

# AHCS incorporating RCCP Fitness to Practise Procedure

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## **Introduction - About Us**

1. The Academy for Healthcare Science ('the Academy') maintains Professional Standards Authority (PSA) accredited registers.
2. The core regulatory functions of the Academy are as follows.
  - a. Set and maintain standards of practice and conduct.
  - b. Maintain registers of qualified professionals.
  - c. Assure the quality of education and training which leads to eligibility to apply for registration.
  - d. Require Registrants to keep their skills up to date through continuing professional development.
  - e. Consider and investigate concerns about the fitness to practise of registrants, taking action where necessary to protect the public, declare and uphold proper professional standards and/or maintain public confidence in the profession.

## **The purpose of this document**

3. This document sets out the process the Academy will follow when receiving, and investigating a concern raised about a Registrant's fitness to practise.
4. The terms 'Advisor', 'Complainant', 'Concern' and 'Registrant' are used throughout this document and their meanings are as follows:
  - Advisor** – An appropriate person who will provide support and advice to Panels. The decision as to which advisor will support each Panel will be made by the Registrar based on each case.
  - Complainant** – A person who raises a concern about a Registrant.
  - Concern** – Any matters about a Registrant's fitness to practise which are brought to the Academy's attention.
  - Registrant** – Someone registered with the Academy about whom a concern has been raised.
5. This document will assist stakeholders including complainants and registrants to understand the Academy's Fitness to Practise process.
6. The Academy will keep this document under regular review and update it from time-to-time.
7. The Academy has the right to issue guidance concerning the application of this Procedure or any part of it (including but not limited to guidance concerning Accepted Outcomes, Interim Orders

and Sanctions) and to amend or revoke any such guidance issued. Although any guidance issued by the Academy is not binding, where relevant, it should be taken into account by the Academy, panel members and Registrants.

### **Fitness to Practise**

8. The Academy will only investigate a concern that relates to a Registrant's fitness to practise.
9. Fitness to practise is where a Registrant has the necessary skills, knowledge, character and health to do their job safely and effectively.
10. Fitness to practise is not just about professional performance, it also includes acts by a Registrant which may affect public confidence in the Registrant and their profession.
11. A Registrant's fitness to practise can be impaired (negatively affected) on one or more of the following grounds:
  - a. Misconduct
  - b. Lack of competence
  - c. Physical or mental health
  - d. A determination by another professional regulatory body
  - e. A criminal conviction or caution in the UK for a criminal offence, or a conviction elsewhere for an offence which, if committed in the UK, could constitute a criminal offence

### **Raising a concern**

12. Anybody can raise a concern about a Registrant's fitness to practise. This includes members of the public, patients, employers, third parties and other healthcare professionals.
13. The Academy's Registrar ('the Registrar') has the discretion to engage the fitness to practise process in circumstances where the Academy becomes aware of any concern that may call into question a Registrant's fitness to practise. This includes cases where a Registrant discloses information that appears to suggest that their fitness to practise may be impaired. Alternatively, a concern may be identified from information in the public domain or otherwise from any apparently credible evidence provided to the Academy.

14. However, they come to the attention of the Academy, all concerns are dealt with in accordance with the procedure below.

### **Decision making panels**

15. The Academy will maintain a list of panel members eligible to sit on the following decision making panels. These panels are convened when required to consider cases.
  - a. Investigating Panel
  - b. Interim Orders Panel
  - c. Fitness to Practise Panel
  - d. Appeal Panel
16. A panel member may sit on more than one of the above panels, but the panel members allocated to deal with a particular matter must not have had any dealings with the concern in question at an earlier stage of the fitness to practise process. The exception to this is that a panel member of the Interim Orders Panel may be party to multiple Interim Order decisions in respect of the same concern.
17. To be properly constituted, panels require three members, including at least one registrant member (defined as someone registered with the Academy) and one lay member.
18. All Panels will be supported by appropriate Advisors, and at all Fitness to Practise hearings, a Legal Advisor will be appointed to advise the panel on matters of law and procedure and to ensure that the proceedings before the panel are conducted fairly. The Advisors will assist in the drafting of the Panel's decision and reasons.

### **Stage one: Investigation**

#### **Screening and preliminary investigation**

19. All concerns will be acknowledged within 28 days of receipt. All Complainants will be provided with a copy of this Fitness to Practise Procedure.
20. All concerns will initially be considered by the Registrar. During this initial consideration, the Registrar may, at their discretion:

- a. carry out any investigation they consider necessary in order to decide whether a concern should be referred to an Investigating Panel; and/or
  - b. carry out any investigation they consider necessary to ensure that an Investigating Panel is provided with sufficient information and/or evidence about a concern to carry out its role effectively.
21. Anonymous concerns will not normally be accepted unless it is possible to gather corroborating evidence.
22. Having reviewed a concern and following any investigation carried out in accordance with paragraph 20, the Registrar may:
  - a. refer the concern to the Investigating Panel; or
  - b. decide that no further action is to be taken in respect of the concern on the basis that:
    - i. it does not amount to a fitness to practise concern (as outlined in paragraphs 9 to 11);
    - ii. it has been raised anonymously and is not verifiable by other means (as outlined in paragraph 21);
    - iii. it appears to be vexatious; or
    - iv. it would otherwise not be in the public interest to proceed with the concern any further.
23. The Complainant will be notified of any decision taken under paragraph 22. If the decision is to take no further action in respect of the concern, the Complainant will be notified of the reasons for the decision. The Registrar may notify the Registrant of any decision to take no further action in respect of a concern.
24. Alternatively, in the case of a determination by another professional regulatory body, the Registrar may utilise the Accepted Outcomes procedure.

### **Accepted Outcomes**

25. The 'Accepted Outcomes' procedure may be used where a Registrant has been previously registered with a statutory regulator overseen by the Professional Standards Authority (PSA) and has been the subject of fitness to practise proceedings which have led to their removal from that register.

