



Education Workforce Council

Disciplinary Procedures and Rules 2017

April 2017

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Section 1

Introduction

1.0 The Education Workforce Council (EWC) and its role in regulating the education workforce in Wales

The Education Workforce Council (EWC) came into force on 1st April 2015 following the reconfiguration of the General Teaching Council for Wales, and is the statutory, self-regulating professional body for education practitioners in Wales.

The aims of the EWC are to:

- contribute to improving the standards of teaching and the quality of learning in Wales;
- maintain and improve standards of professional conduct amongst teachers and persons who support teaching and learning in Wales.

In pursuing these aims, the EWC seeks to raise the status of practitioners in education and training, safeguard the interests of learners and the public and maintain public confidence in the education workforce.

Under Regulations 18 and 19 of the *Education Workforce Council (Main Functions)(Wales) Regulations 2015*, Regulations 18A and 19A of the *Education Workforce Council (Main Functions)(Wales)(Amendment) Regulations 2016*, and Regulations 4, 6 and 7 of the *Education Workforce Council (Registration of Youth Workers, Youth Support Workers and Work Based Learning Practitioners) Order 2016*, every:

- qualified teacher who carries out the specified work of a teacher in a maintained school or non-maintained special school in Wales;
- person who provides education in or for a further education institution in Wales (subject to the exclusions set out under Regulation 19(2) of the Regulations);
- school learning support worker who provides the services set out under Regulation 18A (2) of the Regulations in a maintained school or non-maintained special school in Wales; and
- further education learning support worker who provides the services set out in section 16(2) of the *Education (Wales) Act 2014* in or for a further education institution in Wales; and
- youth worker who provides youth development services for or on behalf of a relevant body (other than as a volunteer, and subject to the exclusion set out under Regulation 4(2)); and
- youth support worker who provides youth development services for or on behalf of a relevant body (other than as a volunteer, and subject to the exclusion set out under Regulation 6(2)); and
- work based learning practitioner who provides services for or on behalf of a work based learning body (other than as a volunteer, and subject to the exclusion set out under Regulation 7(2)),

must be registered with the EWC.

Under the terms of the *Education (Wales) Act 2014*, as amended, the EWC is responsible for investigating and hearing cases of unacceptable professional conduct, serious professional incompetence and/or where

a registered person has been convicted (at any time) of a relevant offence, or it appears that a registered person may be so guilty or have been so convicted.

All referrals received by the EWC are considered, investigated and heard in the public interest. This includes the protection of members of the public, the maintenance of public confidence in the education workforce and the declaration and upholding of proper standards of conduct and competence.

The EWC's powers in these matters are further set out under the *Education Workforce EWC (Main Functions) (Wales) Regulations 2015*, as amended.

The *Disciplinary Procedures and Rules* will be kept under continuous review and will be updated as and when considered appropriate by the EWC.

Registered persons subject to proceedings within these Rules may submit forms, documents and make written representations to the EWC, in English or Welsh.

In the event of any apparent conflict or inconsistency between the English language and Welsh language versions of this document, the English and Welsh versions will be treated as being of equal standing.

2.0 Key contact

Any queries regarding these procedures should be directed to:

Contact	The Fitness to Practise Team
Address	9 th Floor Eastgate House 35-43 Newport Road Cardiff CF24 0AB
Telephone	029 2046 0099
Fax number	029 2047 5850
E-mail	fitnesstopractise@ewc.wales

Section 2

Disciplinary Procedures and Rules 2017

1.0 Introduction

Introduction, citation and transitional provisions

1- (1) The Education Workforce Council, in the exercise of the powers conferred upon it by:

- (a) the *Education Workforce Council (Main Functions) (Wales) Regulations 2015*, as amended; and
- (b) all other powers enabling it in that behalf under the *Education (Wales) Act 2014*, as amended,

hereby make the following Procedures and Rules, cited as the *Disciplinary Procedures and Rules 2017*, which were approved and came into force on 1st April 2017.

- (2) The *Disciplinary Procedures and Rules 2016* are hereby revoked, but shall continue to apply in respect of hearings which are part-heard as at 1st April 2017, or in respect of which the relevant Notice of Proceedings was sent to the registered person before 1st April 2017.
- (3) Save as provided for in paragraph (2), the *Disciplinary Procedures and Rules 2017* shall apply.

Interpretation

2- (1) In these Procedures and Rules, unless the context otherwise requires:

‘the Act’ means the *Education (Wales) Act 2014*, and any subsequent amendments made to it;

‘allegation’ means an allegation that a registered person may be guilty of unacceptable professional conduct, serious professional incompetence or has been convicted (at any time) of a relevant offence;

‘an agent’ means one person (the agent) who makes arrangements for a registered person to provide relevant services at the request of, or with the consent of, a relevant employer (whether or not under a contract). A private supply agency might typically come under the category of an agent,

and ‘current agent’ shall be construed accordingly;

‘a case to answer’ means an Investigating Committee is of the opinion that there is a realistic prospect of a finding of unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence being made by a Fitness to Practise Committee;

‘categories of registration’ means ‘school teacher’, ‘school learning support worker’, ‘further education teacher’, ‘further education learning support worker’, as defined by Schedule 2 to the Act, and ‘youth worker’, ‘youth support worker’ and ‘work based learning practitioner’, as defined by Part 2 to the Order;

‘child’ (in relation to ‘Child and vulnerable witnesses’) means a person who has not attained the age of 18 years;

‘Code of Practice’ means the code of practice prepared and published under section 24 of the Act;

‘the Committee’ means in relation to Section 2 of these Procedures and Rules, the Investigating Committee (Part 3.0), and Fitness to Practise Committee (Part 4.0), and the Annex;

‘the EWC’ means the Education Workforce Council

‘disciplinary order’ in relation to a registered person in Wales means a ‘reprimand’, ‘a conditional registration order’, ‘a suspension order (with or without conditions)’ or ‘a prohibition order’ within the meaning of Section 27 to the Act;

‘the duly authorised officer’ means the person appointed by the Chief Executive of the Education Workforce Council to act on his or her behalf;

the ‘DBS’ means the Disclosure and Barring Service;

‘employer’ means a person who employs or engages a registered person to provide relevant services,

and ‘current employer’ and ‘employed’ shall be construed accordingly;

‘facts of the case’ means the particulars of the allegation of unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence;

‘Fitness to Practice Committee’ [sic] means a Committee established under Regulation 22 of the Regulations;

‘hearing’ means the hearing of a case by a Fitness to Practise Committee of disciplinary proceedings against a registered person, or a hearing under Regulation 37, 38, 39, 40 or 41 of the Regulations;

‘Investigating Committee’ means a Committee established under Regulation 20 of the Regulations;

‘lay member’ means a member of the Committee who is not:

- (a) a registered person;
- (b) employed, or engaged to provide relevant services within the period of five years ending with the date of that person’s appointment to the Committee;
- (c) barred from regulated activity relating to children (within the meaning of section 3(2) of the *Safeguarding Vulnerable Groups Act 2006(1)*);
- (d) subject to a disciplinary order made under the Act by virtue of which the person is ineligible to register; or

(e) disqualified from working in a post equivalent to a category of registration.

