

# Detailed procedures for dealing with complaints

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# Part I Introduction

## I Purpose of this document

- 1.1 The procedures set out in this document are relevant to complaints that have been identified as not suitable for informal resolution, or where informal resolution has not been successful.
- 1.2 Appendix 5 to this document contains details of the types of complaint that are not suitable for informal resolution. It also contains the criteria for escalating a complaint from informal resolution to consideration under the formal procedures.

## 2 Interpretation

- 2.1 In these Procedures, unless the context otherwise requires –

**allegation** means any alleged breach of the CNHC Code of Conduct, Ethics & Performance arising out of a Complaint.

**Complaint** means any information received by the Council, whether by way of a written complaint from a “Complainant” or by way of documentary or other information from any source, which is considered by the Council to be a Complaint by reference to the provisions of the CNHC Code of Conduct, Ethics & Performance.

**Complainant** means any person (including an institution) who makes a Complaint against a Registrant.

**the Complaints Procedure** is the procedure set out in Appendices 1, 2, 3 and 4.

**the Council** means the Complementary and Natural Healthcare Council (CNHC).

**Case Examiner** means a person who is a member of the pool of people referred to in paragraph 8.1 of Part 2.

**Day** means any day including weekends, bank holidays and any religious days.

**Formal Allegation** means an allegation that a Registrant’s practice is impaired by reason of:

- a. Misconduct;
- b. Lack of competence;
- c. A conviction or caution in the UK for a criminal offence, or a conviction elsewhere for an offence, which if committed in England and Wales, would constitute a criminal offence;
- d. Her or his physical or mental health;
- e. A determination by a statutory regulator in the United Kingdom responsible under any enactment for the regulation of health and social care to the effect that her or his fitness to practise is impaired, or a determination by an equivalent regulator outside the United Kingdom to that effect (“a relevant determination”);
- f. An entry in the Register relating to her or him has been fraudulently procured or incorrectly made (“a false entry”).

**the Health Procedure** is the procedure set out in Appendix 2.

**Interim Order** means an Order issued by the CNHC Registrar or made by a Panel or Committee to limit the scope of practice or suspend the Registrant’s registration.

**Interested Third Party** means a person or institution with a legitimate reason to be interested in and advised of proceedings e.g. a statutory regulatory body or police authority.

**Lay Person** means a person who is not, and who has not within three years of appointment to a Committee or Panel, been a practitioner of any of the professions regulated by the CNHC.

**Legal Adviser** means a barrister or a solicitor qualified to practise in the United Kingdom.

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

**Misconduct** means conduct which calls into question the suitability of a Registrant to remain on the Register by way of their Conduct falling below accepted standards for their profession.

**the Parties** means the Presenter (and may include an officer of the Council instructing the Presenter) and the Registrant (or the Registrant's representative) at a hearing before a Committee or Panel and specifically excludes the Complainant.

**the Presenter** means the person acting on behalf of the Council at a hearing before a Committee or Panel, and may include an officer of the Council or a solicitor or barrister engaged by the Council for this purpose.

**Register** means the Register maintained by the CNHC.

**Registrant** means a person registered in the Register.

**Registrant Adviser** means a CNHC registered practitioner appointed by the Council.

**Removal Order** means an Order for the removal of the Registrant's registration from the Register, made by the Conduct and Competence Panel.

**Suspension Order** means an Order for suspension of the Registrant's registration made by a Committee or Panel.

### 3 Service and time limits

- 3.1 In these Procedures, any reference to the sending of a letter 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 to the Registrant's or former Registrant's address in the Register or, if the last-known address differs from the address in the Register, the Registrant or former Registrant's last-known address.
- 3.2 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.

- 3.3 The Council or any of its Committees or Panels may extend any time limit in these Procedures which provides for the service of documents or notices, either by:
  - a. the consent of all Parties and the agreement of the Council, Panel or Committee; or
  - b. where the Council, Panel or Committee consider it fair to so do.

- 3.4 Before deciding whether to extend a time limit, the Council, Panel or Committee shall consider any representations made by the Parties.

### 4 Applicability

- 4.1 These Procedures are not to be prevented from applying because the Formal Allegation is based on a matter which occurred outside the United Kingdom or at a time when the person against whom the allegation is made was not registered.
- 4.2 Unless the Council considers that there are exceptional circumstances, information received by the Council about a Registrant will not be considered under these Procedures if over two years have elapsed since the conduct occurred or since the date on which the Complainant became aware of the conduct, whichever is the latest.

# Part 2 Committees and Panels

## 5 Constitution of Committees and Panels

5.1 The Council shall establish the following five Committees and Panels:

- a. Investigating Committee;
- b. Conduct and Competence Panel;
- c. Health Panel;
- d. Appeals Panel;
- e. Restoration Committee.

## 6 Function of Committees and Panels

### 6.1 Investigating Committee

6.1.1 The Investigating Committee will consider any application by the Council for an Interim Order and decide whether the making of such an Order is:

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

6.1.2 Where the Investigating Committee decides that it should impose an Interim Order on a Registrant's registration, the initial duration of such an Order shall not exceed six months.

6.1.3 Where the Investigating Committee decides to impose a further Interim Order the total period of the order shall not exceed a period of two years.

### 6.2 Conduct and Competence Panel

6.2.1 The Conduct and Competence Panel will consider any Formal Allegation against a Registrant referred to it by the Case Examiners or Investigating Committee (under Part 3, 14.9 below) and decide:

- a. whether the facts are proven;
- b. by virtue of the proven facts, whether the Registrant has either: committed misconduct; lacks competence; has been convicted or cautioned; is the subject of a relevant determination; has made a false entry;

- c. whether the Registrant's fitness to practise is impaired as a result;
- d. where it is decided that the Registrant's fitness to practise is impaired, what sanction (if any) should be imposed upon the Registrant

6.2.2. The Conduct and Competence Panel will consider any application by the Council for an Interim Order and decide whether the making of such an Order is:

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

6.2.3 Where the Conduct and Competence Panel decides that it should impose an Interim Order on a Registrant's registration, the initial duration of such an Order shall not exceed six months.

6.2.4 Where the Conduct and Competence Panel decides to impose a further Interim Order the total period of the order shall not exceed a period of two years.

### 6.3 Health Panel

6.3.1 The Health Panel will consider any Formal Allegation that a Registrant's fitness to practise is impaired by reason of her or his ill health referred to it by the Case Examiners or Investigating Committee (under Part 3, 14.9 below) and decide:

- a. whether the Registrant is physically or mentally unwell;
- b. whether the Registrant's fitness to practise is impaired by reason of her or his physical or mental ill health;
- c. where it is decided that the Registrant's fitness to practise is impaired, what sanction (if any) should be imposed upon the Registrant.

6.3.2 The Health Panel will consider any Formal Allegation against a practitioner referred to it by the Case Examiners or Investigating Committee (under Part 3, 14.11 below) or the Conduct and Competence Committee (under Appendix 2, paragraph 7.2) and decide:

- a. whether the facts are proven;
- b. by virtue of the proven facts, whether the Registrant has either: committed misconduct; lacks competence; has been convicted or cautioned; is the subject of a relevant determination; has made a false entry;
- c. whether the Registrant's fitness to practise is impaired as a result;
- d. where it is decided that the Registrant's fitness to practise is impaired, what sanction (if any) should be imposed upon the Registrant

6.3.3 In making the decisions in 6.3.1 above, the Panel shall take into account the Registrant's ill health.

6.3.4 The Health Panel will consider any application by the Council for an Interim Order and decide whether the making of such an Order is:

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

6.3.5 Where the Health Panel decides that it should impose an Interim Order on a Registrant's registration, the initial duration of such an Order shall not exceed six months.

6.3.6 Where the Health Panel decides to impose a further Interim Order the total period of the order shall not exceed a period of two years.