26. The Accepted Outcomes procedure allows the Registrar, in limited circumstances, to in effect 'ratify' the decision of the other regulator, without the need for duplicate proceedings.
27. The Registrar may instigate the Accepted Outcomes procedure where they consider:
  - a. the determination of the regulator to be relevant to the Registrant's registration with the Academy; and
  - b. that removal from the Academy's register would be a proportionate response in all the circumstances, having regard to the need to protect the public, declare and uphold proper professional standards and/or maintain public confidence in the profession.
28. Where the Registrar considers that the Registrant should be removed from the Academy's register as outlined in paragraph 27, the Registrant will be notified of the intended action and the reasons for that action. The Registrant will be provided with 28 days in which to provide any representations.
29. If the Academy becomes aware that the Registrant has commenced an appeal against the finding of the relevant statutory regulator, the Accepted Outcomes procedure shall be stayed until such time as that appeal has been concluded.
30. Having considered any representations received, the Registrar will make the final decision about whether to remove the Registrant's name from the Register and will notify the Registrant of the outcome.
31. Where the Registrant's name is removed from the Register, they may appeal against the decision as if it were a decision of a Fitness to Practise Panel.
32. Any decision to remove a Registrant's name from the Register will not come into force until 28 days have elapsed from the date on which the Registrant was notified of the decision under paragraph 30 or, if the decision is appealed, until the determination of that appeal.
33. The Registrar may, at their discretion, review a decision to remove a Registrant using this procedure where there is compelling new evidence which was not available at the time of the first assessment of the matter. Examples of such evidence include, but are not limited to, the following:
  - a. Evidence that the Registrant is not the person referred to in the accepted decision of the statutory regulator.

- b. Evidence that the Registrant has successfully appealed against the accepted decision of the statutory regulator.
34. Where a Registrant is subject to fitness to practise action by another relevant regulator short of removal from the register, or where the Registrar determines that the Accepted Outcomes procedure should not be used, any concern will be dealt with in accordance with the other provisions of this Procedure.

### **Investigating Panel**

35. When a concern is referred to an Investigating Panel, the Registrar must write to the Registrant as soon as reasonably practicable to inform them that a concern has been raised about their fitness to practise and that the matter will be formally investigated and then considered by an Investigating Panel.
36. The Registrant must be provided with a summary of the allegations against them and copies of any documentation which the Academy has sent to or proposes to put before the Investigating Panel in relation to the concern, along with a copy of this Procedure. The Registrant must be informed of their right to submit a response to the Investigating Panel and the Registrant must be afforded a period of 28 days to provide that response. For the avoidance of doubt, the Investigating Panel may not consider any allegations or any evidence against a Registrant unless the Registrant has had at least 28 days to respond to that allegation or piece of evidence. That means, for example, in the event of further evidence being obtained at the request of an Investigating Panel, the Registrant must be given a further 28 days to respond to any additional evidence before the Investigating Panel may make a decision under paragraph 40.
37. Where the Registrant concerned is also under investigation in relation to the same matter by the police or other body, or there are ongoing criminal, civil or regulatory proceedings, the Registrar may, at any time, defer the investigation or referral of a concern until any other investigation and/or proceedings have concluded. The Registrant will be notified of any decision to defer the investigation.
38. Where the Registrant fails to respond within the time periods set out in paragraph 36, and the

Investigating Panel is satisfied that the required documents have been properly served on the Registrant in accordance with this Procedure, they may proceed with their decision without a response from the Registrant.

39. An Investigating Panel will meet in private to consider the documentation and any response from the Registrant as soon as practicable after the Registrant has been given the required time to respond.
40. An Investigating Panel may:
  - a. request that further investigation be carried out in relation to specific matter(s) to enable it to reach a decision;
  - b. close the case with no further action;
  - c. close the case and issue a Letter of Advice to the Registrant (see paragraphs 45 and 46);
  - d. close the case and issue a Warning to the Registrant (see paragraphs 47 - 51); or
  - e. refer the case to a Fitness to Practise Panel for a hearing.
41. In determining whether to refer a case to a Fitness to Practise Panel for a hearing under paragraph 40, an Investigating Panel will apply the 'realistic prospect' test to the concern.
42. The realistic prospect test is satisfied where:
  - a. there is a realistic prospect of the facts alleged against the Registrant being proved at a Fitness to Practise Hearing; and
  - b. if the alleged facts are proven, a realistic prospect of the Registrant's fitness to practise being found to be impaired
43. A decision of an Investigating Panel to close a case with no further action may only be reconsidered where there is compelling new evidence which was not available at the time of the first assessment of the concern. Where such evidence is obtained by the Academy, an Investigating Panel may make any decision it could have made when it first considered the concern.
44. The Registrant should be advised of the decision of an Investigating Panel made under paragraph 40 and the reasons for that decision as soon as practicable after the decision has been made.

## Letters of advice and warnings

45. In cases where an Investigating Panel determines that the realistic prospect test has not been met, it may consider whether to issue a Letter of Advice or Warning.
46. A Letter of Advice does not have any formal status, but it allows an Investigating Panel to provide advice to a Registrant arising from a concern it has considered. This may include, for example, advice to undertake further training or feedback related to the circumstances of the concern.
47. An Investigating Panel may decide to conclude the case with a formal warning. A warning will be appropriate when all of the following requirements are met:
  - a. The Panel is satisfied that a concern fails to meet the realistic prospect test for referral to a Fitness to Practise Panel;
  - b. The Panel is satisfied that the Registrant's conduct or performance has fallen below the expected standards to an extent warranting a formal response;
  - c. Some or all of the factual allegations are either admitted by the Registrant or have not been disputed by the Registrant.
48. The purpose of a Warning is to indicate to the Registrant that, whilst not requiring a referral to a Fitness to Practise Panel, their conduct, practice, or behaviour demonstrates a departure from the Academy's standards and should not be repeated.
49. When an Investigating Panel decides that it is appropriate to issue a Warning, they must outline why they consider a Warning to be appropriate and formulate the wording of the proposed Warning. The Registrant must be notified of the reasons for and the wording of the proposed Warning and be given 28 days to make written representations about whether any Warning should be issued and/or the proposed wording. If representations are made, an Investigating Panel must consider these representations and decide whether to give the proposed Warning or not.
50. A Warning is not shown on the public facing Academy Register, but it is recorded against the Registrant's entry internally.
51. A Warning forms part of a Registrant's Fitness to Practise history with the Academy and will stay on the Registrant's internal record for three years. A Warning may be considered by an Investigating Panel if a complaint of a similar nature is received within those three years.

