

**SCOTTISH SOCIAL SERVICES COUNCIL
(CONDUCT) RULES 2009B**

The Scottish Social Services Council, in exercise of its powers under sections 47, 48, 49, 50 and 57 of the Regulation of Care (Scotland) Act 2001, and of all other powers enabling the Scottish Social Services Council in that behalf, and having consulted such persons as appear to the Council to be appropriate, with the consent of the Scottish Ministers, hereby makes the Scottish Social Services Council (Conduct) Rules 2009B:

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PART 1

INTRODUCTION

1. Citation, commencement, saving and extent

- (1) These Rules may be cited as the Scottish Social Services Council (Conduct) Rules 2009B and shall come into force on the day they are signed on behalf of the Council.

- (2) The Scottish Social Services Council (Conduct) Rules 2009 are hereby revoked, and these Rules shall be substituted and shall apply to any case whether initiated before or after the coming into force of these Rules, but the Scottish Social Services Council (Conduct) Rules 2008 shall continue to apply in respect of any case referred to the Conduct Sub-committee by the Preliminary Proceedings Sub-committee prior to 5 June 2009.

- (3) The Council, its Conduct Sub-Committee or any Sub-committee, as may be, may relieve any Party from the consequence of a failure to comply with a provision in these Rules, which is shown to be due to a mistake, oversight or other excusable cause, on such conditions, if any, as it thinks fit.

2. Interpretation

(1) In these Rules, unless the context otherwise requires –

“the Act” means the Regulation of Care (Scotland) Act 2001;

“Applicant” means an applicant for restoration to the Register;

“Appropriate Representative” means a person who represents an Applicant or Registrant at a meeting of a Sub-committee with the consent of the Sub-committee and will be either a solicitor, counsel, a representative from the Applicant or Registrant’s Trade Union or Professional Body and/or where the Registrant is registered in the part of the Register for Students, a representative from a student body;

“Certificate of Compliance” means a certificate prepared by the Clerk certifying that the notification and service requirements in these Rules as relevant in each case have been complied with by the Clerk and the Council;

“the Charge” means the statement, prepared by the Council, giving fair notice to the Registrant of the facts which the Council offers to prove in order to justify the sanctions available in terms of paragraph 26 of SCHEDULE 3 of these Rules;

“Clerk” means the role defined in terms of Rule 8 of SCHEDULE 5;

“Code of Practice for Social Service Workers” means the code of practice laying down the standards of conduct and practice expected of social service workers published by the Council under section 53(1) (a) of the Act, as amended from time to time;

“Complainant” means any person (including an Employer or institution) who makes a Complaint against a Registrant and thereby has an interest in the outcome of proceedings;

“Complaint” means a specific allegation (by any means and from any source) of Misconduct against a named Registrant which, if proved, would in the reasonable opinion of the Council, be likely to result in the Registrant being warned, suspended or removed from the Register or having a condition placed on their Registration;

“Complaint Form” means the form approved by the Council for the purposes of Rule 5;

“the Conduct Committee” means the committee set up by the Council in pursuance of section 49 of the Act and in terms of paragraph 1 of SCHEDULE 5

of these Rules;

“the Conduct Procedure” is the procedure set out in SCHEDULE 3 to these Rules (other than the procedure set out in the Health Procedure, at paragraph 29 of that SCHEDULE);

“the Conduct Sub-committee” means a sub-committee set up by the Council in pursuance of section 49 of the Act and as referred to in terms of paragraph 1 of SCHEDULE 5 of these Rules;

“the Council” means the Scottish Social Services Council;

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

“Employer” means the present or most recent employer/s or employment agency/ies, of any employed or self-employed Social Service Worker working for that Employer in the capacity of a Social Service Worker, of whom the Council is aware;

“the Entry” means the particulars entered on the Register in terms of Rule 39 of the Council’s Registration Rules;

“the Health Procedure” is the procedure set out in paragraph 29 of SCHEDULE 3 to these Rules;

“Interim Suspension Order” means an order for interim suspension of a Registrant’s Registration made by the Preliminary Proceedings Sub-committee, in terms of the procedure set out in paragraph 6 of SCHEDULE 4 to these Rules;

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

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

“Legal Adviser” means an advocate or a solicitor who has been qualified to practise in Scotland, for not less than 10 years, who shall undertake the functions set out in paragraph 6 of SCHEDULE 5 of these Rules;

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

“Misconduct” means conduct, whether by act or omission, which falls short of the standard of conduct expected of a person registered with the Scottish Social Services Council, having particular regard to the Code of Practice for Social Service Workers issued by the Council under Section 53(1)(a) of the Act and the Scottish Social Services Council (Registration) Rules 2009B, both as amended or substituted from time to time;

“Notice of Hearing” means a notice sent to the Registrant and the Council by the Clerk in terms of the procedure set out in paragraph 7 of SCHEDULE 3 to these Rules;

“part of the Register” means a part of the Register in terms of section 44(2) of the Act;

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

“the Parties” means the Presenter and may include an officer of the Council instructing the Presenter and the Registrant or Applicant and/or their representatives at a hearing before a Sub-committee and specifically excludes the Complainant;

“Pre-hearing Review Form” means the form issued by the Clerk prior to a meeting of the Conduct Sub-committee, to both Parties;

“Pre-hearing Review Meeting” means the meeting at which the matters set out at paragraph 4 of SCHEDULE 3 of these Rules are considered;

“Pre-hearing Review Stage” means the point in proceedings at which the matters set out in paragraph 4 of SCHEDULE 3 of these Rules are considered;

“the Preliminary Proceedings Sub-committee” means the Sub-committee set up by the Council in pursuance of section 49 of the Act and in terms of paragraph 1 of SCHEDULE 5 of these Rules;

“the Presenter” means the person acting on behalf of the Council at a hearing before a Sub-committee, and may include an officer of

the Council or a solicitor or advocate engaged by the Council for this purpose;

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

“Registrant” means a person registered in the Register;

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

“Registration Rules” means The Scottish Social Services Council (Registration) Rules 2009B, as amended or substituted from time to time;

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

“Reporting Medical Adviser” means the medical practitioner registered under the Medical Act 1983, appointed and instructed by the Council to examine the Registrant and prepare a report for the Council. The Reporting Medical Adviser shall be treated as a witness of the Council;

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

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

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

“Suspension Order” means an order for suspension of the Registrant’s Registration made by the Conduct Sub-committee in

terms of the procedure set out in paragraphs 26 of SCHEDULE 3 to these Rules;

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

- (2) In these Rules, including the SCHEDULES, unless the context otherwise requires:
 - (a) words in the singular include the plural and words in the plural include the singular;
 - (b) any reference to a numbered Rule is a reference to the Rule bearing that number in these Rules; and
 - (c) any reference in a Rule to a numbered paragraph, is a reference to the paragraph bearing that number in that Rule.

- (3) These Rules shall be construed and applied in accordance with the Council’s obligations under the Human Rights Act 1998 and the Data Protection Act 1998.

3. Service of documents

- (1) In these Rules –
 - (a) unless the context otherwise specifies any reference to the sending of a notice to a Registrant or to a former Registrant is a reference to the sending of a notice by registered post or by a postal service in which delivery or receipt is recorded, or to delivery by hand to the address of the Registrant or former Registrant in the Register or, if different, to the last address known to the Council ; or by email to an email address

provided by the Applicant or Registrant where the Council considers it reasonable;

- (b) where any notice is to be sent to a Registrant or former Registrant, it shall be treated as having been served on the day after it was posted, the day it was delivered by hand or the day it was emailed as appropriate.

4. Non disclosure in the public interest

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

PART II

COMPLAINTS

5. Procedure upon receipt of information about a Registrant

- (1) Where the Council receives information about a Registrant and the information is a Complaint and where no Complaint Form has been received, the Council may send to any person a copy of the Council's guidance about making a Complaint and a Complaint Form, and may also provide information on alternative methods of resolution, including mediation or remedies available through a Registrant's Employer.
- (2) Where the Council has information which is a Complaint, it will inform the Registrant of the information and invite the Registrant to

comment on the Complaint before the Council makes a decision to refer a Complaint to the Screening Sub-committee or the Conduct Sub-committee.