#### **6.4 Appeals Panel**

6.4.1 The Appeals Panel will consider an appeal by the Registrant of:

- a. the imposition of an Interim Order by the Investigating Committee, Conduct and Competence Panel or Health Panel;
- b. any Order made by a Conduct and Competence Panel, Health Panel or Restoration Committee;
- c. any sanction imposed by a Conduct and Competence Panel or Health Panel.

6.4.2 The Appeals Panel will consider an appeal by the Council of any sanction imposed by a Conduct and Competence Panel or Health Panel.

6.4.3 In an appeal under paragraph 6.4.1 or 6.4.2 above, the Appeals Panel:

- a. will review all the documentation before the original Panel or Committee;
- b. may consider any fresh evidence;
- c. shall hear submissions from the Parties;
- d. shall decide whether the Appeal is upheld or dismissed;
- e. may decide whether the Order or sanction should be altered;
- f. may remit the matter to the original Panel or Committee for a re-hearing.

#### **6.5 Restoration Committee**

6.5.1 The Restoration Committee will consider any application for restoration to the Register referred to it and decide:

- a. whether, in all the circumstances of the case, the Registrant should be restored to the Register; and
- b. where the Registrant is to be restored, whether conditions should be placed on the Registrant's registration.

6.5.2 The Restoration Committee will consider any application by a Registrant to review the conditions imposed upon her or his registration in accordance with 6.5.1b above and shall review the conditions before they expire.

### **7 Procedure of Committees and Panels**

7.1 The Investigating Committee shall follow the procedure set out in Appendix 1.

7.2 The Conduct and Competence Panel shall follow the procedure set out in Appendix 2.

7.3 The Health Panel shall follow the procedure set out in Appendix 2.

7.4 The Appeals Panel shall follow the procedure set out in Appendix 3.

7.5 The Restoration Committee shall follow the procedure set out in Appendix 4.

### **8 Membership and quorum of Committees and Panels**

8.1 The Council shall maintain a pool of people from which Committee and Panel members hearing a particular case shall be appointed.

- 8.2 Each Committee or Panel shall consist of up to five members, appointed by the Council.
- 8.3 The quorum of each Committee or Panel shall be three, and each Committee or Panel shall sit with either three or five members present.
- 8.4 The Council shall appoint a Chair of each Committee.
- 8.5 The Council shall ensure that a member is appointed to the Committee or Panel who has experience or an understanding of the area of the case which is under consideration i.e. what is commonly known as 'due regard'.
- 8.6 The Council shall ensure that Conduct and Competence and Health Panels contain a lay member.
- 8.7. Members of each Committee shall be appointed for a period not exceeding three years and shall be eligible for re-appointment for a further period not exceeding three years.
- 8.8 No member of any Committee or Panel shall sit on the hearing of a Registrant's case, if that member has previously been concerned with the case.

## **9 Voting of Committees and Panels**

- 9.1 Decisions of all Committees and Panels shall be taken by simple majority.
- 9.2 The Chair of any Committee or Panel may exercise a casting vote.
- 9.3 Any abstention shall be deemed to be a vote in favour of the Registrant.

## **10 Legal Adviser**

- 10.1 Any Committee or Panel of the CNHC may appoint a Legal Adviser to assist them in procedural or legal matters. Where a Committee or Panel appoint a Legal Adviser the procedure set down under paragraph 10.2 – 10.7 below shall apply.
- 10.2 The role of the Legal Adviser shall be to advise the Committee or Panel on questions of law and to ensure that the proceedings before the Committee or Panel are conducted fairly. To this end, the Legal Adviser shall inform a Committee immediately of any irregularity in the conduct of the proceedings.

- 10.3 The advice of the Legal Adviser shall be given in the presence of the Parties. Advice given by the Legal Adviser during the private deliberations of the Committee or Panel shall subsequently be repeated before the Parties.
- 10.4 The Parties shall have the opportunity to make representations on the contents of the advice given by the Legal Adviser before any decision has been taken by the Committee or Panel.
- 10.5 The Legal Adviser shall not be entitled to vote.
- 10.6 The Legal Adviser may also advise a Committee or Panel in relation to the drafting of the reasons for any findings, determinations or decisions of that Committee or Panel.

## **11 Medical Adviser**

- 11.1 The Council may appoint a Medical Adviser to advise the Health Panel whenever they hold a hearing to reach a determination in relation to a Registrant.
- 11.2 In circumstances other than in 11.1 above, any Panel or Committee of the CNHC may appoint a Medical Adviser to advise them whenever they hold a hearing to reach a determination in relation to a Registrant.
- 11.3 Where the Registrant or former Registrant is not present during the proceedings of a Committee or Panel, the Committee or Panel shall maintain a record of any advice given by the Medical Adviser.
- 11.4 Where the Parties are present during the proceedings, the advice of the Medical Adviser shall be given in the presence of the Parties. Any advice given by the Medical Adviser during the private deliberations of the Committee shall subsequently be repeated before the Parties.
- 11.5 The Parties shall have the opportunity to make representations on the contents of the advice given by the Medical Adviser.
- 11.6 The Medical Adviser shall not be entitled to vote.



## **12 Registrant Adviser**

- 12.1 Any Committee or Panel of the CNHC may appoint a Registrant Adviser to assist them in matters relating to the Registrant's practice. Where a Committee or Panel appoint a Registrant Adviser, the procedure set down under paragraph 12.2 – 12.6 below shall apply.
- 12.2 The role of the Registrant Adviser shall be to advise the Committee or Panel on questions of practice relevant to the Formal Allegation(s).
- 12.3 The advice of the Registrant Adviser shall be given in the presence of the Parties. Advice given by the Registrant Adviser during the private deliberations of the Committee or Panel shall subsequently be repeated before the Parties.
- 12.4 The Parties shall have the opportunity to make representations on the contents of the advice given by the Registrant Adviser before any decision has been taken by the Committee or Panel.
- 12.5 The Registrant Adviser shall not be entitled to vote.

## **13 The clerk to Committees and Panels**

- 13.1 Each Committee and Panel shall be assisted by a clerk who shall be responsible for the administrative arrangements for the hearing.
- 13.2 The clerk to the Committee or Panel shall not participate in the decision making of the Committee.



