

# Academy for Healthcare Science (Registration Council) Appeal Rules 2018

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## Citation and commencement

1. These rules may be cited as the Academy for Healthcare Science (Registration Council) Appeal Rules 2018.
2. These rules come into force on 1<sup>st</sup> March 2018

## Interpretation

In these rules:

**'Academy'** shall mean the Academy for Healthcare Science

**'Applicant'** shall mean an individual who has submitted an application for registration on a register or directory maintained by the AHCS Registration Council.

**'Chair'** shall mean the chair of the Appeal panel.

**'Council'** shall mean the Academy for Healthcare Science Registration Council.

**'Day(s)'** means any day including weekends, bank holidays and any religious days.

**'Fitness to Practise Panel'** shall mean a panel established under rule 5 of the Academy for Healthcare Science (Registration Council) Fitness to Practise Rules 2018.

**'Fitness to Practise Rules'** shall mean the Academy for Healthcare Science (Registration Council) Fitness to Practise Rules 2018.

**'Interim Order'** shall mean an order imposed by an interim order panel to restrict the practice of or suspend from the Register(s) any registrant under rule 60 of the Fitness to Practise Rules.

**'Interim Order Panel'** shall mean a panel established under rule 5 of the Fitness to Practise Rules.

**'Investigating Panel'** shall mean a panel established under rule 5 of the Fitness to Practise Rules.

**'Lay Person'** means a person who is not, and who has not within three years of appointment to any panel, been a registrant of the Council, has been registered with the Health and Care Professions Council as a biomedical scientist, clinical scientist or hearing aid dispenser or does not hold qualifications which would entitle them to apply for such registration.

**'Panel'** shall mean the Appeal Panel established under rule 5 of the Fitness to Practise Rules to consider an appeal.

**'Register(s)'** means one of the accredited registers or directories maintained by the Council and established under rule 3 of the Academy for Healthcare Science (Registration Council) Registration Rules 2018.

**'Registrant'** means a person whose name is entered on a Register(s) maintained by the Council.

**'Registrar'** shall mean a person appointed by the Council to maintain its Register(s).

**'Registration Rules'** shall mean the Academy for Healthcare Science (Registration Council) Registration Rules 2018.

**'Regulation Board'** means the governing body having oversight of all parts of the Academy for Healthcare Science Regulatory Framework, including the Accredited Registers.

## Purpose

3. These rules set out how a Panel established by the Regulation Board will consider appeals made to it by any registrant or other concerning the Academy for Healthcare Science Register:

- a. against a decision by the Registrar to refuse to enter the Applicant's name in a Register(s) maintained by the Council;
- b. against a decision by the Registrar to refuse to renew the registration of a Registrant;
- c. concerning the failure of the Registrar to come to a decision;
- d. against a decision of the Interim Order Panel to impose an Interim Order restricting the practice or suspending the registration of a registrant; or
- e. against determinations of the Fitness to Practise Panel that a registrant's fitness to practise is impaired and/or any sanction imposed.

### Notice of appeal

4. An appeal shall be made by an appellant giving notice in writing in accordance with rule 5 of these rules.
5. The notice shall be addressed to the Council and shall:
  - a. include:
    - i. the name and address of the appellant;
    - ii. the appellant's registration number (where applicable);
    - iii. the date, nature and other relevant details of the decision against which the appeal is brought;
    - iv. a concise statement of the grounds of the appeal; and
    - v. the name and address of the appellant's representative (if any) and a statement as to whether the Council should correspond with that representative concerning the appeal instead of with the appellant;
  - b. a statement that the notice is a notice of appeal; and

- c. be signed by or on behalf of the appellant.
6. The appellant shall attach to the notice of appeal a copy of any documents on which he proposes to rely for the purposes of the appeal.
7. The Council, once it has received the notice of appeal will forward it to the Chair of the Regulation Board who may require that it is served evidence or representations in response to the evidence relied upon by the appellant pursuant to rule 6. Such material must be served within 28 days from the receipt of the notice of appeal.
8. The Regulation Board will establish a panel to consider the Appeal

### The nature of the appeal hearing

9. All appeal hearings shall be held in public in the presence of both parties unless any of the provisions of rule 38 below apply.
10. Unless the provisions of rule 12 below apply, appeal hearings shall not be by way of a rehearing; rather they will be a review of the papers and the previous decision made.
11. If it is satisfied that it is just and reasonable to do so, the panel may permit the appellant to rely on grounds not stated in the notice of appeal.
12. Witnesses shall not be permitted to give live evidence to the panel save with the leave of the panel in accordance with rule 13.
13. If it is satisfied that it is just and reasonable to do so, the panel may permit a party to present any evidence not previously relied upon (fresh evidence), if the party seeking to rely on the material can satisfy the panel that:

- a. the fresh evidence was not reasonably available at the time the decision being appealed against was made; and
  - b. the fresh evidence is relevant to an issue that is being considered by the panel.
14. Where fresh evidence is relied on by the appellant the Regulation Board may serve evidence in rebuttal in accordance with rule 7 above.

