection of members of the public, the Clerk to the Committee may dispense with the notice period referred to in paragraph (3).
- (5) Where the Clerk to the Committee dispenses with the notice period, the Committee shall not impose an Interim Suspension Order on a Registrant's registration unless the Registrant has been given such notice as is reasonable of the application and the opportunity to make oral submissions and written representations to the Committee.

Interim Suspension Order hearings

- 4. (1) In addition to the procedure set out in paragraph (2) below, paragraphs 5, 9(2) and (3), 10, 13, 14, 19 and 27 of SCHEDULE 2 shall apply where the Committee is considering whether or not to make an Interim Suspension Order.

- (2) Where the Committee is considering whether or not to make an Interim Suspension Order, the order of proceedings shall be as follows:
 - (a) The Presenter shall outline the facts of the case and set out the reasons why the Registrant's registration should be made subject to an Interim Suspension Order, together with any evidence in support;
 - (b) The Registrant (if present) shall set out the reasons why such application should not be granted by the Committee, together with any evidence in support;
 - (c) The Committee shall obtain advice from the Legal Adviser;
 - (d) The Committee shall deliberate in private;
 - (e) The Committee shall determine the application and announce its decision, and the reasons for that decision, in the presence of the Parties;
 - (f) Where the Registrant has requested that any part of the proceedings be held in public, the Committee shall announce its decision, and the reasons for that decision, in public.
- (3) Within 7 days of the conclusion of the hearing, the Clerk to the Committee shall send a Notice of Decision to the Parties and the Registrant's employer(s), if any.
- (4) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser or the Medical Adviser;
 - (b) set out the decision of the Committee;
 - (c) specify the reasons for the Committee's decision;
 - (d) where an Interim Suspension Order has been imposed, set out the period of suspension, beginning on the date on which the Order is made;

- (e) inform the Registrant of the right of appeal to the Care Standards Tribunal.

Review of Interim Suspension Orders

- 5. (1) The Council or any person in respect of whom an Interim Suspension Order has been made, may request the Preliminary Proceedings Committee to review the Order at a review hearing.
- (2) Save in exceptional circumstances, the Committee shall not be obliged to review an Interim Suspension Order until 3 months after the date on which the Order was made.
- (3) Where the Committee decides to review an Interim Suspension Order, a Notice of Review shall be sent to the Registrant and the Council.
- (4) The Notice of Review shall:
 - (a) inform the Registrant of the right to attend the hearing;
 - (b) inform the Registrant of the time and venue for the hearing;
 - (c) request the Registrant to inform the Committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) provide the Registrant with:
 - (i) details of the allegations made against the Registrant; and
 - (ii) the reasons for the Interim Suspension Order;
 - (e) inform the Registrant of the rights to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council;
 - (f) inform the Registrant of the right to make oral submissions to the Committee in person or to be represented by:

- (i) solicitor;
 - (ii) barrister;
 - (iii) a representative from the Registrant's Trade Union; or
 - (iv) a representative from the Registrant's Professional Body;
- (g) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing.
- (5) The procedure at the review hearing shall be the same as at the original hearing.
- (6) After reviewing an Interim Suspension Order under paragraph (1) the Committee may-
 - (a) continue the Order;
 - (b) revoke the Order;
 - (c) impose a further Order, to commence upon the expiry of the existing Order.
- (7) Within 7 days of the conclusion of the review hearing, the Clerk to the Committee shall send a Notice of Decision to the Parties and the Registrant's employer(s), if any.
- (8) The Notice of Decision shall contain the matters set out in paragraph 4(4) above.