## Part 3 Complaints

### 14 Procedure upon receipt of a Complaint or information about a Registrant

- 14.1 On receipt of a written Complaint about a Registrant, the Council shall first consider if it is appropriate to seek for it to be resolved informally.
- 14.2 If it is not appropriate to seek for the Complaint to be resolved informally, or if informal resolution has not been successful, the Council may seek further information or evidence in support and shall refer the Complaint to two Case Examiners.
- 14.3 Where the Council has received information about a Registrant and that Registrant is already the subject of an inquiry by the police or other body, or there are on-going criminal or civil proceedings, the Council may defer the investigation or referral of a Complaint until the inquiry or proceedings have concluded.
- 14.4 Where the Council has received information other than in a written Complaint that there is evidence of a breach by a Registrant of the requirements of the CNHC Code of Conduct, Ethics and Performance and the matter is not already the subject of any inquiry by the police or other body or there are no on-going criminal or civil proceedings, the Registrar may become the complainant and seek the co-operation of the complainant and any relevant third party. The Registrar may also consider issuing an Interim Order
- 14.5 In respect of each Complaint, the Case Examiners shall consider all the documents and information provided to them, including a copy of the CNHC Code of Conduct, Ethics & Performance for Registrants, and shall decide whether, in their opinion, there is a realistic prospect of a finding of impairment in relation to any allegation, taking into account the 'Realistic Prospect' test (see Note 1) and consideration of any documents and information provided to it.
- 14.6 If the Case Examiners are not able to agree a decision, the Complaint and all available information will be referred to the Investigating Committee.
- 14.7 Before the Case Examiners or Investigating Committee make any decision as to the prospect of a finding of impairment in relation to each allegation
- 14.7.1 The Council shall send to the Registrant:-
- a copy of the Complaint and any additional documentary or other evidence in support; and
  - a copy of these Procedures.
- And shall invite the Registrant, within 28 days of receipt, to submit written representations together with any supporting documentation in response to the Complaint and any additional documentary or other evidence.
- 14.7.2 The Complainant will be sent a copy of any written representations and documentation submitted by the Registrant and invited to provide any written comment on those representations and documentation for consideration by the Case Examiners.
- 14.7.3 The Registrant will be sent a copy of any such written comments.
- 14.8 If the Case Examiners or Investigating Committee consider that there is not a realistic prospect of a finding of impairment in relation to any allegation which forms the basis of the Complaint, the Complainant, the Registrant and any interested third party will be informed that no further action will be taken in relation to that allegation and will provide an explanation for that decision.
- 14.9 If the Case Examiners or Investigating Committee considers that there is a realistic prospect of a finding of impairment in relation to any allegation which forms the basis of the Complaint, it shall refer that allegation to a Conduct and Competence Panel or a Health Panel and shall inform the Complainant, the Registrant and any interested third party of that referral:
- giving reasons for the decision; and
  - stating whether the case has been referred to the Conduct and Competence Panel or the Health Panel under this procedure, and the reasons why.

- 14.10 The Case Examiners or Investigating Committee shall include each allegation referred to it in a Formal Allegation which the Council shall prepare and serve upon the Registrant and the clerk to a Conduct and Competence or Health Panel.
- 14.11 Subject to 14.13, if the Investigating Committee consider that the behaviour that has led to any Formal Allegation may have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, it may refer the allegation to the Health Panel.
- 14.12 If the Formal Allegation is that a Registrant's fitness to practise is impaired by reason of her or his ill health, the Investigating Committee shall refer the Formal Allegation to a Health Panel.
- 14.13 Where the Investigating Committee has determined that the Health Procedure should be followed, the Council may appoint a Medical Adviser to advise the Health Panel. In addition they may invite the Registrant to agree, within 28 days:
- to be examined (at the Council's expense) by a registered medical practitioner nominated by the Council; and
  - that such registered medical practitioner provide the Health Panel with a report on whether the Registrant's fitness to practise is impaired by reason of her or his physical or mental ill health.
- 14.14 If, at any stage, following service of the 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 Conduct and Competence or Health Panel to have the Formal Allegation withdrawn.
- 14.15 The Council may, at any time before a Formal Allegation is referred to a Panel, make an application to the Investigating Committee that an Interim Order should be imposed on a Registrant's registration, on the grounds that such an 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.
- 14.16 For the purposes of:
- establishing whether any information received is a Complaint;
  - establishing whether there is a realistic prospect of a finding of impairment in relation to each allegation which form the basis of the Complaint;
  - preparing a Formal Allegation for a Conduct and Competence or Health Panel; or
  - determining whether an application should be made for an Interim Order, the Council may make such inquiries and seek such advice as it considers necessary in the circumstances, including instructing solicitors, seeking further information or clarification from the Registrant or interested third party.
- 14.17 If the Case Examiners or Investigating Committee decide there is not a realistic prospect of a finding of impairment they will consider whether to issue a warning. In deciding whether to issue a warning consideration will be given to whether the matter(s) complained of, if repeated, might meet the 'realistic prospect' test.
- 14.18 Warnings will be disclosed to the complainant and any employer but will not be published. This is because the evidence will not have been tested by means of oral evidence and cross examination.
- 14.19 Warnings will be kept on record and used to identify patterns of behaviour that could be used in any subsequent investigations relating to the Registrant.
- 14.20 The Registrant will have a right of appeal if a warning is issued. The appeal will be dealt with by a member of the pool who has not been previously involved in the complaint.

# Part 4 Sanctions, suspension and removal from the Register

## 15 Sanctions, Suspension and Removal from the Register

- 15.1 Where a Formal Allegation against a Registrant has been considered by a Conduct and Competence Panel and they have found that the Registrant's fitness to practise is impaired, the Registrant may receive a Caution, a Restriction of Practice Order, be suspended or removed from the Register.
- 15.2 Where a Formal Allegation against a Registrant has been considered by a Health Panel and they have found that the Registrant's fitness to practise is impaired by reason of their ill health, or the case was referred under paragraph 14.11 above, the Registrant may receive a Caution, a Restriction of Practice Order or be suspended from the Register.
- 15.3 A Health Panel may also refer cases to a Conduct and Competence Panel following a finding that a Registrant's fitness to practise is impaired by reason of their ill health or in a case referred under paragraph 14.11 above and that Panel shall have the sanctions set out in 15.1 above available to it.

# Appendix I Procedure of the Investigating Committee concerning Interim Orders

## Arrangement of paragraphs

- 1 Interpretation
- 2 Private proceedings
- 3 Applications for Interim Orders
- 4 Interim Order hearings
- 5 Review of Interim Orders

### 1 Interpretation

- 1.1 In this Appendix, **the Committee** means the Investigating Committee.

### 2 Private proceedings

- 2.1 The proceedings of the Committee shall be held in private.

### 3 Application for Interim Orders

- 3.1 Where the Council wishes to apply for an Interim Order, it shall apply to the clerk to the Committee, providing:
  - a. details of the allegations upon which the application is based; and
  - b. a statement setting out why the field of practice of the Registrant should be restricted or registration of the Registrant should be suspended.
- 3.2 The clerk to the Committee shall, upon receipt of an application, fix a date and time for the hearing of the application and write separately to the Parties to:
  - a. inform the Parties of the right to attend the hearing;
  - b. inform the Parties of the time and venue for the hearing;
  - c. inform the Registrant of the right to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council;

- d. inform the Registrant of the right to make oral submissions to the Committee in person or to be represented by a:
  - i. solicitor;
  - ii. barrister;
  - iii. representative from the Registrant's Professional Body; or
  - iv. representative from the Registrant's Trade Union;
- e. request confirmation as to whether the Registrant intends to:
  - i. attend the hearing;
  - ii. be represented at the hearing.
- f. inform the Registrant that if acting in person, they may be accompanied and advised by some other representative (not listed in (d) above) and that such representative shall not be entitled to address the Panel without permission, nor may they be called as a witness at the hearing.

- 3.3 Subject to 3.4 below, where notice of the hearing is served upon the Registrant, an application for an Interim Order shall be heard no earlier than seven days after the date upon which notice of the hearing was served upon the Registrant.
- 3.4 Where an urgent application for an Interim Order is made by the Council on the grounds of protection of members of the public, the clerk to the Committee may dispense with the notice period referred to in 3.3 above and the matter will be referred for the urgent attention of the Registrar. The Registrar may issue an Interim Order which will be in force for up to 56 days.
- 3.5 Where the clerk to the Committee dispenses with the notice period, the Committee shall not impose an Interim Order on a Registrant's registration unless the Registrant has been given such notice as is reasonable of the application and the opportunity to make oral submissions and written representations to the Committee.

- 3.6 The Investigating Committee shall not make an Interim Order after a Formal Allegation has been referred to another Committee or Panel.

