

# Healthcare Science (HCS) Practitioner Registration Council Fitness to Practise Rules 2020

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## Part 1 - Introduction

### Citation and commencement

1. These rules may be cited as the Healthcare Science (HCS) Practitioner Registration Council Fitness to Practise Rules 2020.
2. These rules come into force on 1 March 2020.

### Interpretation

In these rules:

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

**'Accredited Register'** shall mean a register accredited by the Professional Standards of Authority for Health and Social Care using its powers under s229 of the Health and Social Care Act 2012.

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

**'Applicant'** shall mean an individual who has submitted an application for registration on a register or directory maintained by the Academy for Healthcare Science.

**'Chair'** shall mean chair of the relevant panel established under these rules.

**'Complaint'** means any information about the conduct of a Registrant which can demonstrate that the Registrant's fitness to practise is impaired by reason of one of the grounds for a formal allegation.

**'Complainant'** means any person (including an institution) who makes a complaint about a person registered with the Council.

**'Concern'** means information about the conduct of a registrant made known to the Council, other than by way of a complaint, which may demonstrate that the registrant's fitness to practise is impaired by reason of the ground(s) of a formal allegation.

**'Council'** shall mean the AHCS Healthcare Science (HCS) Practitioner 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 Fitness to Practise Rules.

**'Fitness to Practise Rules'** shall mean the AHCS Healthcare Science (HCS) Practitioner Registration Council Rules 2020.

**'Formal Allegation'** means an allegation made to the Council that the registrant's fitness to practise is impaired by reason of one of the grounds set out in rule 43.

**'Ground(s)'** means the grounds for a Formal Allegation provided for in rule 43.

**'Impairment'** means the adverse effect on a registrant's fitness to practise caused by one or more of the grounds set out in rule 43.

**'Interested Third Party'** means a person or institution who, in the opinion of the Registrar, has a legitimate reason to be interested in and advised of proceedings, and includes (but is not limited to) a statutory regulatory body, police authority or organisation employing the registrant against whom a formal allegation is made.

**'Interim Order'** means an order made under rule 60 by an Interim Order Panel to suspend the registrant's registration prior to a Fitness to Practise Panel having disposed of the matter.

**'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.

**'Legal Adviser'** means a barrister or a solicitor qualified to practice in the United Kingdom, appointed in accordance with rule 31.

**'Medical Adviser'** means a registered medical practitioner appointed by the Council whose function is to give advice to a panel on matters within their professional competence in connection with any matter which it is considering, appointed in accordance with rule 36.

**'Misconduct'** means conduct which calls into question the suitability of a registrant to remain on the register by way of their conduct falling below the accepted standards of their profession.

**'Register'** shall mean a register established by the Council, whether or not it is an Accredited Register.

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

**'Registrar'** shall mean a person appointed by the Council to manage its Register.

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

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

**'Removal Order'** means an order for the removal of a Registrant from a Register, made by a Fitness to Practise Panel under rule 131(c).

**'Suspension Order'** means an order for suspension of a Registrant's registration made by a Fitness to Practise Panel under rule 131(b).

## Application of these rules

3. These rules shall apply when a complaint or concern about a person registered with the Council (a Registrant) is received. These rules shall also apply when the conduct referred to in the complaint or concern occurred outside the United Kingdom or took place at a time when the Registrant was not registered with the Council.
4. Unless the Registrar considers that it is in the public interest to do so, a complaint or information received by the Council about a Registrant will not be considered under these rules if over five years have elapsed since the conduct occurred.

## Part 2 - Function and constitution of panels

5. The Council will establish three panels, namely:
  - a. an Investigating Panel;
  - b. an Interim Order Panel;
  - c. a Fitness to Practise Panel;and should an appeal be made this will be referred to the AHCS Regulation Board

### Investigating Panel

6. The Investigating Panel will consider in respect of each Formal Allegation referred to it whether there is a case to answer.
7. In determining whether there is a case to answer, the panel will consider the evidence before it and decide whether there is a realistic prospect that the Council will be able to demonstrate that the Registrant's fitness to practise is impaired.
8. The Council will, from time to time, publish guidance on the realistic prospect test to be applied by the panel.
9. Hearings of the panel shall be in private session.