SCHEDULE 2
PROCEDURE OF THE CONDUCT COMMITTEE

ARRANGEMENT OF PARAGRAPHS

1. Interpretation
2. Pre-hearing review
3. Joinder
4. Notice of hearing
5. Postponement of hearing
6. Notice to complainant and to employer
7. Disclosure of case and service of documents
8. Procedure at hearing
9. Public and private hearings
10. Representation and entitlement to be heard
11. Evidence
12. Burden and standard of proof
13. Adjournment of hearing
14. Attendance at hearing
15. Fitness to plead
16. Introduction of Committee and reading of formal allegation
17. Amendment of formal allegation
18. Admissions
19. Witnesses
20. Vulnerable witnesses

21. Registrant's evidence
22. Finding of facts
23. Misconduct
24. Mitigation
25. Sanction
26. Notice of decision
27. Notes and transcript of the proceedings
28. Health Procedure
29. Publication of decision
30. Resumed hearings

Interpretation

1. In this SCHEDULE "the Committee" means the Conduct Committee.

Pre-hearing review

2. (1) No later than 28 days after the Formal Allegation has been served upon the Registrant, the Council shall convene a pre-hearing review and shall invite the Parties to attend. The Council and the Registrant may attend the pre-hearing review in addition to any representatives acting on their behalf.
- (2) The Council shall authorise a Legal Adviser to conduct the pre-hearing review, and members of the Committee shall not attend the pre-hearing review.
- (3) The pre-hearing review may be conducted by telephone or video conferencing or by such method as is agreed between the Parties and the Legal Adviser.
- (4) A record of the directions issued by the Legal Adviser, any admissions, and decisions taken at the proceedings shall be maintained by the Clerk to the Committee.
- (5) The Registrant may attend in person or be represented by the persons set out in paragraph 10 below.
- (6) The following matters shall be considered at the pre-hearing review:
 - (a) Formal Allegation;
 - (b) any admissions of facts;
 - (c) the number of witnesses to be called if any;
 - (d) whether special provisions should be made for vulnerable witnesses at the hearing;
 - (e) whether expert evidence is to be adduced;
 - (f) whether the health of the Registrant will be raised as an issue in the proceedings, and if so, whether a report from a Medical Adviser should be obtained;

- (g) any dates on which the Registrant or witnesses would be unable to attend a hearing;
 - (h) time estimate for the hearing;
 - (i) the documents which each party intends to produce.
- (7) The Legal Adviser may issue directions to the Parties for the purpose of facilitating the hearing of the matter and regarding the timetable for service of evidence, including any medical and expert reports, and any agreed statements of facts.
- (8) The Legal Adviser may give a preliminary opinion to the Parties for the purpose of resolving questions of law or admissibility of evidence.
- (9) The decision as to whether or not to admit evidence at the hearing shall be made by the Committee at the hearing.
- (10) Where the Registrant wishes to admit any facts relating to the Formal Allegation, the Legal Adviser shall direct the Parties to prepare an agreed statement of facts.

Joinder

3. Where a Formal Allegation has been prepared but not served upon the Registrant and the Committee and a new Complaint is received by the Council about the same Registrant and further allegations are referred to the Committee, the further allegations may be added to the Formal Allegation and the Committee shall determine whether the allegations shall be heard together or separately.

Notice of hearing

4. (1) As soon as practicable after the pre-hearing review has been held, the Clerk to the Committee shall send the Registrant and the Council a Notice of Hearing which shall:
- (a) state the date, time and venue of the hearing;
 - (b) specify the Formal Allegation against the Registrant;

- (c) state whether the case is to proceed under the Conduct or the Health Procedure;
 - (d) inform the Parties of their respective rights to:
 - (i) attend the hearing;
 - (ii) give evidence to the Committee;
 - (iii) make oral submissions to the Committee either in person or through a representative as set out in paragraph 10 below;
 - (iv) call and cross-examine witnesses;
 - (e) inform the Registrant of the possible sanctions open to the Committee in the event of a finding of Misconduct;
 - (f) inform the Registrant of the Committee's power to proceed in the absence of the Registrant, or the Registrant's representative, at the hearing.
 - (g) invite the Registrant to state whether the Registrant will be attending the hearing.
- (2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing except with the agreement of the Registrant.
- (3) The Clerk to the Committee shall send with the Notice of Hearing:
- (a) a copy of these Rules; and
 - (b) any reports, written statements or other documents which the Committee will have before it.