#### 4 Interim Order hearings

- 4.1 Where the Committee is considering whether or not to make an Interim Order, the order of proceedings shall be as follows:
- a. The 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 Order, together with any evidence in support;
  - b. The Registrant (if present) may set out the reasons why such an application should not be granted by the Committee, together with any evidence in support;
  - c. The Committee may obtain advice from the Legal, Medical or Registrant Adviser, where one is appointed;
  - d. The Committee shall deliberate in private;
  - e. The Committee shall determine the application and announce its decision and the reasons for that decision, in the presence of the Parties.
- 4.2 Within seven days of the conclusion of the hearing, the clerk to the Committee shall send a Notice of Decision
- 4.3 The Notice of Decision shall:
- a. record any advice given by the Legal, Medical or Registrant Adviser, where they have been appointed;
  - b. set out the decision of the Committee;
  - c. specify the reasons for the Committee's decision;
  - d. where an Interim Order has been imposed, set out the period of suspension or restriction, beginning on the date on which the Order is made;
  - e. inform the Registrant of the right of appeal.

#### 5 Review of Interim Orders

- 5.1 Where an Interim Order has been made:
- a. it shall be reviewed every six months until it expires; and

- b. subject to 5.2 below, the Council or any person in respect of whom the Order was made may request a review at any other time.

- 5.2 An Interim Order shall not be reviewed until 3 months after it was made unless exceptional circumstances exist.
- 5.3 A decision whether to grant a request for a review and the conduct of a review will be undertaken by the Investigating Committee if the case has not yet been referred to a Panel and by the Panel which is to hear the Formal Allegation in any other case.
- 5.4 Where a review is to take place, a Notice of Review shall be sent to the Registrant and the Council.
- 5.5 The Notice of Review shall:
- a. inform the Registrant of the right to attend the hearing;
  - b. inform the Registrant of the time and venue for the hearing;
  - c. provide the Registrant with:
    - i. details of the allegations made against the Registrant; and
    - ii. the reasons for the Interim Order;
  - d. inform the Registrant of the right to give evidence in person, to call witnesses and to cross-examine any witnesses called by the Council;
  - e. inform the Registrant of the right to make oral submissions to the Committee in person or to be represented by a:
    - i. solicitor;
    - ii. barrister;
    - iii. representative from the Registrant's Professional Body or;
    - iv. representative from the Registrant's Trade Union;
  - f. request confirmation as to whether the Registrant intends to:
    - i. attend the hearing;
    - ii. be represented at the hearing;
  - g. inform the Registrant that if acting in person, they may be accompanied and advised by some other representative (not listed in (e) above) and that such representative shall not be entitled to address the Panel without permission, nor may they be called as a witness at the hearing.

- 5.6 The procedure at the review hearing shall be the same as at the original hearing.
- 5.7 After reviewing an Interim Order the relevant Panel may:
  - a. continue the Order;
  - b. revoke the Order;
  - c. amend the Order;
  - d. impose a further Order, to commence upon the expiry of the existing Order.
- 5.8 Within seven days of the conclusion of the review hearing, the clerk to the Committee shall send a Notice of Decision to the Parties and any interested third party.

# Appendix 2 Procedure of the Conduct and Competence Panel and Health Panel

## Arrangement of Paragraphs

- 1 Interpretation
  - 2 Joinder
  - 3 Notice of Hearing
  - 4 Postponement of the hearing
  - 5 Notice to complainant and interested third parties
  - 6 Disclosure of case and service of documents
  - 7 Procedure at the hearing
  - 8 Private hearings before Conduct and Competence Panels
  - 9 Representation and entitlement to be heard
  - 10 Evidence
  - 11 Burden and standard of proof
  - 12 Adjournment of the hearing
  - 13 Attendance at the hearing
  - 14 Introduction of the Panel and reading of the formal allegation
  - 15 Amendment of the formal allegation
  - 16 Admissions
  - 17 Presentation of the Council's case
  - 18 Witnesses
  - 19 Registrant's evidence
  - 20 Closing submissions
  - 21 Findings
  - 22 Mitigation
  - 23 Sanctions
  - 24 Notice of Decision
  - 25 Notes and transcript of the proceedings
  - 26 Health Procedure
  - 27 Publication of Notice of Decision
  - 28 Reviews
  - 29 Interim Orders
  - 30 Consensual Disposal
- 1 Interpretation**
    - 1.1 In this Appendix **the Panel** means the Conduct and Competence Panel, none of whom will have had any previous involvement with the case.
  - 2 Joinder**
    - 2.1 Any Committee or Panel may determine together two or more Formal Allegations against a Registrant and/or Formal Allegations against two or more Registrants, if they consider it fair to so do.
  - 3 Notice of hearing**
    - 3.1 As soon as practicable after the Formal Allegation has been referred to a Conduct and Competence or Health Panel, the clerk to the Panel shall send 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. 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 Panel;
        - iii. make oral submissions to the Panel either in person or through a representative as set out in paragraph 9 below;
        - iv. call and cross-examine witnesses;
      - e. inform the Registrant of the possible sanctions open to the Panel in the event of a finding of impairment;



- f. inform the Registrant of the Panel's power to proceed in the absence of the Registrant, or the Registrant's representative, at the hearing;
- g. invite the Registrant to state whether the Registrant will be attending the hearing.

3.2 The hearing shall not be fixed for any date earlier than 28 days from the day after the posting of the Notice of Hearing except with the agreement of the Registrant.

3.3 The clerk to the Panel may send with the Notice of Hearing:

- a. a copy of these Procedures; and
- b. any reports, written statements or other documents which the Panel will have before it.

#### **4 Postponement of the hearing**

4.1 Where either Party wishes the hearing to be postponed, such application shall be made in writing to the Chair of the Panel.

4.2 The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.

4.3 The Party served with the application may submit a written response to the Chair of the Panel.

4.4 The application shall be considered by the Chair of the Panel who 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 prompt disposal of the case.

4.5 In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the clerk to the Panel shall inform the Parties and the Complainant of the new hearing date as soon as possible.

#### **5 Notice to complainant and interested third parties**

5.1 The clerk to the Panel shall send a copy of the Notice of Hearing to the Complainant and to any interested third party.

#### **6 Disclosure of case and service of documents**

6.1 No later than 42 days before the date of hearing, the Council shall serve on the Registrant and upon the clerk to the Panel, copies of all documents and reports upon which they intend to rely.

6.2 No later than 14 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 clerk to the Panel, copies of all documents and reports upon which they intend to rely.

6.3 The Parties shall make arrangements for original documents to be inspected no later than seven days before the date of the hearing.

6.4 Upon receipt of the Registrant's case, 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 such documents, if any, on the Registrant and on the clerk to the Panel.

6.5 No later than seven days before the hearing, the clerk to the Panel shall send the Panel copies of:

- a. the Notice of Hearing;
- b. any documents or reports provided by the Parties (whether agreed or otherwise).

#### **7 Procedure at the hearing**

7.1 Subject to the requirements of a fair hearing, the Panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.

7.2 If at any time during the hearing it appears to the Panel that the alleged impairment has been caused by, or substantially contributed to, by the Registrant's physical or mental ill health, the Panel may adjourn the hearing and refer the case to a Health Panel.

7.3 The hearing shall be conducted in four stages as follows:

- a. preliminaries and findings of fact;
- b. findings regarding misconduct, lack of competence, conviction or caution, relevant determination, ill health or false entry;

- c. impairment;
- d. mitigation and sanction.

## **8 Private hearings before Conduct and Competence Panels**

- 8.1 The hearing shall be held in private.
- 8.2 For the purpose of arriving at any decision in relation to the hearing, the Panel shall deliberate in the absence of the parties. . However, the Panel shall announce any decision in the presence of the parties.