### Time for appeal

15. A notice of appeal must be served on the Council in accordance with the following deadlines:
- a. for appeals against a refusal to register or to make a decision to register, pursuant to rule 20 of Registration Rules: within 28 days from the date of notice of decision under rule 21 of the Registration Rules;
  - b. for appeals against the imposition of an Interim Order, pursuant to rule 60 of the Fitness to Practise Rules; within 28 days from the date of the notice of decision under rule 65 of the Fitness to Practise Rules;
  - c. for appeals against a determination of the Fitness to Practise Panel that a Registrant's fitness to practise is impaired and/or any sanction imposed, made pursuant to rules 115, 116, 117 or 126 of the Fitness to Practise Rules; within 28 days from the date of notice of decision under rule 127 of the Fitness to Practise Rules.

### Acknowledgement by the Regulation Board and notice of hearing

15. Within 28 days of receiving a valid notice of appeal (that is, complies with

rules 4 and 5) the Regulation Board shall:

- a. acknowledge its receipt
- b. fix a date and time for the hearing of the appeal, which shall not be more than 90 days following the receipt of a valid notice of appeal;
- c. send a notice of hearing to the appellant which shall inform them of:
  - i. the right to attend the hearing;
  - ii. the date, time and venue for the hearing;
  - iii. the nature of the appeal hearing, namely that it is by way of review, rather than re-hearing;
  - iv. the right to give evidence in person and to call witnesses with the leave of the panel and in accordance with the restrictions on evidence identified at rule 11;
  - v. the right to make oral submissions to the panel in person or to be represented by another person (such as a solicitor, barrister, professional body or trade union representative); and
  - vi. that if he does not attend, the appeal may proceed in his absence.

### Notice of attendance

16. Within 28 days of the notice of hearing referred to in rule 15(c) being sent, the appellant shall inform the Regulation Board whether or not they intend to attend or be represented at the hearing and whether or not they intend to call any witnesses or submit other fresh evidence subject to the requirements of rule 12 and, if so, shall provide their names and addresses to the Board.

17. The respondent in proceedings shall be as follows:
  - a. in an appeal against a decision of the Registrar to refuse to register; the Registrar;
  - b. in an appeal against a decision of the Interim Order Panel to impose an Interim Order; the Council; or
  - c. in an appeal against a determination of the Fitness to Practise Panel that the registrant's fitness to practise is impaired and/or any sanction imposed; the Council.
18. An appellant who does not intend to attend or be represented at a hearing may, no less than 7 days before the date of the hearing, send to the Regulation Board additional written representations in support of his appeal.

### Membership of an appeal panel

19. A panel shall comprise no fewer than three members appointed by the Regulation Board under rule 19 of the Fitness to Practise Rules and shall include:
  - a. a person who is registered in the same Register(s) as that in which the appellant is, or is applying to be, registered; and
  - b. at least one Lay Person; and
  - c. a Chair (who may be a Lay Person or a Registrant).
20. A person who has been involved in any other capacity in a case which is to be considered by the panel shall not be appointed as a member of that panel.
21. Decisions by a panel shall be made by a majority vote of those present and, in the event of a tie, the Chair shall have an additional casting vote which shall be exercised in favour of the appellant.
22. Each panel shall be assisted by a clerk who shall be responsible for the

administrative arrangements for the hearing.

23. The clerk shall not participate in the decision making of the panel and shall not have a vote.

### Removal of Panel members

24. A person:
  - a. is not eligible to be appointed to, or to sit as a member of, a panel if that person is disqualified or suspended from membership of another panel; and
  - b. shall cease to be a member of a panel if:
    - i. the member resigns, which the member may do at any time by notice in writing to the Council, or
    - ii. the member ceases to be a member of another panel.