Postponement of the hearing

5. (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Chair of the Committee.

- (2) The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.
- (3) The Party served with the application may submit a written response to the Chair of the Committee.
- (4) The application shall be considered by the Chair of the Committee who shall determine the application, taking into account:
 - (a) the submissions of both Parties;
 - (b) any likely prejudice to either Party;
 - (c) the public interest in the prompt disposal of the case.
- (5) In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Clerk to the Committee shall inform the Parties and the Complainant of the new hearing date, as soon as possible.

Notice to complainant and to employer

6. The Clerk to the Committee shall send a copy of the Notice of Hearing to the Complainant, and to the Registrant's employer(s).

Disclosure of case and service of documents

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

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

Procedure at the hearing

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

Public and private hearings

9. (1) Subject to paragraphs (2), (4), and (5) below, the hearing shall be conducted in the presence of the Parties and shall be held in public.
- (2) The Committee may, of its own volition, or upon the application of a witness or any of the Parties, decide that persons not connected with the hearing should withdraw from the whole or any part of the proceedings, provided always that:

- (a) a decision to exclude the public causes no prejudice to either Party;
 - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
 - (c) the decision is made after hearing representations from both Parties.
- (2) In this paragraph, a person is not concerned with the hearing if that person is not -
- (a) a member of the Committee;
 - (b) the Legal Adviser or the Medical Adviser to the Committee;
 - (c) the Clerk to the Committee;
 - (d) a Party or a representative of that Party;
 - (e) a witness;
 - (f) a shorthand writer;
 - (g) an audio technician;
 - (h) a translator;
 - (i) an interpreter.
- (4) Where the Health Procedure is to be followed, the Committee shall conduct its proceedings in private, in the presence of the Parties.
- (5) For the purpose of arriving at any decision in relation to the hearing, the Committee shall sit in private. However, the Committee shall announce any decision in public.

Representation and entitlement to be heard

10. (1) The Presenter and the Registrant shall be entitled to be heard by the Committee.

- (2) The Registrant may be represented by:
 - (a) barrister;
 - (b) solicitor;
 - (c) a representative from the Registrant's Trade Union; or
 - (d) a representative from the Registrant's Professional Body.
- (3) Where the Registrant is acting in person, he may be accompanied and advised by some other representative. Such representative, however, shall not be entitled to address the Committee, without permission.
- (4) A person who represents or accompanies the Registrant shall not be entitled to be called as a witness at the hearing.
- (5) The Committee may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the Committee, has disrupted or is likely to disrupt the hearing.
- (6) The Complainant may be present at the hearing and may be called to give evidence by any Party, or by the Committee, of its own motion.
- (7) Where the Complainant is to give evidence, the Complainant shall not be entitled to be present during the proceedings until after such evidence is given.
- (8) Subject to paragraph 20, where the Complainant has been called as a witness, the Parties shall have the opportunity to question the Complainant.

Evidence

11. (1) Subject to the advice of the Legal Adviser, the requirements of a fair hearing, and of relevance, the Committee may:
 - (a) admit evidence whether or not it would be admissible in a Court of Law;
 - (b) exclude evidence in order to ensure fairness to the Registrant and between the Parties.

- (2) The Committee may receive oral, documentary or other evidence of any fact or matter which appears to it to be relevant to its consideration of the case.
- (3) The Committee may of its own volition, request the Parties to provide documentation or request any person to give oral evidence, which it considers might assist it in its decision making.
- (4) The Committee may admit evidence adduced by a Party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing-
 - (a) if the Parties consent; or
 - (b) where, after consultation with the Legal Adviser, it is satisfied that:
 - (i) the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the Party which has not previously seen such evidence; and
 - (ii) there is a good reason why such evidence was not previously disclosed.
- (5) The findings of fact and certification of conviction of any UK Criminal Court or the findings of a Judge in any UK Civil Court shall be conclusive proof of the facts or conviction so found.
- (6) The findings of fact by any of the regulatory bodies set out in SCHEDULE 4, shall be prima facie evidence of the facts so found.