## **9 Representation and entitlement to be heard**

- 9.1 The Presenter and the Registrant shall be entitled to be heard by the Panel.
- 9.2 The Registrant may be represented by a:
  - a. barrister;
  - b. solicitor;
  - c. representative from the Registrant's Professional Body;
  - d. representative from the Registrant's Trade Union.
- 9.3 Where the Registrant is acting in person, they may be accompanied and advised by some other representative (not listed in 9.2 above) but such representative shall not be entitled to address the Panel without permission, nor may they be called as a witness at the hearing.
- 9.4 The Panel may exclude from the whole or part of the hearing any person whose conduct, in the opinion of the Panel, has disrupted or is likely to disrupt the hearing
- 9.5 Whilst the Panel has no power to compel a witness to attend and give evidence, in exercising its function under paragraph 7.3 above, the Panel may request that the Complainant attend and give evidence where the Parties have not called the Complainant to so do.
- 9.6 Where the Complainant is to give evidence, the Complainant shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the Panel and been formally released by the Chair of the Panel.
- 9.7 Where the Complainant has been called as a witness, the Parties shall have the opportunity to question the Complainant.

## **10 Evidence**

- 10.1 Subject to the advice of the Legal Adviser if appointed, the requirements of a fair hearing, and of relevance, the Panel may:
  - a. admit evidence whether or not it would be admissible in a Court of Law;
  - b. exclude evidence in order to ensure fairness to the Registrant and between the Parties.
- 10.2 The Panel may receive oral, documentary or other evidence of any fact or matter which appears to it to be relevant to its consideration of the case.
- 10.3 Whilst the Panel has no power to compel the attendance of witnesses or the production of documents, it may of its own volition, request the Parties to provide documentation or request any person to give oral evidence, which it considers might assist it in its decision making under paragraph 7.3 above.
- 10.4 The Panel may admit evidence adduced by a Party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing:
  - a. if the Parties consent; or
  - b. where, after consultation (including with the Legal Adviser if appointed), it is satisfied that:
    - i. the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the Party which has not previously seen such evidence; and
    - ii. there is a good reason why such evidence was not previously disclosed.
- 10.5 The findings of fact and certification of conviction of any UK Criminal Court or the findings of a Judge in any UK Civil Court shall be conclusive proof of the conviction or finding and the underlying facts.
- 10.6 Any relevant determination and findings of fact by any United Kingdom statutory regulator or an equivalent regulator outside the United Kingdom shall be conclusive proof of the determination and the underlying facts.

## **11 Burden and standard of proof**

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

## **12 Adjournment of the hearing**

- 12.1 Subject to the requirements of a fair hearing and after hearing representations from the Parties, the Panel may, at any stage of the hearing, adjourn the proceedings.
- 12.2 Where the hearing has been adjourned, the clerk to the Committee shall, as soon as practicable, notify the Parties and interested third parties if any, of the time and date fixed for the hearing to be resumed.

## **13 Attendance at the hearing**

- 13.1 Where the Registrant fails to attend and is not represented at the hearing, the Chair of the Panel shall:
  - a. require evidence that the Registrant has been served with the Notice of Hearing in accordance with these Procedures and that 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 to the Panel or to the Council.
- 13.2 Where the Panel is satisfied that the Notice has been duly served on the Registrant, and that reasonable efforts have been made to inform the Registrant of the hearing it may:
  - a. hear and determine the case in the absence of the Registrant; or
  - b. adjourn the hearing and give directions.

## **14 Introduction of Panel and reading of the formal allegation**

- 14.1 At the opening of the hearing, the Chair of the Panel shall introduce the members of the Panel and the Parties.
- 14.2 The Chair of the Panel shall ask the Registrant to confirm their name and registration number.
- 14.3 The Presenter shall then read out the Formal Allegation against the Registrant.

## **15 Amendment of the formal allegation**

- 15.1 Subject to the requirements of a fair hearing, the Panel may amend the Formal Allegation at any stage prior to the finding of impairment.

- 15.2 The Panel shall first hear representations from the Parties, and take advice from the Legal Adviser if appointed, before deciding whether or not the Formal Allegation should be amended.

## **16 Admissions**

- 16.1 After the Formal Allegation has been read, the Chair of the Panel shall ask the Registrant whether any facts or convictions, cautions, relevant determinations, health issues or false entries (hereinafter "relevant facts") alleged in the Formal Allegation are admitted and whether there is an agreed statement of facts.
- 16.2 Where any relevant facts are admitted, the Chair of the Panel shall announce that such relevant facts have been found proved.

## **17 Presentation of the Council's case**

- 17.1 Where no admissions are made, or some relevant facts remain disputed, the Presenter shall present the case against the Registrant to the Panel, make an opening submission and adduce evidence in support of those relevant facts which are not admitted.

## **18 Witnesses**

- 18.1 Witnesses shall be examined by the Party calling them and may then be cross-examined by the opposing Party. The Party calling the witness may then re-examine the witness.
- 18.2 Witnesses may then be questioned by the Panel (or by the Legal, Medical or Registrant Adviser, if appointed, with the leave of the Chair of the Panel).
- 18.3 The Parties may then question the witnesses on matters arising out of the Panel's questions. The Party calling the witness shall question the witness last.
- 18.4 Any further questioning of witnesses shall be at the discretion of the Panel.
- 18.5 Witnesses shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the Panel and been formally released by the Chair of the Panel.

## **19 Registrant's evidence**

- 19.1 At the end of the evidence presented by the Presenter, the Registrant may adduce evidence and witnesses in their support.

## 20 Closing Submissions

- 20.1 The Presenter and then the Registrant may make closing submissions to the Panel.

## 21 Findings

- 21.1 The Panel shall then consider in private
- a. whether the relevant facts in the Formal Allegation have been proved on the balance of probabilities;
  - b. if the Formal Allegation is one of misconduct or a lack of competence whether, on the facts found proved, the Registrant has committed misconduct or lacks competence;
  - c. in all cases, whether the Registrant's fitness to practise is impaired.
- 21.2 In deciding upon the issues in 21.1b and 21.1c above, the Panel shall have regard to the Code of Conduct, Ethics and Performance issued by the CNHC.
- 21.3 The Panel shall announce its findings in the presence of the Parties and give reasons for its findings.
- 21.4 If no relevant facts have been proved or (where appropriate) there is no finding of misconduct or lack of competence, or there is no finding that the Registrant's fitness to practise is impaired, the Formal Allegation will be dismissed.

## 22 Mitigation

- 22.1 Where the Panel finds that the Registrant's fitness to practise is impaired, the Presenter shall provide the Panel with details of the Registrant's previous disciplinary record with the Council, if any, and may adduce evidence and make submissions in relation to the appropriate sanction, if any, to be made by the Panel.
- 22.2 The Registrant may then address the Panel in mitigation and may adduce references and testimonials, and may call character witnesses in support.
- 22.3 Where character witnesses are called, they may be questioned by the Presenter and the Panel.
- 22.4 Where the Registrant has chosen not to attend the hearing, the Registrant may provide details of mitigation in writing, in advance, to the clerk to the Panel. The clerk to the Panel shall provide such mitigation documents to the Panel at this stage.

- 22.5 After hearing the Registrant, the Panel shall decide, in private, what sanction if any it should impose.

## 23 Sanctions

- 23.1 Upon a finding of impairment, the Conduct and Competence Panel shall:
- a. decide to take no further action; or
  - b. 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
  - c. issue a Restriction of Practice order, for a period of not less than one year and not more than three years; or
  - d. make an Order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order'); or
  - e. make an Order for removal of the Registrant's name from the Register ('a Removal Order'); and/or
  - f. revoke any Interim Order.
- 23.2 Upon a finding of impairment, the Health Panel shall:
- a. decide to take no further action; or
  - b. 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 five years; or
  - c. issue a Restriction of Practice order, for a period of not less than one year and not more than three years; or
  - d. make an Order suspending the Registrant's registration for a period not exceeding two years ('a Suspension Order'); and/or
  - e. revoke any Interim Order; and/or
  - f. refer the matter to the Conduct and Competence Panel to consider the question of sanction, taking into account the factors mentioned in 23.3 below.
- 23.3 In making the decisions in 23.1 and 23.2 above, the Panel shall take into account:
- a. the seriousness of the Registrant's conduct;
  - b. the protection of the public;
  - c. the public interest in maintaining confidence in complementary healthcare; and
  - d. the issue of proportionality.