‘month’ means a calendar month;

‘order’ means disciplinary order within the meaning of paragraph 2 of section 27 to the Act;

‘the Order’ means the *Education Workforce Council (Registration of Youth Workers, Youth Support Workers and Work Based Learning Practitioners) Order 2016*;

‘presenting officer’ means the person appointed by the EWC to present the EWC’s case before a Fitness to Practise Committee;

‘previous agent’ means an agent of a registered person at the time the allegation relates;

‘previous employer’ means an employer of a registered person at the time the allegation relates;

‘provisional registration’ means the status of registration for which a person is eligible if, for the time being, that person meets one or more of the following conditions, namely:

- (a) the person is a qualified teacher and yet to complete an induction period;
- (b) the person is registered by the EWC in the school teacher category of registration in accordance with the *General Teaching Council (Registration of Temporary Teachers from Relevant European States) (England and Wales) Regulations 2009*;

‘referral’ means a criminal disclosure, a disciplinary case from an employer or agent, or a complaint or information from any other source, which involves a registered person;

‘the Register’ means the Register of Education Practitioners which the EWC is required to establish and maintain in accordance with Section 9(1) of the Act, as detailed in the Regulations,

and ‘registration’ means full or provisional registration on the Register in one or more categories of registration. ‘Provisional’ only applies to the school teacher category;

‘registered person’ means:

- (a) a person for the time being registered under Section 9 of the Act, including those registered on a provisional basis;
- (b) a person who was registered at the time of any alleged conduct or offence (whether under Section 9 of the Act, or under Section 3 of the 1998 Act); or
- (c) a person who has applied to be registered;

‘registered member’ means a member of the Committee who is:

- (a) a registered person from the same category of registration as the registered person who is the subject of the disciplinary proceedings; and

- (b) employed, or engaged otherwise than under a contract of employment, in one of the posts described in the categories of registration on the date of that registered person member's appointment to the Committee,

and a registered member who ceases to be a registered person or who ceases to be employed or engaged in one of the posts described in the categories of registration must cease to be a registered member;

'the Regulations' means the *Education Workforce Council (Main Functions) (Wales) Regulations 2015*, and any subsequent amendments made to those regulations;

a 'relevant employer' means a person who employs or otherwise engages registered persons to provide relevant services in Wales;

'relevant European State' means an EEA State or Switzerland;

'relevant offence' means in the case of a conviction in the United Kingdom, a criminal offence other than one having no material relevance to the person's fitness to be a registered person in the relevant category of registration. In the case of a conviction elsewhere, an offence which, if committed in England and Wales, would constitute such an offence as is mentioned in Schedule 27(1)(a) to the Act;

'relevant services' means services which may be provided only by a registered person;

'serious professional incompetence' means conduct which demonstrates a level of competence which falls seriously below that expected of a registered person, taking into account all the relevant circumstances, within the meaning of Regulation 3 of the Regulations, as amended;

'services' means services provided to a relevant employer in Wales and includes professional and voluntary services;

'unacceptable professional conduct' means conduct which falls short of the standard expected of a registered person within the meaning of Regulation 3 of the Regulations;

'vulnerable witness' means a person whose quality of evidence is likely to be adversely affected at a hearing. This may include:

- (a) any witness with a mental disorder (i.e. mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind);
- (b) any witness who is significantly impaired in relation to intelligence or social functioning;
- (c) any witness with physical disabilities who requires assistance to give evidence;
- (d) any witness where the allegation against the registered person is of a sexual nature and the witness was the alleged victim;

(e) any witness who complains of intimidation.

'week' means a calendar week.

(2) In these Procedures and Rules, unless the contrary intention appears:

(a) words in the singular include the plural, and words in the plural include the singular;

(b) numbered sub-paragraphs and paragraphs are references to the Rule in which they appear;

(c) numbered rules are references to the rules of these Procedures and Rules.

Publication of the Procedures and Rules

3- (1) These Procedures and Rules shall be:

(a) made available without charge on request to any registered person, or person who has applied for registration;

(b) published on the EWC's website;

(c) kept under continuous review and updated as and when appropriate.

2.0 Investigation of referrals

Preliminary

4- (1) Subject to paragraph (2) and Rule 5, the EWC shall investigate all referrals received where it is alleged that a registered person is guilty of unacceptable professional conduct or serious professional incompetence, and/or has been convicted (at any time) of a relevant offence.

(2) The EWC shall, at all times, assess whether or not a referral should be made to the DBS, based on the evidence and information received by it, and whether there is a suggestion of harm, or a risk of harm to children or vulnerable adults.

(3) For the purposes of these Rules, the date the allegation is made shall be the date the referral is received by the EWC.

(4) The EWC must take into account any failure by a registered person to comply with a Code of Practice, issued by the EWC under Section 24 of the Act and Regulation 23 of the Regulations.

Deciding whether a referral should be investigated

- 5- (1) Where a referral is received by the EWC in the form of a criminal disclosure, the duly authorised officer:
- (a) may conclude that the referral should not be investigated in accordance with Rule 6, with reference to a EWC-approved list of convictions and other criminal sanctions considered by it to be incapable of amounting to an allegation. The EWC shall therefore take no further action in respect of the referral.
 - (b) shall, where sub-paragraph (1)(a) does not apply, forward the referral to the Investigating Committee for investigation under Rule 6.
- (2) Where a referral is received by the EWC from a person other than the employer or agent, the duly authorised officer:
- (a) may conclude the complaint should not be investigated in accordance with Rule 6, if:
 - (i) it has not been reported to the registered person's employer or agent, and local procedures for complaint resolution have not been exhausted.
 - (ii) the duly authorised officer is of the opinion that, with reference to the EWC's Code of Practice in force at that time, if any, the complaint is not considered capable of amounting to an allegation.
 - (iii) the same complaint has already been received and concluded by the EWC.
 - (iv) the complaint does not relate to the alleged unacceptable conduct and/or serious professional incompetence of the registered person.
 - (b) shall take no further action where sub-paragraphs (2)(a)(i), and/or (2)(a)(ii), and/or (2)(a)(iii), and/or 2(a)(iv), apply.
 - (c) shall, where the referral does not fall under sub-paragraph 2(a), forward it to the Investigating Committee for consideration under Rule 6, and make enquiries of the registered person's employer or agent to establish whether or not:
 - (i) a complaint has been made to it and, if so, the nature of the complaint; and
 - (ii) the complaint has been investigated by it and, if so, the outcome of that investigation; or
 - (iii) the complaint will be investigated by it and, if so, the likely time necessary for that investigation.
- (3) Where a referral is received by the EWC from the employer or agent in accordance with supply of information requirements set out under Section 36 and section 37 to the Act, and Regulation 45

and Regulation 46 of the Regulations, the duly authorised officer shall forward the referral to the Investigating Committee for investigation under Rule 6.

- (4) Where a referral is received from any source (for example, the DBS), the EWC or its duly authorised officer shall consider whether or not the conduct or incompetence referred is capable of amounting to an allegation, with reference to the EWC's Code Practice in force at that time, if any, before proceeding under Rule 6.
- (5) Where a criminal disclosure is concluded under sub-paragraph (1)(a), the registered person's current or previous employer or agent, as the case may be, shall not be notified of the referral unless the registered person consents in writing.
- (6) Where a complaint is concluded under sub-paragraph (2)(b), the registered person against whom a complaint has been made shall be notified of the complaint, its source and the EWC's decision.
- (7) Where the EWC receives further evidence relating to a criminal disclosure where the duly authorised officer had previously determined to take no further action in accordance with sub-paragraph (1)(a), and the additional evidence, together with the evidence previously received, is, in the view of the duly authorised officer, capable of amounting to an allegation, he or she may forward the referral to an Investigating Committee in accordance with Rule 6. This further evidence may consist of an additional criminal offence committed by the registered person.
- (8) Where the EWC receives further evidence relating to a complaint where the duly authorised officer had previously determined to take no further action under sub-paragraph (2)(b), the duly authorised officer shall make enquiries in accordance with sub-paragraph 2(c), and invite the registered person to comment thereon. Should the duly authorised officer be of the view that the additional evidence, together with the evidence previously received, is capable of amounting to an allegation, he or she may forward the referral to an Investigating Committee in accordance with Rule 6.