Burden and standard of proof

12. (1) The burden of proving the facts alleged in the Formal Allegation shall rest upon the Council.
- (2) The standard of proof shall be the balance of probabilities.

Adjournment of the hearing

13. (1) Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Committee may, at any stage of hearing, adjourn the proceedings.
- (2) Where the hearing has been adjourned, the Clerk to the Committee shall, as soon as practicable, notify the Parties and the Employer(s) if any, of the time or date fixed for the hearing to be resumed.

Stage 1- preliminaries and findings of fact

Attendance at hearing

14. (1) Where the Registrant fails to attend and is not represented at the hearing, the Chair of the Committee shall:
 - (a) require evidence that the Registrant has been served with the Notice of Hearing in accordance with these Rules, and that reasonable efforts have been made to inform the Registrant of the hearing; and
 - (b) inquire whether any reasons for the Registrant's non-attendance have been communicated to the Clerk to the Committee or the Council.
- (2) Where the Committee is satisfied that the Notice has been duly served on the Registrant, and that reasonable efforts have been made to inform the Registrant of the hearing it may:
 - (a) hear and determine the case in the absence of the Registrant; or
 - (b) adjourn the hearing and give directions.

Fitness to plead

15. (1) Where an issue arises as to the Registrant's fitness to plead, the Committee shall proceed under the Health Procedure and shall consider:

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

Introduction of committee and reading of the formal allegation

- 16. (1) At the opening of the hearing, the Chair of the Committee shall introduce the members of the Committee and the Parties.
- (2) The Chair of the Committee shall ask the Registrant to confirm the Registrant's name and registration number.
- (3) The Clerk to the Committee shall then read out the Formal Allegation against the Registrant.

Amendment of the formal allegation

- 17. (1) Subject to the requirements of a fair hearing, the Committee may amend the Formal Allegation at any stage prior to the finding of Misconduct.
- (2) The Committee shall first hear representations from the Parties, and take advice from the Legal Adviser, before deciding whether or not the Formal Allegation should be amended.

Admissions

- 18. (1) After the Formal Allegation has been read, the Chair of the Committee shall ask the Registrant whether any facts (or convictions) alleged in the Formal Allegation are admitted and may receive and agreed statement of facts.

- (2) Where any facts (or convictions) are admitted, the Chair of the Committee shall announce that such facts (or convictions) have been found proved.
- (3) Where no admissions are made, or some facts remain disputed, the Presenter shall present the case against the Registrant to the Committee and adduce evidence in support of those facts which are not admitted.

Witnesses

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

Vulnerable witnesses

20. (1) The following shall be treated as vulnerable witnesses:
 - (a) any witness under the age of 17;

- (b) any witness with a mental disorder;
 - (c) any witness who is significantly impaired in relation to intelligence and social functioning;
 - (d) any witness with physical disabilities who requires assistance to give evidence;
 - (e) any witness, where the Formal Allegation against the Registrant is of a sexual nature and the witness was the alleged victim;
 - (f) any witness who complains of intimidation.
- (2) Subject to the advice of the Legal Adviser, and upon hearing representations from the Parties, the Committee may adopt such measures as it considers necessary to enable it to receive evidence from vulnerable witnesses.
- (3) Measures adopted by the Committee may include, but shall not be limited to:
- (a) use of video links;
 - (b) use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the Committee;
 - (c) use of screens;
 - (d) use of interpreters (including signers and translators) or intermediaries.
- (4) Where an allegation against a Registrant is sexual in nature, and a witness is the alleged victim, and where the Registrant is acting in person, the Registrant shall not be allowed to cross-examine that witness. Any questioning of the witness in these circumstances shall be undertaken by the Legal Adviser.