- (3) Where the Council having received a Complaint, consider that an Interim Suspension Order should be imposed on the grounds that such Order is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned it will refer the Complaint to the Preliminary Proceedings Sub-committee in accordance with SCHEDULE 4.
- (4) Where the Council decides that it would be proportionate and that there is a real prospect of a finding of Misconduct it will refer a Complaint to the Conduct Sub-committee.
- (5) Where the Council considers it appropriate it may refer a Complaint to the Screening Sub-committee for a decision on whether the case should be referred to a Conduct Sub-committee.
- (6) Where the Screening Sub-committee or the Council, having decided to refer a Complaint to a Conduct Sub-committee, considers that the alleged actions or inactions by the Registrant giving rise to the Complaint may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, it may refer the Complaint to the Conduct Sub-committee under the Health Procedure.

- (7) The Council may, where it considers it appropriate to do so, having received a Complaint about a Registrant impose a warning on the Registrant's Registration and retain a record of that warning on the Registrant's Entry in the Register for a period of up to 5 years, provided that such warning shall remain in the Council's records and shall be taken into account in future Council proceedings, instead of referring the matter to a Conduct Sub-committee. The Council may also impose a condition or conditions on the Registrant's Registration following issue of a Notice of Proposal in accordance with section 47 of the Act instead of referring the matter to a Conduct Sub-committee. If the Registrant does not agree to the warning being placed on their Registration or to the proposed condition or conditions, the Council may, if so minded, refer the case to the Conduct Sub-committee or Screening Sub-committee as appropriate.
- (8) The Council shall not refer anonymous Complaints to any Sub-committee except in accordance with the following provision. Where an anonymous allegation is received by the Council and it constitutes a Complaint, the Council may itself act as the Complainant and may in the interests of public protection refer the matter to a Sub-committee for consideration in accordance with Rules 5 (4) and 5 (5).
- (9) Where the Council has received information amounting to a Complaint and that Registrant is already the subject of an inquiry or an investigation by any party in relation to a matter or matters

alleged in the Complaint, the Council may defer further investigation, or referral of the Complaint to any Sub-committee, until that inquiry or investigation has been concluded.

(10) Where the allegation against the Registrant does not constitute a Complaint, the Council may inform the provider of the information (if any) and the Registrant that no further action will be taken and that the matter will be closed. If contact has been made with the Registrant's Employer and/or University the Council will also inform the Employer and/or University that the matter will be closed.

(11) Where the matter is not referred to a Sub-committee the Council may, if it considers it appropriate to do so, remind the Registrant of the terms of the Code of Practice for Social Service Workers.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 1

PROCEDURE OF THE SCREENING SUB-COMMITTEE

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SCHEDULE 1

PROCEDURE OF THE SCREENING SUB-COMMITTEE

1. Interpretation

- (1) In this SCHEDULE, 'the Sub-committee' means the Screening Sub-committee established in accordance with SCHEDULE 5.

2. Private meetings

- (1) The proceedings of the Sub-committee shall be held in private and the Parties shall not be entitled to be present.

3. Preparations for a Hearing by the Sub-committee

- (1) Where a Complaint is referred to the Sub-committee, the Council shall provide the Clerk with:
 - (a) a statement of the Complaint;
 - (b) a copy of the signed Complaint Form (if any);
 - (c) any relevant documents or witness statements;
- (2) The Clerk shall fix a date for the consideration of the case by the Sub-committee and shall issue copies of the items referred to at 3(1)(a) to 3(1)(c) above to the members of the Sub-committee.

4. Adjournment

The Sub-committee may adjourn its proceedings at any stage for the purpose of seeking further information or for any other purpose.

5. Review and Disposal

- (1) The Sub-committee shall review the case and may:
 - (a) transfer the case to the Conduct Sub-committee under the Conduct Procedure or the Health Procedure;
 - (b) direct that further investigations should be undertaken and adjourn the matter;
 - (c) inform the Registrant that it is minded to impose a condition or conditions on the Registration in a part or parts of the Register and indicate the terms of such, thereafter adjourning the proceedings for the Clerk to initiate the Notice procedure at paragraph 26(5) and (6) of SCHEDULE 3 of these Rules provided that should the Registrant not agree to the proposed conditions the Sub-committee may transfer the case to the Conduct Sub-committee;
 - (d) warn the Registrant and direct that a record of the warning be placed on the Registrant's Entry in the Register for a period of up to 5 years, provided that details of such warning shall remain in the Council's records and shall be taken into account in future Council proceedings provided that should the Registrant not agree to the proposed warning the Sub-committee may transfer the case to the Conduct Sub-committee.;
 - (e) take no further action and conclude the case, provided that the Sub-committee may also direct the Clerk to remind the Registrant of the terms of the Code of Practice for Social Service Workers. A record of the reminder and the reasons for it shall be kept by the Council and will be taken into

account by the Council in any future decisions by the Council relating to the Registrant.

- (2) The Sub-committee shall not refer a Complaint to the Conduct Sub-committee unless it is satisfied that there is a real prospect of a finding of Misconduct in relation to the Complaint and that it would be proportionate to do so.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 2

PROCEDURE FOLLOWING A DECISION TO TRANSFER A CASE TO THE CONDUCT SUB-COMMITTEE

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SCHEDULE 2

PROCEDURE FOLLOWING A DECISION TO TRANSFER A CASE TO THE CONDUCT SUB-COMMITTEE

1. Notice of Transfer

- (1) Where the Council or the Screening Sub-committee has determined that the case should be transferred to the Conduct Sub-committee, the Clerk shall within 7 days of the decision to transfer send a Notice of Transfer to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Complainant;
 - (d) the Employer, if any;
 - (e) where the Registrant is registered in the part of the Register for Students, the University setting out the decision.

- (2) The Notice of Transfer shall give reasons for the decision and the Clerk shall also advise the Registrant and the Council (where the decision has been made by the Sub-committee) whether the case has been transferred to the Conduct Sub-committee under the Conduct Procedure or the Health Procedure, and the reasons for this.

- (3) Where it has been decided that the Health Procedure should be followed, the Notice of Transfer shall additionally invite the Registrant to agree within 14 days from the date on which the Notice is sent:

- (a) to be examined (at the Council's expense) by a Reporting Medical Adviser nominated by the Council and

- (b) that such Reporting Medical Adviser provide the Conduct Sub-committee with a report on whether the alleged Misconduct may have been caused or substantially contributed to, by the Registrant's physical or mental ill health.

2. Further investigation by the Council

Upon receipt of the Notice of Transfer the Council shall take such steps as it deems necessary to arrange for the investigation and preparation of the case in relation to the Registrant for hearing including drawing up the Charge.

3. Cancellation of hearing

- (1) If a case has been transferred to the Conduct Sub-committee by the Screening Sub-committee in terms of paragraph 5 of SCHEDULE 1 to these Rules and during the course of the Council's preparation of the case for a hearing, it appears to the Council that the matter should no longer proceed to a hearing, or where this emerges at the Pre-hearing Review Stage the Council shall refer the matter to the Screening Sub-committee to re-consider whether the Complaint should be referred to the Conduct Sub-committee. For the avoidance of doubt the procedure at the Screening Sub-committee

to which the case has been referred back shall be the same as at the original meeting.

- (2) If a case has been transferred to the Conduct Sub-committee by the Council in terms of Rule 5(4) and it appears to the Council that the matter should no longer proceed to a hearing the Council may cancel the hearing and having informed those set out at paragraph 1(1) above may take no further action and conclude the case.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 3

PROCEDURE OF THE CONDUCT SUB-COMMITTEE

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SCHEDULE 3

PROCEDURE OF THE CONDUCT SUB-COMMITTEE

Part I

1. Interpretation

In this SCHEDULE "the Sub-committee" means the Conduct Sub-committee, established in accordance with SCHEDULE 5.

2. Pre-hearing Review Stage

- (1) A Pre-hearing Review Stage shall take place before every Sub-committee.

- (2) The Clerk shall, as soon as practicable after the sending of the Notice of Transfer give the Parties 7 days to confirm whether the Parties wish to use the oral or written procedure.