### Representation

25. The Registrar or Council may be represented in appeal proceedings by any person and shall be known as the respondent.
26. The appellant may be represented in any proceedings by any person, whether or not legally qualified, except a member, employee or agent of the Academy, Council or any of its panels.
27. Where the appellant, the Registrar or the Council are represented at an appeal hearing, references in these rules to the appellant, Registrar or Council may also be read as references to the representative of the appellant, Registrar or Council.

### Preliminary meetings

28. The panel may hold a preliminary meeting in private with the parties, their representatives and any other person the panel considers appropriate if such a

meeting would, in the opinion of the panel or the Chair, assist the panel to perform its functions.

29. Preliminary meetings may be held electronically or by telephone if the panel considers that it would be in the public interest to do so.

### Powers to determine an appeal without a hearing

30. The panel may determine an appeal without an oral hearing based on any documents provided under rules 6, 16 and 18 where:
- a. the Regulation Board does not receive a reply from the appellant within the time specified in rule 16 and the panel is satisfied that all reasonable steps have been taken to give notice under rule 15(c); or
  - b. the appellant replies under rule 16 to the effect that he does not wish to attend or be represented; or
  - c. the appellant consents to the appeal being determined without a hearing; and
  - d. the respondent consents to the appeal being determined without a hearing; and
  - e. the Panel considers it in the public interest to do so.
31. If the panel decides under rule 30 to determine an appeal without a hearing, it shall take into account any written representations provided by the appellant and the respondent.

### Absence of the appellant

32. Where:
- a. the appellant has been notified of the hearing in accordance with rule 15;
  - b. the appellant does not attend and is not represented;

- c. the respondent does not consent to the appeal being determined without a hearing in accordance with rule 31;

the panel may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to give notice of the hearing to the appellant and that it is fair and in the public interest to do so.

### Postponement or adjournment of a hearing

33. Hearings may be postponed by the Regulation Board either of its motion or at the request of a party to a hearing up to 14 days in advance of a hearing after receiving representations from both parties.
34. Where a hearing is postponed the Regulation Board shall send the appellant notice of the date on which the panel is to hold the postponed hearing.
35. Unless the appellant agrees otherwise, the date for a postponed hearing shall be at least 14 days after the date of the notice described in rule 34 above.
36. Hearings may be adjourned by panels from time to time as they see fit either before or after the commencement of the hearing, either of a panel's motion or at the request of a party.
37. Reasonable notice of the date of the adjourned hearing must be provided by the Regulation Board to the parties.

### Conduct of hearing

38. The hearing shall be conducted in public unless after hearing representations from both parties (where available) the panel is satisfied that:
- a. in the interests of justice; or
  - b. for the protection of the public; or

- c. for the protection of the private life of the Registrant; or
  - d. for the protection of any person giving evidence, patient or service user; the whole or part of the hearing should proceed in private.
39. At the beginning of the hearing the Chair shall explain to the parties the order of proceedings which the panel proposes to adopt.
40. The panel shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties shall be heard in such order as the panel shall determine.
41. Any persons that are called to give evidence (pursuant to rule 12) shall be examined by the party calling them, cross examined by the other party and re-examined by the party that called them. The panel may ask questions after re-examination. The parties may then ask questions of the witness, arising from the panel's questions. The party calling the witness shall be the final person to examine the witness in re-examination.

## Evidence

42. Subject to the provision of rules 11 and 12 [no live evidence and admission of fresh evidence], the advice of the Legal Adviser, the requirements of a fair hearing and of relevance, the 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 Council.

43. The 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.
44. 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.
45. Any relevant determination and findings of fact by any regulator or an equivalent regulator outside the United Kingdom shall be conclusive proof of the determination and the underlying facts.

## Powers of the Appeal Panel

46. The panel shall have the power to:
- a. allow the appeal, whether in full or part; or
  - b. refuse the appeal; or
  - c. remit to the original panel for rehearing or redetermination of any issue, finding or sanction imposed; or
  - d. substitute any decision of fact, ground(s), impairment or sanction made by the original panel (where the substituted decision is one that the previous panel could have made).
47. Where the panel decides to remit the original decision under rule 46(c) above, a person who has been involved in any other capacity in the case shall not be appointed as a member of the panel to which the decision is remitted.

## Notice of decision

48. Within 7 days of the hearing, the panel shall notify the appellant and respondent in writing of its decision and the reasons for reaching that decision.



49. The decision of the panel shall be final and there shall be no further right of appeal to the Regulation Board.
50. Where the panel upholds the decision of the Registrar to refuse to register the appellant, the appellant may not submit further applications for registration for two years from the date of the notice described in rule 48 above.