

JCCP Fitness to Practise Rules

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1. Introduction to these Rules

- 1.1 These Rules are effective from 1st March, 2018 and shall be known as The JCCP Fitness to Practise Rules 2018.
- 1.2 The Rules set out the JCCP's procedures for dealing with complaints which allege that the fitness to practise of a JCCP Registrant is impaired.

2. The JCCP/CPSA Code of Practice

- 2.1 A person who applies for and accepts registration with the JCCP thereby undertakes that he or she will practise in compliance with the JCCP/CPSA Code of Practice.
- 2.2 Any breach of the JCCP/CPSA Code of Practice shall be taken into account when considering a complaint against a Registrant.

3. The over-arching objective

- 3.1 The over-arching objective of the JCCP in exercising its functions is the protection of the public.
- 3.2 The pursuit by the JCCP of its over-arching objective involves the pursuit of the following objectives -
 - a. to protect, promote and maintain the health, safety and well-being of the public;
 - b. to promote and maintain public confidence in the practitioners regulated by the JCCP; and
 - c. to promote and maintain proper professional standards and conduct in the practitioners regulated by the JCCP.

4. Interpretation

In these Rules:

"Appellant" means a person who has lodged an appeal against a Panel decision.

"Applicant" refers to a person who has appealed against a decision refusing them membership of the JCCP or a person applying to be restored as a Registrant of the JCCP.

"Case Examiners" means two persons, one registrant and one lay, appointed from the Panel Member Pool for the purpose of considering a complaint referred to them under Rule 29.1 of Part 4;

A "complaint" means information received by the Council which the Registrar considers raises a complaint that the Registrant's fitness to practise is impaired;

"Complainant" means a person or an organisation which refers information to the Council about a JCCP Registrant which the Registrar decides amounts to a complaint;

"the Council" means the Joint Council for Cosmetic Practitioners, also known as "the JCCP"

"Formal Allegation" means the formal allegation arising from a "complaint" which has been referred by the Case Examiners or the Investigation Panel to be considered by the Fitness to Practise Panel;

"Impairment of fitness to practise" means impairment of a Registrant's fitness to practise by reason of

- misconduct;
- lack of competence;
- a conviction or caution in the UK for an offence which if committed in England or Wales would constitute a criminal offence;
- physical or mental health;
- a determination by a statutory regulator in the UK responsible under any enactment for the regulation of health and social care to the effect that his or her fitness to practise is impaired, or a determination by an equivalent regulator outside the UK to that effect ("a relevant determination");

"In private" means in the absence of witnesses and the public, but in the presence of the parties and their legal representatives, other than where a Practice Panel goes into private session to deliberate upon any issue, when "in private" means in the absence of all persons other than the Legal, Medical and Registrant Advisers (if present) and the Panel Secretary;

"Interim Suspension Order" means an Order made by a panel of the Interim Order Committee to suspend the Registrant's registration;

"Lay" means a person who is not and never has been a registrant of the JCCP and does not hold qualifications which would entitle them to apply for registration with the JCCP;

"Legal Adviser" means an independent barrister or solicitor qualified to practise in the United Kingdom and appointed by the Council;

"Medical Adviser" means a registered medical practitioner appointed by the Council;

"Parties" means the Case Presenter and the Registrant (or the Registrant's representative) at a hearing and does not include a Complainant;

"Practise Panel" means the Interim Orders Panel, the Investigation Panel, the Fitness to Practise Hearing Panel the Appeal Panel or the admissions and Restorations Panel;

Practise Panel

"Practitioner" (except where there is reference to a registered medical practitioner with regard to Rule 35(2), means a person registered with the JCCP who agrees to be regulated by them;

"Register" means the JCCP Register;

"Registrant" includes a representative appointed on behalf of the Registrant in accordance with Rule 9;

"Registrant Adviser" means a JCCP registered practitioner appointed by the Council;

"Removal Order" means an Order made by a Panel of the Fitness to Practise Hearing Panel or Appeal Panel for the removal of the Registrant's registration from the JCCP Registers;

"Rules" means The JCCP Fitness to Practise Rules 2018;

"Sanction Order" means one of the Orders under Rule 49.5 which may be imposed by a Fitness to Practise Panel or an Appeals Panel following a finding that a Registrant's fitness to practise is impaired;

"Suspension Order" means an Order made by an Interim Orders Panel, a Fitness to Practise Hearing Panel or an Appeal Panel for the suspension of a Registrant's registration in the JCCP Registers.

Part 1 – General

5. Application of these Rules

- 5.1 These Rules are not prevented from applying where an allegation is based on a matter which occurred outside the United Kingdom or at a time when the Registrant was not a JCCP Registrant.
- 5.2 Where information is received by the JCCP about a JCCP Registrant who is also a registrant of a statutory regulator in the UK responsible under any enactment for the regulation of health and social care ("a statutory regulator"), the Registrar must as soon as practicable after receipt refer the information to the statutory regulator in accordance with any Memorandum of Understanding between the JCCP and the statutory regulator or, where no Memorandum of Understanding exists, the Registrar must consider whether the information received should be referred to the relevant statutory regulator.