- (3) The Clerk shall send the Parties a copy of the Charge and a Pre-hearing Review Form and request the Parties to complete and return the Pre-hearing Review Form within 14 days after the date of service of the Pre-hearing Review Form on them unless either Party requests the oral procedure. The Clerk shall send each Party a copy of the other Party's Pre-hearing Review Form as soon as practicable.

- (4) The Council shall authorise a Legal Adviser to conduct the Pre-hearing Review Stage whether in writing or by oral procedure.

- (5) As soon as practicable after the period referred to in (3) where a Pre-hearing Review meeting is not to be held, the Clerk shall send the Legal Adviser any completed Pre-hearing Review Forms received. Within 21 days thereafter the Legal Adviser will return the Pre-hearing Review Forms to the Clerk and may also issue directions in respect of the Pre-hearing Review Forms in terms of paragraph 5 below.
- (6) A record of the directions issued by the Legal Adviser and a copy of the Pre-hearing Review Forms shall be sent to the Parties as soon as they are received by the Clerk from the Legal Adviser.

3. Pre-hearing Review Meeting

- (1) If either Party requests the oral procedure the Clerk shall arrange a Pre-hearing Review Meeting and inform the Parties of the date, time and venue thereof. Members of the Sub-committee shall not attend the Pre-hearing Review Meeting.
- (2) Where a Pre-hearing Review Meeting is to be held, the Clerk shall arrange a Pre-hearing Review Meeting within 6 weeks after the sending of the Notice of Transfer unless there are exceptional circumstances when this period may be extended, and invite the Parties to attend.
- (3) The Pre-hearing Review Meeting may be conducted by telephone conferencing or by such method as is decided by the Legal Adviser, after consultation with the Parties.

- (4) The Legal Adviser may adjourn the Pre-hearing Review Meeting at any point. The Parties may request that the Legal Adviser adjourns the Pre-hearing Review Meeting in exceptional circumstances.
- (5) A record of the directions issued by the Legal Adviser, any admissions, and decisions taken at the Pre-hearing Review Meeting shall be maintained by the Clerk and sent by the Clerk to the Parties.

4. Matters to be considered at Pre-hearing Review Stage

- (1) The following matters shall be considered at the Pre-hearing Review Stage in respect of the Charge prepared by the Council: -
 - (a) any admissions of facts;
 - (b) whether the Registrant wishes to admit Misconduct;
 - (c) the names and addresses of witnesses to be called and of Parties' representatives;
 - (d) whether particular provisions require to be made for vulnerable witnesses at the hearing;
 - (e) whether expert evidence is to be presented;
 - (f) whether the health of the Registrant will be raised as an issue in the proceedings and if so whether a report from a Reporting Medical Adviser should be obtained;
 - (g) any dates on which the Parties, their representatives or witnesses would be unable to attend a hearing;
 - (h) time estimate for the hearing;

- (i) any request by either Party that any person be directed to produce specified material which would be relevant to the Sub-committee's deliberations and
- (j) any other relevant matters which the Parties may consider it appropriate to bring to the Legal Adviser's attention.

5. Directions

- (1) The Legal Adviser may issue directions as part of the Pre-hearing Review Stage for the purpose of facilitating the hearing of the matter and regarding the production of material, the timetable for service of evidence, including any medical and expert reports and any admissions.
- (2) Any such directions issued by the Legal Adviser will be complied with by the Party to whom they are addressed. If either Party objects to the directions and that objection cannot be resolved, the matter will be referred to the Sub-committee in terms of paragraph 11(2) below.
- (3) Where the Registrant wishes to admit either the alleged facts of the Charge and the issue of Misconduct, or the alleged facts of the Charge alone, the Parties shall prepare an agreed Statement of Facts within a timescale specified by the Legal Adviser.
- (4) The Legal Adviser may give a preliminary opinion to the Parties for the purpose of resolving questions of law or admissibility of evidence.

6. Joinder

Where a Charge against the Registrant has been referred to the Sub-committee and a new Complaint or Complaints are received by the Council or the Screening Sub-committee and subsequently transferred to the Sub-committee, the Charge may be amended in light of the new Complaint or Complaints to reflect this, subject to the requirements of a fair hearing.

7. Notice of Hearing

- (1) As soon as practicable after the Pre-hearing Review Stage, the Clerk shall send the Parties a copy of these Rules and a Notice of Hearing which shall:
 - (a) state the date, time and venue of the hearing;
 - (b) specify the Charge, which may have been amended by the Council following the Pre-hearing Review Stage, against the Registrant;
 - (c) state whether the case is to proceed under the Conduct or the Health Procedure;
 - (d) inform the Parties of their respective rights to:
 - (i) attend the hearing;
 - (ii) give evidence to the Sub-committee;
 - (iii) make oral submissions to the Sub-committee either in person or through an Appropriate Representative;
 - (iv) call and cross-examine witnesses;
 - (e) inform the Parties of the possible sanctions open to the Sub-committee in the event of a finding of Misconduct as outlined in Paragraph 26, including the possibility of the imposition of

an Interim Suspension Order at any time during the proceedings;

- (f) inform the Parties of the Sub-committee's power to proceed in their absence at the hearing.
- (g) invite the Parties to state whether they will be attending the hearing
- (h) invite the Parties to submit an application stating their position in writing 7 days before the date of the meeting in relation to the matters provided for in paragraph 11 of this SCHEDULE.

- (2) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing except with the agreement of the Registrant.

8. Notice to Complainant, to Employer and to University

The Clerk shall send a copy of the Notice of Hearing to the Complainant, to the Registrant's Employer and, where the Registrant is registered in the part of the Register for Students, to the University.

9. Postponement of hearing

- (1) Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Clerk of the Sub-committee at least 48 hours before the date of a hearing, other than in exceptional circumstances.

- (2) The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.
- (3) The Party served with the application may submit a written response to the Clerk of the Sub-committee as soon as practicable and shall serve a copy on the other Party at the same time.
- (4) The application shall be sent by the Clerk for consideration by the Convener of the Sub-committee; the Convener shall determine the application, taking into account:
 - (a) the submissions of both Parties;
 - (b) any likely prejudice to either Party;
 - (c) the public interest in the expeditious disposal of the case.
- (5) In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the Clerk shall inform the Parties and those referred to in paragraph 8 of the new hearing date, as soon as possible or alternatively, the new date shall be fixed and intimated by the Clerk after the occurrence of a specified event.

10. Disclosure of case and service of documents

- (1) No later than 14 days before the date of hearing, the Parties shall serve on each other and lodge with the Clerk to the Sub-committee, certified copies of all documents and reports upon which they

intend to rely which will include any Statement of Facts agreed by the Parties in terms of paragraph 5.3 above.

- (2) The Parties shall make arrangements for original documents to be available for inspection no later than 7 days before the date of the hearing.
- (3) Upon receipt of the Registrant's documents and reports if any, the Presenter shall consider whether there are any further documents in the Council's possession which may assist the Registrant and shall serve copies of any such documents on the Registrant and on the Clerk.
- (4) No later than 7 days before the hearing the Clerk shall send the Sub-committee copies of:
 - (a) the Notice of Hearing;
 - (b) any documents lodged by the Parties in terms of paragraph 10(1)
 - (c) a Certificate of Compliance.

11. Procedure at hearing

- (1) Subject to these Rules and the requirements of a fair hearing, the Sub-committee may decide its own procedures generally and may issue directions with regard to the just and expeditious determination of the proceedings.

- (2) Where either Party wishes to make representations regarding:
- (a) the issue of directions; or
 - (b) directions issued by the Legal Adviser regarding the production of material; or.
 - (c) objections to the legality of the Charge; or
 - (d) whether a Medical Adviser should be appointed; or
 - (e) any submissions on legal matters;

that Party should submit an application in writing to the Clerk no later than seven days before the hearing setting out their position.

The Clerk shall make the applications available to the other Party, the Legal Adviser and the Sub-committee as soon as practicable thereafter.