## **Interim orders**

52. At any point after receiving a concern, the Registrar can make an application to an Interim Orders Panel for an Interim Order.
53. Applications for Interim Orders heard by an Interim Orders Panel are determined without a hearing. However, an Interim Orders Panel may only determine an Interim Order application if it is satisfied that the Academy has sent a notice to the Registrant setting out the following details:
  - a. the reason(s) why the Academy has applied for an Interim Order;
  - b. any evidence in support of the application;
  - c. the date by which the Registrant must provide any written representations or other evidence on which they wish to rely; and
  - d. notification that an Interim Orders Panel may proceed to determine the Interim Orders application in the absence of any response from the Registrant.
54. An Interim Orders Panel may not impose an Interim Order unless it is satisfied that the Academy has served the Registrant with a notice, in accordance with this Procedure, that complies with the requirements of paragraph 53, and that the Registrant has had at least seven days to respond to it.
55. An Interim Orders Panel may only impose an Interim Order if it is satisfied that it is:
  - a. necessary for the protection of the public;
  - b. in the public interest; or
  - c. in the interest of the Registrant.
56. In determining an application for an Interim Order, the Interim Orders Panel does not make findings of fact. If a Panel concludes that an Interim Order is appropriate, it must decide whether to impose an Interim Conditions of Practice Order or an Interim Suspension Order. An Interim Orders Panel must ensure that any Interim Order imposed is proportionate.
57. An Interim Orders Panel may impose an Interim Order for an initial period of up to 18 months. All Interim Orders must, unless a Registrant expressly waives their right to a particular review in writing, be reviewed every six months and reviews are also determined without a hearing. Unless expressly waived in writing, a review may not proceed unless the Academy has served the Registrant with a notice that complies with the requirements of paragraph 53, and the Registrant has had at least seven days to respond to it.

58. When reviewing Interim Orders, the Panel must apply the requirements in paragraph 55 and may:
  - a. maintain the Interim Order in place;
  - b. replace an Interim Suspension Order with an Interim Conditions of Practice Order;
  - c. replace an Interim Conditions of Practice Order with an Interim Suspension Order;
  - d. vary an Interim Conditions of Practice Order; or
  - e. revoke an Interim Order
59. Either the Academy or the Registrant may apply for an early review where they believe there has been a material change of circumstances.
60. Where an application for an early review is made, the Interim Order will then be reviewed by a Panel, in the same manner and applying the same principles as at any other Interim Order review.
61. The Registrant has the right to appeal against any decision of the Interim Orders Panel, in accordance with paragraph 157 of this Procedure.
62. As soon as reasonably practicable after the conclusion of any meeting of an Interim Orders Panel, the Academy shall send a notice of decision to the Registrant which must provide full details of any Interim Order made by the Panel, the Panel's reasons for its decision and it must notify the Registrant of their right to appeal. While the details of any Interim Order made will be public, the Interim Order Panel's reasons are private. Interim Order decisions made without a hearing come into effect on the day after the relevant notice of decision is sent to the Registrant. In contrast, any Interim Order decision made at a hearing comes into effect on the day it is made.
63. Where the Academy's fitness to practise proceedings have not concluded within 18 months, the Academy may apply to extend (or further extend) an Interim Order.
64. An application by the Academy to extend (or further extend) an Interim Order must be considered by an Interim Orders Panel at a hearing. All such hearings will be conducted in private. The rules in paragraphs 96 to 109 apply. The Academy must send the Registrant a notice of hearing which must include the details specified in paragraph 53, the date and time of the hearing and the remote hearing access details or venue of the hearing. The notice must inform the Registrant of their right to be represented at the hearing and their right to submit documents or give evidence at the hearing. The hearing may proceed in the absence of the Registrant if the Interim Orders

Panel is satisfied that a notice of hearing (which complies with the requirements of this paragraph) has been sent to the Registrant and that the Registrant has had at least seven days' notice of the hearing. Any Interim Order decision made at a hearing comes into effect on the day it is made. However, the Academy shall send a notice of decision to the Registrant which must provide full details of any decision made by the Panel, the Panel's reasons for its decision and it must notify the Registrant of their right to appeal.

65. When considering an application by the Academy for an extension (or further extension) of an Interim Order, the Interim Orders Panel must be satisfied that there are good reasons why the fitness to practise proceedings have not been concluded within 18 months from the imposition of an Interim Order. If it is satisfied that there are good reasons, the Interim Orders Panel may (applying the test in paragraphs 55 to 56) extend (or further extend) an Interim Order by up to six months and may exercise any of the powers set out in paragraph 58.
66. There is no limit on the number of extensions to an Interim Order that may be applied for by the Academy or granted by the Interim Orders Panel, provided the requirements above are satisfied.
67. The Registrant may appeal against any decision to extend (or further extend) an Interim Order (see paragraph 157).
68. An interim order will be automatically extinguished when a Fitness to Practise Panel makes the following decisions:
  - a. a finding that a Registrant's fitness to practise is not currently impaired;
  - b. the imposition of a sanction on a Registrant's registration; or,
  - c. the formal approval of a Consensual Disposal agreement.
69. If an interim order is imposed pending a decision under the Accepted Outcomes procedure, the order will be extinguished at the point at which any decision under that procedure takes effect.

### **Stage two: Post Investigating Panel**

#### **Consensual disposal**

70. Consensual disposal is an alternative outcome by which the Registrant and the Academy agree that a concern will be resolved without the need for a contested hearing.

71. Where an Investigating Panel refers a case to a Fitness to Practise Panel either the Registrant or the Academy may seek to utilise the consensual disposal process at any time before a full hearing has started.
72. The Academy must be satisfied that it is appropriate for a concern to be dealt with under the consensual disposal process, taking into account the Academy's role in protecting the public, declaring and upholding proper professional standards and upholding public confidence in the profession.
73. The procedure will only apply where the Registrant accepts the facts of the allegation(s) and that their fitness to practise is currently impaired. The Academy will send the Registrant the particulars of allegation(s) and supporting documents.
74. The Academy may require the Registrant to agree a set of facts pertaining to the allegation(s) and may require the Registrant to provide evidence of insight, reflection or remediation including but not limited to references or testimonials and evidence of any relevant training or other remedial steps.
75. The Academy and the Registrant must agree a bundle of all relevant documents, to be sent to a Fitness to Practise Panel without the need for the parties to attend a hearing.
76. A Fitness to Practise Panel will consider the matter on papers and will also consider the agreement between the Academy and Registrant as to sanction.
77. A Fitness to Practise Panel will have the full range of sanctions available to it, as they would in a full fitness to practise hearing and will decide what sanction it considers to be appropriate.
78. A Fitness to Practise Panel can refer the matter to a hearing if they believe consensual disposal is not the appropriate method for dealing with the concern. A Fitness to Practise Panel will need to be satisfied that following the consensual disposal process is not contrary to the public interest.
79. The Registrant will be notified of the sanction proposed by the Fitness to Practise Panel and will have the opportunity to review the agreement and accept the sanction.
80. If the Registrant and/or the Academy do not agree to the sanction proposed by the Fitness to Practise Panel in the consensual disposal process, or if a Fitness to Practise Panel decide that the case is not suitable for consensual disposal, the matter will be dealt with instead by way of a