6. Practice Committees, Panels and Case Examiners

- 6.1 The Council will establish the following Panels, which shall be known as the Practice Panels, who shall have the functions given to them under these Rules:
 - a. Interim Orders Panel;
 - b. Investigation Panel;
 - c. Fitness to Practise Hearing Panel;
 - d. Appeal Panel;
 - e. Admissions and Restorations Panel.
- 6.2 The Council shall maintain a Panel Member Pool of up to 15 lay and 15 registrant persons appointed as panel members by the Council's Appointments Committee.
- 6.3 A panel member shall be appointed for a term of up to five years and may be re-appointed for a further term not exceeding five years.
- 6.4 The Appointments Committee shall appoint to each Practice Panel up to two lay and **one** registrant persons from the Panel Member Pool.
- 6.5 The Appointments Committee shall appoint up to one lay person from each Practice Panel to act as Panel Chairs in the consideration of matters under these Rules.
- 6.6 The quorum for a panel of a Practise Panel which is convened to consider a matter under these Rules shall be three persons and must include:
 - a. two lay panel members, one of whom has been appointed by the Appointments Committee to act as a Panel Chair; and
 - b. one registrant panel member
- 6.7 The Council shall appoint up to one lay and one registrant persons from the Panel Member Pool to conduct the functions of the Case Examiners under these Rules and the associated JCCP voluntary erasure rules.
- 6.8 No panel member shall sit on a panel of a Practise Panel to consider a matter under these Rules if that panel member has previously considered the matter, whether as a member of another panel or as a Case Examiner.

Part 2 - Provisions relating to hearings

7. These provisions shall apply to the consideration of matters under these Rules.

- 7.1 The following parts of these Rules shall also apply:
 - a. Part 3 to proceedings before the Interim Orders Panel
 - b. Part 4 to proceedings before Case Examiners and the Investigation Panel

- c. Part 5 to proceedings before the Fitness to Practise Panel
- d. Part 6 to proceedings before the Appeal Panel.

8. Service of notices and time limits

- 8.1 In these Rules a reference to the sending of a notice or other document by any person is a reference to it being sent:
 - a. in the case of the Council, its committees/panels or the Registrar, to the offices of the Council;
 - b. in the case of a Registrant, to his address as it appears in the Registers; or
 - c. in all other cases, to the last known address of that person.
- 8.2 All communications to be sent for the purposes of these Rules may be sent by post and any such communication shall be treated as having been sent on the day on which it was posted.
- 8.3 The Council, its Committees or panels may extend any time limit in these rules which provide for the service of documents or notices where, subject to any representations from the parties, they consider it fair and in the interests of justice to do so.

9. Representation

- 9.1 In any proceedings under these Rules:
 - a. A Registrant may be represented by:
 - (i) a barrister or solicitor; or
 - (ii) a representative of the Registrant's professional body, professional association or trade union.
 - b. The Council may be represented by a Case Presenter who is:
 - (i) a barrister or solicitor; or
 - (ii) an in-house officer of the Council.

10. Panel Secretary

- 10.1 A Practice Panel may be assisted by a Panel Secretary who shall be responsible for the administrative arrangements for the hearing or meeting and other functions given to the Panel Secretary under these Rules.
- 10.2 A Panel Secretary shall not participate in the decision making of a Practice Panel.

11. Legal Advisers

- 11.1 The Council, the Registrar or a Practice Panel may be advised by a Legal Adviser.
- 11.2 A Practice Panel at a hearing or meeting shall be advised by a Legal Adviser.
- 11.3 A Legal Adviser may:
 - a. advise a on any question of law or procedure;
 - b. advise on any other matter arising in connection with these Rules;
 - c. assist a Practice Panel at a hearing or meeting with the drafting of its written decision and the structuring of its reasons;
 - d. ask questions of the parties or witnesses for the purpose of clarifying the evidence or issues.
- 11.4 A Legal Adviser shall advise a Practice Panel of any irregularity in the proceedings which comes to the attention of the Legal Adviser.
- 11.5 A Legal Adviser may retire with a Practice Panel but shall not participate in its decision-making.
- 11.6 When a Legal Adviser gives advice to a Practice Panel the advice shall be given in the presence of the parties (if present) or if the advice is given whilst the Panel is in private session for any reason, the parties must be informed of the advice by as soon as possible thereafter.

12. Medical Advisers

- 12.1 A Practice Panel may be advised by a Medical Adviser on any matter within his or her competence.
- 12.2 When a Medical Adviser gives advice to a Practice Panel the advice shall be given in the presence of the parties (if present) or if the advice is given whilst the Panel is in private session for any reason, the parties must be informed of the advice by as soon as possible thereafter.
- 12.3 A Medical Adviser may ask questions of witnesses or parties with the permission of the Chair.
- 12.4 A Medical Adviser may retire with the Committee or Panel but shall not participate in its decision-making.

13. Registrant Advisers

- 13.1 A Practice Panel may be advised by a Registrant Adviser on any matter within his or her competence in order to assist the Panel in matters relating to the Registrant's practice.

- 13.2 When a Registrant Adviser gives advice to a Practice Panel the advice shall be given in the presence of the parties (if present) or if the advice is given whilst the Panel is in private session for any reason, the parties must be informed of the advice by as soon as possible thereafter.
- 13.3 A Registrant Adviser may ask questions of witnesses or parties with the permission of the Chair.
- 13.4 A Registrant Adviser may retire with the Committee or Panel but shall not participate in its decision-making.

14. Preliminary meetings

- 14.1 A preliminary meeting shall be:
 - a. heard by a person who is appointed to chair Practice Panels, or the Chair of the Panel which has been convened to consider the matter;
 - b. held with a Legal Adviser in attendance;
 - c. held in private in the presence of the parties, their representatives and any person the Chair considers appropriate.
- 14.2 A preliminary meeting may be convened in respect of a matter which is to be the subject of a hearing before the Fitness to Practise Hearing Panel or the Appeals Panel, at the request of the Case Presenter or the Registrant.
- 14.3 The parties must be given no less than 14 days' notice of the date of the preliminary meeting.
- 14.4 A preliminary meeting may take place by telephone conference or videoconference.
- 14.5 At the preliminary meeting the Chair may give such directions for the fair, expeditious and efficient disposal of the case as the Chair considers appropriate.