- (3) Where such representations are made to the Sub-committee, Parties will have a right of reply and the Party or person making the representations may respond thereto, before the Sub-committee decide on the matters. If the Sub-committee decide to issue or uphold the directions, a period or further period for compliance may be specified, if reasonable. If necessary the hearing may be adjourned to allow compliance with any such directions.
- (4) If at any time during the hearing it appears to the Sub-committee that the alleged Misconduct may have been caused by, or substantially contributed to by the Registrant's physical or mental ill health, the Sub-committee may cease to consider the allegation following the Conduct Procedure and instead may decide that the Health Procedure shall be followed, in terms of paragraph 29. If

necessary, the Sub-committee may adjourn in order to enable initial or further expert reports to be obtained.

- (5) The hearing shall be conducted in two stages:
 - (a) findings of fact and a finding of Misconduct; and
 - (b) mitigation and sanction.

12. Public and private hearings

- (1) Subject to paragraphs (2) (4) and (5) below, the hearing shall be conducted in the presence of the Parties and shall be held in public, in accordance with section 49(2) of the Act.
- (2) The Sub-committee may, of its own volition, or upon the application of a witness or any of the Parties, decide that persons not connected with the hearing should withdraw from the whole or any part of the proceedings, provided that:
 - (a) a decision to exclude the public causes no prejudice to either Party;
 - (b) the particular circumstances of the case outweigh the public interest in holding a public hearing;
 - (c) the decision is made after hearing representations from both Parties.
- (3) In this paragraph, a person is connected with the hearing if that person is -

- (a) a member of the Sub-committee, or a member of the Conduct Committee attending in an observational capacity for the purposes of training;
 - (b) the Legal Adviser or the Medical Adviser to the Sub-committee;
 - (c) the Clerk to the Sub-committee;
 - (d) a Party or a representative of that Party;
 - (e) a witness and this may include the Complainant;
 - (f) a shorthand writer;
 - (g) an audio technician;
 - (h) a translator;
 - (i) an interpreter.
- (4) Where the Health Procedure is to be followed, in terms of paragraph 29, the Sub-committee shall conduct its proceedings in private and in the presence of the Parties, unless:
- (a) the Registrant requests that the hearing be held in public and
 - (b) the Sub-committee is satisfied, having obtained advice from the Medical Adviser, that a public hearing would be in the Registrant's best interests.
- (5) For the purpose of arriving at any decision in relation to the hearing, the Sub-committee shall sit in private. The Sub-committee shall announce its decisions in public.

13. Representation and entitlement to be heard

- (1) The Presenter and the Registrant shall be entitled to be heard by the Sub-committee.
- (2) The Registrant may be represented by an Appropriate Representative.
- (3) The Convener of a Sub-committee may, at the Convener's discretion, permit the Registrant to be represented by a person other than an Appropriate Representative.
- (4) Any application to be represented by a person other than an Appropriate Representative shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.
- (5) Where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee without permission.
- (6) A person who represents or accompanies the Registrant shall not be called as a witness at the hearing.
- (7) The Sub-committee may exclude from the whole or part of the hearing any person whose conduct, in the opinion of the Sub-committee, has disrupted or is likely to disrupt the hearing.

- (8) The Complainant may be present at the hearing and may be called to give evidence by any Party, or by the Sub-committee, of its own motion.
- (9) Where the Complainant is called as a witness he shall not be present during the proceedings until after his evidence is given.
- (10) Subject to paragraph 16 below, where the Complainant has been called to give evidence by the Sub-committee, the Parties shall have the opportunity to question the Complainant.

14. Evidence

- (1) After obtaining the advice of the Legal Adviser, the Conduct Sub-committee may admit any evidence that would be regarded as relevant and, in terms of the Civil Evidence (Scotland) Act 1988, admissible in an ordinary civil court in Scotland provided that the Sub-committee can refuse to admit evidence where it does not consider it relevant to the material facts in dispute. Oral evidence may not be admitted where it relates only to facts which have been agreed between the Parties in a document lodged with the Clerk.
- (2) The Sub-committee may receive oral, documentary or other evidence submitted by the Registrant or the Council, which appears to the Sub-committee to be relevant to its consideration of the case.

- (3) The Sub-committee may of its own volition, request the Parties to provide documentation or request any person to provide documentation or to give oral evidence, which it considers might assist it in determining the Charge against the Registrant and the Sub-committee may receive such evidence.
- (4) The Sub-committee may admit documentary evidence put forward by a Party notwithstanding that such documentary evidence has not been disclosed in advance of the hearing
 - (a) if the other Party consents; or
 - (b) where after consultation with the Legal Adviser, it is satisfied that the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the other Party, which has not previously seen that evidence.
- (5) The findings of fact and certification of conviction of any UK Criminal Court shall be conclusive proof of the facts or conviction so found.
- (6) The findings of fact and determination by any of the regulatory bodies set out in SCHEDULE 6, shall be prima facie evidence of the facts so found. The Registrant shall be entitled to adduce evidence to the Sub-committee in rebuttal.

15. Witnesses

- (1) The Convener shall warn any witnesses of the serious nature of the proceedings and of the requirement to tell the truth at all stages. Where it is legally competent to do so, the witness will be put on oath.
- (2) The Sub-committee may, on the application of the Party calling the witness, agree that the witness's personal details shall not be revealed in public.
- (3) Subject to the provisions of paragraph 16, relating to vulnerable witnesses, 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.
- (4) Witnesses may also be questioned by Members of the Sub-committee or by the Legal Adviser with the leave of the Convener.
- (5) The Parties may question the witnesses on matters arising out of the Sub-committee's questions. The Party calling the witness shall question the witness last.
- (6) Any further questioning of witnesses shall be at the discretion of the Sub-committee.

- (7) Witnesses shall not be allowed to attend the proceedings until after they have completed giving evidence to the Sub-committee and been formally released by the Convener.

16. Vulnerable Witnesses

- (1) The following shall be treated as vulnerable witnesses:
- (a) any witness under the age of 17;
 - (b) any witness with a mental disorder;
 - (c) any witness who is significantly impaired in relation to intelligence and social functioning;
 - (d) any witness with physical disabilities who requires assistance to give evidence;
 - (e) the Complainant and any individual against whom the Registrant's alleged behaviour was directed, where the Charge against the Registrant is of a sexual nature;
 - (f) any witnesses who complain of intimidation.
- (2) Subject to the advice of the Legal Adviser and also upon hearing representations from the Parties, the Sub-committee may adopt such measures as it considers necessary to enable it to receive evidence from vulnerable witnesses.
- (3) Measures adopted by the Sub-committee may include, but shall not be limited to:
- (a) use of video links;
 - (b) use of pre-recorded evidence as the evidence in chief of a witness, provided always that such witness is available at

the hearing for cross-examination and questioning by the Sub-committee;

- (c) use of screens;
- (d) use of interpreters (including signers and translators) or intermediaries.

- (4) Where the Charge against a Registrant is sexual in nature, and where the Registrant is acting in person, the Registrant shall not be allowed to cross-examine the Complainant or any individual against whom the Registrant's alleged behaviour was directed. Where the Registrant has attended the Pre-hearing Review or completed a Pre-hearing Review Form and has indicated an intention to dispute the facts and does not admit Misconduct and the Registrant has demonstrated that the Registrant does not have financial resources to instruct a solicitor, the Sub-committee may appoint a solicitor to undertake cross-examination of the Complainant or relevant individuals on the Registrant's behalf.

17. Introduction of Sub-committee and reading of the Charge

- (1) At the opening of the hearing, the Convener shall introduce the members of the Sub-committee and the Parties.
- (2) The Convener shall ask the Registrant to confirm the Registrant's name and Registration number.
- (3) The Clerk shall then read out the Charge against the Registrant, who may object to it or any part of it, on a point of law and any

other Party to the proceedings may reply to any such objection. If any such objection is upheld by the Sub-committee, no further proceedings shall be taken on the Charge or that part of the Charge to which the objection relates.

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

18. Burden and Standard of Proof

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

19. Adjournment of hearing

- (1) Subject to the requirements of a fair hearing and after hearing representations from the Parties the Sub-committee may, at any stage of the hearing, adjourn the proceedings for the purposes of seeking further information or for any other purpose.
- (2) Where the Registrant is subject to an Interim Suspension Order and the Council has, in terms of paragraph 26(1) below, applied to have

the Interim Suspension Order extended, the Sub-committee may not adjourn until the final determination on the Interim Suspension Order has been made.