hearing before a Fitness to Practise Panel. The Panel conducting the hearing must not be told about the agreement between the Registrant and the Academy unless (and to the extent) that both the Academy and the Registrant consent to this.

### **Cases referred to a Fitness to Practise Panel**

81. Following a case being referred to a Fitness to Practise Panel, the Academy will prepare the case for a hearing. This may include taking witness statements, obtaining further documentary evidence, or procuring an expert report, for example. The Academy will then draft formal allegations setting out the Academy's case. The Academy will generally instruct legal representatives to assist with this process.
82. In cases where a Fitness to Practise Panel is considering an allegation of impaired fitness to practise on the grounds of physical or mental health, the Academy may ask the Registrant to undergo a medical assessment and/or medical testing. The report will be sent to the Registrant and form part of the documents considered by the Fitness to Practise Panel at the hearing.
83. Once the case is ready for Hearing, the Academy will provide the Registrant with an estimated timeframe for the Hearing and a listing window.
84. A listing window is a period in time in which the hearing may take place. The Academy will ask the Registrant to confirm their dates to avoid and will take the Registrant's availability into consideration when listing the hearing. The Academy will also ask the Registrant to indicate whether any admissions will be made in advance of the Hearing and whether they plan on relying on live witness evidence at the hearing and an estimate of how much time the witness(es) will take. The Registrant should provide the Academy with their witnesses' dates to avoid at this time, where relevant.
85. When a hearing date has been fixed, the Registrant will be informed of this as soon as possible. They will also be notified of the requirements for disclosure of evidence outlined in paragraphs 89 – 94.

### **Notice of hearing**

86. No later than 28 days before a hearing of a Fitness to Practise Panel, the Academy shall send the Registrant a notice of hearing.
87. The notice of hearing shall inform the Registrant of:
  - a. the date, time and location (if applicable) of the hearing;
  - b. the allegation(s) against the Registrant;
  - c. their right to:
    - i. attend the hearing;
    - ii. give evidence to the panel;
    - iii. make oral submissions to the panel either in person or through a representative (such as barrister, solicitor, professional body or trade union representative);
    - iv. call and cross-examine witnesses; and
  - d. the possible sanctions open to the panel in the event of a finding of impairment; and
  - e. the panel's power to proceed and determine the matter in the absence of the Registrant, or the Registrant's representative, at the hearing.
88. The hearing shall not be fixed for any date earlier than 28 days from the day after the sending of the notice of hearing except with the agreement of the Registrant.

### **Disclosure of case and service of documents**

89. No later than 42 days before the date of hearing, the Academy shall serve on the Registrant a draft hearing bundle containing the allegations, and copies of all witness statements and documents upon which it intends to rely.
90. No later than 28 days before the date of the hearing, the Registrant shall:
  - a. Confirm which of the allegations are admitted and which are denied.
  - b. In respect of any witnesses relied upon by the Academy, confirm as follows:
    - i. whether any witnesses will be required to attend the hearing to give live evidence;
    - ii. whether the statements of any witnesses can be agreed either in their entirety or with redactions;

- c. In respect of the documents contained in the draft hearing bundle, whether there are any objections to these documents being relied upon and/or any requests for redaction to those documents.
  - d. serve on the Academy copies of all documents and witness statements upon which they intend to rely.
- 91. Upon receipt of the Registrant's case, the Academy shall (regardless of whether it has previously done so) consider whether there are any further documents in the Academy's possession which may assist the Registrant, and shall serve copies of such documents, if any, on the Registrant.
- 92. The Academy shall also respond to the Registrant in relation to any objections to documents and/or requests for redactions. Where agreement can be reached, the documents should be edited as required before being provided to the Panel. Where agreement cannot be reached between the parties, this will need to be resolved by the Panel at the hearing as a preliminary matter.
- 93. No later than 7 days before the hearing, the Academy shall send to members of the panel copies of:
  - a. the notice of hearing; and
  - b. the documents referred to in paragraphs 89 to 91.
- 94. Documents disclosed by either party outside of the timeframes stipulated in paragraphs 89 to 90 may only be relied upon with the permission of the Panel.

### **Joinder**

- 95. A Panel may determine together two or more cases against a Registrant and/or cases against two or more Registrants. If the Academy proposes that two or more cases should be heard together, the Registrant(s) must be notified at least 42 days before any hearing. If a Registrant objects to this course of action, any objection will be considered without a hearing by a Fitness to Practise Panel, which will decide whether the cases should be heard together or not.

## **Stage three: Hearings**

### **General rules related to hearings**

#### **Absence of the Registrant**

96. Where:
- a. the Registrant has been notified of the hearing in accordance with paragraphs 86 to 88; and
  - b. the Registrant does not attend and is not represented; the Fitness to Practise Panel may nevertheless proceed with the hearing if it is satisfied that reasonable steps have been taken to give notice of the hearing to the Registrant and that it is in the public interest to proceed.
97. The power of the Fitness to Practise Panel to proceed in the absence of an applicant at a restoration hearing is set out in paragraph 186. The power of the Fitness to Practise Panel to proceed in the absence of a Registrant at a review hearing is set out in paragraph 148. The power of the Interim Orders Panel to proceed in the absence of a Registrant is set out above. The power of the Appeal Panel to proceed in the absence of a Registrant is set out in paragraphs 166 and 174.

