

**SCOTTISH SOCIAL SERVICES COUNCIL
(CONDUCT) RULES 2008**

The Scottish Social Services Council, in exercise of its powers under sections 47, 48, 49, 50 and 57 of the Regulation of Care (Scotland) Act 2001, and of all other powers enabling the Council in that behalf, and with the consent of the Scottish Ministers, hereby makes the following Rules:

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Citation, commencement and saving

1. (1) These Rules may be cited as the Scottish Social Services Council (Conduct) Rules 2008 and shall come into force on the day they are signed on behalf of the Council.
- (2) These Rules apply to any case whether initiated before or after the coming into force of these Rules.
- (3) The Scottish Social Services Council (Conduct) Rules 2006A are hereby revoked and these Rules shall be substituted.
- (4) The Council, its Conduct Committee and any Sub-committee, as may be, may relieve any party from the consequence of a failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as it thinks fit.

Interpretation

2. (1) In these Rules, unless the context otherwise requires –
 - “**the Act**” means the Regulation of Care (Scotland) Act 2001;
 - “**Applicant**” means an Applicant for restoration to the Register;
 - “**the Charge**” means the statement giving fair notice to the Registrant of the facts which the Council offers to prove in order to justify the sanctions available in terms of SCHEDULE 2, Paragraph 24;
 - “**Complainant**” means any person (including an employer or institution) who makes a complaint against the Registrant and thereby has an interest in the outcome of the proceedings;

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

“the Conduct Committee” means the Committee set up by the Council in pursuance of section 49 of the Act and in terms of Rule 4 of these Rules;

“the Conduct Procedure” is the procedure set out in SCHEDULE 2 to these Rules (other than the procedure set out in paragraph 28 of that SCHEDULE);

“the Conduct Sub-committee” means a Sub-committee set up by the Council in pursuance of section 49 of the Act and in terms of Rule 4 of these Rules;

“the Council” means the Scottish Social Services Council;

“Degree Course” means a course leading to the honours degree in social work, or postgraduate qualification which has been approved by the Council in accordance with The Scottish Social Services Council Rules for Social Work Training 2003, as amended from time to time;

“the Employer” includes employment agencies, the self employed, and any Employer of a Social Service Worker (working in the capacity of a Social Service Worker), of whom the Council is aware;

“the Entry” means the particulars entered on to the Register in terms of the Council’s Registration Rules;

“the Health Procedure” is the procedure set out in paragraph 28 of SCHEDULE 2 to these Rules;

“Interim Suspension Order” means an order for suspension of the Registrant’s Registration made by the Preliminary Proceedings Sub-committee in terms of the procedure set out in paragraph 11 of SCHEDULE 1 to these Rules;

“Lay Person” means a person who is not, and has not within five years of appointment to a Council Sub-committee been-

- (a) a Social Service Worker or a Student; or
- (b) involved in the training, education, appointment, employment, supply, supervision, monitoring or representation of Social Service Workers or Students;

“Legal Adviser” means an advocate or a solicitor who has been qualified to practise in Scotland, for not less than 10 years;

“Medical Adviser” means a medical practitioner registered under the Medical Act 1983, appointed by the Council;

“Misconduct” means conduct, whether by act or omission, which falls short of the standard of conduct expected of a person registered with the Scottish Social Services Council, having particular regard to the Code of Practice for Social Service Workers issued by the Council under Section 53(1)(a) of the Act and the Scottish Social Services Council (Registration) Rules 2008, both as amended or substituted from time to time;

“Notice of Hearing” means a notice sent to the Registrant and to the Council by the Clerk in terms of the procedure set out in paragraph 4 of SCHEDULE 2 to these Rules;

“part of the Register for students” means the part of the Register for persons participating in a Degree Course approved by the Council under section 54(1) of the Act for those wishing to become social workers;

“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 Sub-committee, and specifically excludes the Complainant;

“the Preliminary Proceedings Sub-committee” means the Sub-committee set up by the Council in pursuance of section 49 of the Act and in terms of Rule 4 of these Rules;

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

“Register” means the Register maintained under section 44 of the Act;

“Registrant” means a person registered in the Register;

“Registration” means the Entry in the Register relating to a particular Registrant;

“Registration Rules” means The Scottish Social Services Council (Registration) Rules 2008, as amended or substituted from time to time;

“Removal Order” means an order for the removal of the Registrant’s Registration from the Register, made by the Conduct Sub-committee;

“the Restoration Sub-committee” means the Sub-committee set up by the Council in pursuance of section 49 of the Act and in terms of Rule 4 of these Rules;

“Social Service Worker” has the meaning ascribed by Section 77 of the Act;

“Student” means a person participating in or who has been offered and accepted a place on a Degree Course;

“Suspension Order” means an order for suspension of the Registrant’s Registration made by the Conduct Sub-committee in terms of the procedure set out in SCHEDULE 2 to these Rules;

“University” means the University or Higher Education Institution providing the Degree Course.

- (2) Unless the context otherwise requires, a reference-
- (a) in these Rules-
 - (i) to a numbered rule is a reference to the rule bearing that number in these Rules, and
 - (ii) to a numbered 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 a schedule to these Rules, to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph;
 - (d) words in the singular include the plural, and words in the plural include the singular.

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's 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
SUB-COMMITTEES

Constitution of Sub-committees

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

Function of Sub-committees

Preliminary Proceedings Sub-committee

5. (1) It shall be the duty of the Preliminary Proceedings Sub-committee to consider any complaint(s) against a Registrant referred to it and decide-
- (a) whether the complaint(s) should be referred to the Conduct Sub-committee, under the Conduct Procedure or the Health Procedure;
 - (b) whether it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned, for the Sub-committee to make an Interim Suspension Order;
 - (c) whether no further action should be taken in respect of the complaint.
- (2) Subject to (3) below, where the Preliminary Proceedings Sub-committee determines to refer a complaint to the Conduct Sub-committee, it shall refer the complaint under the Conduct Procedure.

- (3) Where the Preliminary Proceedings Sub-committee having taken advice from the Medical Adviser considers that the alleged Misconduct may have been caused, or substantially contributed to by, the Registrant's physical or mental ill health, it may refer the complaint to the Conduct Sub-committee under the Health Procedure.
- (4) The Preliminary Proceedings Sub-committee shall also consider applications made by the Council, at any time, that an Interim Suspension Order should be imposed on the Registrant's Registration, on the grounds that such order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned.
- (5) Where the Preliminary Proceedings Sub-committee decides that it is necessary to impose an Interim Suspension Order on a Registrant's Registration, the initial duration of such Order shall not exceed 6 months.
- (6) Where the Preliminary Proceedings Sub-committee decides to impose a further Interim Suspension Order in accordance with the provisions set out in paragraph 12 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 Sub-committee

- (7) It shall be the duty of the Conduct Sub-committee to consider:
 - (a) any Charge of Misconduct against a Registrant referred to it, and to decide:
 - (i) whether the Registrant has committed Misconduct;

- (ii) where the Registrant has committed Misconduct, what sanction should be imposed on the Registrant;
 - (iii) where the Registrant is unfit to plead, whether the Registrant should be suspended from the Register.
- (b) any criminal convictions, or acquittal on the grounds of insanity referred to it, and to decide:
 - (i) whether the Registrant has committed Misconduct;
 - (ii) where the Registrant has committed Misconduct, what sanction, should be imposed on the Registrant.
 - (iii) where the Registrant is unfit to plead, whether the Registrant should be suspended from the Register.