## Interim Order Panel

10. The Interim Order Panel will consider any application by the Council for an Interim Order and will only make such an order if it determines that it is:
  - a. necessary for the protection of members of the public; or
  - b. otherwise in the public interest; or
  - c. in the interests of the Registrant concerned.
11. Hearings of the panel shall be held in private.
12. Where the panel decides that it should impose an Interim Order on a Registrant's registration, the duration of such an order shall not exceed twelve months.

## Fitness to Practise Panel

13. The Fitness to Practise Panel shall consider any Formal Allegation against a Registrant referred to it by the Investigating Panel to decide whether a Registrant's fitness to practise is impaired.
14. Hearings of the panel shall be held in public unless the Chair considers that it is necessary to hold some or all the hearing in private:
  - a. to protect the private life of the Registrant, Complainant, any person giving evidence or any patient or service user; and
  - b. that the public interest would be furthered by holding the hearing in private.

## Appeals referred to and convened by the Regulation Board

15. The Regulation Board shall consider appeals made:
  - a. against the decision by the Registrar to refuse to enter the Applicant's name in the Register(s); or
  - b. against the decision by the Registrar to

- refuse to renew the registration of a Registrant; or
  - c. concerning the failure of the Registrar to come to a decision; or
  - d. against determinations of the Interim Order Panel to impose an Interim Order to suspend 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.
16. Hearings of the Regulation Board shall be held in public unless the Chair considers that it is necessary to hold some of the hearing in private:
    - a. in order to protect the private life of the Registrant, Complainant, any person giving evidence or any patient or service user; and
    - b. that the public interest would be furthered by holding the hearing in private.

## Membership, quorum and voting of panels

17. The Council shall maintain a pool of people from which panel members hearing a case shall be appointed.
18. Individuals shall be appointed to be members of the pool for a period not exceeding three years. They shall be eligible for reappointment for a further period not exceeding three years.
19. Each panel shall consist of not fewer than three members, appointed from the pool by the Council.
20. The quorum of each panel shall be equal to its membership.
21. The Council shall ensure that all panels contain at least one person who is registered in the same Register and at the same Tier as that of the Registrant.

22. The Council shall ensure that all panels contain at least one Lay Member.
23. The Council shall appoint a Chair of each panel.
24. No member of any panel shall sit on the hearing of a Registrant's case if that member has previously been concerned with the case.
25. Decisions of all panels shall be taken by simple majority.
26. The Chair may exercise a casting vote.
27. Each panel shall be assisted by a clerk who shall be responsible for the administrative arrangements for the hearing.
28. The clerk shall not participate in the decision making of the panel and shall not have a vote.

## Removal of panel members

29. 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;
  - c. may be removed pursuant to the procedures of the AHCS Governance and Scrutiny Committee.

## Appointment of Legal or Medical Adviser

### Legal Adviser

30. The Council may appoint a Legal Adviser to assist the panel in procedural or legal matters.
31. The role of the Legal Adviser shall be to advise the panel on questions of law and to

ensure that the proceedings before the panel are conducted fairly. To this end, the Legal Adviser shall inform the panel immediately of any irregularity in the conduct of the proceedings.

32. Where the proceedings of the panel are held in public, the advice of the Legal Adviser shall be given in the presence of the parties. Advice given by the Legal Adviser during the private deliberations of the panel shall subsequently be repeated before the parties.
33. The parties shall have the opportunity to make representations on the contents of the advice given by the Legal Adviser before any decision is announced by the panel.
34. The Legal Adviser may also assist a panel in relation to the drafting of the reasons for any findings, determinations or decisions of that panel but shall take no part in the decision-making process.
35. The Legal Adviser shall not be entitled to vote.