- (3) Where the hearing has been adjourned, the Clerk shall, as soon as practicable, notify the Parties, and those identified in paragraph 8 above of the date fixed for the hearing to be resumed and of any continuation of an Interim Suspension Order.

20. Attendance at hearing

- (1) Where the Registrant fails to attend and is not represented at the hearing, the Sub-committee shall:
 - (a) have regard to the Certificate of Compliance and whether reasonable efforts have been made to inform the Registrant of the hearing and
 - (b) inquire whether any reasons for the Registrant's non attendance have been communicated to the Clerk, or the Council.

- (2) The Sub-committee may:
 - (a) hear and determine the case in the absence of the Registrant or
 - (b) adjourn the hearing and give directions.

21. Fitness to Plead

- (1) Where an issue arises as to the Registrant's fitness to plead, the Sub-committee may proceed under the Health Procedure and, if so, consider whether the Registrant:
 - (a) can understand the issues in the case;
 - (b) can appreciate the effect of any advice received from the Registrant's Appropriate Representative, if any;
 - (c) can give instructions accordingly.

- (2) The Sub-committee shall receive expert evidence and submissions on these issues.

- (3) Where a Registrant has been charged with a criminal offence and a court has acquitted the Registrant on the grounds of insanity the Sub-committee may find the Registrant unfit to plead on the Charge of Misconduct.

- (4) At any stage where the issue of the Registrant's fitness to plead is called into question, the Council may refer the case to the Preliminary Proceedings Sub-committee for an order for interim suspension, or may request that the Sub-committee considers the imposition of an Interim Suspension Order, until such time as the Registrant becomes fit to plead.

22. Admissions

- (1) After the Charge has been read, the Convener shall ask the Registrant whether any facts alleged in the Charge are admitted and whether the Registrant admits Misconduct.
- (2) Where the Registrant admits the facts alleged, or the facts alleged and Misconduct, and where a Statement of Facts has been agreed in advance the Presenter shall read out the agreed Statement of Facts.
- (3) Where the Registrant admits the facts alleged but denies Misconduct, the Sub-committee shall determine the issue of Misconduct and then announce a finding on the facts alleged and Misconduct.
- (4) Where the Registrant has admitted Misconduct, the Sub-committee, if satisfied, shall announce a finding of Misconduct. On a finding of Misconduct the Sub-committee shall proceed to determine the issue of sanction in accordance with paragraph 26 below.

23. Procedure where facts disputed

- (1) Where no admissions are made, or some facts alleged remain disputed, the Presenter shall present the case against the Registrant to the Sub-committee and produce evidence and witnesses in support of those facts which are not admitted.

- (2) At the end of the evidence presented by the Presenter, the Registrant may produce evidence and witnesses in support.
- (3) At the conclusion of the Registrant's evidence the Parties may make a closing statement on both the facts and the issue of Misconduct and the Parties may lead evidence on the issue of Misconduct.
- (4) The Sub-committee shall then ask whether the Registrant admits Misconduct. If the Registrant does admit Misconduct the Sub-committee shall proceed to determine the issue of mitigation and sanction.

24. Finding of facts and Misconduct

- (1) The Sub-committee shall then consider in private whether the facts alleged in the Charge which remained disputed by the Registrant have been proved on the civil standard of proof. The Sub-committee shall make findings of fact and shall consider whether the findings of fact amount to Misconduct.
- (2) The Convener will then announce in the presence of the Parties, the Sub-committee's findings of fact and decision on whether there has been Misconduct. If no facts alleged have been found proved the case will be dismissed.
- (3) In deciding upon the issue of Misconduct, the Sub-committee shall have regard to the Code of Practice for Social Service Workers

issued by the Council under Section 53(1)(a) of the Act, as amended from time to time.

- (4) If the Registrant is found not to have committed Misconduct, the case will be dismissed and the hearing concluded. The Clerk may be directed by the Sub-committee to remind the Registrant of the terms of the Code of Practice for Social Service Workers. In this case the direction and the reasons therefor shall be entered on the Registrant's Registration in the relevant part of the Register.
- (5) Save in exceptional circumstances, the Sub-committee shall not be required to give detailed reasons for its findings on the facts. However the Sub-committee shall give reasons for its findings on the issue of Misconduct.

25. Mitigation

- (1) Where the Sub-committee finds that the Registrant has committed Misconduct, including where the Registrant admits Misconduct, the Convener shall require the Presenter to provide the Sub-committee with details of the Registrant's previous record with the Council.
- (2) The Convener will then announce the sanctions available to the Sub-committee and shall invite representations from both Parties in respect of any mitigating factors and as to the sanction to be imposed.

- (3) The Registrant may address the Sub-committee in mitigation and may produce references and testimonials and may call character witnesses in support.
- (4) Where character witnesses are called, they may be questioned by the Presenter and the Sub-committee.
- (5) Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the Clerk. The Clerk shall provide such mitigation documentation to the Sub-committee at this stage.
- (6) After hearing the Registrant, if the Registrant is present, the Sub-committee shall decide, in private, what sanction it should impose. If it is minded to impose a condition or conditions, the terms of such will be formulated. If the Sub-committee is minded to impose a condition or conditions the Sub-committee may ask the Council to call a witness to give evidence before the Sub-committee and the Parties as to the suitability or workability of any potential condition or conditions. The Registrant shall be entitled to cross-examine the witness.
- (7) The Sub-committee shall announce its decision on sanctions in public, and shall give reasons for its decision.
- (8) A decision by the Sub-committee on the question of sanction shall be treated as that of the Council.

26. Sanctions

- (1) At any time during the proceedings, on the application of the Council, having considered representations from the Registrant or the Registrant's representative, if present, the Sub-committee may impose, extend or vary an Interim Suspension Order.

- (2) Upon a finding of Misconduct, the Sub-committee may:
 - (a) warn the Registrant and direct that a record of the warning be placed on the Registrant's Entry in the Register for a period of up to 5 years, provided that details of such warning shall remain in the Council's records and shall be taken into account in future Council proceedings; or
 - (b) make a Suspension Order for a period not exceeding two years;
 - (c) revoke any Interim Suspension Order imposed by the Preliminary Proceedings Sub-committee; or
 - (d) make a Removal Order; or
 - (e) inform the Registrant that it is minded to impose a condition or conditions on the Registration in a part or parts of the Register and indicate the terms of such, thereafter adjourning the proceedings for the Clerk to initiate the Notice procedure at paragraph 4 below.

- (3) In deciding what sanction is to be imposed, the Sub-committee shall take into account:
 - (a) the seriousness of the Registrant's Misconduct;

- (b) the protection of the public;
 - (c) the public interest in maintaining confidence in social services and
 - (d) the issue of proportionality.
- (4) Where the Sub-committee is minded to impose a condition or conditions on the Registrant's Registration in a part or parts of the Register, the Clerk shall normally within seven days and at least 28 days before the next meeting of the Sub-committee send a Notice of Proposal, if required to do so in terms of section 47 of the Act to the Registrant and copy it to the Council. Where the Sub-committee decides to impose one of the other sanctions referred to at (1) or (2) above, it shall issue a Notice of Decision in terms of paragraph 27.
- (5) The Notice of Proposal referred to at (4) above shall:
- (a) set out the condition or conditions which the Sub-committee is minded to impose and the reasons for the proposal; and
 - (b) inform the Registrant of the right to make written representations to the Sub-committee concerning any matter that the Registrant wishes to dispute, within 14 days of service of the Notice of Proposal.
- (6) The Sub-committee shall reconvene to consider the matter as soon as practicable after the expiry of the 14 day period set out in the

Notice of Proposal. At least 7 days prior to the meeting, the Clerk shall send:

- (a) to the Sub-committee and the Council a copy of any written representations submitted by the Registrant and
 - (b) to the Sub-committee and to the Parties a Notice of Reconvened Hearing.
- (7) At the reconvened hearing, the Sub-committee shall take into account any written representations made by the Registrant in relation to the issue of conditions, and may consider oral submissions on the issue before determining what sanction to impose on the Registrant.