Restoration Sub-committee

- (8) It shall be the duty of the Restoration Sub-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 Sub-committees

- 6. (1) The Preliminary Proceedings Sub-committee shall follow the procedure set out in SCHEDULE 1.

- (2) The Conduct Sub-committee shall follow the procedure set out in SCHEDULE 2.
- (3) The Restoration Sub-committee shall follow the procedure set out in SCHEDULE 3.

Membership and Quorum of Sub-committees

7. (1) The Council shall establish a Conduct Committee. Members of the Committee shall be appointed for a period not exceeding 3 years and shall be eligible for re-appointment for further periods not exceeding 4 years in total. No defect in the appointment of a Member shall affect the validity of the proceedings or decisions of the Committee or any of its Sub-committees.
- (2) The Conduct Committee shall consist of a pool of members appointed by the Council, from which members of the individual Sub-committees hearing a particular case shall be appointed.
- (3) Each Sub-committee shall consist of up to five members, appointed by the Council.
- (4) The quorum of each Sub-committee shall be three, and each Sub-committee shall sit with either three or five members present.
- (5) Each Sub-committee shall include at least one Lay Person as a member.

- (6) The Council shall appoint a Convener of each Sub-committee. The Convener shall be a Lay Person.
- (7) The Convener of the Council shall not sit as a member on any Sub-committee.
- (8) The Council shall endeavour to appoint to each Sub-committee, a member who is Registered in the same part of the Register as the Applicant or Registrant whose case is under consideration, unless the Applicant or Registrant is:
 - a. registered only in the part of the Register for students; or
 - b. registered only in the part of the Register for Care Commission Officers.
- (9) Where the Council is unable to appoint a member referred to in paragraph (8) above, the Council shall, wherever possible, ensure that a member is appointed to the Sub-committee who has experience or understanding of the area of social service work and where appropriate Registration and inspection of social services practised by the Registrant whose case is under consideration, unless the Applicant or Registrant is
 - a. registered only in the part of the Register for students; or
 - b. registered only in the part of the Register for Care Commission Officers.
- (10) No member of any Sub-committee shall sit as such on the hearing of a Registrant's case, if that member has previously been concerned with the case.

- (11) Notwithstanding (10) above, members of the Preliminary Proceedings Sub-committee may sit as such at both the initial and subsequent considerations of a Registrant's case, by that Sub-committee.

Voting and Decisions

8. (1) Decisions of all Sub-committees shall be taken by simple majority. No Convener of any Sub-committee may exercise a casting vote. Any abstention shall be deemed to be a vote in favour of the Registrant.
- (2) Decisions of the Sub-committees shall be treated as those of the Council.

The Legal Adviser

9. (1) A Legal Adviser shall be present at the sitting of each Sub-committee. The Legal Adviser shall also be present during the deliberations of each Sub-committee.
- (2) The Legal Adviser shall advise each Sub-committee on questions of law, and shall endeavour to ensure that proceedings before each Sub-committee are conducted fairly. To this end, the Legal Adviser shall inform a Sub-committee immediately of any irregularity in the conduct of proceedings before that Sub-committee.
- (3) The Sub-committee shall maintain a record of any advice tendered by the Legal Adviser, whether the proceedings are held in public or private.
- (4) Where the proceedings of a Sub-committee are held in public, the advice of the Legal Adviser shall be given before the Parties. Any advice given by the

Legal Adviser during the private deliberations of a Sub-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. The Legal Adviser will then assess whether the advice tendered requires to be altered in the light of the submissions made by the Parties and will advise the Sub-committee accordingly, in the presence of the Parties.
- (6) The Legal Adviser shall not participate in the decision making of a Sub-committee and shall not be entitled to vote.

The 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 Sub-committee that is to consider the allegations of Misconduct.
- (2) A Medical Adviser shall be present whenever a Sub-committee's proceedings are held under the Health Procedure and may be present when requested by the Convener on any other occasion.
- (3) The Sub-committee shall maintain a record of any advice given by the Medical Adviser whether in public or in private.
- (4) Where the Parties are present during the proceedings of a Sub-committee, the advice of the Medical Adviser shall be given before the Parties. Any advice

given by the Medical Adviser during the private deliberations of a Sub-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 and where representations have been made on the contents of the advice given by the Medical Adviser, the Medical Adviser shall consider whether the advice should be amended and shall advise the Registration Sub-Committee accordingly, in the presence of the Parties.
- (6) The Medical Adviser shall not participate in the decision making of a Sub-committee and shall not be entitled to vote.

The Clerk

11. (1) Each Sub-committee and Pre-hearing review shall be assisted by a Clerk who shall be responsible for the administrative arrangements for the meeting.
- (2) The Clerk shall not participate in the decision making of a Sub-committee or a Pre-hearing review and shall not be entitled to vote.

PART III-COMPLAINTS

Procedure upon receipt of information about a Registrant

12. (1) On receipt of information about a Registrant, by any means and from any source, the Council may carry out such preliminary investigations as it deems necessary and shall thereafter consider whether the information is a complaint.

- (2) Information shall only be considered to be a complaint where such information:
 - (a) relates to an identifiable Registrant; and
 - (b) makes a specific allegation or allegations of misconduct against the Registrant; or
 - (c) is that there has been a conviction or acquittal in terms of Rule 13 (1) (c) or (d), subject to Rule 12(7).

- (3) Where the information is not capable of amounting to a complaint, the Council may inform the provider of the information (if any) that no further action will be taken and that the matter will be closed.

- (4) Where the information is a complaint and where no Complaint Form has been received, the Council may send to any person a copy of the Council's guidance about making a complaint and a Complaint Form, and may also provide information on alternative methods of resolving a complaint, including mediation or remedies available through a Registrant's employer.

- (5) On receipt of a duly completed Complaint Form which contains material which amounts to a complaint in terms of Rule 12(2), the Council may refer

the complaint to the Preliminary Proceedings Sub-committee for consideration, subject to Rule 12(7).

- (6) Where the Council has information which amounts to a complaint in terms of Rule 12(2), and in a situation where no Complaint Form has been received, it may refer the complaint to the Preliminary Proceedings Sub-committee, subject to Rule 12(7).

- (7) Where the Council receives, by any means and from any source, information that a Registrant has had his or her driving licence endorsed under the Road Traffic Offenders Act 1988, as amended or substituted from time to time as a result of paying a fixed penalty, or has paid a fixed penalty under the Vehicle Excise and Registration Act 1994 as amended or substituted from time to time the Council will not refer the matter to the Preliminary Proceedings Sub-committee unless the circumstances leading to the endorsement or fixed penalty as appropriate appear to the Council to raise a question as to whether the Registrant has committed misconduct. Where in terms of this Rule, the Council decides not to refer the matter to the Preliminary Proceedings Sub-committee, the Council may remind the Registrant of the terms of the Code of Practice for Social Service Workers, and inform the Registrant that a record of this reminder and the reasons therefor, will be kept on the Entry relating to the Registrant.

- (8) The Council may seek further information from any source, including the Registrant, regarding a conviction in terms of Rule 13(1)(c) or acquittal in

terms of Rule 13(1)(d), and shall place any information so received before the Preliminary Proceedings Sub-committee, subject to Rule 12(7).