15. Public/private hearings

- 15.1 Subject to the provisions of this rule, hearings shall take place in public.
- 15.2 All or part of hearing may be held in private where the Practice Panel is satisfied, having considered any representations from the parties, any third parties from whom the Panel considers it appropriate to hear representations and having sought the advice of the Legal Adviser, that the public should be excluded:
 - a. in the interests of justice; or
 - b. for the protection of the private life of the Registrant, the Complainant, any person giving evidence or any client or service user.

- 15.3 An application that all or part of a hearing should be held in private must be heard in private.
- 15.4 A Practice Panel may deliberate in private session at any time, including when determining any issue or before reaching a decision at a hearing.

16. Non-attendance of the Registrant

- 16.1 Where the Registrant whose matter is being considered at a hearing is neither present nor represented, the Practice Panel may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to send notice of the hearing to the Registrant.

17. Adjournments

- 17.1 Subject to the requirements of a fair hearing, and after hearing any representations from the parties and seeking the advice of the Legal Adviser, a Practice Panel may adjourn the proceedings from time to time as it thinks fit.

18. Evidence

- 18.1 Upon receiving the advice of the Legal Adviser, and subject only to the requirements of relevance and fairness, a Practice Panel may admit oral, documentary and other evidence whether or not such evidence would be admissible in civil proceedings (in the appropriate court in that part of the United Kingdom in which the hearing takes place).
- 18.2 Where a Registrant has been convicted of a criminal offence, a certified copy of the certificate of conviction (or, in Scotland, an extract conviction) shall be admissible as proof of that conviction and of the findings of fact upon which it was based.
- 18.3 A certificate as to a determination about a Registrant's fitness to practise made by –
 - a. a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession; or
 - b. a licensing body elsewhere;

and signed by an officer authorised by the body to sign such certificates shall be admissible as prima facie evidence of the facts referred to in the determination.

19. Witnesses

- 19.1 A witness called in a hearing held under these Rules 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.

- 19.2 The witness may be questioned by the Panel, or by the Legal Adviser, or by the Registrant Adviser or Medical Adviser (if present) with the leave of the Panel Chair.
- 19.3 The parties may then question the witness on matters arising from the questions of the Panel or the Advisers. The party which called the witness shall question the witness last.
- 19.4 A witness, other than an expert witness, shall not be permitted to be present during a hearing until after they have completed their evidence and been formally released by the Panel Chair.

20. Vulnerable witnesses

- 20.1 At hearings held under these Rules, the following may be treated as vulnerable witnesses:
 - a. Any witness under the age of 18;
 - b. Any witness with a mental disorder;
 - c. Any witness who is significantly impaired in relation to intelligence or social functioning;
 - d. Any witness with physical disabilities who requires assistance to give evidence;
 - e. Any witness where the Formal Allegation against the Registrant is of a sexual nature and the witness was the alleged victim;
 - f. Any witness who complains of intimidation.
- 20.2 After seeking the advice of the Legal Adviser and upon hearing representations from the parties, a Panel may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness.
- 20.3 A Registrant who is unrepresented shall not be permitted to cross-examine a witness in person where the Formal Allegation is of a sexual nature and the witness is the alleged victim.
- 20.4 In the circumstances set out in Rule 20.3, any questioning of the witness may be undertaken by such person as the Panel considers appropriate.

21. Conduct of proceedings before a Panel

- 21.1 Subject to the requirements of a fair hearing and the requirements of these Rules, a Practice Panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.
- 21.2 A Practice Panel may exclude from the hearing any person whose conduct, in its opinion, is likely to disrupt the orderly conduct of the proceedings.

22. Voting

22.1 Where a Practice Panel is required to vote on any matter under these Rules:

- a. no panel member may abstain from voting;
- b. the vote shall be taken by a simple majority;
- c. if the votes are equal, the Panel Chair shall have a casting vote.

23. Publication of decisions

23.1 Publication of all decisions under these rules shall be in accordance with the Council's publication policy.

24. Records of the proceedings at hearings

24.1 A recording shall be made of the proceedings before of a Practice Panel.

24.2 A copy of the recording or a transcript of such recording shall be provided to the Registrant who is the subject of the proceedings upon his or her written request and on receipt of the costs thereof.

Part 3 - Interim Orders

25. Functions of the Interim Orders Panel

25.1 An Interim Orders Panel will be convened to consider any application made by the Council for an Interim Suspension Order.

25.2 An Interim Order Panel may impose an Interim Suspension Order in respect of a Registrant where it is satisfied that the making of such an order is:

- a. necessary for the protection of members of the public;
- b. otherwise in the public interest; or
- c. in the interests of the Registrant concerned

25.3 The maximum duration of an Interim Suspension Order shall be eighteen months.

26. Applications for Interim Suspension Orders

26.1 Where the Council wishes to apply for an Interim Suspension Order, it shall provide to the Panel Secretary:

- a. details of the complaint or Formal Allegation upon which the application is based; and
- b. a statement setting out why the registration of the Registrant should be interimly suspended.

26.2 The Panel Secretary shall, upon receipt of an application, fix a date and time for the hearing of the application and send a Notice of Interim Suspension Order Hearing to the parties:

- a. informing the parties of their right to attend the hearing;
- b. informing the parties of the time and venue for the hearing;
- c. informing the Registrant of the right to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council;
- d. informing the Registrant of the right to make oral submissions to the Panel in person or to be represented as provided for in Rule 9;
- e. requesting confirmation as to whether the Registrant intends to:
 - i. attend the hearing;
 - ii. be represented at the hearing.