27. Notice of Decision

- (1) Within 7 days, after the conclusion of the hearing, the Clerk shall send a Notice of Decision to the Parties and to those named in paragraph 8 above, provided that the Notice of Decision sent to the Complainant, the Employer and the University shall omit the record of advice given by the Medical Adviser.
- (2) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser or the Medical Adviser;
 - (b) set out the Sub-committee's findings of fact and its decisions on Misconduct and sanction;
 - (c) give reasons for the Sub-committee's decisions;

- (d) where a Suspension Order has been imposed, set out the period of suspension;
- (e) inform the Registrant of the right of appeal to the Sheriff set out in Section 51 of the Act;
- (f) inform the Registrant that the decision will take effect as decided by the Sub-committee and in accordance with Section 51 of the Act.

28. Notes and transcript of the proceedings

- (1) A person shall be appointed by the Council to take a shorthand note or to make an audio recording of the proceedings before the Sub-committee.
- (2) On application and on payment of a reasonable sum the Registrant and the Complainant shall be sent by the Council a transcript of the proceedings or of any part of the proceedings at which they were entitled to be present.

29. Health Procedure

- (1) Subject to the following provisions, the Health Procedure shall be the same as the Conduct Procedure and the foregoing provisions of this SCHEDULE shall apply.
- (2) The Sub-committee shall sit in private, unless the Registrant requests a public hearing and the Sub-committee, having taken advice from the Medical Adviser, considers that a public hearing would be in the best interests of the Registrant.

- (3) Subject to (4) below, in determining whether the Registrant has committed Misconduct and in deciding on the issue of sanction, review of suspension or restoration or any other issue, the Sub-committee shall consider any medical reports or other medical evidence on whether the alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health.
- (4) The Sub-committee shall not receive medical reports or other medical evidence unless the Registrant has consented to be examined and to allow such reports and evidence to be provided to the Sub-committee.
- (5) In determining the issue of Misconduct, the Sub-committee may take into account a Registrant's refusal to be examined or to consent to reports on the Registrant's fitness to practise being provided to the Sub-committee.
- (6) If at any time during the hearing it appears to the Sub-committee, having taken advice from the Medical Adviser that the alleged Misconduct has not been caused by, or substantially contributed to by the Registrant's physical or mental ill health, the Sub-committee may cease to consider the allegation following the Health Procedure and instead follow the Conduct Procedure.

30. Amendment to the Register

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

31. Publication of decision

- (1) After the determination of the Sub-committee that a Registrant has committed Misconduct, or in the event of an appeal, upon the dismissal or abandonment of such appeal, the Council shall publish the Sub-committee's decision by such means as it considers appropriate.
- (2) 14 days after the determination of the Sub-committee that a Registrant has committed Misconduct, or in the event of an appeal, upon any dismissal or abandonment of such appeal, the Council may also provide a copy of the Sub-committee's findings of fact and the Sub-committee's determination, to any of the regulatory bodies set out in SCHEDULE 6.

Part II

32. Hearings to Review Suspension Orders and Conditions previously imposed

- (1) At the request of the Registrant or the Council a Sub-committee may review a Suspension Order before the end of the period of suspension.
- (2) At the request of the Council the Sub-committee may also review conditions which have been imposed on a Registration, which have not been fulfilled
- (3) The Sub-committee shall seek advice from the Legal Adviser before deciding whether or not to review the Suspension Order or conditions.
- (4) The Sub-committee shall not review the Order or vary conditions unless in its opinion there has been a material change of circumstances since the Order or conditions were imposed.
- (5) The Sub-committee which considers the request shall be composed of a different set of Members from those who sat on the original Conduct Sub-committee.

- (6) The procedure at the review hearing shall follow the procedure applied at the original hearing and the relevant Rules shall apply
- (a) The Presenter shall outline the facts of the case and the circumstances in which the Suspension Order or the conditions were imposed and may produce documents and call witnesses in support;
 - (b) The Registrant shall make submissions outlining why the Suspension Order or the conditions should be revoked and may produce documents and call witnesses in support.
- (7) Where the Suspension Order or conditions were imposed following the Health Procedure, the resumed hearing shall be held under the Health Procedure and the Sub-committee may require the Registrant to provide up to date medical reports from a medical examiner, nominated by the Council, at the Registrant's own expense.
- (8) After reviewing a Suspension Order or the imposition of conditions, the Sub-committee may decide to:
- (a) confirm unchanged;
 - (b) vary; or
 - (c) revoke the Order or the conditions.

Where the Sub-committee is minded to vary conditions, the provisions of paragraph 26 above shall apply.

- (9) At the conclusion of the review hearing, the Sub-committee shall announce its decision, and the reasons for its decision, in public.
- (10) A decision of the Sub-committee shall be treated as a decision of the Council.
- (11) Within 7 days of the conclusion of the hearing, the Clerk shall send a Notice of Decision to the Parties and to those outlined in paragraph 8 above provided that the Notice of Decision sent to the Complainant, the Employer and the University shall omit the record of advice given by the Medical Adviser.
- (12) The Notice of Decision shall:
 - (a) record any advice given by the Legal Adviser or Medical Adviser;
 - (b) set out the decision of the Sub-committee;
 - (c) set out the reasons for the Sub-committee's decision;
 - (d) inform the Registrant of the right of appeal to the Sheriff set out in section 51 of the Act.

Part III

33. Restoration Hearings

- (1) A former Registrant may apply to the Sub-committee for restoration to the Register, following a Removal Order imposed by the Conduct Sub-committee. The Sub-committee shall not grant such an application unless, in its opinion, there has been a material change of circumstances since the Removal Order was made.
- (2) No application shall be made within three years from the date of removal or in any period of 2 years in which an application for restoration has already been made by or on behalf of the person who has been removed.
- (3) The Sub-committee, which considers the application, should be composed of a different set of Members from those who sat on the original Conduct Sub-committee.
- (4) An application for restoration will be deemed to be an initial application for Registration under sections 45 and 46 of the Act and should comply with the provisions of the Scottish Social Services Council (Registration) Rules 2009B, as amended or substituted from time to time.
- (5) In addition to documents specified in Rule 4 of the Scottish Social Services Council (Registration) Rules 2009B, as amended or

substituted from time to time, the Applicant may send to the Council any report, statement or other document which, in the Applicant's opinion, supports the application for restoration.

- (6) As soon as practicable after receipt of a completed application for restoration to the Register a copy of the audio recording of the Sub-committee hearing at which the Removal Order was made, if available, will be sent by the Clerk to the Parties together with a Notice of Hearing in the same form as a Notice of Hearing for the original Conduct Sub-committee, outlined at paragraph 7 of this SCHEDULE. The Clerk will also send the Applicant a copy of these Rules and a copy of any of the documents to be relied on by the Council.
- (7) The Sub-committee shall receive a copy of the audio recording, if available, and a copy of all the documents to be relied upon by each of the Parties, and a copy of the Notice of Hearing.
- (8) The hearing shall not be fixed for any date earlier than 28 days after the posting of the Notice of Hearing, except with the agreement of the Applicant.
- (9) The procedure in respect of a Restoration hearing shall follow the procedure applied at the original hearing where the Removal Order was imposed and the relevant Rules shall apply including those relating to the Health Procedure if this was followed previously:

- (a) the Presenter shall outline the history of the case and the circumstances in which the Removal Order was imposed and may produce documents exhibited to the Conduct Sub-committee which made the Removal Order and which have subsequently come into the possession of the Council and call witnesses in support relating to the Applicant's character, conduct and competence;
 - (b) the Applicant shall address the Sub-committee outlining the reasons why the order for restoration should be made and may produce documents and call witnesses in support of the application for restoration.
- (10) In determining an application for restoration the Sub-committee shall have regard to:
- (a) the reasons why the Applicant was removed from the Register;
 - (b) the application for restoration and any documents provided by the Applicant in support of the application;
 - (c) any documents to be relied on by the Council;
 - (d) the public interest in maintaining confidence in social services; and
 - (e) the principle of proportionality.
- (11) Where the Sub-committee is minded to restore an Applicant's Registration to the relevant part of the Register it will consider

whether it should be made subject to conditions for a period specified by the Sub-committee.