### Medical Adviser

36. The Council may appoint a Medical Adviser to advise the panel whenever it is considering a Formal Allegation that the Registrant's fitness to practise is impaired by their physical or mental ill health.
37. The role of the Medical Adviser shall be to advise the panel on questions relating to the Registrant's physical or mental health.
38. Where the parties are present during the proceedings, the advice of the Medical Adviser shall be given in the presence of the parties. Any advice given by the Medical Adviser during the private deliberations of the panel shall subsequently be repeated before the parties.
39. The parties shall have the opportunity to make representations on the contents of the advice given by the Medical Adviser.

40. The Medical Adviser shall not be entitled to vote nor shall they take any part in the decision-making process.

## Part 3 - Investigating Panel

### Referral of Complaint or Concern

41. Any complaint or concern received must be referred as soon as reasonably practicable to the Council to consider in accordance with the provisions below.

42. The Registrar shall initially consider the complaint or concern in relation to a Registrant and shall determine whether the complaint or concern:

- a. meets the requirements of rule 4 above;
- b. can amount to a Formal Allegation in accordance with rule 43 below;
- c. is an issue that cannot be resolved informally or by mediation;
- d. is made by an anonymous complainant and is not verifiable by other means.

43. A complaint or concern is only capable of amounting to a Formal Allegation on the basis that a Registrant's fitness to practise may be impaired due to one or more of the following grounds:

- a. misconduct (whether in the person's practice of that profession or otherwise);
- b. lack of competence;
- c. a level of proficiency in the knowledge and use of the English language that is insufficient for the safe and competent practice of the regulated profession;
- d. physical or mental health;
- e. having an unspent conviction or caution in the UK for a criminal offence, or a conviction elsewhere for an offence, which if committed in England and Wales, would constitute a criminal offence;
- f. having been bound over to keep the

peace by a magistrates' court in England and Wales;

- g. having:
  - i. been dismissed with an admonition under section 246(1) of the Criminal Procedure (Scotland) Act 1995<sup>1</sup>;
  - ii. been discharged under section 246(2) or (3) of that Act;
  - iii. accepted a conditional offer under section 302 of that Act, or
  - iv. accepted a compensation offer under section 302A of that Act;
- viii. having agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- ix. is the subject of a determination by a statutory body or Accredited Register responsible for regulating or licensing a health or social care profession to the effect that the Registrant's fitness to practise is impaired, or a determination by an equivalent regulator outside the United Kingdom to that effect ("a relevant determination");
- x. is included on a barred list;
- h. that an entry in the Register has been fraudulently procured or made incorrectly.

44. Where the complaint or concern meets the Grounds set out in rule 43 above, the Registrar shall refer the complaint or the concern to the Council as a Formal Allegation.

45. Where the Council has received a complaint or concern about a Registrant and that Registrant is already the subject of an inquiry by the police or other body, or there are ongoing criminal, civil or regulatory proceedings, the Council may defer the investigation or referral of a complaint or concern until the inquiry or proceedings

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<sup>1</sup> Or amendment or replacement thereof.

have concluded.