- (9) Where the Council has received information amounting to a complaint and that Registrant is already the subject of an inquiry or an investigation by any party in relation to the circumstances of the complaint, the Council may defer further investigation or referral of the complaint to the Preliminary Proceedings Sub-committee until that inquiry or investigation has been concluded.
- (10) The Council shall not refer anonymous complaints to the Preliminary Proceedings Sub-committee except in accordance with the following provision. 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, and may in the interests of public protection refer the matter to the Preliminary Proceedings Sub-committee for consideration.

PART IV

Removal and Suspension from the Register

13. (1) The circumstances in which a Registrant may be removed or suspended from the Register or a part of the Register by the Conduct Sub-committee are:
- (a) that the Conduct Sub-committee has made a finding of Misconduct against the Registrant (including a finding that the Registrant has failed to comply with conditions imposed under Sections 46, 47, 48 or 50 of the Act, or that the Registrant has secured Registration by fraud);
 - (b) that a Charge of Misconduct against the Registrant has been referred to the Conduct Sub-committee and the Registrant has been found unfit to plead;
 - (c) that the Registrant has been convicted (at any time) in the United Kingdom of a criminal offence or has been convicted (at any time) elsewhere of an offence which, if committed in the United Kingdom would constitute a criminal offence, whether while registered or not and there has been a finding of misconduct by the Conduct Sub-committee;
 - (d) that the Registrant has been charged with a criminal offence and a Criminal Court has made findings on the facts, but the Registrant has been acquitted on the grounds of insanity and there has been a finding of misconduct by the Conduct Sub-committee.

Non disclosure in the public interest

14. (1) Notwithstanding any reference in the SCHEDULES to these Rules regarding disclosure of information or documents, where the Council considers that disclosure should be withheld in the public interest, it shall not disclose the information or documents.

The Scottish Ministers having consented, the Council hereby makes these Rules.

A handwritten signature in black ink, appearing to be 'G. S. D.', written over a faint circular stamp or seal.

Convener

On behalf of the Scottish Social Services Council

Dated 9 June 2008

SCHEDULE 1

PROCEDURE OF THE PRELIMINARY PROCEEDINGS SUB-COMMITTEE

ARRANGEMENTS OF PARAGRAPHS

1. Interpretation
2. Public or private meetings
3. Initial consideration by Sub-committee
4. Notice of referral
5. Second or Subsequent consideration by Sub-committee
6. Disposal
7. Notice of Transfer
8. Notice to Complainant
9. Further investigation by the Council
10. Cancellation of hearing
11. Interim Suspension Orders
12. Review of Interim Suspension Orders

Interpretation

1. In this SCHEDULE, 'the Sub-committee' means the Preliminary Proceedings Sub-committee.

Public or private meetings

2. (1) Subject to (2) below, the proceedings of the Sub-committee shall be held in private and the Parties shall not be present.

(2) Where the Sub-committee is considering whether or not to impose an Interim Suspension Order on the Registrant's Registration the Parties are entitled to be present. The hearing may be held in public if the Registrant so requests.

Initial consideration by the Sub-committee

3. (1) Where a complaint is referred to the Preliminary Proceedings Sub-committee, the Council shall provide the Clerk with:
 - (a) a statement of the complaint;
 - (b) a copy of the signed Complaint Form (if any);
 - (c) any relevant documents or witness statements;
 - (d) recommendations for disposaland the Clerk shall fix a date for the initial consideration of the case by the Preliminary Proceedings Sub-committee and serve copies of the items referred to at (a) – (d) above on the members of the Preliminary Proceedings Sub-committee not less than 7 days before that date, provided that in exceptional circumstances this period may be shortened.

- (2) At the initial consideration of the case, the Sub-committee shall first consider whether any complaint referred to it calls into question the suitability of the Registrant to remain on the Register or part of the Register.
- (3) Where the complaint does not call into question the suitability of the Registrant to remain on the Register or part of the Register, the Sub-committee shall take no further action and the Clerk shall inform the Complainant accordingly, in writing, provided that the Sub-committee may direct the Clerk to remind the Registrant of the terms of the Code of Practice for Social Service Workers, and the fact of the reminder and the reasons therefor shall be entered on the Registrant's Registration in the relevant part of the Register.
- (4) Where the Sub-committee has determined that a complaint calls into question the suitability of the Registrant to remain on the Register or part of the Register, the Sub-committee shall adjourn its consideration of the matter to a second meeting at a date to be fixed by the Clerk.
- (5) The Sub-committee may adjourn its proceedings at any stage for the purposes of seeking further information or for any other purpose.

Notice of Referral

4. (1) Not less than 28 days before the second consideration of the Registrant's case, the Clerk shall send the Registrant and the Council a Notice of Referral.
- (2) Not less than 28 days before the second consideration of the Registrant's case, the Clerk shall additionally send the Registrant:

- (a) a statement of the complaint and any documentation in support;
- (b) a copy of these Rules

subject to the provisions of paragraph 11 (2) below.

(3) The Notice of Referral shall:

- (a) set out the complaint which calls into question the Registrant's suitability to remain on the Register or part of the Register;
- (b) invite the Registrant to make written representations upon the complaint within 14 days of service of the Notice;
- (c) inform the Registrant of the date of the hearing;
- (d) inform the Registrant that the Sub-committee, or the Council may seek further information about the complaint from the Registrant's Employer (if any), where the Registrant is registered in the part of the Register for students, the University, or from any other source.

Second or Subsequent consideration by Sub-committee

5. (1) At the second or any subsequent consideration of the Registrant's case, the Sub-committee shall consider the complaint against the Registrant and any information obtained from the Registrant's Employer, where the Registrant is registered in the part of the Register for students, the University, or other source.

(2) The Sub-committee shall then consider the Council's recommendations for disposal together with any further documentation provided by the Council, and any written representations and documentation provided by the Registrant.

- (3) Any documentary evidence to be considered by the Sub-committee, shall be lodged with the Clerk, 7 days before the meeting. In exceptional circumstances, the Convener of the Sub-committee may waive this requirement.
- (4) Except where the Sub-committee is considering whether or not to make an Interim Suspension Order, the Sub-committee shall not receive oral testimony, or oral representations.
- (5) The Sub-committee may adjourn its proceedings at any stage for the purposes of seeking further information or for any other purpose.

Disposal

6. (1) At the second or subsequent consideration of the Registrant's case, the Sub-committee may:
 - (a) refer the case to the Conduct Sub-committee under the Conduct Procedure or the Health Procedure;
 - (b) impose an Interim Suspension Order on the Registrant's Registration in the Register or part of the Register, if satisfied that such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;
 - (c) direct that further investigations should be undertaken and adjourn the matter;
 - (d) take no further action and conclude the case, provided that the Sub-committee may also direct the Clerk to remind the Registrant of the terms of the Code of Practice for Social Service Workers, and

the fact of the reminder and the reasons therefor shall be entered
on the Registrant's Registration in the relevant part of the Register.

- (2) The Sub-committee shall not refer a complaint to the Conduct Sub-committee unless it is satisfied that there is a real prospect of a finding of Misconduct in relation to the complaint.
- (3) Where the Sub-committee determines that a complaint shall not be referred to the Conduct Sub-committee, the Clerk shall within 7 days send written notification, with the reasons for the Sub-committee's decision, to the Registrant, the Council and the Employer, (if any), and where the Registrant is registered in the part of the Register for students, the University.