26.3 Subject to Rule 26.4 below, the hearing of an application for an Interim Suspension Order shall take place no earlier than seven days after the date upon which notice of the Interim Suspension Order Hearing was served upon the Registrant

26.4 A notice period of less than seven days may be given where in the opinion of the Council the application is made upon the ground of protection of members of the public and must be heard urgently.

27. Interim Suspension Order hearings

27.1 The order of proceedings at an Interim Suspension Order hearing shall be as follows:

- a. The Case Presenter shall outline the facts of the case and set out the reasons why the Registrant's registration should be made subject to an Interim Suspension Order, together with any evidence in support;
- b. The Registrant (if present) may set out the reasons why such an Order should not be made, together with any evidence in support;
- c. The Panel may obtain advice from the Legal Adviser or Medical Adviser (where one is present);
- d. The Panel shall deliberate in private;
- e. The Panel shall announce its decision, which must specify the duration of any Interim Suspension Order imposed up to a period of eighteen months and the reasons, in the presence of the Parties.

27.2 As soon as practicable after the conclusion of the hearing, the Panel Secretary shall send a Notice of Decision to the parties and any interested third parties

27.3 The Notice of Decision shall:

- a. record any advice given by the Legal or Medical Adviser;
- b. set out the decision and reasons of the Panel;
- c. where an Interim Suspension Order has been imposed, set out the period of suspension beginning on the date on which the Order is made;
- d. inform the Registrant of the right of appeal.

28. Reviews of Interim Suspension Orders

- 28.1 Where an Interim Suspension Order has been made:
- a. it shall be reviewed every six months until it expires; and
 - b. subject to 28.2 below, the Council or the Registrant in respect of whom the Order was made may request a review at any other time.
- 28.2 An Interim Order shall not be reviewed under Rule 28.1(b) until 3 months after it was made unless exceptional circumstances exist.
- 28.3 A decision whether to grant a request for a review and the conduct of a review will be undertaken by an Interim Order Panel.
- 28.4 Where a review is to take place, a Notice of Interim Order Review Hearing shall be sent to the Registrant and the Council.
- 28.5 The Notice of Review Hearing shall:
- a. contain the information set out in rule 26.2 (a) to (e);
 - b. enclose a copy of the Interim Order decision to be reviewed
- 28.6 The procedure at the review hearing shall be the same as at the original hearing.
- 28.7 After reviewing an Interim Order the Interim Order Panel may:
- a. continue the Order;
 - b. revoke the Order.
- 28.8 As soon as practicable after the conclusion of the hearing, the Panel Secretary shall send a Notice of Decision to the parties and any interested third party.

Part 4 – Investigation of complaints

29. Functions of the Case Examiners and the Investigation Panel

- 29.1 Two Case Examiners, one Lay and one Registrant, shall consider complaints referred to them by the Registrar in accordance with these Rules and applications for voluntary

erasure under the JCCP Voluntary Erasure Rules and shall have the function of determining in respect of any complaint whether there is a case to answer.

- 29.2 Where the two Case Examiners do not agree whether in respect of any complaint there is a case to answer, or regarding an application for voluntary erasure pursuant to the JCCP Voluntary Erasure Rules they shall inform the Registrar who shall refer the complaint to a Panel.
- 29.3 Where a complaint is referred to the Investigation Panel under Rule 29.2, it shall have the function of determining whether there is a case to answer in respect of the complaint, or determining an application for voluntary erasure pursuant to the JCCP Voluntary Erasure Rules, and the Case Examiners shall take no further part in considering the complaint, or application for voluntary erasure. In the event that a Registrant applies for Voluntary Erasure the JCCP will finish any existing disciplinary process and publish outcomes as it would for current registrants.

30. Investigation and initial consideration of a complaint case

- 30.1 Where the Council receives information about a JCCP Registrant, the Registrar shall consider whether the information appears to raise a complaint that the Registrant's fitness to practise may be impaired and if so, the Registrar shall refer the complaint to be considered by two Case Examiners.
- 30.2 For the purposes of:
- a. establishing whether any information received by the Council is a complaint;
 - b. establishing whether there is a case to answer in relation to the complaint;
 - c. preparing a Formal Allegation for a Fitness to Practise Hearing Panel; or
 - d. determining whether an application should be made for an Interim Suspension Order,

the Registrar may make such inquiries and seek such advice as appears necessary in the circumstances, including seeking legal advice and seeking further information or clarification from the Registrant or any interested third party.

- 30.3 Where at any stage the Registrar considers that the in the light of the complaint, an Interim Suspension Order should be considered on the grounds that it is necessary for the protection of members of the public, is otherwise in the public interest; or is in the interests of the Registrant, the Registrar shall refer the matter to the Interim Orders Panel to consider the application in accordance with Part 3 of these Rules.

31. Representations in respect of the Complaint

- 31.1 Before the Case Examiners or the Investigation Panel consider a complaint, the Registrar shall send to the Registrant a copy of the complaint and any additional information or evidence received or obtained in respect of it, together with a copy of these Rules.

- 31.2 The Registrar shall invite the Registrant to submit within 28 days from the date on which the information in Rule 31.1 is sent, to submit written representations and any supporting documentation or evidence in response to the complaint.
- 31.3 Any information and documents submitted by the Registrant under Rule 31.2 shall be sent to the Complainant (if any) who shall be invited to submit any observations for the consideration of the Case Examiners within 14 days.
- 31.4 Copies of any observations submitted by the Complainant shall be provided to the Registrant who shall be invited to submit any comments thereon within 14 days from the date when the observations are sent.