3.0 Investigating Committee

Notice of Investigation

- 6- (1) Where a referral is forwarded to an Investigating Committee to be investigated, the duly authorised officer shall send to the registered person a Notice of Investigation in accordance with paragraph (2) by special delivery to his or her last known address as recorded on the Register, or such other latest address known to the EWC.
- (2) The Notice of Investigation shall:
 - (a) set out the allegation or allegations referred to the Committee, enclosing a copy of the information received about the registered person;
 - (b) inform the registered person of the date of the Investigating Committee which is to consider the referral, and the identity of the members of that Committee;

- (c) invite the registered person to make written representations regarding the matters referred to in sub-paragraph (2)(a) and provide, within four weeks from the day the Notice was sent, any written evidence the registered person wishes to submit;
 - (d) confirm whether or not, at the time of responding, the registered person is currently employed as an education practitioner regulated by the EWC, and, if so, the name and address of the current employer, or supply agency;
 - (e) enquire whether the registered person believes a conflict of interest may arise in relation to any member of the Committee, and if so, what the reason is;
 - (f) have annexed to it a copy of these Procedures and Rules.
- (3) The duly authorised officer shall send a copy of the Notice of Investigation to the employer or agent of the registered person at the time the referral being investigated arose, and to any current employer or agent.

Proceedings of an Investigating Committee

- 7- (1) Subject to paragraphs (2) to (7) and to Voting and decision making (Annex), the procedure shall be determined at the discretion of the Chair.
- (2) The Committee shall, before investigating a referral, ensure that all relevant available information, including any written representations and evidence received from the registered person, is available to the Investigating Committee.
- (3) When investigating a referral, an Investigating Committee may, at any stage:
- (a) require further enquiries to be conducted by an officer of the EWC;
 - (b) request further evidence / documents from the referral source,
- and any evidence / documents obtained shall be copied to the registered person.
- (4) An Investigating Committee shall consider the evidence provided to it, including any written representations and evidence submitted by the registered person.
- (5) An Investigating Committee may, at any stage, adjourn investigation of the referral.
- (6) An officer of the EWC requested by an Investigating Committee to undertake further enquiries under paragraph (3) shall provide any further information and/or evidence acquired to the Committee and registered person.
- (7) Meetings of the Investigating Committee shall be held in private.

Decision of an Investigating Committee

- 8- (1) Where a Notice of Investigation has been issued under Rule 6, an Investigating Committee constituted to investigate a referral may:
- (a) decide there is no case for the registered person to answer; or
 - (b) decide there is a case for the registered person to answer, and forward the referral to a Fitness to Practise Committee as appropriate; or
 - (c) decide the referral should be discontinued on other grounds. For example, because of the exceptional personal circumstances of the registered person at the time of the Committee's decision. However, such 'other grounds' shall not include any defect or deficiency in any procedure required to be observed by an employer or agent or any other person under the registered person's terms of employment or contract; or
 - (d) adjourn for further enquiries to be made under Rule 7(3), or for legal advice under Rule 7(5), prior to a final determination under this Rule;
 - (e) decide the referral, or any part of it, should be forwarded to the DBS.
- (2) Where a referral is concluded under paragraph (1), the registered person and the registered person's previous and/or current employer or agent, as may be the case, shall be informed in writing of the Investigating Committee's decision, including reasons, within two weeks of it reaching a decision.
- (3) Where the investigation of a referral is adjourned under sub-paragraph (1)(d), the referral may be forwarded to the same Committee or a newly-constituted Committee.
- (4) A Committee convened under this Rule may, in exceptional circumstances and before its final decision, forward a referral to a differently constituted Investigating Committee where it appears that there has been a breach in relation to Committee membership or of natural justice (Annex).
- (5) Where a Committee forwards a referral to another Committee, the duly authorised officer shall inform the parties accordingly.
- (6) Where the EWC receives further evidence relating to a referral where an Investigating Committee had previously determined that there was no case to answer in accordance with sub-paragraph (1)(a), the duly authorised officer may forward the referral to an Investigating Committee in accordance with Rule 6. This further evidence may consist of a criminal offence committed by the registered person.

Voluntary Reprimand and Voluntary Prohibition

- 9- (1) Where an Investigating Committee forwards a referral to a Fitness to Practise Committee on the grounds that a registered person has a case to answer, subject to paragraphs (2) and (3) below, a duly authorised officer may make a recommendation to a Fitness to Practise Committee that the case be disposed of without a hearing by way of a Voluntary Reprimand or Voluntary Prohibition.
- (2) A recommendation for a Voluntary Reprimand or Voluntary Prohibition shall only be made to a Fitness to Practise Committee where the referral meets the following minimum criteria, that:
- (a) the duly authorised officer is satisfied that relevant and appropriate facts relating to the referral have been gathered;
 - (b) the registered person fully admits all of the alleged facts against him or her, as set out by the EWC; and
 - (c) the registered person has been provided with and signs an agreed statement of facts; and
 - (d) the registered person accepts that the admitted facts of the allegation(s) against him or her amount to unacceptable professional conduct, serious professional incompetence or a conviction of a relevant offence, or a combination of these, as the case may be; and
 - (e) in the view of the duly authorised officer, the interests of justice and fairness can be met without a hearing; and
 - (f) the EWC's responsibilities to safeguard the interests of learners and the public, and to maintain public trust and confidence in the education workforce can be duly discharged with a Voluntary Reprimand or Voluntary Prohibition, given the facts of the particular referral.
- (3) Should the duly authorised officer consider an invite to a Voluntary Reprimand or Voluntary Prohibition appropriate, he or she will:
- (a) send the invite by special delivery to the registered person's address as recorded on the Register, or such other latest address known to the EWC specifying whether a Voluntary Reprimand or Voluntary Prohibition is proposed; and
 - (b) inform the registered person that he or she is not required to agree to a Voluntary Reprimand or Voluntary Prohibition (as the case may be), but that such a recommendation might be made if the criteria specified in paragraph (2) apply;
 - (c) invite the registered person to respond in writing to the proposal for a Voluntary Reprimand or Voluntary Prohibition, as the case may be;
 - (d) inform the registered person that the effect of a Voluntary Reprimand will be the same as if it had been imposed by a Fitness to Practise Committee in accordance with Rule 29;
 - (e) inform the registered person that, in the case of a Voluntary Prohibition:

- (i) his or her name will be removed from the Register; and
 - (ii) he or she may not make an application for eligibility for restoration to the Register for a minimum period of 2 years from the date on which the registered person's name is removed from the Register (or such longer period as may be specified by a Fitness to Practise Committee); and
 - (iii) he or she is otherwise bound by the terms of a Prohibition Order, as if it had been imposed by a Fitness to Practise Committee in accordance with Rule 29; and
- (f) require the registered person to respond to the invite in writing within 21 working days of it being made.
- (4) Should the registered person not provide his or her consent, or not respond to the invite within 21 working days, the referral shall be forwarded to a Fitness to Practise Committee for hearing in accordance with Rule 11.
- (5) Should the registered person provide his or her consent, and the duly authorised officer is satisfied as to the registered person's response, the recommendation of the duly authorised officer for a Voluntary Reprimand or Voluntary Prohibition, as the case may be, shall be considered by a Fitness to Practise Committee in accordance with Rule 10.
- (6) Where paragraph 5 applies, the duly authorised officer shall send a Notice of Meeting in accordance with paragraph (2) by special delivery to the registered person's last known address as recorded on the Register or such other latest address known to the EWC, giving him or her at least 3 weeks' notice of the meeting
- (7) The Notice of Meeting shall:
- (a) specify the date of the meeting and the identity of the members of the Committee;
 - (b) specify the allegations and the particulars of the allegations against the registered person;
 - (c) have annexed to it a bundle including:
 - (i) a copy of the agreed statement of facts;
 - (ii) the registered person's admission that the agreed facts amount to unacceptable professional conduct, serious professional incompetence and/or conviction of a relevant offence;
 - (iii) the registered person's written consent to a Voluntary Reprimand or Voluntary Prohibition, as the case may be.
 - (d) have annexed to it a copy of these Procedures and Rules.