(12) Where the Sub-committee is minded to impose conditions the provisions of paragraph 26 above shall apply.

(13) A decision of the Sub-committee shall be treated as a decision of the Council.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 4

PROCEDURE OF THE PRELIMINARY PROCEEDINGS SUB-COMMITTEE

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SCHEDULE 4

PROCEDURE OF THE PRELIMINARY PROCEEDINGS SUB-COMMITTEE

1. Interpretation

In this SCHEDULE, 'the Sub-committee' means the Preliminary Proceedings Sub-committee established in accordance with SCHEDULE 5.

2. Private meetings

- (1) The proceedings of the Sub-committee shall be held in private.

- (2) The Parties are entitled to be present. The hearing may be held in public if the Registrant so requests.

3. Consideration by the Sub-committee

- (1) The Council will refer an application for an Interim Suspension Order to the Sub-committee.

- (2) Where an application for an Interim Suspension Order is referred to the Sub-committee, the Council shall provide the Clerk with:
 - (a) a statement of the Complaint;
 - (b) a copy of the signed Complaint Form (if any);
 - (c) any relevant documents or witness statements;

4. Notice of Referral

- (1) Not less than 28 days before the consideration of the Registrant's case, the Clerk shall send the Registrant and the Council a Notice of Referral, subject to paragraph 6 below. The Clerk shall also send the Registrant a copy of the documentation to be relied on by the Council.

- (2) The Notice of Referral shall:
 - (a) set out the Complaint;
 - (b) invite the Registrant to make written representations upon the Complaint within 14 days of service of the Notice;
 - (c) inform the Registrant of the date of the hearing;
 - (d) inform the Registrant that the Sub-committee, or the Council may seek further information about the Complaint from the Registrant's Employer (if any), where the Registrant is registered in the part of the Register for Students, the University, or from any other source;
 - (e) inform the Registrant of the time and venue for the hearing;
 - (f) inform the Registrant of the right to attend the hearing;
 - (g) request the Registrant to inform the Sub-committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (h) provide the Registrant with a brief statement of the matters which appear to raise the question whether:
 - (i) the Registrant's Registration in a part of the Register should be suspended;

- (ii) why such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant; or why the Registrant's fitness to plead has been called into question; and
 - (iii) inform the Registrant of the right to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council.
- (i) inform the Registrant of the right to make oral submissions to the Sub-committee in person or to be represented by an Appropriate Representative;
- (j) request confirmation as to whether the Registrant intends to:
 - i) attend the hearing;
 - ii) be represented at the hearing.
- (k) where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission;
- (l) the Convener of a Sub-committee may, at the Convener's discretion, permit the Registrant to be represented by a person other than an Appropriate Representative;
- (m) Any application to be represented by a person other than an Appropriate Representative, shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.

5. Disposal

- (1) The Sub-committee may:
 - (a) impose an Interim Suspension Order on the Registrant's Registration in the Register or part of the Register, if satisfied that such action is necessary for the protection of members of the public or is otherwise in the public interest or is in the interests of the Registrant;
 - (b) impose an Interim Suspension Order on the Registrant's Registration where the Registrant's fitness to plead has been called into question;
 - (c) direct that further investigations should be undertaken and adjourn the matter.

6. Interim Suspension Orders

- (1) Where the imposition of an Interim Suspension Order is to be considered on the grounds that such action is necessary for the protection of members of the public, or where the Registrant's fitness to plead has been called into question, the Council may dispense with service of the Notice of Referral and where the Council so decide the Clerk shall dispense with service of Notice of Referral, and the provisions of paragraph 4 above will not apply, and the Sub-committee shall convene for a consideration of the case as soon as practicable at a date to be fixed by the Clerk.
- (2) Notwithstanding (1) above, the Sub-committee shall not impose an Interim Suspension Order on a Registrant's Registration without first giving the Registrant such notice of the consideration of the

matter as is reasonable in all the circumstances of the case, and allowing the Registrant, or the Registrant's representative, the opportunity to make oral submissions and written representations to the Sub-committee. The Sub-committee may adjourn for this purpose.

- (3) Where the procedure in (1) above is followed and the Sub-committee decide that an Interim Suspension Order shall not be imposed on the Registrant's Registration on the basis that it is not necessary for the protection of members of the public, the Sub-committee may decide that the Clerk shall issue a Notice of Referral in terms of paragraph 4 above where one of the Council's grounds for seeking an Interim Suspension Order is that the Interim Suspension Order may be otherwise in the public interest or in the interests of the Registrant.
- (4) In addition to the procedure set out at (5) below, paragraphs 9; 12(2) and (3) (where the hearing is held in public); 13 and 14; 15, and 16 (where witnesses are present) and 19 and 28 of SCHEDULE 3 shall apply but in these paragraphs for the word "Charge", the word "Complaint" shall be understood.
- (5) The order of proceedings shall be as follows:
 - (a) The Presenter shall outline the allegation against the Registrant and set out the reasons why the Registrant's

Registration should be made subject to an Interim Suspension Order, and may lead any evidence in support;

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

- (8) A decision by the Sub-committee to impose an Interim Suspension Order shall be treated as that of the Council.

7. Review of Interim Suspension Orders

- (1) The Council, or any person in respect of whom an Interim Suspension Order has been made, may request the Sub-committee to review the Interim Suspension Order.
- (2) Save in exceptional circumstances, the Sub-committee shall not be obliged to review an Interim Suspension Order until 3 months after the date on which the Order was made.
- (3) Where the Sub-committee is to be requested to review an Interim Suspension Order, a Notice of Review shall be sent by the Clerk to the Registrant and the Council not less than 28 days before the meeting.
- (4) The Notice of Review shall:
 - (a) inform the Registrant of the right to attend the meeting;
 - (b) inform the Registrant of the date, time and venue for the hearing;
 - (c) request the Registrant to inform the Sub-committee whether the Registrant wishes the proceedings to be heard in private or in public;
 - (d) where the Council has requested a review of the Interim Suspension Order, for the purpose of imposing a further Interim Suspension Order, provide the Registrant with a brief

statement why the Council has requested the review; where the Registrant has requested the review provide the Registrant with a brief statement of whether the Council is to oppose the review of the Interim Suspension Order, if applicable, and the reasons why it intends to oppose the review;

- (e) inform the Registrant of the right to call witnesses and to cross examine any witnesses called by the Council.
- (f) inform the Registrant of the right to make oral submissions to the Sub-committee in person or to be represented by an Appropriate Representative;
- (g) request confirmation as to whether the Registrant intends to:
 - (i) attend the hearing;
 - (ii) be represented at the hearing;
- (h) where the Registrant is acting in person, the Registrant may be accompanied and advised by some other person. Such person, however, shall not be entitled to address the Sub-committee, without permission;
- (i) the Convener of a Sub-committee may, at its discretion, permit the Registrant to be represented by a person other than an Appropriate Representative;
- (j) Any application to be represented by a person other than an Appropriate Representative shall be given or sent to the Clerk to be received not less than 7 days before the meeting of the Sub-committee.

- (5) The procedure at the Review Hearing shall be the same as at the original hearing.

- (6) After reviewing an Interim Suspension Order under (1) above the Sub-committee may-
 - (a) continue the Interim Suspension Order;
 - (b) vary or revoke the Interim Suspension Order;
 - (c) impose a further Interim Suspension Order, to commence upon the expiry of the existing Interim Suspension Order; and any such decision shall be treated as that of the Council.

- (7) Within 7 days of the conclusion of the Review Hearing, the Clerk shall send a Notice of Decision to:
 - (a) the Registrant;
 - (b) the Council;
 - (c) the Registrant's Employer(s) (if any);
 - (d) where the Registrant is registered in the part of the Register for Students, the University.