## Procedure of the Investigating Panel

46. The Investigating Panel will sit in private in the absence of the parties.
47. In respect of each Formal Allegation referred to it, the panel shall consider whether, in its opinion, there is a realistic prospect of a finding of impairment in relation to each Ground(s), considering the realistic prospect test set by the Council and after consideration of any relevant documents and information provided to it.
48. Before the panel makes any decision as to the prospect of a finding of impairment, the Council shall send to the Registrant:
  - a. a copy of the complaint or concern and any documentation in support; and
  - b. information on how to access these rules.
49. The Council shall invite the Registrant, within 28 days of receipt of the material provided for at rule 48(a) above, to submit written representations upon the complaint or concern or other matter to be considered pursuant to rule 50 below, together with any additional documentation.
50. Where any written representations are received, the Council may if it sees fit, send the Complainant a copy of the written representations inviting them to provide any written comment on those representations for consideration by panel within 14 days. The Registrant will be sent a copy of the Complainant's response.
51. If the panel considers that there is not a realistic prospect of a finding of impairment in relation to any Ground(s), it shall inform the Complainant, the Registrant and any Interested Third Party that no further action will be taken in relation to that ground and will provide an explanation for that decision to the Registrant. All decisions under this rule shall be made in writing.
52. Subject to rule 53, in determining whether there is a case to answer the panel may take account of any other Formal Allegation made against the Registrant within a period of three years prior to the date upon which the present Formal Allegation was received by the Council.
53. An earlier allegation in respect of which an Investigating Panel previously determined that there was no case to answer may only be considered in accordance with rule 52 if, when the Registrant is notified that no further action is to be taken in connection with the earlier allegation, the notification contains a statement that the case may be taken into account in the consideration of any subsequent allegation.
54. If the panel considers that there is a realistic prospect of a finding of impairment in relation to any Ground(s), it may (subject to the provisions of rule 56 below) recommend that Council:
  - a. issue a warning to the Registrant;
  - b. enter into a training/development agreement with the Registrant;
  - c. agree to suspend the Registrant for a period not exceeding 12 months;
  - d. agree to remove the Registrant from the register.
55. Where the panel considers that there is a realistic prospect of a finding of impairment in relation to any Ground(s) and it does not proceed in accordance with rule 54, it must refer the matter to a Fitness to Practise Panel.
56. Where the panel considers that there is a realistic prospect of a finding of impairment in relation to any Ground(s) and decides to proceed under rule 54, the panel must ensure that:
  - a. the Registrant admits the facts of the allegation; and
  - b. it would not be in the public interest to refer the matter to the Fitness to

Practise Panel.

57. Where the panel considers that there is a realistic prospect of a finding of impairment and proceeds under rules 54 or 56, it must provide written reasons for its decision.

58. As soon as reasonably practicable after the decision has been made under rule 54, the Council shall write to the Registrant giving reasons for the decision.

59. As soon as reasonably practicable after the decision has been made to refer a Formal Allegation to the Fitness to Practise Panel under rule 55, the Council shall write to the Registrant:

- a. giving reasons for the decision; and
- b. stating the Ground(s) referred.

## Part 4 - Interim Order Panel

60. The Interim Orders Panel may impose an Interim Order, on application by the Council or of its own motion, to suspend from the Register any Registrant against whom a Formal Allegation has been referred to the Investigating Panel.

61. The Interim Orders Panel shall sit in private.

62. Where the Council wishes to apply for an Interim Order it shall send a notice of hearing to the Registrant.

63. The notice of hearing referred to in rule 62 shall:

- a. include details of the matters upon which the application is based;
- b. include a statement setting out why the Registrant's registration should be suspended;
- c. provide reasonable notice of the hearing;
- d. include notification that the hearing may proceed and be decided in the absence of the Registrant should they (or their representative) not attend;
- e. inform the Registrant of:
  - i. their right to attend the hearing;

ii. the time and venue for the hearing;

iii. their right to give evidence in person, to call witnesses and to cross examine any witnesses called by the Council;

iv. their 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).

64. Where the panel is considering whether to make an Interim Order, the order of proceedings shall be as follows:

- a. the Council shall outline the facts of the case and set out the reasons why the Registrant's registration should be made subject to an Interim Order, together with any evidence in support;
- b. the Registrant (if present) may set out the reasons why such an application should not be granted by the panel, together with any evidence in support;
- c. the panel may obtain advice from the Legal or Medical Adviser, where one is appointed;
- d. the panel shall determine the application and announce its decision and the reasons for that decision, in the presence of the parties (if present).

65. As soon as reasonably practicable after the conclusion of the hearing the Council shall send a notice of decision to the Registrant.

66. The notice of decision referred to in rule 65 shall:

- a. set out the decision of the panel;
- b. specify the reasons for the panel's decision;
- c. where an Interim Order has been imposed, set out the period of suspension beginning on the date on which the order is made; and
- d. inform the Registrant of the right of appeal to the Appeal Panel.