Notice of Transfer

7. (1) Where the Sub-committee has determined that the case should be transferred to the Conduct Sub-committee, the Clerk shall within 7 days send a Notice of Transfer to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Employer (if any);
 - (d) where the Registrant is registered in the part of the Register for students, the University.
- (2) The Notice of Transfer shall
 - (a) give reasons for the Sub-committee's decision;

- (b) state whether the case has been transferred to the Conduct Sub-committee under the Conduct Procedure or the Health Procedure, and the reasons therefor.

- (3) Where the Sub-committee has determined that the Health Procedure should be followed, the Notice of Transfer shall inform the Registrant of that fact and additionally invite the Registrant to agree within 14 days from the date on which the Notice is sent-
 - (a) to be examined (at the Council's expense) by a Medical Adviser nominated by the Council; and
 - (b) that such Medical Adviser provide the Conduct Sub-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.

Notice to Complainant

- 8. The Clerk shall within 7 days inform the Complainant (if any) of the Sub-committee's decision on whether or not the case should be transferred to the Conduct Sub-committee, and the reasons for that decision.

Further investigation by the Council

- 9. Upon receipt of the Notice of Transfer, the Council shall take such steps as it deems necessary, to arrange for the investigation and preparation of the case in relation to the Registrant for hearing.

Cancellation of hearing

10. Where, during the course of the Council's preparation of the case for hearing, it appears that the matter should no longer proceed to a hearing, or where the Legal Adviser makes such a recommendation at a Pre-hearing review, the Council shall refer the matter back to the Preliminary Proceedings Sub-committee to re-consider whether or not the complaint should be referred to the Conduct Sub-committee.

Interim Suspension Orders

11. (1) Where, at the initial or any subsequent hearing, the circumstances of the case are such that the Sub-committee considers that an Interim Suspension Order may be necessary, or an application for an Interim Suspension Order is made by the Council, the Notice of Referral shall additionally:
 - (a) inform the Registrant of the right to attend the meeting;
 - (b) inform the Registrant of the time and venue for the hearing;
 - (c) request the Registrant to inform the Sub-committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) provide the Registrant with a brief statement of the matters which appear to raise the question whether-
 - (i) the Registrant's Registration in a part of the Register should be suspended; and
 - (ii) such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;
 - (e) inform the Registrant of the right 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 Sub-committee in person or to be represented by:
 - (i) a solicitor; or
 - (ii) counsel; or
 - (iii) a representative from the Registrant's Trade Union; or
 - (iv) a representative from the Registrant's Professional Body, or
 - (v) where the Registrant is registered in the part of the Register for students, a representative from a student body.
 - (g) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing.
 - (h) where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission;
 - (i) the Convener of a Sub-committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (f) above;
 - (j) Any application to be represented by a person other than those listed in paragraph (f) above, shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.
- (2) Where the imposition of an Interim Suspension Order is to be considered on the grounds that such action is necessary for the protection of members of the public, the Sub-committee may dispense with service of the Notice of Referral and the provisions of paragraph 4 above will not apply, and the Sub-

committee shall re-convene for a second consideration of the matter as soon as practicable at a date to be fixed by the Clerk.

- (3) Notwithstanding paragraph (2) above, the Sub-committee shall not impose an Interim Suspension Order on a Registrant's Registration without first giving the Registrant such notice of the consideration of the matter as is reasonable in all the circumstances of the case, and allowing the Registrant, or the Registrant's representative, the opportunity to make oral submissions and written representations to the Sub-committee. The Sub-committee may adjourn for this purpose.
- (4) In addition to the procedure set out in paragraph (5) below, paragraphs 5, 9 (2) and (3) (where the hearing is held in public), 10, 11, 13, 19 (where witnesses are present), 20 (where witnesses are present) and 27 of SCHEDULE 2 shall apply at the second or subsequent consideration of the Registrant's case where the Sub-committee is considering whether or not to make an Interim Suspension Order, but in these paragraphs for the word "charge", the word "complaint" shall be understood.
- (5) Where the Sub-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 alleged facts of the case and set out the reasons why the Registrant's Registration should be made subject to an Interim Suspension Order, and may lead any evidence in support.

- (b) The Registrant (if present) shall set out the reasons why such application should not be granted by the Sub-committee, and may lead any evidence in support.
 - (c) The Sub-committee may obtain advice from the Legal Adviser.
 - (d) The Sub-committee shall deliberate in private.
 - (e) The Sub-committee shall determine the application and announce its decision, and the reasons for that decision, in the presence of the Parties.
- (6) Within 7 days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
 - (b) the Council;
 - (c) the Employer (if any);
 - (d) where the Registrant is registered in the part of the Register for students, the University.
- (7) The Notice of Decision shall:
- (a) give reasons for the Sub-committee's decision;
 - (b) where an Interim Suspension Order has been imposed, set out the period of suspension;
 - (c) inform the Registrant of the right of appeal to the Sheriff conferred by Section 51 of the Act.
- (8) A decision by the Sub-committee to impose an Interim Suspension Order shall be treated as that of the Council.

Review of Interim Suspension Orders

12. (1) The Council, or any person in respect of whom an Interim Suspension Order has been made, may request the Preliminary Proceedings Sub-committee to review the Order.
- (2) Save in exceptional circumstances, the Sub-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 Sub-committee is to be requested to review an Interim Suspension Order, a Notice of Review shall be sent by the Clerk to the Registrant and the Council not less than 28 days before the meeting.
- (4) The Notice of Review shall:
 - (a) inform the Registrant of the right to attend the meeting;
 - (b) inform the Registrant of the time and venue for the hearing;
 - (c) request the Registrant to inform the Sub-committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) where the Council has requested a review of the Interim Suspension Order, for the purpose of imposing a further Interim Suspension Order, provide the Registrant with a brief statement of the matters which appear to raise the question whether:
 - (i) the Registrant's Registration in a part of the Register should be suspended for a further period; and

- (ii) why such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;
- (e) inform the Registrant of the right 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 Sub-committee in person or to be represented by:
 - (i) a solicitor; or
 - (ii) counsel; or
 - (iii) a representative from the Registrant's Trade Union; or
 - (iv) a representative from the Registrant's Professional Body;
 - (v) where the Registrant is registered in the part of the Register for students, a representative from a student body.
- (g) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing.
- (h) where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission;
- (i) the Convener of a Sub-committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (f) above;
- (j) Any application to be represented by a person other than those listed in paragraph (f) above, shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.

- (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 Subcommittee may-
- (a) continue the Interim Suspension Order;
 - (b) vary or revoke the Interim Suspension Order;
 - (c) impose a further Interim Suspension Order, to commence upon the expiry of the existing Interim Suspension Order.
- and any such decision shall be treated as that of the Council.
- (7) Within 7 days of the conclusion of the Review Hearing, the Clerk shall send a Notice of Decision to:
- (a) the Registrant;
 - (b) the Council;
 - (c) the Registrant's Employer(s) (if any);
 - (d) where the Registrant is registered in the part of the Register for students, the University.

- (8) The Notice of Decision shall contain the matters set out in paragraph 11(7) above.

A handwritten signature in black ink, consisting of several loops and a final vertical stroke.