#### **Vulnerable witnesses**

98. At any hearing before any Panel, the following may (if the quality of their evidence is likely to be adversely affected as a result) be treated as a vulnerable witness:
- a. any witness under the age of 17 at the time of the hearing;
  - b. any witness with a mental disorder within the meaning of the Mental Health Act 1983;
  - c. any witness who is significantly impaired in relation to intelligence and social functioning;
  - d. any witness with disabilities who requires assistance to give evidence;
  - e. any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
  - f. any witness who complains of intimidation.
99. Subject to any representations from the parties and the advice of the appropriate Advisor, any Panel may adopt such Orders as it considers reasonable and desirable to enable it to receive evidence from a vulnerable witness.
100. Where a case concerns an allegation of a sexual nature, the Registrant shall not be permitted to

cross-examine the Complainant without the consent of that person. Where a Registrant is not represented, a Fitness to Practise Panel must make directions (either on the papers or at a hearing) as to how cross-examination of the Complaint should be conducted. Both the Academy and the Registrant must be given a reasonable opportunity to make representations to the Fitness to Practise Panel about how matters should proceed.

### **Hearing Procedure**

101. At the opening of a hearing, the Chair shall introduce the members of the panel and the parties. Subject to the requirements of a fair hearing, Panels may thereafter decide their own procedures generally and may postpone or adjourn any hearing and/or issue directions about the just and prompt determination of the proceedings.
102. All hearings shall be conducted in the presence of the parties, unless the panel decides to proceed in the absence of the Registrant.
103. Fitness to Practise Panel and Appeal Panel hearings shall be conducted in public unless, after hearing representations from both parties (where available), the Panel decides that all or part of a hearing should be conducted in private and/or that all or part of the reasons for a decision should be private. In deciding whether to depart from the general rule that matters are dealt with in public, the relevant panel should consider:
  - a. the interests of justice;
  - b. the Registrant's interests; and/or
  - c. the interests of any person giving evidence, any patient or service user and/or any relevant third party
104. At any hearing, a Registrant (or applicant) may be represented by any person, whether or not they are legally qualified, so long as they are not an employee or agent of the Academy or an existing Academy panel member and the Academy may be represented by any person other than one of its existing Panel members.
105. Any Panel may exclude from the whole or part of a hearing, any person whose conduct, in the opinion of the Panel, has disrupted or is likely to disrupt the hearing.

106. Before arriving at any decision, a Panel shall sit in private and in the absence of the parties. Any announcement of a decision shall be made in public subject to the power to proceed in private set out above.

### **Evidence**

107. Subject to the advice of the appropriate Advisor, the requirements of a fair hearing and of relevance, any Panel may:

- a. admit evidence whether or not it would be admissible in a UK court of law;
- b. exclude evidence, where doing so ensures fairness to the Registrant and/or the Academy.

108. Any Panel 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.

109. 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 conviction or finding and the underlying facts.

### **General order of proceedings at Fitness to Practise Panel hearings**

#### **Reading of the allegations**

110. The following rules are applicable to hearings before the Fitness to Practise Panel when it is considering an allegation that a Registrant's Fitness to Practise is impaired, but they do not apply to review or restoration hearings and nor do they restrict a Panel's power to decide its own procedure subject to any relevant advice from the Legal Advisor and the requirements of a fair hearing. The proceedings shall generally be conducted in four stages, being:

- a. preliminary matters and findings of fact;
- b. findings on the Ground(s);
- c. deciding whether the Registrant's fitness to practise is currently impaired; and
- d. mitigation and sanction (where applicable).

111. The Chair shall read out the allegations against the Registrant.

112. After the allegations have been read, the Chair shall ask the Registrant whether any facts alleged in the allegations are admitted.

113. Subject to the requirements of a fair hearing, the Panel may (on the application of a party or on its own initiative) amend the allegations at any stage prior to making its findings of fact.
114. The panel must hear representations from the parties, (and take advice from it's appropriate Advisor) before deciding if the allegations should be amended.

### **Presentation of the Academy's case**

115. The Academy shall present the case against the Registrant to the panel, make an opening submission and present evidence in support (including by the calling of witnesses) of those relevant facts which are not admitted.

### **Witnesses**

116. Witnesses shall be sworn or required to affirm.
117. The Panel may, on the application of the party calling the witness, agree that the personal details of the witness shall not be revealed in public.
118. 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.
119. Witnesses may then be questioned by the Panel.
120. The parties may then question the witnesses on matters arising out of the Panel's questions. The party calling the witness shall question the witness last.
121. Any further questioning of witnesses shall be at the discretion of the Chair.
122. Witnesses shall not be allowed, without permission of the Chair, to attend or watch the proceedings until after they have completed giving evidence to the Panel and been formally released by the Chair.

### **Half-time submission**

123. At the close of the Academy's case, a Registrant may submit that the Academy has not presented sufficient evidence to demonstrate that, taken at its highest:
  - a. the facts of the Allegation(s) are capable of proof; and/or
  - b. the Ground(s) are capable of being made out; and/or

c. there is a realistic prospect of a finding of impairment.

124. The Panel will consider any such submission(s) under paragraph 123 after having heard representations from both parties and after having received any such advice as it considers necessary.

### **Registrant evidence**

125. At the end of the evidence presented by the Academy, the Registrant may present evidence and advance witnesses in support of their case.

### **Closing submissions**

126. The Academy and then the Registrant may make closing submissions to the panel.

127. The Legal Advisor will then provide any advice required by the panel.

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

128. The burden of proving the facts alleged in the allegations shall rest upon the Academy.

129. The standard of proof shall be on the balance of probabilities.

### **Findings**

130. The Panel shall make findings as to whether:

- a. some or all the facts alleged are proved;
- b. whether any facts found proved amount to the Ground(s) of allegation;
- c. whether by the proved Ground(s), the Registrant's fitness to practise is impaired.

131. In deciding upon the issues in paragraph 130 above, the Fitness to Practise Panel shall have regard to any applicable standards of proficiency, conduct, performance or ethics issued by the Academy.

132. The Panel shall announce its findings in public and give reasons for its findings (subject to the Panel's power to proceed in private).

## **Mitigation**

133. If the Panel finds that fitness to practise is impaired, the Registrant may address the Panel in mitigation, present references and testimonials and call character witnesses in support.
134. Where character witnesses are called, they may be questioned by the Academy and the Panel.
135. Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Academy. The Academy shall provide such mitigation documents to the Panel at this stage.
136. Where the Panel finds that the Registrant's fitness to practise is impaired, the Academy shall provide the Panel with details of any previous findings by the Fitness to Practise Panel in relation to the Registrant.
137. After hearing from the Academy and the Registrant, the Panel shall decide, in private, which of the sanctions set out in paragraph 138, if any, it should impose.