- 23.4 The Panel shall announce its decision on sanctions in the presence of the Parties, and shall give reasons for its decision.
- 23.5 Any decision of the Panel shall take effect as soon as it is made.

## **24 Notice of Decision**

- 24.1 Within seven days, after the conclusion of the hearing, the clerk to the Panel shall send a Notice of Decision to:
- a. the Registrant;
  - b. the Council;
  - c. the Complainant; and
  - d. interested third parties, if any.
- 24.2 The Notice of Decision shall:
- a. record any advice given by the Legal, Medical or Registrant Adviser if appointed;
  - b. set out the Panel's findings of fact, its decisions on misconduct or lack of competence (where appropriate), impairment and sanction;
  - c. specify the reasons for the Panel's decisions;
  - d. where a Suspension Order or Restriction of Practice Order has been imposed, set out the period of suspension or restriction;
  - e. inform the Registrant of the right of appeal;
  - f. inform the Registrant that any sanction imposed by the Committee took effect from the date on which it was made.

## **25 Notes and transcript of the proceedings**

- 25.1 A person shall be appointed by the Council to take a verbatim note of the proceedings before the Panel.
- 25.2 Upon application, the clerk to the Panel shall send the Registrant and the Complainant a transcript of the verbatim note, of any part of the proceedings at which the Registrant or, as the case may be, the Complainant was entitled to be present.

## **26 Health Procedure**

- 26.1 Subject to the following provisions, the Health Procedure shall be the same as the Conduct and Competence Procedure.

- 26.2 The Panel shall sit in private.
- 26.3 Subject to paragraph 26.4 below, in making any determination in relation to a Registrant, the Health Panel shall consider any medical reports or other medical evidence.
- 26.4 The Panel 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 Panel.
- 26.5 In determining the issue of impairment, the Panel 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 Panel.
- 26.6 If at any time during the hearing it appears to the Panel that the alleged impairment may not have been caused, or substantially contributed to, by the Registrant's physical or mental ill health, the Panel may cease to consider the allegation following the Health Procedure and instead adjourn the hearing and refer the case to a Conduct and Competence Panel.

## **27 Publication of Notice of Decision**

- 27.1 The Council shall publish the Panel's findings of fact and the Panel's determination, by such means as it considers appropriate, as soon as is reasonably practicable following any finding of fact and determination.
- 27.2 The Council may also at any time provide a copy of the Panel's findings of fact and the Panel's determination, to any of the statutory regulatory bodies or interested third parties if it is in the interests of justice to so do.

## **28 Reviews**

- 28.1 Where a Health Panel has imposed a Suspension Order, it shall be reviewed every six months.
- 28.2 Where a Conduct and Competence Panel has imposed a Suspension Order, it shall be reviewed before it expires.
- 28.3 Where a Panel has imposed a Restriction of Practice Order, it shall be reviewed before it expires.



- 28.4 In addition to the mandatory reviews envisaged in paragraphs 28.1 – 28.3 above, a Panel may, at the request of the Registrant or the Council, review the Order before the end of the period for which the suspension or restriction has been ordered provided that there has been a material change of circumstances since the Order was imposed.
- 28.5 A decision whether to grant a request for a review and the conduct of any review held in accordance with 28.1-28.4 above, will be undertaken by the Panel that imposed the Order.
- 28.6 The procedure at a review hearing held in accordance with 28.1 - 28.5 above shall be as follows:
- a. the Presenter may address the Panel in relation to the relevant history of the case and make any submissions or observations in relation to the decision that the Panel have to make;
  - b. the Registrant may address the Panel, make submissions in relation to the Order and may adduce documents and call witnesses in support.
- 28.7 Where the Order was imposed following the Health Procedure, the Panel may require the Registrant to provide up-to-date medical reports from a registered medical practitioner nominated by the Council, at the Registrant's own expense.
- 28.8 Where the Order was imposed following the Health Procedure, the resumed hearing shall be held under the Health Procedure.
- 28.9 The Panel may, after reviewing a Suspension Order or Restriction of Practice Order, revoke, vary or amend that Order. The Panel may also impose a further Suspension or Restriction of Practice Order, to commence upon the expiry of the existing Order.
- 28.10 At the conclusion of the resumed hearing, the Panel shall announce its decision and the reasons for its decision, in the presence of the Parties.
- 28.11 Within seven days of the conclusion of the hearing, the clerk to the Panel shall send a Notice of Decision, containing the reasons for the Panel's decision to:
- a. the Registrant;
  - b. the Council;
  - c. the Complainant;
  - d. interested third party, if any.

- 28.12 Save in exceptional circumstances, the Panel shall not be obliged to review a Suspension Order or Restriction of Practice Order until 3 months after the date on which the Order was made.

## 29 Interim Orders

- 29.1 The Conduct and Competence Panel and the Health Panel shall consider any application by the Council for an Interim Suspension or Interim Restriction of Practice Order.
- 29.2 In deciding whether to impose an Interim Order, the Panel shall follow the procedure in Appendix 1, paragraph 4 above.
- 29.3 An application for an Interim Order cannot be made by the Council unless the Registrant had been given reasonable notice of such an application.

## 30 Consensual Disposal

- 30.1 The use of procedures for disposing of cases by consent is an effective case management tool that reduces the number of contested hearings which need to be held. A Panel cannot simply agree to resolve a case by consent without having regard to its wider obligations.
- 30.2 The CNHC will only consider proposing consensual disposal
- a. where the registrant is willing to admit the allegations in full, and
  - b. where the remedial action proposed by the registrant is consistent with the expected outcome if the case was to proceed to a contested hearing.
- 30.3 Disposal by consent does not affect the range of sanctions available to the Panel.
- 30.4 The Panel may reject a proposal for disposing of a case by consent and a full hearing will then take place before an entirely different Panel which will not be made aware of the proposal unless the registrant chooses to bring the proposal to its attention.

# Appendix 3 Procedure of the Appeals Panel

## Arrangement of Paragraphs

- 1 Interpretation
- 2 Time Limit for Appeal
- 3 Notice of Hearing
- 4 Postponement of the hearing
- 5 Notice to any interested third parties
- 6 Disclosure of case and service of documents
- 7 Procedure at the hearing
- 8 Private hearings
- 9 Representation and entitlement to be heard
- 10 Evidence
- 11 The nature of the Appeal
- 12 Adjournment of the hearing
- 13 Attendance at the hearing
- 14 Order of Proceedings
- 15 Witnesses
- 16 Appeal against an Interim Order
- 17 Appeal against the Order of the Conduct and Competence Panel or Health Panel
- 18 Appeal against sanction
- 19 Appeal against the Order of the Restoration Committee
- 20 Notice of Decision
- 21 Notes and transcript of the proceedings
- 22 Health Procedure Appeals
- 23 Publication of Notice of Decision

## 1 Interpretation

- 1.1 In this Appendix:

**the Appeal** means an appeal held in accordance with this Appendix.

**The Order** means a determination that a Registrant's fitness to practise is impaired, made by a Committee or Panel.

**the Panel** means the Appeals Panel, none of whom will have had any previous involvement with the case.

**the Appellant** means the Party that is appealing the Order or sanction.

**the Respondent** means the Party who is not appealing.

## 2 Time limit for Appeal

- 2.1 An Appeal under this Appendix must be made within 28 days from the day on which the Order or sanction was made.
- 2.2 Appeals must be made on an Appeals Form which shall be provided by the Registrar at the request of the party which wishes to lodge an Appeal.