Convener

On behalf of the Scottish Social Services Council

Dated **9 June 2008**

SCHEDULE 2

PROCEDURE OF THE CONDUCT SUB-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, and University
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 Sub-committee and reading of Charge
17. Amendment of Charge
18. Admissions
19. Witnesses
20. Vulnerable witnesses
21. Finding of facts
22. Misconduct
23. Mitigation
24. Sanctions
25. Immediate suspension
26. Notice of Decision
27. Notes and Transcript of proceedings
28. Health Procedure
29. Amendment to the Register
30. Publication of decision
31. Resumed Hearings

Interpretation

1. In this SCHEDULE “the Sub-committee” means the Conduct Sub-committee.

Pre-hearing review

2. (1) Not less than 28 days after the matter has been referred to the Conduct Sub-committee, except in exceptional circumstances, 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 Sub-committee shall not attend the Pre-hearing review.
- (3) The Pre-hearing review may be conducted by telephone conferencing or by such method as is decided by the Legal Adviser, after consultation with the Parties.
- (4) A record of the directions issued by the Legal Adviser, any admissions, and decisions taken at the Pre-hearing review shall be maintained by the Clerk.
- (5) The Registrant may attend in person or be represented by any of the persons set out in paragraph 10 below.

- (6) The following matters shall be considered at the Pre-hearing review:
- (a) the Charge against the Registrant, prepared by the Council and sent to the Legal Adviser and the Parties in advance of the Pre-hearing review;
 - (b) any admissions of facts;
 - (c) whether the Registrant wishes to admit Misconduct;
 - (d) the names and addresses of witnesses to be called (if any);
 - (e) whether particular provisions should be made for vulnerable witnesses at the hearing;
 - (f) whether expert evidence is to be adduced;
 - (g) 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;
 - (h) any dates on which the Registrant or witnesses would be unable to attend a hearing;
 - (i) time estimate for the hearing;
 - (j) any request by the Registrant or the Council that any person be directed to produce specified material which would be relevant to the Sub-committees deliberations;
 - (k) any other relevant matters as the Legal Adviser shall determine.
- (7) The Legal Adviser may issue directions for the purpose of facilitating the hearing of the matter and regarding the production of material, the timetable for service of evidence, including any medical and expert reports, and the Statement of Facts (if any), and such directions will be complied with by the persons to whom they are addressed. If either Party objects to the issue of a

direction for the production of material, the matter will be referred to the Sub-committee in terms of paragraph 8(1). If the person to whom directions regarding the production of material are addressed does not wish to comply with the directions, that person may make representations to the Sub-committee in terms of paragraph 8(1).

- (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 Sub-committee at the hearing.
- (10) Where the Registrant wishes to admit either the alleged facts of the Charge and the issue of Misconduct, or the alleged facts of the Charge alone, the Legal Adviser shall direct the Parties to prepare an agreed Statement of Facts within a specified timescale.

Joinder

- 3. Where a Charge against the Registrant has been referred to the Sub-committee and a new complaint or complaints are received by the Preliminary Proceedings Sub-committee and subsequently transferred to the Sub-committee, the Charge may be amended in the light of the new complaint or complaints, subject to the requirements of a fair hearing.

Notice of Hearing

4. (1) As soon as practicable after the Pre-hearing review has been held, the Clerk 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 Charge, which may be amended by the Council following the Pre-hearing review, 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 Sub-committee;
 - (iii) make oral submissions to the Sub-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 Sub-committee in the event of a finding of Misconduct;
 - (f) inform the Registrant of the Sub-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 shall send a copy of these Rules with the Notice of Hearing.

Postponement of hearing

5. (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Convener of the Sub-committee at least 48 hours before the date of a hearing, other than in exceptional circumstances.
- (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 Convener of the Sub-committee.
- (4) The application shall be considered by the Convener of the Sub-committee who shall determine the application, taking into account:
 - (a) the submissions of both Parties;
 - (b) any likely prejudice to either Party;
 - (c) the public interest in the expeditious disposal of the case.
- (5) In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Clerk shall inform the Parties and the Complainant of the new hearing date, as soon as possible.

Notice to Complainant and to Employer, and University

6. The Clerk shall send a copy of the Notice of Hearing to the Complainant, and to the Registrant's Employer (if any), and where the Registrant is registered in the part of the Register for students, the University.

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 lodge with the Clerk to the Sub-committee, certified 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 documents and reports (if any), the Presenter shall consider whether there are any further documents in the Council's possession which may assist the Registrant, and shall serve copies of such documents (if any) on the Registrant and on the Clerk.
- (4) No later than 7 days before the hearing, the Clerk shall send the Sub-committee, copies of:
 - (a) the Notice of Hearing;
 - (b) any documents lodged by the Parties in terms of paragraph (1).

Procedure at hearing

8. (1) Subject to these Rules, and the requirements of a fair hearing, the Sub-committee may decide its own procedures generally and may issue directions with regard to the just and expeditious determination of the proceedings. A Sub-committee may consider representations by or on behalf of any Party or person with regard to:
 - (a) the issue of directions; or
 - (b) directions issued by the Legal Adviser

regarding the production of material in terms of paragraph 2(7). Where such representations are made to the Sub-committee, the Party or Parties as appropriate will have a right of reply and the Party or person making the representations may respond thereto, before the Sub-committee decide whether or not to issue or uphold the directions, as appropriate. If the Sub-committee decide to issue or uphold the directions, a period or further period for compliance may be specified if it is reasonable. If necessary the hearing may be adjourned to allow compliance with any such directions.

- (2) As soon as the Charge has been read out the Registrant may object to the Charge, or any part or parts of it, on a point of law, and any other Party to the proceedings may reply to any such objection. If any such objection is upheld, no further proceedings shall be taken on the Charge or that part of the Charge to which the objection relates.
- (3) If at any time during the hearing it appears to the Sub-committee that the alleged Misconduct may have been caused by, or substantially contributed to by the Registrant's physical or mental ill health, the Sub-committee may cease to consider the allegation following the Conduct Procedure and instead follow the Health Procedure. If necessary, the Sub-committee may adjourn in order to enable initial or further expert reports to be obtained.
- (4) The hearing shall be conducted in 3 stages as follows:
 - (a) preliminaries and findings of fact
 - (b) finding of 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 Sub-committee may, of its own volition, or upon the application of a witness or any of the Parties, decide that persons not connected with the hearing should withdraw from the whole or any part of the proceedings, provided always that:
 - (a) a decision to exclude the public causes no prejudice to either Party;
 - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
 - (c) the decision is made after hearing representations from both Parties.

- (3) In this paragraph, a person is connected with the hearing if that person is -
 - (a) a member of the Sub-committee;
 - (b) the Legal Adviser or the Medical Adviser to the Sub-committee;
 - (c) the Clerk to the Sub-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 Sub-committee shall conduct its proceedings in private and in the presence of the Parties, unless:

- (a) the Registrant requests that the hearing be held in public; and
 - (b) the Sub-committee is satisfied, having obtained advice from the Medical Adviser, that a public hearing would be in the Registrant's best interests.
- (5) For the purpose of arriving at any decision in relation to the hearing, the Sub-committee shall sit in private. However, the Sub-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 Sub-committee.
- (2) The Registrant may be represented by:
- (a) counsel; or
 - (b) a solicitor; or
 - (c) a representative from the Registrant's Trade Union; or
 - (d) a representative from the Registrant's Professional Body;
 - (e) where the Registrant is registered in the part of the Register for students, a representative from a Student Body.
- (3) Where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission.