## **Sanctions**

138. Where the Fitness to Practise Panel finds that a Registrant's fitness to practise is impaired it may decide to:
  - a. take no further action;
  - b. caution the Registrant and direct that a record of the caution be placed on the Registrant's entry in the Register(s), for a period of up to five years ('a Caution Order'); or
  - c. make an order making the Registrant's registrant subject to conditions of practice for up to three years ('a Conditions of Practice Order'); or
  - d. make an order suspending the Registrant's registration for a period not exceeding twelve months ('a Suspension Order'); or
  - e. make an order removing the Registrant's name from the Register(s) ('a Removal Order'); and/or
  - f. make or revoke any Interim Order.
139. Where the Fitness to Practise Panel imposes a Conditions of Practice Order, a review hearing will take place before the order's expiry.

140. Where the Fitness to Practise Panel imposes a Suspension Order, it may, at its discretion, determine in its decision that a review hearing should take place prior to its expiration.
141. Any sanction imposed by the Fitness to Practise Panel will come into effect 28 days after the date on which the decision is notified to the Registrant or, if an appeal is made, on the date on which the appeal is finally determined.
142. On application by the Academy, or on its own initiative, and having heard from the parties, the Panel may decide to impose an interim order to cover the period of any appeal. In doing so the Panel will have regard to its findings of fact and determination in respect of current impairment and sanction. The Panel must not regard the making of an interim order following a sanction as automatic; an interim order may only be made if it is necessary for the protection of the public, otherwise in the public interest or in the Registrant's own interests. If the Panel decides that an interim order should be made it may impose either an interim conditions of practice order or an interim suspension order. Any interim order made must be proportionate and can only be made for a maximum of 18 months. If an interim order is made under this paragraph it will continue until the expiry of the appeal period or until any appeal is determined (whichever is the later). An interim order made under this paragraph is not subject to review but there is no power to extend it. A Registrant may appeal against a decision to make an interim order made under this paragraph.

#### **Notice of Decision**

143. As soon as reasonably practicable after the hearing, the Academy shall send a notice of decision to the Registrant.
144. The notice of decision referred to in paragraph 143 shall:
  - a. set out the Panel's findings of fact, its decisions on the Ground(s), impairment and sanction;
  - b. state the reasons for the Panel's decisions;
  - c. inform the Registrant of the right of appeal to the Appeal Panel; and
  - d. inform the Registrant when any sanction imposed by the panel will take effect pursuant to paragraph 141.

## **Review hearings**

145. The purpose of a review hearing is to evaluate the Registrant's compliance with a sanction and determine whether their fitness to practise remains impaired.
146. Review hearings take place before the expiration of the substantive order being reviewed.
147. Either the Academy or the Registrant may apply for an early review where they believe there has been a material change of circumstances. This includes, for example, alleged non-compliance with an Order of the Fitness to Practise Panel. On such an application, a Chair of the Fitness to Practise Panel will initially review the application and decide whether there are reasonable grounds for an early review. If the Chair decides that there are reasonable grounds for an early review, a review hearing will be organised.
148. Review hearings will be conducted in line with the 'General rules related to hearings' set out above. The Academy must send the Registrant a notice of review hearing at least 14 days before the review hearing. The notice of review hearing must inform the Registrant of their right to attend and be represented at the review hearing, along with their right to give evidence and/or submit documents for consideration at the review hearing. The notice of review hearing must also inform the Registrant of the potential outcomes of the review hearing as set out in paragraph 149 below. Finally, the notice of review hearing must inform the Registrant of the date, time and remote access details or venue of the hearing. The Fitness to Practise Panel may decide to proceed with a hearing in the absence of a Registrant where the requirements of this paragraph have been satisfied.
149. Having heard from the parties at a review hearing, the Fitness to Practise Panel may decide to:
  - a. take no further action;
  - b. extend the order for an additional period of time (for example, extend a condition of practice or suspension order);
  - c. replace the order with one of the other sanctions in paragraph 138.

### **Location of hearings**

150. Hearings and meetings under this procedure will normally take place remotely using video-conferencing technology.
151. Hearings may take place in person where either the Academy or the Registrant requests an in-person hearing. However, where an in-person hearing is held, a Panel may, after inviting representations from the parties and advice from an appropriate Advisor, order that any person (including any party, representative, witness, Panel member or appropriate Advisor) may attend the hearing (or part of it) by remote means.

### **Representation at hearings**

152. As stated above, at any hearing, a Registrant (or applicant) may be represented by any person, whether or not they are legally qualified, so long as they are not an employee or agent of the Academy or an existing Academy panel member and the Academy may be represented by any person other than one of its existing Panel members.
153. Where the Registrant or the Academy are represented, references in this procedure to the Academy or the Registrant may also be read as references to the representative of the Academy or the Registrant, unless otherwise indicated.

### **Postponement or adjournment of a hearing**

154. Hearings may be postponed by the Academy up to 14 days in advance of a hearing.
155. Where a hearing is postponed, the Academy shall send the Registrant notice of the date on which the Panel is to hold the postponed hearing.
156. Where a Panel adjourns a hearing after it has commenced, reasonable notice of the date on which the adjourned hearing will resume must be provided by the Academy to the Registrant.

## **Stage four: Post Sanction**

### **Appeals**

157. A Registrant may appeal against any decision made by the Interim Orders Panel or the Fitness to Practise Panel. A Registrant may also appeal against a decision of the Registrar to remove a Registrant's name from the register under the Accepted Outcomes procedure.
158. The Appeal Panel determines all appeals and all decisions of the Appeal Panel (whether made at a hearing or on the basis of documents only) are final.
159. Any appeal must be made within 28 days of the date on which the relevant decision was served on the Registrant in accordance with this Fitness to Practise Procedure.
160. The Appeal Panel may, on the application of a party, extend the time limit for appealing a decision (whether or not the time limit has already expired) if it is the interests of justice to do so, having regard to:
  - a. the Academy's core regulatory functions;
  - b. fairness to the Registrant;
  - c. the principle of finality
161. Any appeal or application for an extension of time for appealing must be in writing, although no specific form is required.
162. All appeals and applications for an extension of time to appeal must be sent to the address/email address specified in the notice of decision.
163. All appeals and applications for an extension of time to appeal should be acknowledged within 14 days.