## Part 5 - Fitness to Practise Panel procedures

### Notice of hearing

67. No later than 28 days before the hearing of the Formal Allegation before the Fitness to Practise Panel, the Council shall send the Registrant a notice of hearing.
68. The notice of hearing referred to in rule 67 shall inform the Registrant of:
- a. the date, time and venue of the hearing;
  - b. the allegation(s) against the Registrant;
  - c. their right to:
    - i. attend the hearing;
    - ii. give evidence to the panel;
    - iii. make oral submissions to the panel either in person or through a representative (such as barrister, solicitor, professional body or trade union representative); and
    - iv. call and cross-examine witnesses;
  - d. the possible sanctions open to the panel in the event of a finding of impairment; and
  - e. the panel's power to proceed and determine the matter in the absence of the Registrant, or the Registrant's representative, at the hearing.
69. The hearing shall not be fixed for any date earlier than 28 days from the day after the sending of the notice of hearing except with the agreement of the Registrant.
70. The Council shall publish the notice of hearing on the website maintained by the Academy.

### Disclosure of case and service of documents

71. No later than 42 days before the date of hearing, the Council shall serve on the Registrant copies of all documents and reports upon which it intends to rely.
72. No later than 14 days before the date of the

hearing, the Registrant shall:

- a. advise the Council what, if any, of the evidence served by the Council they agree; and
  - b. serve on the Council copies of all documents and reports upon which they intend to rely.
73. Upon receipt of the Registrant's case, the Council shall (regardless of whether it has previously done so) consider whether there are any further documents in the Council's possession which may assist the Registrant, and shall serve copies of such documents, if any, on the Registrant.
74. No later than 7 days before the hearing, the Council shall send to members of the panel copies of:
- a. the notice of hearing; and
  - b. any documents or reports provided by the parties (whether agreed or otherwise).

### Preliminary Meetings

75. The Fitness to Practise 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.
76. Preliminary meetings may be held electronically or by telephone if the Council considers that it would be in the public interest to do so.

### Joinder

77. The panel may determine together two or more Formal Allegations against a Registrant and/or Formal Allegations against two or more Registrants, if the panel considers it fair to so do.

### Absence of the Registrant

78. Where:

- a. the Registrant has been notified of the hearing in accordance with rules 67 and 68; and
  - b. the Registrant does not attend and is not represented;
- 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 Registrant and that it is in the public interest to proceed.

### Vulnerable witnesses

79. In proceedings before the panel, the following may (if the quality of their evidence is likely to be adversely affected as a result) be treated as a vulnerable witness:

- a. any witness under the age of 17 at the time of the hearing;
- b. any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- c. any witness who is significantly impaired in relation to intelligence and social functioning;
- d. any witness with physical disabilities who requires assistance to give evidence;
- e. any witness, where the allegation against the practitioner is of a sexual nature and the witness was the alleged victim; and
- f. any witness who complains of intimidation.

80. Subject to any representations from the parties and the advice of the Legal Adviser, the panel may adopt such measures as it considers reasonable and desirable to enable it to receive evidence from a vulnerable witness.

81. Where a Formal Allegation concerns an allegation of a sexual nature, the Registrant shall not be permitted to cross-examine the Complainant in person without the consent of that person.

### Procedure at the Hearing

82. Subject to the requirements of a fair hearing, the panel may decide its own procedures generally and may issue directions about the just and prompt determination of the proceedings.

83. Any determination of the panel shall be conducted in four stages, being:

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

84. The hearing shall be conducted in the presence of the parties, unless the panel decides to proceed in the absence of the Registrant pursuant to rule 78.

85. 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 hearing (or any part of the hearing) should proceed in private.

86. The Registrant may be represented by any person, whether or not they are legally qualified, so long as they are not an employee or agent of the Academy, the Council or any of its panels.