32. Consideration by the Case Examiners or Investigation Panel

- 32.1 Where a complaint is referred to them, the Case Examiners shall consider in private all the information obtained in relation to the complaint and decide:
 - a. that they agree there is a case to answer and the complaint should be referred to the Fitness to Practise Hearing Panel as a Formal Allegation; or
 - b. that they agree that there is no case to answer and that advice should be given to the Registrant;
 - c. that they agree that there is no case to answer and no further action should be taken; or
 - d. that further investigations should be undertaken before they reach a decision under a. b or c.
- 32.2 The Case Examiners shall give reasons for their decision.
- 32.3 At any stage of their consideration of a complaint case, either of the two Case Examiners may decide that the complaint should be referred for consideration of an Interim Suspension Order and shall so inform the Registrar.
- 32.4 Where the two Case Examiners do not agree whether there is a case to answer, they shall inform the Registrar who shall refer the complaint and the information relating to it to the Investigation Panel.

33. Consideration by the Investigation Panel

- 33.1 Where a complaint is referred to The Investigation Panel under Rule 32.4, the Investigation Panel shall consider in private all the information obtained in relation to the complaint and decide:
 - a. whether there is a case to answer and the complaint case should be referred to the Fitness to Practise Hearing Panel as a Formal Allegation; or

- b. that they agree that there is no case to answer and that advice should be given to the Registrant;
- c. that they agree that there is no case to answer and no further action should be taken; or
- d. that further investigations should be undertaken before they reach a decision under a, b or c.

33.2 The Investigation Panel shall give reasons for their decision.

33.3 At any stage of their consideration of a complaint, the Investigation Panel may decide that the complaint should be referred for consideration of an Interim Suspension Order it shall inform the Registrar.

34. Advice

34.1. Where the Case Examiners under Rule 32.1(b) or the Investigation Panel under Rule 33.1(b) decide to give advice to the Registrant, such advice will:

- a. be disclosed to the Complainant and any employer, but will not be published;
- b. be kept on record and referred to in any subsequent investigations relating to the Registrant.

35. Complaints relating to Health

35.1 Where a complaint raises an issue that the Registrant's fitness to practise is impaired by reason physical or mental health, the Registrar may appoint a Medical Adviser to advise the Case Examiners or the Investigation Panel.

35.2 In addition the Registrar may invite the Registrant to agree, within 28 days:

- a. to be examined (at the Council's expense) by a registered medical practitioner nominated by the Council; and
- b. that such registered medical practitioner provide a report on whether the Registrant's fitness to practise is impaired by reason of his or her physical or mental ill health and that such report shall be provided to the Case Examiners or Practise Panel considering the complaint.

36. Action following the decision of the Case Examiners or Investigation Panel

36.1 Where the Case Examiners or the Investigation Panel reach a decision on whether there is a case to answer, the Registrant and the Complainant shall be informed of the decision and the reasons in writing within 7 days of the date of the decision.

- 36.2 Where the Case Examiners or the Investigation Panel has decided that there is a case to answer and the complaint should be referred to the Fitness to Practise Hearing Panel, a Notice of Formal Allegation shall be sent to the Registrant setting out the allegations which will be considered by the Fitness to Practise Committee.
- 36.3 If, at any stage, following service of the Notice of Formal Allegation upon the Registrant, it appears to the Council that the matter should no longer proceed to a hearing, the Council may make an application to the Fitness to Practise Hearing Panel that the formal allegation be withdrawn.

Part 5 - The Fitness to Practise Hearing Panel

37. Functions of the Fitness to Practise Hearing Panel

- 37.1 A Fitness to Practise Hearing Panel shall be convened to consider and determine in respect of any Formal Allegation referred by the Case Examiners or the Investigation Panel:
- a. whether any of the facts alleged are proved;
 - b. if so, whether any facts found proved in the judgment of the Panel establish the ground of misconduct, lack of competence, criminal conviction or police caution, or a relevant determination of another statutory regulator;
 - c. if so, whether in the light of the ground established, the Registrant's fitness to practise is impaired
 - d. if so, whether to impose one of the Sanction Orders set out in Rule 49.5
- 37.2 The provisions in Part 2 shall apply to proceedings before a Fitness to Practise Panel.
- 37.3 Subject to these Rules and the requirements of fairness, a Fitness to Practise Hearing Panel shall determine the conduct of proceedings at hearings under Part 5.

38. Joinder

- 38.1 A Fitness to Practise Hearing Panel may consider and determine together two or more Formal Allegations against a Registrant and/or a Formal Allegation against two or more Registrants together, if it considers it fair and just to so do.

39. Notice of Hearing

- 39.1 As soon as practicable after the Formal Allegation has been referred to a Fitness to Practise Hearing Panel the Panel Secretary shall send to the Registrant and the Council a Notice of Hearing which shall:

- a. state the date, time and venue of the hearing;
 - b. specify the Formal Allegation(s) against the Registrant;
 - c. inform the parties of their respective rights 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 as set out in Rule 9;
 - iv. call and cross-examine witnesses;
 - d. inform the Registrant of the possible Sanction Orders open to the Panel in the event of a finding of impairment of fitness to practise.
 - e. inform the Registrant of the Panel's power to proceed in the absence of the Registrant at the hearing;
 - f. invite the Registrant to state whether they will attend the hearing or be represented and whether they admit or deny the Formal Allegation.
- 39.2 The date fixed for the hearing shall not be not less than 42 days from the day after the posting of the Notice of Hearing except with the agreement of the Registrant.
- 39.3 The Panel Secretary shall send with the Notice of Hearing:
- a. a copy of these Rules and
 - b. any reports, written statements or other documents relating to the Formal Allegation.