Registrant's evidence

21. At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and witnesses in support.

Finding of facts

22. (1) The Committee shall then consider in private whether the facts in the Formal Allegation have been proved on the balance of probabilities.
- (2) The Committee shall announce its findings of facts in public and may, where it deems necessary, give reasons for its findings.
- (3) If no facts have been proved, the case will be dismissed.

Stage 2 - Misconduct

Misconduct

23. (1) The Parties shall make representations to the Committee and may adduce evidence on the question of Misconduct.
- (2) In deciding upon the issue of Misconduct, the Committee shall have regard to the Code of Practice issued by the Council under Section 62 of the Act.
- (3) The Committee shall consider in private whether, on the facts found proved, the Registrant has committed Misconduct.
- (4) The Committee shall announce its finding on the issue of Misconduct in public, and shall give reasons for its decision.
- (5) If the Registrant is found not to have committed Misconduct, the case will be dismissed and the hearing concluded.

Stage 3 - Mitigation

Mitigation

24. (1) Where the Committee finds that the Registrant has committed Misconduct, the Presenter shall provide the Committee with details of the Registrant's previous disciplinary record with the Council if any and may adduce evidence and make submissions in relation to the appropriate order, if any, to be made by the Committee.

- (2) The Registrant may then address the Committee in mitigation and may adduce references and testimonials, and may call character witnesses in support.
- (3) Where character witnesses are called, they may be questioned by the Presenter and the Committee.
- (4) Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Clerk to the Committee. The Clerk to the Committee shall provide such mitigation documents to the Committee at this stage.
- (5) After hearing the Registrant, the Committee shall decide, in private, what sanction it should impose.

Sanctions

25. (1) Upon a finding of Misconduct, the Committee may:
 - (a) admonish the Registrant and direct that a record of the admonishment be placed on the Registrant's entry in the Register, for a period of up to five years; or
 - (b) make an Order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order'); or
 - (c) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').
 - (d) revoke any Interim Suspension Order imposed by the Preliminary Proceedings Committee.
- (2) In deciding what sanction is to be imposed, the Committee shall take into account:
 - (a) the seriousness of the Registrant's Misconduct;
 - (b) the protection of the public;
 - (c) the public interest in maintaining confidence in social care services; and

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

Notice of Decision

26. (1) Within 7 days, after the conclusion of the hearing, the Clerk to the Committee shall send a Notice of Decision to:
- (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant; and
 - (d) the Registrant's employer if any.
- (2) The Notice of Decision shall:
- (a) record any advice given by the Legal Adviser or the Medical Adviser;
 - (b) set out the Committee's findings of fact, and its decisions on Misconduct and sanction;
 - (c) specify the reasons for the Committee's decisions;
 - (d) where a Suspension Order has been imposed, set out the period of suspension;
 - (e) inform the Registrant of the right of appeal to the Care Standards Tribunal;
 - (f) inform the Registrant that any sanction imposed by the Committee took effect from the date on which it was made.

Notes and transcript of the proceedings

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

Health Procedure

28. (1) Subject to the following provisions, the Health Procedure shall be the same as the Conduct Procedure and the foregoing provisions of this SCHEDULE shall apply.
- (2) The Committee shall sit in private.
- (3) Subject to paragraph (4) below, in determining whether the Registrant has committed Misconduct at stage 2, and in deciding on the issue of sanction at stage 3, the Committee shall consider any medical reports or other medical evidence on whether the alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health.
- (4) The Committee shall not receive medical reports or other medical evidence unless the Registrant has consented to be examined and to allow such reports and evidence to be provided to the Committee.
- (5) In determining the issue of Misconduct, the Committee may take into account a Registrant's refusal to be examined or to consent to reports on the Registrant's fitness to practise being provided to the Committee.
- (6) If at any time during the hearing it appears to the Committee that the alleged Misconduct may not have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Committee may cease to consider the allegation following the Health Procedure and instead follow the Conduct Procedure.