87. The panel may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the panel, has disrupted or is likely to disrupt the hearing.

88. For arriving at any decision in relation to the hearing, the panel shall sit in private and in

the absence of the parties. Any announcement of a decision shall be made in public.

## Evidence

89. Subject to 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.
90. 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.
91. 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.
92. 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.

## Reading of the Formal Allegation

93. At the opening of the hearing, the Chair shall introduce the members of the panel and the parties.
94. The Chair shall ask the Registrant to confirm their name and registration number.
95. The clerk shall then read out the Formal Allegation against the Registrant.
96. After the Formal Allegation has been read, the Chair shall ask the Registrant whether any facts (or convictions, cautions, relevant determinations, health issues or false entries) alleged in the Formal Allegation are admitted.
97. Subject to the requirements of a fair

hearing, the panel may amend the Formal Allegation at any stage prior to conclusion of the Council's case.

98. The panel shall first hear representations from the parties, (and take advice from the Legal Adviser if appointed), before deciding if the Formal Allegation should be amended.

## Presentation of the Council's case

99. Where no admissions are made, or some relevant facts remain disputed, the Council shall present the case against the Registrant to the panel, make an opening submission and present evidence in support (including by the calling of witnesses) of those relevant facts which are not admitted.

## Witnesses

100. Witnesses shall be sworn or required to affirm.
101. The panel may, on the application of the party calling the witness, agree that the personal details of the witness shall not be revealed in public.
102. Witnesses shall be examined by the party calling them and may then be cross-examined by the opposing party. The party calling the witness may then re-examine the witness.
103. Witnesses may then be questioned by the panel (and, if appointed and with leave of the Chair, by the Legal or Medical Adviser).
104. The parties may then question the witnesses on matters arising out of the panel's questions. The party calling the witness shall question the witness last.
105. Any further questioning of witnesses shall be at the discretion of the Chair.
106. Witnesses shall not be allowed, without leave of the Chair, to attend or watch the proceedings until after they have completed giving evidence to the panel and been formally released by the Chair.

## Half time submission

107. At the close of the Council's case, a Registrant may submit that the Council has not presented sufficient evidence to demonstrate that, taken at its highest:
- the facts of the Formal Allegation(s) are capable of proof; and/or
  - the Ground(s) are not capable of being made out; and/or
  - there is no realistic prospect of a finding of impairment.
108. The panel will consider any such submission(s) under rule 107 after having heard representations from both parties and after having received any such advice as it considers necessary.

## Registrant's evidence

109. At the end of the evidence presented by the Council, the Registrant may present evidence and advance witnesses in support of their case.
110. The Registrant shall not be permitted to call witnesses of fact before they give their own evidence without the permission of the Chair after having heard representations from both parties.

## Closing submissions

111. The Council and then the Registrant may make closing submissions to the panel.
112. The Legal or Medical Adviser (if appointed) will then provide any advice required by the panel.

## Burden and standard of proof

113. The burden of proving the facts alleged in the Formal Allegation shall rest upon the Council.
114. The standard of proof shall be on the balance of probabilities.

## Findings

115. In respect of a Formal Allegation brought under rule 43(a) - misconduct, rule 43(b) - lack of competence or rule 43 (c) - proficiency in the English language, the Panel shall make findings as to whether:
- some or all the facts pleaded are proved;
  - whether any facts found proved amount to the pleaded Ground(s);
  - whether by the proved Ground(s), the Registrant's fitness to practise is impaired.
116. In respect of a Formal Allegation brought under rules 43(c) to (g), the Panel shall make findings as to whether:
- the pleaded Ground(s) is made out;
  - by the Ground(s) made out, the Registrant's fitness to practise is impaired.
117. In respect of a Formal Allegation brought under rule 43(h) - incorrect or fraudulent entry, the Panel shall make findings as to whether some or all the facts pleaded are proved.
118. In deciding upon the issues in rules 115 to 117 above, the Fitness to Practise Panel shall have regard to Good Scientific Practice and any standards of proficiency, conduct, performance or ethics issued by the Council.
119. Any failure to comply with Good Scientific Practice, standards of proficiency or of conduct, performance and ethics issued by the Council shall not be taken, in and of itself to establish that a Registrant's fitness to practise is impaired but may be considered in any proceedings under these rules.
120. The panel shall announce its findings in public and give reasons for its findings.
121. If no relevant facts have been proved or there is no finding that the Ground(s) have

been made out or there is no finding that the Registrant's fitness to practise is impaired, the Formal Allegation will be dismissed.