40. Standard case management directions

- 40.1 The directions at Rule 40.2 – 40.5 shall apply in respect of all hearings before a Fitness to Practise Hearing Panel and a hearing before an Admissions and Restorations Panel, unless varied with the written agreement of the parties and the Panel or at a Preliminary Meeting.
- 40.2 No later than 35 days before the date of hearing, the Council shall serve on the Registrant or the Applicant and upon the Panel Secretary, copies of all documents and reports upon which they intend to rely.
- 40.3 No later than 21 days before the date of the hearing, the Registrant shall:
- a. advise the Council which, if any, of the evidence served by the Council they agree; and/or
 - b. serve on the Council and upon the Panel Secretary, copies of all documents and reports upon which they intend to rely.
- 40.4 The Parties shall make arrangements for original documents to be inspected no later than seven days before the date of the hearing.
- 40.5 Upon receipt of the Registrant's or Applicant's case, the Case Presenter shall consider whether there are any further documents in the Council's possession which may assist

the Registrant or the Applicant, and shall serve copies of such documents, if any, on the Registrant and on the Panel Secretary.

- 40.6 No later than 10 days before the hearing, the Panel Secretary shall send the Panel copies of:
- a. the Notice of Hearing;
 - b. any agreed documents or reports provided by the Parties.

41. Burden and standard of proof

- 41.1 The burden of proving any facts alleged at a hearing shall rest on the Case Presenter for the Council.
- 41.2 The standard of proof in relation to any facts alleged shall be on the balance of probabilities.
- 41.3 A Fitness to Practise Hearing Panel shall determine the issue of whether there is impairment of fitness to practise on any ground in accordance with its own judgment.

42. Preliminary matters

- 42.2 At the opening of the hearing, the Fitness to Practise Panel Chair shall ask the Registrant to confirm their name and registration number.
- 42.3 The Panel shall consider any application to amend the Formal Allegation and, subject to the requirements of a fair hearing, the Panel may amend the Allegation at any stage prior to making any finding of impairment.
- 42.4 The Panel shall first hear representations as to the proposed amendment from the parties, and shall take advice from the Legal Adviser before deciding whether or not the Formal Allegation should be amended.
- 42.5 The Panel Secretary shall read out the Formal Allegation against the Registrant.
- 42.6 After the Formal Allegation has been read, the Panel Chair shall ask the Registrant whether the Formal Allegation or any part of it is admitted.
- 42.7 Where any relevant facts are admitted, the Panel Chair may announce that those facts are proved.

43. The Presenting Officer's case

- 43.1 Where no admissions are made, or some relevant facts remain disputed, the Case Presenter shall present the Council's case against the Registrant to the Panel, make an opening submission and adduce evidence in support of the allegation.

44. The Registrant's case

- 44.1 At the end of the evidence presented by the Case Presenter, the Registrant may adduce evidence in support of their case and may give evidence.

45. Closing submissions

- 45.1 The parties may make closing submissions on the facts, with those of the Registrant being heard last.

46. Stage 1 - The Decision on the facts

- 46.1 The Panel shall consider in private whether any of the facts which remain in dispute are proved on the balance of probabilities
- 46.2 The Panel must give reasons for its decision.
- 46.3 The Panel shall announce its findings of fact in the presence of the parties.

47. Stage 2 - Consideration of ground and impairment

- 47.1 The Case Presenter may adduce further evidence relevant to the alleged ground/s and impairment and may make submissions
- 47.2 The Registrant may adduce further evidence relevant to the alleged ground/s and impairment and may make submissions.

48. The Panel's decision on the ground/s and impairment

- 48.1 The Panel shall consider and determine in private whether in the light of any facts found proved the alleged ground of impairment is made out and if so, whether the Registrants fitness to practise is impaired.
- 48.2 The Panel must give reasons for its decision.
- 48.3 The Panel shall announce its findings in relation to the ground and impairment in the presence of the parties.

49. The Panel's decision on sanction

- 49.1 Where the Panel has found the Registrant's fitness to practise impaired, the Case Presenter shall inform the Panel of any previous disciplinary history of the Registrant and may make submissions as to any appropriate Sanction Order to be imposed.
- 49.2 The Registrant may adduce evidence in mitigation, present character/testimonial evidence and make submissions as to sanction.
- 49.3. Where the Registrant has not attended the hearing in person, the Panel Secretary may provide to the Panel any written mitigation evidence which has been submitted by the Registrant.
- 49.4 The Panel shall next consider and determine in private in the light of its finding of impairment of fitness to practise whether to:
 - a. take no further action; or
 - b. impose one of the Sanctions Orders.
- 49.5 The Sanction Orders the Panel may impose are to:
 - a. to caution the Registrant and direct that a record of the Caution be placed on the Registrant's entry in the Register, for a period of up to two years; or
 - b. issue a Conditions of Practice order, for a period of not less than one year and not more than three years; or
 - c. make an Order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order'); or
 - d. other than where the Panel's finding of impairment of fitness to practise is on the ground of health, make an Order for removal of the Registrant's name from the Register ('a Removal Order')
- 49.6 Where the Fitness to Practise Hearing Panel reaches its final determination of the Formal Allegation under this Part, any Interim Suspension Order imposed in relation to the Registrant shall be revoked with immediate effect where the Registrant has attended the hearing, or where the Registrant has not attended the hearing from the date the decision was notified to the registrant for the purposes of Rule 8.2.
- 49.7 On giving a direction for removal or suspension under Rule 49.5 (c) and (d) in respect of the Registrant, the Panel may, if satisfied that to do so is necessary for the protection of members of the public or otherwise in the public interest, or is the best interest of the registrant, order that the Registrants registration in the Register shall be suspended forthwith, pending expiry of the 28 day period allowed for an lodging an appeal, or determination of any appeal brought pursuant to Rule 57.
- 49.8 On giving a direction for a condition of practice order under Rule 49.5 (b) in respect of the Registrant, the Panel may, if satisfied that to do so is necessary for the protection of members of the public or otherwise in the public interest, or is in the best interests of the registrant, order that the Registrants registration in the Register be made subject to a

conditions of practice order forthwith, pending expiry of the 28 day period allowed for lodging an appeal, or determination of any appeal brought pursuant to Rule 57.