Publication of decisions

29. (1) The Council shall publish the Committee's findings of fact, and the Committee's determination, by such means as it considers appropriate, as soon as is reasonably practicable following any finding of fact and determination.
- (2) The Council may also at any time provide a copy of the Committee's findings of fact and the Committee's determination, to any of the regulatory bodies set out in SCHEDULE 4.

Resumed Hearings

30. (1) Where the Committee has imposed a Suspension Order, the Committee may, at the request of the Registrant, review the Order before the end of the period for which the suspension has been ordered.
- (2) The Committee shall seek advice from the Legal Adviser before deciding whether or not to review the Order.
- (3) The Committee shall not review the Order unless there has been a material change of circumstances since the Order was imposed.
- (4) The procedure at the resumed hearing shall be as follows:
 - (a) the Presenter shall outline the facts of the case and the circumstances in which the Suspension Order was imposed;
 - (b) the Registrant shall then make submissions as to why the Suspension Order should be revoked, and may adduce documents, and call witnesses in support.
- (5) Where the Suspension Order was imposed following the Health Procedure, the Committee may require the Registrant to provide up-to- date medical reports from a registered medical practitioner nominated by the Council, at the Registrant's own expense.
- (6) Where the Suspension Order was imposed following the Health Procedure, the resumed hearing shall be held under the Health Procedure.

- (7) The Committee may, after reviewing a Suspension Order, revoke that Order.
- (8) At the conclusion of the resumed hearing, the Committee shall announce its decision, and the reasons for its decision, in public.
- (9) Within 7 days of the conclusion of the hearing, the Clerk to the Committee shall send a Notice of Decision, containing the reasons for the Committee's decision to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Employer if any.

SCHEDULE 3
PROCEEDINGS BEFORE THE RESTORATION COMMITTEE

ARRANGEMENT OF PARAGRAPHS

1. Interpretation
2. Documents to be provided to the Council
3. Documentation to be provided to the applicant
4. Notice of restoration hearing
5. Documents to be provided to the committee
6. Procedure at restoration hearing
7. Decision of the committee
8. Notice of decision
9. Time limits for application
10. Barring order

Interpretation

1. (1) In this SCHEDULE -

"Applicant" means a former Registrant applying for restoration to the Register, following a Removal Order imposed by the Conduct Committee;

"the Committee" means the Restoration Committee.

- (2) An application for restoration shall be deemed to be an initial application for registration under Sections 57 and 58 of the Act, and should comply with the provisions of the Council's Registration Rules.

Documents to be provided to the Council

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

Documents to be provided to the applicant

3. As soon as practicable after receipt of a completed application for restoration to the Register, the Clerk to the Committee shall send the Applicant notice of the hearing, including:
 - (a) a copy of the transcript of the Conduct Committee hearing at which the Order for removal from the Register was made;
 - (b) any documents to be relied on by the Council; and
 - (c) a copy of these Rules.

Notice of restoration hearing

4. (1) The notice of the hearing shall-
 - (a) state the date, time and venue of the hearing;

- (b) inform the Applicant of the right to attend the hearing and make oral submissions to the Committee or to be represented by:
 - (i) solicitor;
 - (ii) barrister;
 - (iii) a representative from the Applicant's Trade Union;
or
 - (iv) a representative from the Applicant's Professional Body.
- (2) Where the Registrant is acting in person, he may be accompanied and advised by some other representative, however, shall not be entitled to address the Committee, without permission.
- (3) The hearing shall not be fixed for any date earlier than 28 days after the posting of the notice of the hearing, except with the agreement of the Applicant.
- (4) A copy of the Notice of Restoration shall be provided to the Council by the Clerk to the Committee.

Documents to be provided to the committee

- 5. No less than 7 days before the hearing, the Clerk to the Committee shall send to the Committee, copies of:
 - (a) the notice of the restoration hearing;
 - (b) the application for restoration and any documents provided by the Applicant in support of the application.

Procedure at a restoration hearing

- 6. (1) Subject to paragraphs (2) and (3) below, proceedings of the Committee shall be held in public.
- (2) Proceedings of the Committee shall be held in private where the Removal Order was made under the Health Procedure.