## 3 Notice of Hearing

- 3.1 As soon as practicable after the Appeals Form has been referred to the Panel, the clerk to the Panel shall send the Appellant and the Respondent a Notice of Hearing which shall
- a. state the date, time and venue of the hearing;
  - b. specify the grounds of the Appeal ;
  - c. inform the Parties of their respective rights to:
    - i. attend the hearing;
    - ii. make oral submissions to the Panel either in person or through a representative as set out in paragraph 9.2 below;
    - iii. call fresh evidence at the discretion of the Panel;
  - d. inform the Parties of the possible options open to the Panel in the event of an appeal being allowed or dismissed.



- 3.2 The hearing shall not be fixed for any date earlier than 28 days from the day after the posting of the Notice of Hearing except with the agreement of the Registrant.
- 3.3 The clerk to the Panel may send with the Notice of Hearing:
- a. a copy of these Procedures; and
  - b. any reports, written statements or other documents which the Panel will have before it.

#### **4 Postponement of the hearing**

- 4.1 Where either Party wishes the hearing to be postponed, such application shall be made in writing, to the Chair of the Panel.
- 4.2 The Party making such application shall serve a copy of the application on the other Party, together with any supporting documentation.
- 4.3 The Party served with the application may submit a written response to the Chair of the Panel.
- 4.4 The application shall be considered by the Chair of the Panel who 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 prompt disposal of the case.
- 4.5 In the event that the application for postponement is granted, or the matter has to be re-scheduled for some other reason, the clerk to the Panel shall inform the Parties of the new hearing date as soon as possible.

#### **5 Notice to any interested third parties**

- 5.1 The clerk to the Panel shall send a copy of the Notice of Hearing to any interested third party.

#### **6 Disclosure of case and service of documents**

- 6.1 No later than 28 days before the date of the hearing, the Appellant shall serve on the Respondent and upon the clerk to the Panel, copies of any written submissions upon which they rely and any fresh evidence (where appropriate).

- 6.2 No later than 14 days before the date of the hearing, the Respondent shall serve on the Appellant and upon the clerk to the Panel, copies of any written submissions upon which they intend to rely and any fresh evidence (where appropriate).
- 6.3 If the Appellant is the Registrant, upon receipt of the Appellant's submissions, the Council shall consider whether there are any further documents in the Council's possession which may assist the Appellant, and shall serve copies of such documents, if any, on the Appellant and to the clerk to the Panel.
- 6.4 No later than seven days before the hearing, the clerk to the Panel shall send the Panel, copies of:
- a. the Appeal Form;
  - b. Notice of Hearing;
  - c. any written submissions provided by the Parties;
  - d. any fresh evidence upon which the Parties propose to rely;
  - e. all the material and written evidence that was before the previous Committee or Panel;
  - f. a transcript of the proceedings to which the Appeal relates;
  - g. a copy of the Order to which the Appeal relates.

#### **7 Procedure at the hearing**

- 7.1 Subject to the requirements of a fair hearing, the Panel may decide its own procedures generally and may issue directions with regard to the just and prompt determination of the proceedings.
- 7.2 The appeal hearing shall be conducted by the Panel in 3 stages as follows:
- a. subject to 10.1-10.5 below, it shall consider the information provided under 6.4 above and it shall hear submissions from the Parties;
  - b. it shall make a decision on whether the Appeal is allowed or dismissed;
  - c. in the event that it allows the Appeal, it shall make a decision on whether to vary the Order, remit the case for a re-hearing or amend or vary the sanction.

## 8 Private hearings

- 8.1 The hearing shall be held in private.
- 8.2 For the purpose of arriving at any decision in relation to the hearing, the Panel shall deliberate in the absence of the Parties. However, the Panel shall announce any decision in the presence of the Parties.

## 9 Representation and entitlement to be heard

- 9.1 The Appellant and the Respondent shall be entitled to be heard by the Panel.
- 9.2 The Registrant (whether appearing as an Appellant or Respondent) may be represented by
- a. a barrister;
  - b. solicitor;
  - c. representative from the Registrant's Professional Body;
  - d. representative from the Registrant's Trade Union.
- 9.3 Where the Registrant is acting in person, they may be accompanied and advised by some other representative (not listed in 9.2), but such representative shall not be entitled to address the Panel without permission and may not be entitled to be called as a witness at the hearing.
- 9.4 The Panel may exclude from the whole or part of the hearing, any person whose conduct, in the opinion of the Panel, has disrupted or is likely to disrupt the hearing.

## 10 Evidence

- 10.1 Subject to the advice of the Legal Adviser if appointed, the requirements of a fair hearing, and of relevance, the 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.
- 10.2 When making the decision in 10.1 above, the Panel may admit evidence adduced by a Party notwithstanding that such evidence has not been disclosed to the other side in advance of the hearing:

- a. if the Parties consent; or
- b. where, after consultation (including with the Legal Adviser if appointed), it is satisfied that:
  - i. the evidence is fresh evidence;
  - ii. the admission of such evidence is necessary to ensure the fairness of the proceedings and outweighs any prejudice to the Party which has not previously seen such evidence; and
  - iii. there is a good reason why such evidence was not previously disclosed.

10.3 Whilst the Panel has no power to compel a witness to attend and give evidence, in exercising its function under paragraph 11 below, the Panel may of its own volition request the Parties to provide documentation or request any person to give oral evidence which it considers might assist it in its determination of the Appeal.

10.4 The findings of fact and certification of conviction of any UK Criminal Court or the findings of a Judge in any UK Civil Court shall be conclusive proof of the conviction or finding and the underlying facts.

10.5 Any relevant determination and findings of fact by any statutory regulator or any equivalent regulator outside the United Kingdom shall be conclusive proof of the determination and the underlying facts.

## 11 The nature of the Appeal

11.1 An appeal shall be limited to a review of the decision of the original Committee or Panel and consideration of any fresh evidence.

11.2 The Panel will allow an appeal:

- a. in cases where no fresh evidence is admitted, if they decide that the original Committee or Panel ought to have reached a different decision on the material before it;
- b. in cases where fresh evidence is admitted, if:
  - i. in the light of that evidence, the original Committee or 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.

## 12 Adjournment of the hearing

- 12.1 Subject to the requirements of a fair hearing, and after hearing representations from the Parties, the Panel may, at any stage of hearing, adjourn the proceedings.
- 12.2 Where the hearing has been adjourned, the clerk to the Panel shall, as soon as practicable, notify the Parties and interested third parties if any, of the time or date fixed for the hearing to be resumed.

## 13 Attendance at the hearing

- 13.1 Where the Registrant, if they are the Respondent, fails to attend and is not represented at the hearing, the Chair of the Panel shall:
- a. require evidence that the Registrant has been served with the Notice of Hearing in accordance with these Procedures and that reasonable efforts have been made to inform them of the hearing; and
  - b. inquire whether any reasons for the Registrant's non-attendance have been communicated to the clerk to the Panel or the Council.
- 13.2 Where the Panel is satisfied that the Notice has been duly served on the Parties, and that reasonable efforts have been made to inform the Registrant of the hearing it may:
- a. hear and determine the case in the absence of the Appellant or Registrant if they are not the Appellant; or
  - b. adjourn the hearing and give directions;
  - c. dismiss the Appeal without a determination of its merits.

## 14 Order of Proceedings

- 14.1 At the opening of the hearing, the Chair of the Panel shall introduce the members of the Panel and the Parties.
- 14.2 The Chair of the Panel shall ask the Appellant, if they are the Registrant, to confirm their name and their registration number.
- 14.3 The clerk to the Panel shall then read out the reason(s) for the Appeal (if provided) and state which Party is appealing and the nature of the decision appealed.