- (8) The duly authorised officer shall send a copy of the Notice of Meeting, as provided in paragraph (7), to the employer or agent at the time that the alleged conduct or matter giving rise to the referral occurred, and to any current employer or agent.

Meeting of Fitness to Practise Committee

- 10 - (1) Subject to the provisions of this Rule and Voting and decision making (Annex), the procedure at the meeting shall be determined at the discretion of the Chair.
- (2) The meeting of the Fitness to Practise Committee will take place in private and the Committee will make a determination based on the written material alone without the attendance of the registered person.
- (3) The Committee shall be advised by a legal adviser.
- (4) At any stage of the meeting, the Committee may decide that, in the public interest and/or in the interests of justice, the allegation should be considered at a hearing. If so, the referral shall be forwarded to a Fitness to Practise Committee for hearing in accordance with Rule 11.
- (5) The Committee will determine whether to
 - (a) approve the recommendation;
 - (b) decline the recommendation;
 - (c) adjourn to request further evidence / documents before making a determination.
- (6) Where the Committee determines to approve a Voluntary Prohibition, the Committee shall also specify the period (which shall be not less than 2 years beginning with the date on which the order takes effect) before the end of which no application may be made by the registered person for a determination that he or she is eligible to reapply for registration.
- (7) A person wishing to be readmitted to the Register following a prohibition order must apply to the EWC for a determination in accordance with Rule 36.
- (8) Should a Fitness to Practise Committee approve the duly authorised officer's recommendation under Rule 9(4), the decision of the Committee shall be announced in public either on the date of the meeting of the Committee, or on a later date. The registered person shall also be notified of the date and time and location of the announcement of the decision if it is to be announced at a later date.
- (9) Should the Committee approve the recommendation, the referral shall be considered concluded.
- (10) Should the Committee decline to approve the duly authorised officer's recommendation the case will be remitted for hearing to a newly-constituted Fitness to Practise Committee.
- (11) Rules 29 to 31 shall apply to a Voluntary Reprimand and a Voluntary Prohibition as those Rules apply to disciplinary orders made following a hearing before a Fitness to Practise Committee.

4.0 Fitness to Practise Committee

11- (1) A Fitness to Practise Committee shall:

- (a) determine referrals received from an Investigating Committee where the registered person was found to have a case to answer in relation to:
 - (i) unacceptable professional conduct;
 - (ii) serious professional incompetence; or
 - (iii) conviction of a relevant offence.
- (b) consider whether to make a disciplinary order in relation to that registered person, and if it considers that such an order should be made, to make such an order where a Fitness to Practise Committee finds he or she guilty of unacceptable professional conduct, serious professional incompetence, or to have been convicted of a relevant offence.
- (c) In respect of a recommendation made by the duly authorised officer under Rule 9(5):
 - (i) approve or decline the recommendation;
 - (ii) request further evidence / documents before making a decision to allow a Voluntary Reprimand or Voluntary Prohibition.
- (d) determine applications under Regulation 37, 39 or 40 in the Regulations, or matters arising in relation to disciplinary orders under Regulation 38 or 41.

Notice of Proceedings

12-(1) Where a referral is forwarded to a Fitness to Practise Committee, the duly authorised officer shall send to the registered person a Notice of Proceedings in accordance with paragraph (2) by special delivery to his or her last known address as recorded on the Register, or such other latest address known to the EWC, giving him or her at least eight weeks' notice of the hearing

(2) The Notice of Proceedings shall:

- (a) specify where the Committee hearing is to take place and the identity of the members of the Committee;
- (b) specify the time and date of the hearing, which shall not be less than eight weeks after the day the Notice was sent to the registered person;
- (c) specify the allegations and the particulars of the allegations against the registered person;
- (d) specify the witnesses, if any, the presenting officer proposes to call to give evidence at the hearing;

- (e) have annexed to it the case bundle;
 - (f) have annexed to it a copy of these Procedures and Rules.
- (3) The duly authorised officer shall send a copy of the Notice of Proceedings, as provided in paragraph (2), to the employer or agent of the registered person at the time the referral being heard arose, and to any current employer or agent.

Response to the Notice of Proceedings

13-(1) The registered person shall, within three weeks of the date of the Notice of Proceedings, provide the EWC with written responses to the following enquiries, namely whether he or she:

- (a) has, or knows of any reason why the hearing, or part of it, shall not be held in public;
- (b) intends to appear in person and/or to be represented at the hearing and if so,
 - confirm whether or not the registered person intends to give evidence. If so, to confirm whether they intend to give evidence as to the facts, and/or evidence in mitigation;
 - provide the EWC with the name and address of the registered person's representative. If the registered person intends to be represented, to also confirm whether he or she would wish documentation relating to the proceedings to be sent to them and/or to the representative;
 - confirm whether or not, at the time of responding, the registered person is currently employed as an education practitioner regulated by the EWC, and, if so, the name and address of the current employer, or supply agency.
- (c) admits the alleged facts and, if so, whether the allegation of unacceptable professional conduct, serious professional incompetence, and/or a conviction of a relevant offence, as the case may be, is admitted;
- (d) intends to call witnesses; if so, to provide their names and contact details; and
- (e) knows of any reason why a conflict of interest may arise in relation to any member of the Committee, and if so, what the reason is.

(2) The registered person shall, in accordance with this Rule and Rule 15, and at least four weeks prior to the hearing, provide the EWC with any written submission or such documents as he or she considers relevant, including any witness statements.

Representations to the Committee

14- (1) The duly authorised officer shall appoint a presenting officer following a decision to forward a referral to a Fitness to Practise Committee.

- (2) The presenting officer shall present the EWC's case before a Fitness to Practise Committee, and such a person may be an officer of the EWC or other representative.
- (3) The registered person against whom an allegation is made may appear in person or be represented by any person of his or her choice, including a legal representative.

Service and inspection of evidence

- 15- (1) Subject to paragraph (2), where the presenting officer or the registered person or his or her representative wish to rely upon any document, including a witness statement, they shall submit to the EWC a copy of the document concerned at least four weeks prior to the hearing in accordance with Rule 13(2).
- (2) Where either the presenting officer or the registered person or his or her representative wish to rely at the hearing upon documents or other physical evidence and it is not appropriate or practicable for that evidence to be copied or sent by post, the party in possession of the document(s) or other physical evidence concerned shall, at least four weeks prior to the hearing, provide the EWC with:
- (a) a description of the evidence;
 - (b) an explanation of the reason why it is not practicable or appropriate for the evidence or a copy to be sent in accordance with paragraph (1); and
 - (c) details of the arrangements that may be made for inspection of that evidence by the other party.
- (3) If the presenting officer or the registered person or his or her representative wish to rely at the hearing upon any document not served in accordance with this Rule, then that document may only be admitted at the discretion of the Committee. In exercising this discretion, the Committee may waive or amend the periods of time set out in the Rules for disclosure of documents, but only if it is satisfied that to admit the document is appropriate, and in the interests of a fair hearing.