- (4) The Convener of a Sub-committee may, at its discretion, permit the Registrant to be represented by a person other than those listed in paragraph (2) above.
- (5) Any application to be represented by a person other than those listed in paragraph (2) above, shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.
- (6) A person who represents or accompanies the Registrant shall not be entitled to be called as a witness at the hearing.
- (7) The Sub-committee may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the Sub-committee, has disrupted or is likely to disrupt the hearing.
- (8) The Complainant may be present at the hearing and may be called to give evidence by any Party, or by the Sub-committee, of its own motion.
- (9) 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.
- (10) Subject to paragraph 20, where the Complainant has been called to give evidence by the Sub-committee, the Parties shall have the opportunity to question the Complainant.

Evidence

11. (1) Subject to the advice of the Legal Adviser, the Sub-committee may admit evidence that would be regarded as relevant, and in terms of the Civil Evidence (Scotland) Act 1988 admissible in an ordinary civil court in Scotland;
- (2) The Sub-committee may receive oral, documentary or other evidence which appears to it to be relevant to its consideration of the case.
- (3) The Sub-committee may of its own volition, request the Parties to provide documentation or request any person to provide documentation or to give oral evidence, which it considers might assist it in determining the Charge against the Registrant.
- (4) The Sub-committee may admit documentary evidence adduced by a Party notwithstanding that such documentary 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 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. The Registrant shall be entitled to adduce evidence to the Conduct Sub-committee in rebuttal.

Burden and standard of proof

- 12. (1) The burden of proof to prove the Charge shall rest upon the Council.
- (2) Where the facts are in dispute, the Conduct Sub-committee shall decide the facts on the civil standard of proof.

Adjournment of hearing

- 13. (1) Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Sub-committee may, at any stage of the hearing, adjourn the proceedings for the purposes of seeking further information or for any other purpose.
- (2) Where the hearing has been adjourned, the Clerk shall, as soon, as practicable, notify the Parties, the Complainant and the Employer(s) (if any), and where the Registrant is registered in the part of the Register for students, the University, of the date fixed for the hearing to be resumed.

Stage 1-preliminaries and findings of fact

Attendance at hearing

14. (1) Where the Registrant fails to attend and is not represented at the hearing, the Convener shall:
 - (a) require evidence that the Registrant has been served with the Notice of Hearing in accordance with these Rules, and that reasonable efforts have been made to inform the Registrant of the hearing; and
 - (b) inquire whether any reasons for the Registrant's non attendance have been communicated to the Clerk or the Council.

- (2) Where the Sub-committee is satisfied that the Notice has been duly served on the Registrant, it may:
 - (a) hear and determine the case in the absence of the Registrant; or
 - (b) adjourn the hearing and give directions.

Fitness to Plead

15. (1) Where an issue arises as to the Registrant's fitness to plead, the Sub-committee may proceed under the Health Procedure and if so 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 Sub-committee shall receive expert evidence and submissions on these issues.

- (3) Where the Sub-committee determines that the Registrant is unfit to plead, they may 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 Sub-committee and reading of the Charge

16. (1) At the opening of the hearing, the Convener shall introduce the members of the Sub-committee and the Parties.
- (2) The Convener shall ask the Registrant to confirm the Registrant's name and Registration number.
- (3) The Clerk shall then read out the Charge against the Registrant.

Amendment of Charge

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

Admissions

18. (1) After the Charge has been read, the Convener shall ask the Registrant whether any facts alleged in the Charge are admitted, and whether the Registrant admits Misconduct.

- (2) Where any facts alleged are admitted, the Convener shall announce that such facts alleged have been found proved.
- (3) Where the Registrant admits the facts alleged, or the facts alleged and Misconduct, the Presenter shall read out the agreed Statement of Facts.
- (4) Where the Registrant admits the facts alleged but denies Misconduct, the Sub-committee shall announce a finding on the facts alleged and determine the issue of Misconduct in accordance with stage 2.
- (5) Where the Registrant has admitted Misconduct, the Convener shall announce a finding of Misconduct against the Registrant, and the Sub-committee shall proceed to determine the issue of sanction in accordance with stage 3.
- (6) Where no admissions are made, or some facts alleged remain disputed, the Presenter shall present the case against the Registrant to the Sub-committee and adduce evidence in support of those facts alleged which are not admitted.
- (7) At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and witnesses in support.

Witnesses

19. (1) Witnesses shall be sworn or required to affirm where competent.
- (2) The Sub-committee may, on the application of the Party calling the witness, agree that the witness' personal details shall not be revealed in public.

- (3) Subject to 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 Sub-committee, or by the Legal Adviser, with the leave of the Convener.
- (5) The Parties may then question the witnesses on matters arising out of the Sub-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 Sub-committee.
- (7) Witnesses shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the Sub-committee and been formally released by the Convener.

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) the Complainant and any individual against whom the Registrant's alleged behaviour was directed, where the Charge against the Registrant is of a sexual nature;
 - (f) any witnesses who complain of intimidation.
- (2) Subject to the advice of the Legal Adviser, and upon hearing representations from the Parties, the Sub-committee may adopt such measures as it considers necessary to enable it to receive evidence from vulnerable witnesses.
- (3) Measures adopted by the Sub-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 Sub-committee;
 - (c) use of screens;
 - (d) use of interpreters (including signers and translators) or intermediaries.
- (4) Where the Charge against a Registrant is sexual in nature, and where the Registrant is acting in person, the Registrant shall not be allowed to cross examine the Complainant and any individual against whom the Registrant's alleged behaviour was directed. Any cross examination in these circumstances shall be undertaken by a solicitor appointed for the purpose by the Sub-committee.

Finding of facts

21. - (1) The Sub-committee shall then consider in private whether the facts alleged in the Charge have been proved on the civil standard.
- (2) The Convener will then announce before the Parties, the Sub-committee's findings of fact. If no facts alleged have been found proved, the case will be dismissed.
- (3) Save in exceptional circumstances, the Sub-committee shall not be required to give detailed reasons for its findings on the facts.

Stage 2-Misconduct

22. (1) Where the Sub-committee has found some or all of the facts alleged proved, the Convener shall ask the Registrant whether, on the facts found proved, the Registrant admits Misconduct.
- (2) Where the Registrant admits Misconduct, the Sub-committee shall then proceed to determine the issues of sanction in accordance with stage 3.
- (3) Where the Registrant denies Misconduct, the Parties shall make representations to the Sub-committee and may adduce evidence on the question of Misconduct.
- (4) In deciding upon the issue of Misconduct, the Sub-committee shall have regard to the Code of Practice for Social Service Workers issued by the Council under Section 53(1)(a) of the Act, as amended from time to time.

- (5) The Sub-committee shall consider in private whether, on the facts found proved, the Registrant has committed Misconduct and shall announce its finding on the issue of Misconduct before the Parties.
- (6) The Sub-committee shall give reasons for its finding on the issue of Misconduct.
- (7) If the Registrant is found not to have committed Misconduct, the case will be dismissed and the hearing concluded, but the Clerk may be directed to remind the Registrant of the terms of the Code of Practice for Social Service Workers, and the fact of this direction and the reasons therefor shall be entered on the Registrant's Registration in the relevant part of the Register.

Stage 3-Mitigation

23. (1) Where the Sub-committee finds that the Registrant has committed Misconduct, the Convener shall require the Presenter to provide the Sub-committee with details of the Registrant's previous record with the Council.
- (2) The Convener will then announce the sanctions available to the Sub-committee and shall invite representations from both Parties as to the sanction to be imposed.
- (3) Where the Sub-committee is of the opinion that the finding of Misconduct may merit removal or suspension from the Register or part of the Register, the Convener shall inform the Registrant of this preliminary view, and shall invite the Registrant to make specific representations on both these sanctions.