- 49.9 Where the Panel gives a direction under Rule 49.7 or 49.8 above, and the Registrant to whom the direction applies is neither present or represented at the hearing, the direction that the order take place with immediate effect will be substituted for the date the letter notifying the Registrant of the order was sent pursuant to Rule 8.2.

50. Admission and Restoration hearings

- 50.1 An application for restoration to the Register shall be treated as if it were an initial application for registration and must comply with the Council's requirements for obtaining registration. Any application for restoration after a Registrant's removal from the Register pursuant to Rule 49.5 (d) (a removal order) shall be considered by the Admissions and Restorations Panel.
- 50.2 Where a Registrant's name has been removed from the Register under Rule 49.4 (d), no application for restoration of the Registrant's name to the Register shall be made before the expiration of five years from the date of removal from the Register.
- 50.3 Applicants who have been refused admission to the JCCP register may appeal the JCCP's decision to refuse them entry to the Register. This application shall be heard by the Admissions and Restoration Panel.

51. Documents to be provided to the Council

- 51.1 In addition to the documents required in an application for admission to the Register, the Applicant may send to the Council any other document or information supporting the application for restoration.

52. Notice of an Admission or Restoration Panel Hearing

- 52.1 As soon as practicable after receipt of an application under Rule 50.1, or 50.3 the Panel Secretary shall send the Applicant a Notice of Admission or Restoration Hearing which must:
- a. state the date, time and venue of the hearing;
 - b. inform the Applicant of the right to attend the hearing and make oral submissions to the Committee or to be represented in accordance with Rule 9;
 - c. in relation to a restoration hearing enclose a copy of the decision and Order made by the Fitness to Practise Hearing Panel that made the Removal Order;
 - d. enclose any documents to be relied on by the Council; and
 - e. enclose a copy of these Rules.

53. Documents to be provided to the Admissions and Restoration Fitness to Practise Hearing Panel

- 53.1 No less than seven days before the hearing, the Panel Secretary shall send to the Panel copies of:
- a. the Notice of Restoration Hearing;
 - b. the application for restoration and any documents provided by the Applicant in support of the application;
 - c. a copy of the decision and Order made by the Fitness to Practise Hearing Panel which made the Removal Order;
 - d. any documents relied on by the Council.

54. Procedure at an admission or restoration hearing

- 54.1 The Case Presenter shall first outline the history of the Applicant or Registrant's case and in the case of restoration hearing, the circumstances in which the Order for removal of the Registrant's registration was made.
- 54.2 The Applicant or the Applicant's representative may then address the Panel as to the reasons why an Order for restoration should be made.
- 54.3 The Applicant may adduce evidence and call witnesses in support of an application to be admitted to the Register or for restoration to the Register.

55. Decision of the Admissions and Restoration Fitness to Practice Hearing Panel on an Admission or Restoration Application

- 55.1 The Admissions and Restorations Fitness to Practise Hearing Panel shall determine whether the Applicant is fit to practise and should be restored to the Register, having regard to:
- a. the reasons why the Applicant was removed from the Register;
 - b. evidence as to the Applicant's current good character, competence or health;
 - c. evidence as to the Applicant's conduct since removal from the Register;
 - d. the protection of the public and the public interest
- 55.2 The Admissions and Restorations Panel in relation to an application for admission to the JCCP register shall have regard to:
- a. evidence of the Applicant's qualifications and experience;
 - b. any witness or testimonial evidence the Panel have heard in support of the application;
 - c. whether once it has considered the evidence submitted by the Applicant at 55.2 a) and b) the application meets the entry requirements for admission to the JCP Register.;
- 55.3 The Panel shall give reasons for its decision.

Part 6 – Appeals

56. Functions of the Appeal Panel

56.1 An Appeal Panel shall be convened to consider:

- a. an appeal by a Registrant against one of the following decisions in respect of the Registrant:
 - (i) the imposition of an Interim Suspension Order under Part 3;
 - (ii) the findings or sanction order made by a Panel of the Fitness to Practise Committee under Part 4;
 - (iii) a decision by a Panel of the Fitness to Practise Committee to refuse the Registrant's application for restoration under Part 5.
- b. an appeal by the Council against a sanction order made by a Panel of the Fitness to Practise Hearing Panel under Part 5;

56.2 On hearing an appeal, an Appeal Panel shall determine the appeal in accordance with the Rules 59-68.

56.3 Further in this Part, the party which brings the appeal shall be called "the Appellant" and the other or opposing party shall be called "the Respondent".

57. Time limit and form of Appeal

57.1 An appeal must be made within 28 days from the day on which the original decision was made.

57.2 An appeal must be submitted to the Appeal Panel Secretary in writing, specifying the Appellant's grounds of appeal and enclosing any supporting documents

57.3 As soon as practicable after the appeal has been lodged, the Appeal Panel Secretary shall fix a date for the appeal hearing.