Absence of the registered person at the hearing

- 16-(1) Where the registered person does not attend and is not represented at a hearing, the Chair shall:
- (a) request evidence from the presenting officer that the Notice of Proceedings has been sent to the registered person in compliance with Rule 12; and
 - (b) enquire with the presenting officer whether any reasons for the registered person's absence have been communicated to the duly authorised officer.
- (2) Where the Committee is not satisfied that Rule 12 has been complied with, the Committee may adjourn the hearing.

- (3) Where the Committee is satisfied that Rule 12 has been complied with, then after taking into consideration any representations by the presenting officer and any written representations made by or on behalf of the registered person, and taking advice from the legal adviser, the Committee may:
 - (a) proceed with the hearing in the absence of the registered person; or
 - (b) adjourn the hearing.

Witnesses

- 17-(1) The EWC may require any person to attend and give evidence, or to produce documents or other material evidence at any hearing.
- (2) Witnesses must take an oath or affirmation before giving evidence. In doing so, the witness makes a solemn promise as to the truth of their evidence.
- (3) Except as may be determined by the Committee, witnesses may not be present as observers at the hearing until they have completed giving evidence and been formally released by the Chair.
- (4) Witnesses may be recalled at the discretion of the Committee.
- (5) The EWC may make payment of:
 - (a) reasonable expenses;
 - (b) reasonable costs of employing a replacement education practitioner,in relation to witnesses called by a registered person or the presenting officer.
- (6) The duly authorised officer may, where a witness for the EWC refuses, or intentionally fails to attend or produce a document material to a case, obtain a witness summons by way of a Court Order.

Children and vulnerable witnesses

- 18-(1) A child or a vulnerable witness shall only give evidence where, after considering representations by or on behalf of the registered person and the presenting officer, it is determined by the Committee, or as provided for in paragraphs (2) and (3), that the welfare of the child or vulnerable witness will not be prejudiced by so doing.
- (2) In advance of the hearing, where possible, written representations may be referred for consideration to a Chair of a relevant Committee sitting at the time or to one or more prospective members of the Committee.
- (3) If the Chair of a relevant Committee, or prospective member or members, considers that the welfare of the child or vulnerable witness would be prejudiced by giving evidence, the Committee

Chair, member or members, as the case may be, shall refuse permission for the child or vulnerable witness to give evidence.

- (4) If the Committee Chair, or member or members, as the case may be, determine that the child or vulnerable witness should be permitted to give evidence, then the Committee that hears the case shall adopt such measures as they consider necessary to safeguard the interests of the child or vulnerable witness which may include, but shall not be limited to:
 - (a) the use of a video link;
 - (b) the use of pre-recorded evidence as the evidence in chief of the witness, provided always that such witness is available at the hearing for questioning;
 - (c) the use of interpreters (including signers and translators);
 - (d) the hearing of evidence by the Committee in private;
 - (e) the attendance of a witness supporter.
- (5) The Chair of the Committee may direct that a child or vulnerable witness is not referred to by name during a hearing regardless of whether he or she is called to give evidence at the hearing.

Evidence

- 19-(1) Subject to the requirements of a fair hearing, and of relevance, the Committee may admit oral, documentary or other evidence whether or not it would be admissible in a court of law.
- (2) Production of a record of a caution shall be prima facie evidence of the commission of the offence giving rise to the caution.
- (3) Production of an appropriate certificate from a court in the United Kingdom or overseas of a conviction for a criminal offence shall be conclusive proof of the commission of the offence to which the certificate relates.

Language

- 20-(1) A registered person in relation to whom a referral has been made may make a written request for the hearing to be conducted (all or in part) in Welsh.
- (2) Where the registered person or a witness wishes to give evidence in Welsh, he or she shall be permitted to do so provided that at least 21 days' notice of that request has been given to the EWC.

Referral to another Committee

21-(1) Prior to the first day of a hearing before a Fitness to Practise Committee, or before such a Committee makes its final decision, the duly authorised officer may refer the matter:

- (a) back to an Investigating Committee where the registered person or his or her representative, or the presenting officer, submits to the EWC further evidence or information which, in the view of the duly authorised officer, may have caused the Investigating Committee to consider such further evidence or information as relevant to the determination to forward the referral for hearing;
- (b) to a differently constituted Fitness to Practise Committee, where it appears that there has been a breach in relation to Committee membership or of natural justice (Annex).

(2) Where a case is referred to another Committee under paragraph (1)(a) or (1)(b), the duly authorised officer shall inform the parties accordingly.

Standard and burden of proof

22-(1) The standard of proof applied in these proceedings is the civil standard, 'on the balance of probabilities'.

(2) The burden of proof shall rest with the presenting officer.

(3) Paragraph (2) shall not apply to any application made by a person under Rule 32 and Rule 34.

Pre-hearing case management

23-(1) Where the presenting officer, or the registered person, consider it would be helpful for certain matters to be determined in advance of a hearing, either may make an application in writing to the duly authorised officer for pre-hearing directions. The registered person and the presenting officer should attempt to reach agreement before applying for such directions.

(2) Such application must be made in writing to the duly authorised officer, ordinarily no later than three weeks before the first day of the hearing.

(3) Upon receipt of a written application, a duly authorised officer of the EWC will consider listing a case for a case management hearing.

(4) The directions may include proposals such as:

- (a) where specific preliminary legal arguments are to be made, and those which cannot be resolved by other means;
- (b) that a particular witness is a child, and/or should be treated as a vulnerable witness and directions should be given providing for special measures as to how their evidence should be presented to the Committee at the hearing (Rule 18);

- (c) joint hearing (see Rule 26);
 - (d) the obtaining and/or disclosure and/or admissibility of particular evidence;
 - (e) time limits for compliance with any directions issued;
 - (f) any other appropriate matter which, if determined in advance of a hearing, may assist in the just and efficient management of the case.
- (5) The Committee for a case management hearing shall consist of one or three members and be advised by a legal adviser. Where possible and appropriate, the same member(s) will sit on the committee that conducts the full hearing.
 - (6) The duly authorised officer shall send to the registered person, and his or her representative, notice of the case management hearing at least five working days before it convenes.
 - (7) At least three working days before the case management hearing, the registered person, his or her representative and presenting officer, shall send a skeleton argument and any relevant documents to support the proposals for directions to the duly authorised officer. The duly authorised shall send copies to the Committee.
 - (8) A case management hearing may be conducted by the parties attending in person, or by telephone or video conference.
 - (9) The procedure at the case management hearing shall be determined at the discretion of the Chair.
 - (10) A case management hearing shall be held in private, unless the Committee directs otherwise.
 - (11) The Chair shall invite each party to make representations regarding the directions sought, and shall provide an opportunity for the other party to respond.
 - (12) The Committee shall determine the directions to be given.
 - (13) The duly authorised officer shall provide each party with a written record of the directions within seven days of the case management hearing.
 - (14) Where a party fails to comply with the directions issued at a case management hearing, a Committee may take whatever decision it thinks is most appropriate in relation to the admissibility of evidence or any other relevant matter.
 - (15) The Committee at the full hearing may, at any time during the hearing, give directions for the management of the case, or adjourn for a case management hearing to be held. In the event that the Committee directs that such a case management hearing will take place, it will also give directions as to the provision of any relevant documents to the duly authorised officer, and paragraph (7) shall not apply.