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

Sanctions

24. (1) Upon a finding of Misconduct, the Sub-committee may:
 - (a) admonish the Registrant and direct that a record of the admonishment should be placed on the Registrant's Entry in the Register for a period of up to 5 years, provided that details of such admonition shall remain in the Council's records and may be taken into account in future Council proceedings;
 - (b) make an Order suspending the Registrant's Registration from a part or the whole of the Register, for a period not exceeding two years ('a Suspension Order');
 - (c) make an Order for removal of the Registrant's Registration from a part or the whole of the Register ('a Removal Order');

- (d) revoke any Interim Suspension Order imposed by the Preliminary Proceedings Sub-committee.
 - (e) inform the Registrant that it is minded to impose a condition or conditions on the Registrant's Registration or a part or parts of the Register and adjourn the proceedings.
- (2) Where the Sub-committee is minded to impose a condition or conditions on the Registrant's Registration in a part or parts of the Register, the Clerk shall within 7 days send a Notice of Proposal to the Registrant.
- (3) The Notice of Proposal shall:
- (a) set out the condition or conditions which the Sub-committee is minded to impose, and the reasons for the proposal;
 - (b) inform the Registrant of the right to make written representations to the Sub-committee concerning any matter that the Registrant wishes to dispute, within 14 days of service of the Notice of Proposal.
- (4) The Sub-committee shall reconvene to consider the matter as soon as practicable after the expiry of the 14 day period set out in the Notice of Proposal.
- (5) At the re-convened hearing, the Sub-committee shall take into account any written representations made by the Registrant in relation to the issue of conditions, and may consider oral submissions on the issue before determining what sanction to impose on the Registrant.

- (6) In deciding what sanction is to be imposed, the Sub-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 services; and
 - (d) the issue of proportionality.
- (7) The Sub-committee shall announce its decision on sanctions in public, and shall give reasons for its decision.
- (8) A decision by the Sub-committee on the question of sanction shall be treated as that of the Council.

Immediate suspension

25. (1) Where the Sub-committee is of the view that the Misconduct of the Registrant is such as to merit immediate suspension of the Registrant's Registration in a part or parts of the Register, or that that the protection of the public requires such an immediate suspension, it shall invite the Parties (if present) to make representations on this issue.
- (2) After hearing any representations from the Parties and receiving advice from the Legal Adviser, the Sub-committee may make an order for immediate suspension of the Registrant's Registration in a part or parts of the Register.
- (3) A decision of the Sub-committee on the issue of immediate suspension shall be treated as that of the Council.

Notice of Decision

26. (1) Within 7 days, after the conclusion of the hearing, the Clerk shall send a

Notice of Decision to:

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

Provided that the Notice of Decision sent in terms of paragraphs (c) (d) or (e) shall omit the record of advice given by the Medical Adviser.

(2) The Notice of Decision shall:

- (a) record any advice given by the Legal Adviser or the Medical Adviser;
- (b) set out the Sub-committee's findings of fact, and its decisions on Misconduct and sanction;
- (c) give reasons for the Sub-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 Sheriff set out in Section 51 of the Act;
- (f) inform the Registrant that, save in the case of a decision to impose immediate suspension, the Sub-committee's decision shall not take effect until either 14 days after the Notice of Decision has been served,

or, in the event of an appeal, until such appeal is finally determined or abandoned.

Notes and transcript of the proceedings

27. - (1) A person shall be appointed by the Council to take a verbatim note or an audio recording of the proceedings before the Sub-committee.
- (2) The Registrant and the Complainant shall, on application to the Council and on payment of a reasonable sum, be sent by the Council a transcript of the proceedings, 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 Sub-committee shall sit in private, unless the Registrant requests a public hearing and the Sub-committee having taken advice from the Medical Adviser considers that a public hearing would be in the best interests of the Registrant.
- (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 Sub-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 Sub-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 Sub-committee.
- (5) In determining the issue of Misconduct, the Sub-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 Sub-committee.
- (6) If at any time during the hearing it appears to the Sub-committee, having taken advice from the Medical Adviser, that the alleged Misconduct has not been caused by, or substantially contributed to by the Registrant's physical or mental ill health, the Sub-committee may cease to consider the allegation following the Health Procedure and instead follow the Conduct Procedure.

Amendment to the Register

29. (1) 14 days after the determination of the Sub-committee that a Registrant has committed Misconduct, or in the event of an appeal, upon the dismissal or abandonment of such appeal, the Council shall amend the Registrant's entry in the Register to record the finding of Misconduct and the sanction imposed, as appropriate.
- (2) Where an entry relating to a Registrant has been removed from the Register, the Council shall make a corresponding entry in the removed persons Register.

Publication of decision

30. (1) 14 days after the determination of the Sub-committee that a Registrant has committed Misconduct, or in the event of an appeal, upon the dismissal or abandonment of such appeal, the Council shall publish the Sub-committee's decision, by such means as it considers appropriate.
- (2) 14 days after the determination of the Sub-committee that a Registrant has committed Misconduct, or in the event of an appeal, upon the dismissal or abandonment of such appeal, the Council may also provide a copy of the Sub-committee's findings of fact and the Sub-committee's determination, to any of the regulatory bodies set out in SCHEDULE 4.

Resumed Hearings

31. - (1) Where the Conduct Sub-committee has imposed a Suspension Order, the Sub-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 Sub-committee shall seek advice from the Legal Adviser before deciding whether or not to review the Order.
- (3) The Sub-committee shall not review the Order unless in the opinion of the Sub-committee 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 resumed hearing shall be held under the Health Procedure.
- (6) Where the Suspension Order was imposed following the Health Procedure, the Sub-committee may require the Registrant to provide up to date medical reports from a medical examiner nominated by the Council, at the Registrant's own expense.
- (7) The Sub-committee may, after reviewing a Suspension Order, revoke that Order.
- (8) At the conclusion of the resumed hearing, the Sub-committee shall announce its decision, and the reasons for its decision, in public.
- (9) A decision of the Sub-committee shall be treated as a decision of the Council.
- (10) Within 7 days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant; and

- (d) the Employer(s) (if any);
- (e) where the Registrant is registered in the part of the Register for students, the University;

provided that the Notice of Decision sent in terms of paragraph (c), (d) and (e) shall omit the record of advice given by the Medical Adviser.

(11) The Notice of Decision shall:

- (a) record any advice given by the Legal Adviser or Medical Adviser;
- (b) set out the decision of the Sub-committee;
- (c) set out the reasons for the Sub-committee's decision



Convener

On behalf of the Scottish Social Services Council

Dated 9 June 2008

SCHEDULE 3

PROCEDURE OF THE RESTORATION SUB-COMMITTEE

ARRANGEMENT OF PARAGRAPHS

1. Interpretation
2. Documents to be provided to the Council
3. Documents to be provided to the Applicant
4. Notice of Hearing before the Restoration Sub-committee
5. Documents to be provided to the Sub-committee
6. Procedure at a restoration hearing
7. Decision of Sub-committee
8. Notice of Decision.
9. Time limits for making 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 Sub-committee.

- (2) An application for restoration shall be deemed to be an initial application for Registration under Sections 45 and 46 of the Act, and should comply with the provisions of the Scottish Social Services Council (Registration) Rules 2008, as amended or substituted from time to time.

Documents to be provided to the Council

2. In addition to documents specified in Rule 4 of the Scottish Social Services Council (Registration) Rules 2008, as amended or substituted from time to time, the Applicant may send to the Council any report, statement or other document which, in the Applicant’s opinion, supports the application for restoration.