## Mitigation

122. If the Formal Allegation(s) is not dismissed in accordance with rule 121 above, the Registrant may address the panel in mitigation, present references and testimonials and call character witnesses in support. Except with the leave of the Chair, mitigation shall be presented following the panel's decision under rule 115, 116 or 117.

123. Where character witnesses are called, they may be questioned by the Council and the panel.

124. Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Council. The Council shall provide such mitigation documents to the panel at this stage.

125. Where the panel finds that the Registrant's fitness to practise is impaired, the Council shall provide the panel with details of the Registrant's previous disciplinary record with the Council, if any, and may present evidence and make submissions in relation to the appropriate sanction, if any, to be made by the panel.

126. After hearing from the Council and the Registrant, the panel shall decide, in private, which of the sanctions set out in Part 6 of these rules it should impose.

## Notice of Decision

127. As soon as reasonably practicable after the hearing, the Council shall send a notice of decision to:

- a. the Registrant;
- b. the Complainant;
- c. any Interested Third Party.

128. The notice of decision referred to in rule 127 shall:

- a. set out the panel's findings of fact, its decisions on the Ground(s), impairment and sanction;
- b. state the reasons for the panel's decisions;
- c. where a Suspension Order has been imposed, set out the period of suspension;
- d. inform the Registrant of the right of appeal to the Appeal Panel; and
- e. inform the Registrant that any sanction imposed by the panel took effect from the date on which it was made.

129. Where there is a finding of impairment the Council shall publish the notice of decision on the AHCS website.

130. The Council may also provide a copy of the notice of decision to any of the regulatory bodies, other accredited registers or interested third parties if it is in the public interest to so do.

## Part 6 - Sanctions

131. Upon a finding of impairment due to any of the Grounds, the Fitness to Practise Panel may decide to take no further action or shall:

- a. caution the Registrant and direct that a record of the caution be placed on the Registrant's entry in the Register(s), for a period of up to five years; or
- b. make an order suspending the Registrant's registration for a period not exceeding twelve months ('a Suspension Order'); or
- c. make an order removing the Registrant's name from the Register(s) ('a Removal Order'); and/or
- d. revoke any Interim Order.

132. All sanctions come into force on the day that they are made.

133. The Fitness to Practise Panel shall announce its decision on sanctions in public and shall give reasons for its decision.

## Part 7 - General

### Representation

134. Save where otherwise stated in these rules, parties may be present and represented at any hearings under these rules.

135. The Council may be represented by any person.

136. The Registrant may be represented by any person, whether or not legally qualified, except a member, employee or agent of the Academy, the Council or any of its panels.

137. Where the Registrant or the Council are represented, references in these rules to the Council or the Registrant may also be read as references to the representative of the Council or the Registrant.

### Postponement or adjournment of a hearing

138. Hearings may be postponed by the Council 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.

139. Where a hearing is postponed the Council shall send the Registrant notice of the date on which the panel is to hold the postponed hearing.

140. Unless the Registrant agrees otherwise, the date for a postponed hearing shall be more than 14 days after the date of the notice described in rule 140 above.

141. Hearings may be adjourned by panels from time to time as they see fit either before or after they have commenced, either of their

motion or at the request of a party.

142. Reasonable notice of the date of the adjourned hearing must be provided by the Council to the Registrant.

### Service

143. Any form, warning, notice, decision or request for information given by the Council, Academy or Registrar to a Registrant under these rules may be:

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