Procedure at hearing

- 24-(1) Subject to the provisions of this Rule and Voting and decision making (Annex), the procedure at the hearing shall be determined at the discretion of the Chair.
 - (2) The Chair shall ensure the members of the Committee introduce themselves, confirm the identity of the registered person against whom the allegations are made, and of any representative, and ask for confirmation that there are no conflicts of interest.
 - (3) The Chair shall enquire if there are any preliminary applications from the registered person and the presenting officer.
 - (4) The duly authorised officer, as directed by the Chair, shall read the allegations against the registered person. The Chair shall enquire of the registered person:
 - (a) whether the facts of the allegations, in turn, are admitted; and, if so,
 - (b) whether he or she admits unacceptable professional conduct, serious professional incompetence and/or that they have been convicted of a relevant offence, as the case may be.
 - (5) The presenting officer shall be permitted to make an opening statement about the allegations and the registered person, or his or her representative, shall have the opportunity to reply.
 - (6) The presenting officer and the registered person, or his or her representative, may present relevant evidence, including calling witnesses, relating to the facts of the allegations and whether those facts amount to unacceptable professional conduct, serious professional incompetence, and/or a conviction of a relevant offence, as the case may be.
 - (7) The presenting officer, the registered person or his or her representative and members of the Committee may question any witness called, including the registered person if he or she gives evidence.
 - (8) The Chair will allow the presenting officer and the registered person, or his or her representative, an opportunity to sum up and make final summations.
 - (9) The Committee shall determine whether the facts of the allegations have been proved.
 - (10) The Committee shall determine whether or not it is satisfied that any facts proved amount to unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence, as the case may be, regardless of whether admissions are made by the registered person in that respect.
 - (11) The Committee may adjourn the proceedings at any stage.
 - (12) The Committee may determine to refer a case back to an Investigating Committee at any stage.

- (13) When making a determination under Rule 29, the Committee shall deliberate in private, and may deliberate in private in relation to any other matter.
- (14) Should the Committee find that unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence, as the case may be, has been established, it:
- (a) will invite the presenting officer to provide the Committee with relevant information concerning the registered person's previous history, including details of any disciplinary order made by the EWC or by any other relevant body;
 - (b) will invite the presenting officer to provide the Committee with details of the registered person's previous record with the EWC, or other relevant information concerning the registered person's previous history;
 - (c) will provide the registered person or his or her representative, if present, with a further final opportunity to submit evidence in relation to their previous history, character or mitigating circumstances. Where the registered person or any other person is called as a witness, the presenting officer and the Committee may question the witness;
 - (d) will provide the presenting officer with the opportunity to make submissions as to the appropriate disciplinary order (if any);
 - (e) will provide the registered person, or his or her representative, with the opportunity to make submissions in mitigation and as to the appropriate disciplinary order (if any).
- (15) Subject to the requirements of a fair hearing, in the interests of justice, the Committee may amend an allegation or the particulars of an allegation at any time prior to making its findings of fact.
- (16) Before amending an allegation or the particulars of an allegation in accordance with paragraph (15), the Committee shall first consider any representations by the presenting officer and by, or on behalf of, the registered person, and take advice from the legal adviser.
- (17) The outcome of the hearing shall be announced in public.

Public or private hearing

- 25-(1) The Committee may exclude the public from a hearing or any part of a hearing:
- (a) where it appears to the Committee necessary in the interests of justice to exclude the public;
 - (b) where the registered person against whom disciplinary proceedings are being taken makes a written request that the hearing should be in private, and, given the reasons for the request, the Committee does not consider it to be contrary to the public interest to hold the hearing in private; or
 - (c) where it is necessary to protect the interests of children or vulnerable witnesses.

- (2) Where an application is made for the hearing to be in private under Rule 24(3), the Committee shall hear the application in private, but shall announce the decision in public.

Joint hearings

- 26- (1) Subject to the requirements of a fair hearing, a Committee may consider allegations against two or more registered persons at a joint hearing, where:
- (a) the allegation against each registered person arises from the same circumstances and/or case referred; or
 - (b) the Committee considers that a joint hearing is appropriate.
- (2) Where a joint hearing is proposed a duly authorised officer shall give notice of the proposal to the registered persons concerned or their representatives and invite their representations on the proposal. Where a joint hearing is opposed by or on behalf of one of the registered persons, a duly authorised officer may consider listing the case for a case management hearing under Rule 23.

Postponement, adjournment and resumption of hearing

- 27- (1) Prior to the first day of a hearing before the Fitness to Practise Committee, the duly authorised officer may postpone the hearing of his or her own motion, or upon application by a party to the proceedings, provided both parties have been given an opportunity to make representations before the decision is made. The decision to postpone a hearing shall be confirmed in writing with the registered person, copied to his or her representative, and shall include reasons for the decision.
- (2) The duly authorised officer shall, as soon as is practicable, notify the parties of the date of the rescheduled hearing.
- (3) Where a Committee adjourns a hearing under Rule 24(11) and determines to resume the hearing, the duly authorised officer shall notify the registered person, and his or her representative in writing, specifying the date of the rescheduled hearing.

Functions of the Committee at hearings

- 28-(1) A Fitness to Practise Committee shall not decline jurisdiction to hear or determine a referral by reason only of any defect or deficiency in any procedure which may, or otherwise, be required to be observed:
- (a) prior to the making of an allegation to the EWC, under any requirement otherwise than under the *Disciplinary Procedures and Rules 2017* of the EWC or the provisions of the Act or the Regulations; or
 - (b) by an employer or agent or any other person under the registered person's terms of employment or contract.

Decision

29-(1) The Fitness to Practise Committee, in making its decision in accordance with Voting and decision making (Annex) shall:

- (a) determine whether the facts of the case, all or in part, are proved;
 - (b) if the facts are admitted or proved, determine whether those facts amount to unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence, as the case may be.
- (2) The Committee may review its findings of fact if it is satisfied it is necessary to do so in order to correct an obvious mistake, or to avoid a miscarriage of justice, and before a decision is made as to whether to impose a disciplinary order.
- (3) If the Committee determines that the facts amount to unacceptable professional conduct, serious professional incompetence and/or a conviction of a relevant offence, it shall consider the previous history and character of the registered person and any mitigating circumstances, in accordance with Rule 24(14)(c).
- (4) The Committee shall determine whether or not to make a disciplinary order against the registered person, and, if applicable, specify the terms of any disciplinary order. This will take one of the following forms:

- a Reprimand;
- a Conditional Registration Order. This shall specify all the conditions relevant to the registered person's employment as a practitioner with which he or she is required to comply, and in relation to each condition, either the period for which it has effect, or that it has effect without limit of time (as the case may be);
- a Suspension Order. This shall specify the period (not exceeding two years) at the end of which the person again becomes eligible to re-apply for registration. A Suspension Order may specify conditions to be complied with by the person to whom the order relates which must be complied with before he or she can become eligible again to apply for registration. A condition specified in a Suspension Order has effect for such period as may be specified, or without limit of time.

Once the Suspension Order has expired, subject to any conditions being met, the person concerned must re-apply for registration. In doing so, he or she shall be subject to pre-registration checks required by the EWC at that particular time;

- a Prohibition Order. This shall specify the period (which shall not be less than two years, beginning with the date on which the order takes effect) before the end of which no application may be made by the person for a determination that he or she is eligible to re-apply for registration. A person wishing to be readmitted to the Register following a Prohibition Order must apply to the EWC for a determination in compliance with Rule 36.