- (8) The Notice of Decision shall contain the matters set out in paragraph 6(7) above.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 5
SUB-COMMITTEES

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SCHEDULE 5
SUB-COMMITTEES

1. Constitution of Sub-committees

- (1) The Council has established a Conduct Committee and the following Sub-committees:
- (a) Screening Sub-committee
 - (b) Conduct Sub-committee
 - (c) Preliminary Proceedings Sub-committee

2. Functions of Sub-committees

- (1) Screening Sub-committee
- The Screening Sub-committee shall, where requested to do so by the Council consider whether a complaint referred to it by the Council under Rule 5(5) should be referred to a Conduct Sub-committee and may:
- (a) transfer the case to the Conduct Sub-committee under the Conduct Procedure or the Health Procedure;
 - (b) direct that further investigations should be undertaken and adjourn the matter;
 - (c) inform the Registrant that it is minded to impose a condition or conditions on the Registration in a part or parts of the Register and indicate the terms of such, in accordance with paragraph 26(4) of SCHEDULE 3;
 - (d) warn the Registrant and direct that a record of the warning be placed on the Registrant's Entry in the Register for a

period of up to 5 years, provided that details of such warning shall remain in the Council's records and shall be taken into account in future Council proceedings; .

- (e) take no further action and conclude the case, provided that the Sub-committee may also direct the Clerk to remind the Registrant of the terms of the Code of Practice for Social Service Workers. The fact of the reminder and the reasons for it shall be kept on the Council's records and will be taken into account by the Council in any future decisions by the Council relating to the Registrant.

(2) Conduct Sub-committee

The Conduct Sub-committee shall consider any Charge against a Registrant referred to it, and decide:

- (a) whether the Registrant has committed Misconduct;
- (b) where the Registrant has committed Misconduct, what sanction should be imposed on the Registrant;
- (c) where the Registrant is unfit to plead, whether the Registrant should be suspended from the Register, in terms of paragraph 21(4) of SCHEDULE 3;
- (d) The Conduct Sub-committee shall consider any applications for restoration to the Register referred to it and decide:
 - (i) whether, in all the circumstances of the case, and having regard to the matters set out in paragraph 33 of SCHEDULE 3, the Applicant should be restored to the Register and

- (ii) where the Applicant is to be restored, whether conditions should be placed on their Registration.
- (3) Preliminary Proceedings Sub-committee
 - (a) The Preliminary Proceedings Sub-committee shall consider any application for an Interim Suspension Order against a Registrant referred to it at any time and decide if it is necessary for the protection of members of the public or is otherwise in the public interest, or is in the interests of the Registrant concerned, or where the Registrant's fitness to plead has been called into question, for the Sub-committee to make an Interim Suspension Order;
 - (b) Where the Preliminary Proceedings Sub-committee decides that it is necessary to impose an Interim Suspension Order on a Registrant's Registration, the initial duration of such Interim Suspension Order shall not exceed 6 months.
 - (c) Where the Preliminary Proceedings Sub-committee decides to impose a further Interim Suspension Order in accordance with the provisions set out in paragraph 7 of SCHEDULE 4, the total period of suspension shall not exceed a period of 2 years including the period specified in the original Order.

3. Procedure of Sub-committees

- (1) The Screening Sub-committee shall follow the procedures set out in SCHEDULE 1.

- (2) The Conduct Sub-committee shall follow the procedure set out in SCHEDULE 3.
- (3) The Preliminary Proceedings Sub-committee shall follow the procedure set out in SCHEDULE 4.

4. Membership and Quorum of Sub-committees

- (1) The Council shall establish a Conduct Committee. Members of the Committee shall be appointed for a period not exceeding 3 years and shall be eligible for re-appointment for further periods not exceeding 4 years in total, provided that a Member may sit on a Sub-committee which has commenced consideration of a matter prior to the expiry of his/her period of appointment until the final conclusion of the Sub-committee's consideration of any matter before it. No defect in the appointment of a Member shall affect the validity of the proceedings or decisions of the Committee or any of its Sub-committees.
- (2) The Sub-committees hearing a particular case shall be selected from the pool of persons appointed by the Council to the Conduct Committee.
- (3) Each Sub-committee shall consist of up to five members and the quorum shall be three.
- (4) Each Sub-committee shall consist of at least two Lay Persons and one Due Regard member in accordance with (6) below.

- (5) The Council shall appoint a Convener of each Sub-committee. The Convener shall be a Lay Person.
- (6) The Convener of the Council or a member of the Council shall not sit as a member on any Sub-committee.
- (7) The Council shall endeavour to appoint to each Sub-committee, a Due Regard member who is registered in the same part of the Register as the Applicant or Registrant whose case is under consideration, unless that person either is registered only in the part of the Register for Students or registered only in the part of the Register for Care Commission Officers.
- (8) Where the Council is unable to appoint a member referred to in (7) above, it shall seek to ensure that a member is appointed to the Sub-committee, who has experience or understanding of the area of social service work and where appropriate registration and inspection of social services practised by the Applicant or Registrant whose case is under consideration, unless the Applicant or Registrant either is registered only in the part of the Register for Students or registered only in the part of the Register for Care Commission Officers.
- (9) No member of any Sub-committee shall sit at the hearing of a Registrant's case, if that member has previously been concerned with the case. For the avoidance of doubt a Sub-committee

member shall not be barred from sitting at a hearing of a case where that Sub-committee member has previously been concerned only in considering an application for postponement or adjournment in a particular case nor shall they be barred from hearing multiple applications for postponement or adjournment in connection with a particular case.

5. Voting and Decisions

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

6. The Legal Adviser

- (1) A Legal Adviser shall be present at the sitting of each Sub-committee. The Legal Adviser shall also be present during the deliberations of each Sub-committee.
- (2) The Legal Adviser shall advise each Sub-committee on questions of law and shall ensure that the proceedings before each Sub-committee are conducted fairly, informing a Sub-committee immediately of any irregularity in the conduct of proceedings before it.

- (3) The Clerk to each Sub-committee shall maintain a record of any advice tendered by the Legal Adviser, whether the proceedings are held in public or private.
- (4) Where the proceedings of a Sub-committee are held in public, the advice of the Legal Adviser shall be given in the presence of the Parties. Any advice given by the Legal Adviser during the private deliberations of a Sub-committee shall subsequently be in the presence of the Parties.
- (5) The Parties shall have the opportunity to make representations on the contents of the advice given by the Legal Adviser. Where such representations have been made the Sub-committee may seek further advice from the Legal Adviser, who shall advise the Sub-committee accordingly, in the presence of the Parties.
- (6) The Legal Adviser shall not participate in the decision making of a Sub-committee and shall not be entitled to vote.

7. The Medical Adviser

- (1) Where it appears to the Council that the Registrant's alleged Misconduct may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Council shall appoint a Medical Adviser to advise each Conduct Sub-committee that is to consider the allegations of Misconduct.
- (2) A Medical Adviser shall be present whenever a Sub-committee's proceedings are held under the Health Procedure and may be

present when requested by the Convener of a Conduct Sub-committee or a Preliminary Proceedings Sub-committee on any other occasion.

- (3) The Clerk to each Sub-committee shall maintain a record of any advice given by the Medical Adviser.
- (4) The advice of the Medical Adviser shall be given in the presence of the Parties.
- (5) The advice of the Medical Adviser shall be given at the conclusion of the evidence, or where the facts are not in dispute after the Presenter has read out the agreed statement of facts. The Convener may request additional medical advice from the Medical Adviser at any other time thereafter. The Parties shall have the opportunity to make representations on the contents of the advice given by the Medical Adviser and where representations have been made on the contents of the advice given by the Medical Adviser, the Medical Adviser shall consider whether the advice should be amended and shall advise the Conduct Sub-Committee or the Preliminary Proceedings Sub-committee accordingly, in the presence of the Parties.
- (6) The Medical Adviser shall not be present at the private deliberations of the Sub-committee and shall not be entitled to vote.

8. The Clerk

- (1) Each Sub-committee shall be assisted by a Clerk who shall be responsible for the administrative arrangements for the meeting and shall keep a record of decisions made by each Sub-committee and the reasons for them.
- (2) The Clerk shall not participate in the decision making of a Sub-committee and shall not be entitled to vote.

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009

SCHEDULE 6

DETERMINATIONS OF REGULATORY BODIES WHICH MAY BE CONSIDERED BY A CONDUCT SUB-COMMITTEE

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

Signed by Maureen O'Neill, Council Member

On Behalf of the Scottish Social Services Council

Dated 24 December 2009