- (3) The Committee, upon the application of the Parties or of a witness, or of its own motion may sit in private, provided always that:
 - (a) no prejudice is caused to the Applicant;
 - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing; and
 - (c) the decision to sit in private is made after hearing representation from the Parties.
- (4) Notwithstanding the above, the deliberations of the Committee shall be held in private.
- (5) The Presenter shall outline the history of the Registrant's case and the circumstances in which the Order for removal of the Registrant's registration was made.
- (6) The Presenter may adduce to the Committee any documents which were exhibited to the Conduct Committee which made the Removal Order; and any documents which have since come into the possession of the Council and which relate to the Applicant's good character; conduct; competence; and health, and may call witnesses to give testimony on these issues.
- (7) The Applicant or the Applicant's representative shall then address the Committee as to the reasons why an Order for restoration should be made.
- (8) The Applicant may adduce evidence and call witnesses in support of the application for restoration.
- (9) Witnesses shall be examined by the Party calling them, and may be questioned by the other Party, by the Committee, and by the Legal Adviser.
- (10) The Committee shall obtain advice from the Legal Adviser before determining the application for restoration.

Decision of the committee

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

- (2) The Committee shall first consider whether the Applicant should be restored to the Register, having regard to:
 - (a) the reasons why the Applicant was removed from the Register;
 - (b) evidence as to the Applicant's current good character, competence and health;
 - (c) evidence as to the Applicant's conduct since removal from the Register;
 - (d) the protection of the public; and
 - (e) the public interest in maintaining confidence in social care services.
- (3) Where the Committee is minded to restore an Applicant's registration, it shall then consider whether the Applicant's registration should be made subject to conditions for a specified period not exceeding 3 years.
- (4) Where the Committee is minded to impose conditions on the Applicant's registration, it shall invite specific representations from the Applicant before making its decision.
- (5) In deciding whether to restore an Applicant's registration, and if so, whether an Applicant's registration should be made subject to conditions, the Committee shall take into account the principle of proportionality.
- (6) The Committee shall give reasons for its decision.

Notice of decision

8. (1) Within 7 days of the conclusion of the proceedings, the Clerk to the Committee shall send a Notice of Decision to the Applicant and to the Council.
- (2) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser and the Medical Adviser;

- (b) set out the Committee's decision;
- (c) specify the reasons for the Committee's decision;
- (d) clearly set out any conditions imposed on the Applicant's registration;
- (e) set out the Applicant's right of appeal to the Care Standards Tribunal.

Time limits for application

9. No application for restoration to the Register under this rule shall be made to the Committee:
 - (a) within 3 years from the date of removal; or
 - (b) in any period of 12 months in which an application for restoration has already been made by or on behalf of the person who has been removed.

Barring order

10. (1) Where an Applicant has made a previous unsuccessful application for restoration and the Committee have refused the current application for restoration, the Committee may Order that the Applicant's right to make any further restoration applications be suspended indefinitely ("a Barring Order").
- (2) The Committee shall not make a Barring Order until it has heard representations on this issue from the Applicant.
- (3) In deciding whether or not to make a Barring Order, the Committee shall take into account the principle of proportionality.
- (4) Where a Barring Order has been made, the Applicant may apply to the Committee, in writing, for permission to make any further applications for restoration and the Committee shall grant such an application if the Applicant provides evidence to the Committee demonstrating that there has been a change in the circumstances which led to the decision to remove the Applicant

from the Register such that the Committee, acting reasonably, should consider the application for restoration.

SCHEDULE 4
APPROVED REGULATORY BODIES

1. Care Council for Wales
2. Scottish Social Services Council
3. Northern Ireland Social Care Council
4. General Medical Council
5. General Teaching Council
6. General Teaching Council for Northern Ireland
7. General Teaching Council for Wales
8. General Teaching Council for Scotland
9. Health Professions Council
10. Nursing and Midwifery Council
11. General Dental Council
12. British Psychological Society