Should a Committee grant a Rule 36 application for eligibility, the person concerned must re-apply for registration. In doing so, he or she shall be subject to pre-registration checks required by the EWC at that particular time.

- (5) In deciding to impose a disciplinary order, the Committee may also determine to apply such an order to more than one category of registration, depending on in which categories the person is registered at that time.
- (6) The outcome of the hearing shall be announced in public.

Notification of decision

30-(1) If a disciplinary order is considered appropriate, the duly authorised officer shall, at the direction of the Committee:

- (a) serve a Notice of the disciplinary order on the person in relation to whom it is made containing the information set out in Regulation 36(3) of the Regulations; and
- (b) serve Notice of the order on the employer or agent of the registered person at the time the referral was made, and to any current and/or previous employer or agent as may be the case,

within a period of two weeks from the day the decision was given in public.

(2) The written decision shall be accompanied by a statement of:

- (a) the allegations;
- (b) the findings of fact; and
- (c) the reasons of the Committee.

(3) Where, following the determination of a referral by a Committee it decides, for exceptional reasons, not to make a disciplinary order in relation to a registered person, the Committee shall notify the registered person and the registered person's current employer or agent, or previous employer or agent, of its decision. This notification shall state the Committee's reasons for not making a disciplinary order, and whether or not it decided that the case against him or her was proved or not.

(4) Where a Committee does not find the facts against a registered person proved, the EWC shall, at the registered person's request, publish a statement to that effect.

Publication

31-(1) The EWC must publish the information set out in paragraph (2) in relation to a disciplinary order, subject to the exception in paragraph (3):

- (a) on a website which it maintains on the internet for the period for which the order is to have effect or for a period of six months, starting on the date on which the order is posted; or
 - (b) in such other manner as it sees fit.
- (2) The information to be published is:
- (a) the name of the person in relation to whom the order is made, and the name of the school or institution within the further or higher education sector at which the person was last employed, or, where the person was last employed by a local authority as a registered person otherwise than at a school or institution within the further or higher education sector, the name of the local authority;
 - (b) the type of disciplinary order; and
 - (c) the date on which the disciplinary order was made and takes effect; and
 - (d) the period for which the disciplinary order was made and takes effect (where specified); and
 - (e) whether the person was found to have been guilty of unacceptable professional conduct, serious professional incompetence, and/or a conviction of a relevant offence; and
 - (f) where the person was found to have been convicted of a relevant offence, the nature and date of the conviction in question; or
 - (g) where the person was found to have received a criminal sanction, other than a conviction, and to have been guilty of unacceptable professional conduct in that respect, the nature and date of that sanction; or
 - (h) where the person was found to have been guilty of unacceptable professional conduct or serious professional incompetence, an indication of the nature of the misconduct or incompetence which led to the making of the order.
- (3) The duty to publish the information in paragraph (2)(a) does not apply where, in the opinion of the EWC, not publishing appears necessary:
- (a) in the interests of justice; or
 - (b) to protect the interests of children.

Recording details of disciplinary orders

32-(1) The EWC shall record against a registered person's name on the Register details of any disciplinary orders made.

Notification to other relevant European states

- 33-(1) In accordance with EU Directive 2005/36/EC and the *European Union (Recognition of Professional Qualifications) Regulations 2015* the EWC, as the competent authority in Wales, shall inform the competent authorities of other relevant European states where the disciplinary order imposed restricts or prohibits the pursuit of work in the same profession in another Member State.
- (2) The information to be provided by way of an alert mechanism through the Internal Market Information System (IMI) within 3 days of the decision being made is:
- (a) the identity of the professional;
 - (b) the profession concerned;
 - (c) information about the EWC ;
 - (d) the scope of the restriction or prohibition;
 - (e) the period during which the prohibition or restriction applies.
- (3) At the same time that information is provided in accordance with Rule 33(2), the EWC shall send notice to the registered person, of the:
- (a) decision to submit an alert;
 - (b) right to appeal against the decision or to apply for rectification;
 - (c) access to remedies for damages caused by false alerts sent to relevant European states.
- (4) A person may appeal the EWC's decision to submit the alert if they consider that the information has been provided not in accordance with the *European Union (Recognition of Professional Qualifications) Regulations 2015*.
- (5) Where a person takes action under Rule 33(3)(b), the EWC will qualify the alert to show that it is subject to proceedings by the person concerned.
- (6) When a restriction or prohibition is no longer relevant to a person, the alert shall be removed from the IMI within 3 days of the date that the prohibition or restriction ends.

Application to vary or revoke a condition in a conditional registration order or a suspension order which specifies conditions

- 34-(1) A person in relation to whom a conditional registration order or a suspension order which specifies conditions has been made may apply to the EWC for variation or revocation of any condition specified in the order.

- (2) An application under paragraph (1) shall be made in writing and shall specify the grounds on which the person seeks to have any condition specified in the order varied or revoked, and must be accompanied by every document relied upon in support of the application.
- (3) Where a person makes an application to vary or revoke an order, the EWC shall conduct a hearing in accordance with these Procedures and Rules.
- (4) The duly authorised officer shall send to the person a Notice of Proceedings by special delivery to his or her last known registered address, as recorded on the Register, or such other latest address known to the EWC which shall:
 - (a) specify where the Committee hearing is to take place and the identity of the members of the Committee;
 - (b) specify the time and date of the hearing; and
 - (c) have annexed to it a copy of the Committee's decision at the hearing when the conditional registration order or suspension order was made.
- (5) In considering the application, these Procedures and Rules shall apply as appropriate given the Committee's role.
- (6) Where a conditional registration order or a suspension order which specifies conditions in respect of which an application is made under paragraph (1) was made by a Fitness to Practise Committee, the application shall be determined by another Fitness to Practise Committee which shall not include as a member any person who was a member of the Committee which made the order.
- (7) The outcome of the hearing shall be announced in public.
- (8) If an application to vary or revoke a condition specified in a disciplinary order is refused, no further application to vary or revoke a condition specified in that order may be made by the person within twelve calendar months of the date on which the original application was determined, or within such other time limit as the Committee shall determine.

Compliance with conditional registration orders and suspension orders which specify conditions

35-(1) Where a Committee has made a conditional registration order or a suspension order which specifies conditions in respect of a registered person, the Committee may require the duly authorised officer, at any time, to request from:

- (a) the person in respect of whom the order was made;
- (b) any person who is, at the time the request is made, an employer or agent employing him or her in the capacity of a education practitioner,

such relevant evidence as will enable the EWC to determine whether the conditions of the order have been, or continue to be, complied with.