### **Applications for an extension of time**

164. An application for an extension of time must explain why it is not possible to appeal within the time limit or, where the time limit has already expired, why an appeal was not made in time. The application must also be accompanied with any relevant evidence, for example, in a case where an appeal was not made in time due to ill-health, appropriate medical evidence. The onus is on the Registrant to satisfy the Appeal Panel that it is in the interests of justice to extend the time limit for appealing.

165. Applications for an extension of time to appeal are decided without a hearing unless a hearing is requested by either party (in which case the application must be determined at a hearing) or the Appeal Panel considers that the matter should be dealt with at a hearing. The Academy must be given 14 days to make submissions in relation to whether the time for appealing should be extended, before the Appeal Panel may determine any application for an extension of time.
166. Where an application for an extension of time is considered at a hearing, the hearing shall take place in private. The Appeal Panel has discretion as to the procedure to be followed during the hearing provided that fairness to both parties is ensured. A Registrant must be given 14 days' notice of any hearing to determine an application for an extension of time to appeal. The notice of hearing must inform the Registrant of their right to be represented at the hearing, the date and time and remote hearing access details or venue of the hearing. If the requirements of this paragraph are satisfied, the Appeal Panel may proceed in the absence of a Registrant.
167. Any decision to extend time or to refuse to extend time must be given in writing and reasons must be provided to the Registrant.

#### **What must an appeal include?**

168. To be valid, an appeal must:
- a. specify the decision appealed against by date and by identifying whether the decision is one made by the Interim Orders Panel, the Fitness to Practise Panel or the Registrar; and
  - b. set out the grounds on which the decision is appealed (see paragraph 173 below). The Grounds of Appeal should be numbered and should be as concise as possible.

#### **Processing appeals**

169. All valid appeals will be considered (after any necessary application for an extension of time has been determined), by an Appeal Panel Chair (without a hearing) who will make case management directions which will include directions about disclosure and exchange of documents and any other preparatory steps required for the hearing. Either party may apply in writing to vary the case management directions or for additional directions. Any such application will be decided without a hearing, unless the Appeal Panel Chair directs otherwise. The Appeal Panel may refuse to admit

any evidence not provided in accordance with the case management directions. In deciding whether to admit any evidence not submitted in accordance with any case management directions, the Appeal Panel must consider whether (and if so to what extent) admitting the evidence would disadvantage either party, along with the interests of justice.

170. At any stage before an appeal is determined, a Registrant may apply to amend their Grounds of Appeal. Applications to amend Grounds of Appeal will be decided by an Appeal Panel Chair without a hearing unless the application is made during a hearing, in which case the application will be decided by the Appeal Panel. The test to be applied is whether it is in the interests of justice to allow the amendment. The Academy must be given a reasonable opportunity to make submissions in relation to any application to amend the Grounds of Appeal.
171. Any hearing to consider case management will be conducted in private.
172. Hearings to determine the outcome of an appeal will be in public, although the Appeal Panel may proceed in private applying the principles in paragraph 103.
173. When considering an appeal, the Appeal Panel is not re-hearing the matter previously decided. The Appeal Panel may only allow an appeal where:
  - a. the decision appealed against was one which no reasonable decision maker could have made on a proper application of the law and in light of the evidence available at the time;
  - b. there was a serious procedural or other irregularity; or
  - c. new evidence is available which:
    - i. could not have been obtained with reasonable diligence and presented to the relevant Panel or Registrar before the decision appealed against was made;
    - ii. the evidence is relevant and would probably have had an important influence on the outcome of the matter in question; and
    - iii. the evidence appears credible.
174. A Registrant must be given 28 days' notice of any appeal hearing. The notice of hearing must inform the Registrant of their right to be represented at the hearing, the date and time and remote hearing access details or venue of the hearing. The notice must also enclose a copy of any case management directions. Provided the Appeal Panel is satisfied that the Registrant has been

given notice of the hearing in accordance with this paragraph, it may proceed with any appeal hearing in the absence of a registrant.

175. The Appeal Panel has discretion as to the procedure to be followed during the hearing provided that fairness to both parties is ensured. Whether or not oral evidence is called, each party shall be permitted to make submissions to the Appeal Panel.
176. The Appeal Panel may:
- a. dismiss an appeal;
  - b. where an appeal against sanction is successful, substitute a different sanction;
  - c. where an appeal against an interim order decision is successful, substitute its own decision as to whether any interim order should be made, revoked, extended or varied;
  - d. where an appeal against an Accepted Outcomes procedure decision is successful, direct that the Accepted Outcomes procedure must not be used in relation to that specific concern and refer the concern to the Investigating Panel for consideration (the concern will then be dealt with in the usual way under the provisions of this Procedure); and
  - e. in any other case, direct that a fresh hearing take place before the Fitness to Practise Panel
177. Following advice from the appropriate Advisor, the Appeal Panel shall deliberate in the absence of the parties, before announcing and confirming its decision to the parties in writing. There is no further right of appeal.

### **Restoration**

178. A person who has been removed from the Academy's register in accordance with this Fitness to Practise Procedure may only apply to be restored to the register after a period of five years has passed since the date of their removal from the register.
179. An application for restoration must be made to the Registrar.
180. Valid applications for restoration must be considered at a hearing and determined by the Fitness to Practise Panel.
181. Upon receipt of a valid application for restoration, Fitness to Practise Panel Chair will make case management directions which will include directions about disclosure and exchange of documents and any other preparatory steps required for the hearing. Any application for further case

management directions or to vary the directions must be made in writing and shall be determined without a hearing unless the Fitness to Practise Panel Chair decides otherwise.