Documents to be provided to the Applicant

3. (1) As soon as practicable after receipt of a completed application for restoration to the Register, the Clerk shall send the Applicant:
 - (a) a copy of the transcript of the Conduct Sub-committee hearing at which the Removal Order was made;
 - (b) any documents to be relied on by the Council;
 - (c) a Notice of Hearing before the Restoration Sub-committee; and
 - (d) a copy of these Rules.

Notice of Hearing before the Restoration Sub-committee

4. (1) The Notice of Hearing before the Restoration Sub-committee shall-
 - (a) state the date, time and venue of the hearing;
 - (b) inform the Applicant of the right to attend the hearing and make oral submissions to the Sub-committee or to be represented by:
 - (i) a solicitor; or
 - (ii) counsel; or
 - (iii) a representative from the Applicant's Trade Union; or
 - (iv) a representative from the Applicant's Professional Body.
 - (v) where the Registrant is registered in the part of the Register for students, a representative from a Student Body.
 - (c) where the Applicant is acting in person, the Applicant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission;
 - (d) the Convener of a Sub-committee may permit the Applicant to be represented by a person other than those listed in paragraph (b) above;
 - (e) any application to be represented by a person other than those listed in paragraph (b) above, shall be given or sent to the Clerk to be received not less than 7 days in advance of the meeting of the Sub-committee.
- (2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing before the Restoration Sub-committee, except with the agreement of the Applicant.

- (3) A copy of the Notice of Hearing before the Restoration Sub-committee shall be provided to the Council by the Clerk.

Documents to be provided to the Sub-committee

5. No later than 7 days before the hearing, the Clerk shall send to the Sub Committee, copies of:
 - (a) the Notice of Hearing before the Restoration Sub-committee;
 - (b) the application for restoration and any documents provided by the Applicant in support of the application;
 - (c) the transcript of the Conduct Sub-committee hearing at which the Removal Order was made;
 - (d) any documents to be relied on by the Council.

Procedure at a Restoration Sub-committee

6. (1) Subject to paragraphs (2) and (3) below, proceedings of the Restoration Sub-committee shall be held in public.
 - (2) Proceedings of the Restoration Sub-committee shall be held in private where the Removal Order was made under the Health Procedure, unless the Applicant requests a public hearing and the Sub-committee having taken advice from the Medical Adviser considers that a public hearing would be in the best interests of the Applicant.
 - (3) The Restoration Sub-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 either Party;

- (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
 - (c) the decision to sit in private is made after hearing representation from the Parties.
- (4) Notwithstanding the above, the deliberations of the Sub-committee shall be held in private.
- (5) The Presenter shall outline the history of the Applicant's case and the circumstances in which the Removal Order was made.
- (6) The Presenter may adduce to the Sub-committee any documents which were exhibited to the Conduct Sub-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 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 Sub-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 Sub-committee, and by the Legal Adviser.

- (10) The Sub-committee shall obtain advice from the Legal Adviser before determining the application for restoration.

- (11) Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Sub-committee may, at any stage of the hearing, adjourn the proceedings for the purposes of seeking further information or for any other purpose. Where the hearing has been adjourned, the Clerk shall, as soon, as practicable, notify the Parties, the original Complainant (if any), and where the Registrant is registered in the part of the Register for students, the University, of the date fixed for the hearing to be resumed.

Decision of Sub-committee

7. (1) The Sub-committee shall determine an application for restoration in two stages.
 - (2) The Sub-committee shall first consider whether the Applicant should be restored to the relevant part of 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 and competence;
 - (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 services.
 - (3) Where the Sub-committee is minded to restore an Applicant's Registration to the relevant part of the Register, 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 Sub-committee is minded to impose conditions on the Applicant's Registration in the relevant part of the Register, the Sub-committee shall inform the Applicant of this fact and adjourn the matter to a second meeting.
- (5) At least 28 days before the second meeting of the Restoration Sub-committee, the Council shall send the applicant a Notice of Proposal:
 - (a) giving the date, time and venue of the meeting of the Restoration Sub-committee;
 - (b) setting out the proposal to impose conditions on an Applicant's Registration in the relevant part of the Register and the reasons for such proposal;
 - (c) setting out the Applicant's right to make written representations to the Council concerning any matter that he wishes to dispute, within 14 days of service of the Notice;
 - (d) setting out the Applicant's right to attend the meeting and to be heard in person or through a representative; and
 - (e) enclosing copies of any material to be put before the Restoration Sub-committee.
- (6) 14 days before the second meeting of the Restoration Sub-committee, the Applicant shall provide to the Clerk, any documents on which the Applicant intends to rely.

- (7) At the second meeting of the Restoration Sub-committee, the Sub-committee shall take into account the Applicant's written representations and may consider oral representations from the Applicant before determining whether or not to impose conditions on the Applicant's Registration in the relevant part of the Register.
- (8) In deciding whether to restore an Applicant's Registration in the relevant part of the Register, and if so, whether an Applicant's Registration should be made subject to conditions, the Sub-committee shall take into account the principle of proportionality.
- (9) The Sub-committee shall give reasons for its decision.
- (10) A decision of the Sub-committee shall be treated as a decision of the Council.

Notice of Decision

8. (1) At the conclusion of the proceedings, the Sub-committee shall announce its decision and the reasons for it before the Parties (if present).
- (2) Within 7 days, after the conclusion of the hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Applicant;
 - (b) the Council;
 - (c) the original Complainant (if any);
 - (d) the Applicant's Employer (if any); and

- (e) where the Applicant is registered in the part of the Register for students, the University.

Provided that the Notice of Decision sent in terms of paragraphs (c), (d) and (e) shall omit the record of advice given by the Medical Adviser.

- (3) The Notice of Decision shall:
 - (a) record any advice by the Legal Adviser or the Medical Adviser;
 - (b) set out the Sub-committee's decision;
 - (c) specify the reasons for the Sub-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 Sheriff conferred by Section 51 of the Act.

Time limits for making application

- 9. No application for restoration to the Register shall be made to the Sub-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 Sub-committee has refused the current application for restoration, the Sub-committee may order that the Applicant's right to make any further restoration applications be suspended indefinitely ("a Barring Order").

- (2) The Sub-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 Sub-committee shall take into account the principle of proportionality.
- (4) Where a Barring Order has been made, the Applicant may apply to the Sub-committee, in writing, for permission to make any further applications for restoration.

A handwritten signature in black ink, appearing to be 'G. S. H.', written in a cursive style.

Convener

On behalf of the Scottish Social Services Council

Dated 9 June 2008

SCHEDULE 4

APPROVED REGULATORY BODIES

1. The Nursing and Midwifery Council
2. The General Teaching Council for England
3. The General Teaching Council for Northern Ireland
4. The General Teaching Council for Scotland
5. The General Teaching Council for Wales
6. The Health Professions Council
7. The General Medical Council
8. The General Dental Council
9. The British Psychological Society
10. The General Social Care Council
11. The Care Council for Wales
12. The Northern Ireland Social Care Council
13. Scottish Commission for the Regulation of Care
14. Commission for Social Care Inspection
15. Care Inspectorate for Wales
16. Health and Personal Services Regulation and Improvement Authority
(HPSSRIA)
17. Royal Pharmaceutical Society of Great Britain



Convener

On behalf of the Scottish Social Services Council

Dated 9 June 2008