- (2) Where:
- (a) the duly authorised officer receives information, and he or she is of the opinion that the conditions have not been complied with; or
 - (b) the person fails to comply with a reasonable request made in accordance with paragraph (1),
- the duly authorised officer shall refer the matter to a Fitness to Practise Committee which shall not include as a member any person who was a member of the Committee which made the order to which the application relates. The Committee shall make a determination as to whether the person has failed to comply with the condition(s).
- (3) A Committee shall not make an order under this Rule without a further hearing in accordance with these Rules.
- (4) The duly authorised officer shall send to the person a Notice of Proceedings by special delivery to his or her registered address, as recorded on the Register, or such other latest address known to the EWC which shall:
- (a) specify where the Committee hearing is to take place and the identity of the members of the Committee;
 - (b) specify the time and date of the hearing; and
 - (c) have annexed to it the evidence given at the hearing when the conditional registration order or suspension order was made, together with a copy of the decision made; and
 - (d) specify the allegation in terms of sub-paragraphs 2(a) or 2(b) above.
- (5) In considering the alleged failure to comply with the condition(s), these Procedures and Rules shall apply as appropriate given the Committee's role.
- (6) A Fitness to Practise Committee may vary a condition or conditions where it considers it appropriate to do so.
- (7) Before varying a condition or conditions in accordance with paragraph (6), the Committee shall first consider any representations by the presenting officer and by or on behalf of the registered person, and take advice from the legal adviser.
- (8) Where a Fitness to Practise Committee is satisfied that a person against whom a conditional registration order or suspension order which specifies conditions has been made has failed to comply with any or all condition(s) of it, the Committee may make a suspension or prohibition order in relation to him or her.
- (9) The outcome of the hearing shall be announced in public.

Eligibility for registration following a prohibition order

- 36-(1) A person in relation to whom a prohibition order has been made may apply to the EWC for a determination that he or she is eligible for registration under Regulation 40(1) of the Regulations.
- (2) An application under paragraph (1) shall be made in writing and shall specify the grounds on which the person seeks the determination, and shall be accompanied by every document relied upon in support of the application.
 - (3) Where a person makes an application to the EWC for a determination that they are eligible for registration, a Committee shall conduct a hearing in accordance with these Procedures and Rules.
 - (4) The duly authorised officer shall send to the person a Notice of Proceedings by special delivery to his or her last known registered address, as recorded on the Register, or such other latest address known to the EWC which shall:
 - (a) specify where the Committee hearing is to take place and the identity of the members of the Committee;
 - (b) specify the time and date of the hearing; and
 - (c) have annexed to it a copy of the evidence given, and the Committee's decision at the hearing when the prohibition order was made.
 - (5) In considering the application, these Procedures and Rules shall apply as appropriate given the Committee's role.
 - (6) The Committee shall determine whether or not it is satisfied the person is suitable to be readmitted to the Register.
 - (7) The Committee, in making its decision, shall consider:
 - (a) the reasons for the prohibition order being imposed;
 - (b) the particulars in support of the application;
 - (c) whether or not the applicant has been of good character since the prohibition order was made; and
 - (d) whether or not the applicant has demonstrated his or her willingness and ability in the future to adhere to the standards of conduct expected of a registered person and/or is able to demonstrate a level of competence which does not fall short of that expected of a registered person.
 - (8) An application under paragraph (1) shall be determined by a Fitness to Practise Committee which shall not include as a member any person who was a member of the Committee which made the order to which the application relates.

- (9) If the Committee is satisfied in relation to the matters set out in paragraph (6) above, it may determine that the person is eligible for registration. If this is the decision of the Committee, the person concerned must re-apply for registration.
- (10) The outcome of the hearing shall be announced in public.
- (11) If an application for a determination that the person is eligible for registration is refused, no further application for a determination that he or she is eligible for registration may be made by the person within twelve calendar months of the date on which the original application was determined, or within such longer time period as the Committee may decide.

Review of disciplinary orders

- 37-(1) A Fitness to Practise Committee may, of its own motion, at any time revoke a disciplinary order made by another Committee, where:
 - (a) the only or main reason for making the order was that the person in relation to whom the order was made had been convicted of a relevant offence, and after the date the order was made, the conviction in question was quashed; or
 - (b) after the order was made, the Committee obtained evidence not considered by it before it made the order, and it is satisfied that if it had been aware of the evidence before it made the order, it would not have made it.
- (2) A Fitness to Practise Committee hearing a case under paragraph (1) shall not include as a member any person who was a member of the Committee which made the order.

Appeals

- 38-(1) Any person aggrieved by the decision of a Fitness to Practise Committee to impose a disciplinary order shall have the right of appeal against the order to the High Court within 28 days from the date on which Notice of the order is served on him or her.

Disciplinary orders made by other bodies

- 39-(1) A disciplinary order made by any other General Teaching Council, or a Committee of those Councils in the United Kingdom, or prohibition imposed by the Secretary of State, or a Barring made by the DBS shall apply in relation to Wales as it applies in relation to those countries.

Constitution and meetings

Committee membership

- (1) The following points relate to an Investigating Committee and Fitness to Practise Committee.
- (2) A Committee shall consist of a minimum of three persons and a maximum of five persons. The quorum for a meeting of the Committee shall be three which must include:
 - (a) one or more lay members;
 - (b) one or more registered persons from the same category, or categories of registration as the registered person who is the subject of the disciplinary proceedings.
- (3) In constituting a Committee, the EWC shall have regard to equality and diversity, its statutory Welsh Language Scheme and any standards that are specifically applicable to the EWC pursuant to the *Welsh Language (Wales) Measure 2011*.
- (4) Where a Committee is considering a referral and a member:
 - (a) is unwilling; or
 - (b) is unable to remain a member,and there is no longer a quorum, the referral shall be adjourned and a new Committee appointed to investigate or hear the referral.
- (5) A person who is a member of the Investigating Committee investigating a referral shall not be appointed as a member of any subsequent Fitness to Practise Committee which hears that referral.
- (6) Where, in considering a referral, any member of a Committee considers that a fair-minded and informed observer could perceive he or she has a conflict of interest, that member shall make a declaration accordingly. This may, following legal advice, result in the member being disqualified from sitting in relation to that referral.
- (7) In pursuance of paragraph (6), where a member of the Committee belongs to the same union or professional association as the registered person, this shall not in itself constitute a conflict of interest for the purposes of this Rule.

Chairs

- (1) Each Committee shall have a Chair.
- (2) In the absence of the appointed Chair under paragraph (1), the Committee shall appoint another of its members to act as the Chair.

Meetings

- (1) A Committee shall be convened at such time and place as a duly authorised officer considers appropriate.
- (2) Officers of the EWC:
 - (a) may be in attendance at all Committee meetings;
 - (b) shall not participate in the making of the decision of a Committee.

Voting and decision making

- (1) Any decision of a Committee shall be made by a vote of the members of that Committee.
- (2) Any question put to the vote of a Committee shall be put in the form of a motion by the Committee Chair.
- (3) No member in attendance at a meeting of a Committee may abstain from voting when any question is put to a vote.
- (4) Where a question is put to a vote, the Chair shall:
 - (a) call on the members to vote for or against the motion; and
 - (b) declare that the motion has been carried or not carried, as the case may be.
- (5) Where the votes are equal on any motion, the motion shall be deemed to have been resolved in favour of the registered person.

Legal adviser or other professional adviser

- (1) The EWC shall make available to any Committee constituted under these Procedures and Rules any such legal adviser and/or other professional adviser as may be required by it to act as an adviser in the course of a meeting or a hearing.
- (2) Where a Committee requires legal advice and/or other professional advice which is given to it by the legal adviser and/or other professional adviser made available by the EWC, the appointed legal adviser and/or other professional adviser shall:
 - (a) in the case of an Investigating Committee, make a written declaration in relation to the nature of the advice the Committee sought and received;
 - (b) in the case of a Fitness to Practise Committee, make a written declaration in relation to the nature of the advice the Committee sought and received, and declare in public the nature of the advice the Committee sought and received.

- (3) The legal adviser and/or other professional adviser shall not be a person who has previously addressed the Committee in a referral in relation to which the Committee seeks advice in any capacity other than as a legal adviser or other professional adviser.