182. At a hearing, the Fitness to Practise Panel may refuse to admit evidence that is not submitted in accordance with any case management directions. In deciding whether to admit any evidence not submitted in accordance with any case management directions, the Fitness to Practise panel must consider whether (and if so to what extent) admitting the evidence would disadvantage either party, along with the interests of justice.
183. The provisions in paragraphs 96 to 109 apply to all Restoration application hearings.
184. Hearings to determine restoration applications shall be in public but the Fitness to Practise Panel has the same power to proceed in private as it does when dealing with a substantive hearing.
185. The Academy must give an applicant 28 days' notice of any restoration hearing. The notice of hearing must:
  - a. include a copy of any case management directions;
  - b. a copy of this Procedure;
  - c. inform the applicant of their right to be represented
  - d. the date and time of the hearing;
  - e. the remote hearing access details or venue of the hearing
186. A restoration hearing may proceed in a Registrant's absence where the panel is satisfied that the requirements of paragraph 185 have been met.
187. An application for restoration is not an appeal against the decision that led to the applicant being removed from the register. It is not open to the Fitness to Practise Panel to reopen any findings whether as to the facts, impairment or sanction previously made. The burden is on the person applying for restoration to satisfy the Fitness to Practise Panel that:
  - a. they meet the general requirements for registration; and
  - b. they are a fit and proper person to practise the relevant profession, having regard to the circumstances that led to removal.
188. In deciding whether to order that an applicant be restored to the register, the Fitness to Practise Panel must therefore consider whether the applicant meets the general requirements for registration but also whether (and if so to what extent) the applicant has insight and/or has

remediated the matters that led to their removal from the register. Particular regard should be had to whether restoring the applicant to the register would be compatible with the need to protect the public, maintain proper professional standards and/or maintain public confidence in the profession and/or the Academy as a regulatory body.

189. There is no power to impose conditions on restoration to the register and the Fitness to Practise Panel must therefore be satisfied that the applicant is fit to practise immediately and without restriction.
190. The Fitness to Practise Panel has the power to determine the procedure to be followed when hearing a restoration application. However, it will generally be appropriate for the Academy's representative to begin by briefly outlining the reasons why the applicant was previously removed from the register before the applicant presents their case. The Academy should generally present any evidence it wishes to rely on after the applicant has closed their case.
191. The Fitness to Practise Panel may take advice from the Legal Advisor and deliberate in private. The Panel's decision and the reasons for it must be given in writing. Where the Fitness to Practise Panel determines that an applicant should be restored to the register, the applicant will be deemed to be registered (subject to the payment of any applicable fee) seven days after the date of the Panel's decision.
192. Following a second unsuccessful application, the Fitness to Practise Panel has the power to suspend an applicant's right to make any further applications for restoration for three years.
193. An applicant may apply for the suspension of their right to apply for restoration to be revoked but any such application will be determined on the papers by a Fitness to Practise Panel Chair and there is no right of appeal against the decision. The Fitness to Practise Panel Chair will only revoke the suspension in exceptional circumstances.

## **General Provisions**

### **Service**

194. Any form, advice, warning, notice, decision, letter or other document may be given by the Academy or Registrar to a Registrant under this procedure as follows:

- a. by post to the home address of the Registrant as it appears in the Register and shall be treated as having been sent on the day on which it was posted; or
- b. to the Registrant's last known address and shall be treated as having been sent at the time of its posting; or
- c. served on the Registrant by hand at either of the addresses at (a) and (b) above or otherwise and shall be treated as having been sent at the time of personal service; or
- d. by email to the email address provided to the Academy by the Registrant and shall be treated as having been sent at the time of its sending.

#### **Publication of fitness to practise decisions**

195. Where the Fitness to Practise panel makes a finding of impairment, the Academy will normally publish the notice of decision on the Academy's website. This will include consensual determinations agreed under paragraphs 70 - 80. The notice of decision may be redacted so as to protect the identity of third parties; to avoid disclosure of sensitive information (for example in relation to a Registrant's health); and/or to comply with the Academy's legal obligations.
196. Any sanction imposed will be identified on the Registrant's entry in the public register.
197. Where a Registrant is suspended or removed from the Register, the Academy will inform the Accredited Registers Collaborative under the agreed Information Sharing Protocol.
198. The Academy may also provide a copy of the notice of decision to any of the Statutory Regulators, other accredited registers or interested third parties if it is in the public interest to so do.
199. The following publication policy will be followed.
  - a. A Caution Order will be identified on the Registrant's entry in the public Register until its expiry.
  - b. A Conditions of Practice Order will be identified on the Registrant's entry in the public Register until its expiry.
  - c. A Suspension Order will be identified on the Registrant's entry in the public Register until its expiry.
  - d. A Removal Order will be identified on the AHCS website until five years have elapsed from the date the decision came into effect.

200. In cases where the Fitness to Practise Panel makes a finding of impairment but takes no further action, the notice of decision will normally be published on the Academy's website for a period of one year from the date of the decision.
201. Where an Interim Orders Panel imposes an Interim Order, it is published on the Registrant's entry in the public Register for the period in which that Order is in place. Notices of decision for Interim Orders are not published.
202. The publication of decision of the Fitness to Practise Panel following review hearings will depend upon the outcome of the hearing. These outcomes are as follows:
- a. If the Panel determines that no further action shall be taken, the Panel's decision will not be published and the original decision will cease to be published.
  - b. If the Panel extends an order, the decision from the review hearing will be published for the relevant period stated in paragraph 199.
  - c. If the Panel replaces the original order with another sanction, the decision from the review hearing will be published for the relevant period stated in paragraph 199.
203. The publication of decisions of the Appeal Panel will depend upon the outcome of the appeal hearing. These outcomes are as follows:
- a. If a Registrant appeals a decision of the Fitness to Practise Panel and this results in a finding of impairment being overturned, the original decision of the Fitness to Practise Panel will no longer be published.
  - b. If a Registrant appeals a decision of Fitness to Practise Panel and this results in a different sanction being imposed, the decision of the Appeal Panel will be published, and the new order will be published in accordance with paragraph 199.
  - c. If a Registrant appeals a decision of the Interim Orders Panel which results in an interim order being revoked, the interim order will no longer be publicised under paragraph 201.
204. The publication of decisions of the Fitness to Practise Panel following restorations hearings will depend upon the outcome of the hearing. These outcomes are as follows:
- a. If an application for restoration is granted, the decision will be published for 12 months.
  - b. If an application for restoration is refused, the decision will be published for 12 months.

c. If the Panel make an order under paragraph 192 suspending a Registrant's right to make further applications, the decision will be published for 3 years.

205. When making a decision on publication, including the need for redactions, the Registrar will have regard to the Academy's *Publication Policy*.