57.4 Not less than 42 days before the date fixed for the Appeal Hearing, the Appeal Panel Secretary shall send a Notice of Appeal Hearing to the Appellant and the Respondent which shall:

- a. set out the date, time and location of the hearing;
- b. enclose a copy of these Rules;
- c. enclose copies of the Appellant's grounds of appeal and supporting documents.

58. Service of documents

- 58.1 No later than 28 days before the hearing date, the Appellant shall send to the Respondent and the Appeal Panel Secretary copies of any written submissions upon which they wish to rely.
- 58.2 No later than 14 days before the hearing date, the Respondent shall send to the Appellant and the Appeal Panel Secretary copies of any written submissions and documents upon which they wish to rely.
- 58.3 No later than 10 days before the hearing date, the Appeal Panel Secretary shall send to the Appeal Panel which is to hear the appeal of copies of:
- a. the Appellant's grounds of appeal;
 - b. the Notice of Appeal Hearing;
 - c. the order or decision appealed against;
 - d. the written submissions and documents submitted by both parties; and
 - e. a transcript of the hearing at which the decision appealed against was made.

59. The nature of the appeal

- 59.1 An appeal shall be limited to a review of the decision of the original Panel and consideration of any fresh evidence.
- 59.2 The Appeal Panel will allow an appeal:
- a. in cases where no fresh evidence is admitted, if it is satisfied that the original Panel ought to have reached a different decision on the material before it;
 - b. in cases where fresh evidence is admitted, if it is satisfied that:
 - i. in the light of that evidence, the original Panel would have reached a different decision;
 - ii. notwithstanding that evidence, the original Panel ought to have reached a different decision on the material before it.

60. Evidence

- 60.1 Rule 18 shall apply generally in relation to the consideration of appeals
- 60.2 Subject to the advice of the Legal Adviser, the requirements of a fair hearing and relevance, the Appeal Panel may:
- a. admit evidence that was not available or not known to the Appellant at the time of the original hearing ("fresh evidence");
 - b. exclude evidence in order to ensure fairness to the Appellant and the Respondent.

61. Appeal Hearing procedure

- 61.1 Subject to the requirements of a fair hearing and subject to these Rules, the Appeal Panel may determine its own procedures for the conduct of an appeal hearing.
- 61.2 The Appeal Panel shall first hear and determine any preliminary legal arguments.
- 61.3 The Appellant shall first present their appeal.
- 61.4 The Respondent shall then address the Panel in response to the appeal.
- 61.5 The Appeal Panel may allow either party to make a closing address.
- 61.6 The Appeal Panel shall next consider and determine in private its decision and reasons.

62. Appeal against an Interim Suspension Order

- 62.1 Where the Registrant is appealing against an Interim Suspension Order, the Appeal Panel must consider the Appeal in accordance with paragraph 53 above and must either:
 - a. allow the Appeal and vary or revoke the Interim Suspension Order imposed; or
 - b. dismiss the Appeal, in which case, the Interim Suspension Order will continue.

63. Appeal against the Findings of a Fitness to Practise Hearing Panel

- 63.1 Where the appealing is against the Findings of a Fitness to Practise Hearing Panel, the Appeal Panel must determine the Appeal in accordance with paragraph 53 above and must either:
 - a. allow the Appeal; or
 - b. dismiss the Appeal
- 63.2 If the Appeal Panel allows the Appeal it must either:
 - a. quash the Findings and dismiss the Formal Allegation(s);
 - b. quash the Findings and substitute any decision that the original Fitness to Practise Panel could have made; or
 - c. remit the matter to the Fitness to Practise Hearing Panel for a re-hearing.

64. Appeal against sanction order

- 64.1 Where the Appeal is against a sanction order, the Appeal Panel must consider the Appeal in accordance with paragraph 53 above and must either:

- a. allow the Appeal; or
- b. dismiss the Appeal.

64.2 On an appeal against a sanction order the Appeal Panel may either:

- a. revoke, amend, vary or extend the sanction order imposed; or
- b. remit the matter to the Fitness to Practise Committee for re-consideration.

64.3 The sanctions available to the Appeal Panel are those that were available to the Fitness to Practise Panel at the original hearing.

65. Appeal against Findings and Sanction Order

65.1 Where a Registrant appeals the Findings and the Sanctions Order made by a Fitness to Practise Hearing Panel, the Appeal Panel shall:

- a. consider the Appeal against the Findings first;
- b. consider the Appeal against the Sanction Order thereafter.

66. Appeal against a refusal of Restoration

66.1 Where the Registrant is appealing against an order refusing an application for restoration to the Registers the Appeal Panel must determine the Appeal in accordance with paragraph 53 above and must either:

- a. allow the Appeal and restore the Registrant to the register; or
- b. dismiss the Appeal.

66.2 In making this decision, the Appeal Panel shall have regard to the provisions of Rule 55.

67. Announcement of Decision on the Appeal

67.1 The Appeal Panel Chair shall announce the decision and reasons of the Appeal Panel in the presence of the parties.

68. Notice of Decision

68.1 Within seven days after the conclusion of the hearing, the Appeal Panel Secretary shall send a Notice of Decision to:

- a. the Appellant and the Respondent;
- b. the Complainant; and
- c. interested third parties, if any.

68.2 The Notice of Decision shall:

- a. record any advice given by the Legal Adviser;
- b. set out the decision of the Appeal Panel on the Appeal;
- c. specify the reasons for the Appeal Panel's decision;
- d. inform the Registrant that any further order imposed by the Appeal Panel took effect from the date on which it was made.

[END]