- 14.4 The Chair of the Panel shall ask the Appellant to make oral submissions in support of their appeal.
- 14.5 Any application to adduce fresh evidence shall be made and the Panel shall rule in accordance with paragraphs 10.1 and 10.2 above.
- 14.6 At the end of the case presented by the Appellant, the Respondent may make submissions in support of their case.
- 14.7 The Panel shall then consider in private whether the Appeal is upheld or dismissed in accordance with paragraph 11 above.
- 14.8 The Panel shall announce its decision in the presence of the Parties and give reasons for its findings.

## 15 Witnesses

- 15.1 Should the Panel rule that fresh evidence can be admitted and that evidence involves the calling of a witness, the provisions in 15.2 -15.7 below shall apply.
- 15.2 Witnesses shall be examined by the Party calling them and may then be cross-examined by the opposing Party. The Party calling the witness may then re-examine the witness.
- 15.3 Witnesses may then be questioned by the Panel (or by the Legal, Medical or Registrant Adviser if appointed, with the leave of the Chair of the Panel).
- 15.4 The Parties may then question the witnesses on matters arising out of the Panel's questions. The Party calling the witness shall question the witness last.
- 15.5 Any further questioning of witnesses shall be at the discretion of the Panel.
- 15.6 Witnesses shall not be allowed to attend or watch the proceedings until after they have completed giving evidence to the Panel and been formally released by the Chair of the Panel.

## 16 Appeal against an Interim Order

- 16.1 Where the Registrant is appealing against an Interim Order, the Panel must consider the Appeal in accordance with paragraph 11 above and must:
- a. allow the Appeal and remit the matter to the Conduct and Competence Panel, the Health Panel or the Investigating Committee (whichever made the decision) for a re-hearing; or

- b. allow the Appeal and amend, vary or revoke the Interim Order imposed; or
- c. allow the Appeal and, if an Interim Suspension Order was imposed, impose an Interim Restrictions of Practice Order instead; or
- d. dismiss the Appeal, in which case, the Interim Order will continue.

## **17 Appeal against the Order of the Conduct and Competence Panel or Health Panel**

- 17.1 Where the Registrant is appealing against the Order of the Conduct and Competence Panel or Health Panel, the Panel must determine the Appeal in accordance with paragraph 11 above and must:
- a. allow the Appeal; or
  - b. dismiss the Appeal
- 17.2 If the Panel allow the Appeal they must either:
- a. quash the Order and dismiss the Formal Allegation(s);
  - b. quash the Order and substitute any decision that the original Panel could have made; or
  - c. remit the matter to the original Panel for a re-hearing.
- 17.3 Where a Registrant appeals the Order and the sanction made by the Conduct and Competence Panel or Health Panel, the Panel shall:
- a. consider the Appeal against the Order first;
  - b. consider the Appeal against the sanction thereafter.
- 17.4 In considering the Appeal against the sanction, the Panel shall proceed in accordance with paragraph 18 below.

## **18 Appeal against sanction**

- 18.1 Where the Appeal relates to the imposition of a sanction, the Panel must consider the Appeal in accordance with paragraph 11 above and must:
- a. allow the Appeal; or
  - b. dismiss the Appeal.
- 18.2 The powers of the Panel in an appeal against sanction are as follows:
- a. they may revoke, amend, vary or extend the sanction imposed; or

- b. remit the matter to the original Panel for a re-consideration.

- 18.3 In deciding upon the issue of the sanction, the Panel shall have regard to the Code of Conduct, Ethics and Performance issued by the CNHC and the Standards of Proficiency.
- 18.4 The sanctions available to the Panel are those that were available to the Panel at the original hearing.

## **19 Appeal against an Order of the Restoration Committee**

- 19.1 Where the Registrant is appealing against the Order of the Restoration Committee, the Panel must determine the Appeal in accordance with paragraph 11 above and must:
- a. allow the Appeal and restore the Registrant to the register; or
  - b. allow the Appeal and vary, amend or remove the Conditions of Registration imposed;
  - c. dismiss the Appeal .
- 19.2 In making this decision, the Panel shall have regard to the provisions of Appendix 4, paragraph 7.

## **20 Notice of Decision**

- 20.1 Within seven days, after the conclusion of the hearing, the clerk to the Panel shall send a Notice of Decision to:
- a. the Appellant and the Respondent;
  - b. the Complainant; and
  - c. interested third parties, if any.
- 20.2 The Notice of Decision shall:
- a. record any advice given by the Legal, Medical or Registrant Adviser, if appointed;
  - b. set out the Panel's decision on the Appeal;
  - c. specify the reasons for the Panel's decision;
  - d. where an Order has been imposed, set out the nature of the Order;
  - e. inform the Registrant that any further sanction imposed by the Panel took effect from the date on which it was made.

## **21 Notes and transcript of the proceedings**

- 21.1 A person shall be appointed by the Council to take a verbatim note of the proceedings before the Panel.
- 21.2 Upon application, the clerk to the Panel shall send the Registrant a transcript of the verbatim note, of any part of the proceedings at which the Registrant was entitled to be present.

## **22 Health Procedure Appeals**

- 22.1 If the Order or sanction appealed was made by the Health Panel, subject to the following provisions, the procedure adopted by the Appeal Panel shall be the same as the Conduct and Competence Procedure.
- 22.2 The Panel shall sit in private.
- 22.3 In determining the issues in relation to the Appeal, the Panel 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 Panel.

## **23 Publication of Notice of Decision**

- 23.1 The Council shall publish the Panel's determination, by such means as it considers appropriate, as soon as is reasonably practicable following any such determination.
- 23.2 The Council may also at any time provide a copy of the Panel's determination, to any of the statutory regulatory bodies or interested third parties if it is in the interests of justice to so do.

# Appendix 4 Procedure of the Restoration Committee

## Arrangement of Paragraphs

- 1 Interpretation
- 2 Documents to be provided to the Council
- 3 Documents to be provided to the Applicant
- 4 Notice of Restoration Hearing
- 5 Documents to be provided to the Committee
- 6 Procedure at a restoration hearing
- 7 Decision of the Committee
- 8 Notice of Decision
- 9 Time limits for application
- 10 Barring Order
- 11 Review of conditions imposed by the Committee
- 12 Notice of Review Hearing

### I Interpretation

- I.1 In this Appendix:

**Applicant** means a former Registrant applying for restoration to the Register, following a Removal Order imposed by a Conduct and Competence Panel.

**the Committee** means the Restoration Committee.

**Registration Conditions** are any conditions imposed by the Restoration Committee on a Registrant's registration following a successful restoration application.

- I.2 An application for restoration shall be deemed to be an initial application for registration and should comply with the provisions of the Council's Registration criteria.

### 2 Documents to be provided to the Council

- 2.1 In addition to the documents specified for an application for admission to the Register, the Applicant may send to the Council any report, statement or other document which, in the Applicant's opinion, supports the application for restoration.

### 3 Documents to be provided to the Applicant

- 3.1 As soon as practicable after receipt of a completed application for restoration to the Register, the clerk to the Committee shall send the Applicant notice of the hearing, including:
- a. a copy of the transcript of the Conduct and Competence Panel hearing at which the Order for removal from the Register was made;
  - b. a copy of the decision and Order made by the Conduct and Competence Committee that made the Removal Order;
  - c. any documents to be relied on by the Council; and
  - d. a copy of these Procedures.

### 4 Notice of Restoration Hearing

- 4.1 The notice of the hearing shall:
- 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 by a:
    - i. solicitor;
    - ii. barrister;
    - iii. representative from the Applicant's Professional Body;
    - iv. representative from the Applicant's Trade Union.



4.2 Where the Registrant is acting in person, they may be accompanied and advised by some other representative, however that representative shall not be entitled to address the Committee, without permission.

4.3 The hearing shall not be fixed for any date earlier than 28 days from the day after the posting of the notice of the hearing, except with the agreement of the Applicant.

4.4 A copy of the Notice of Restoration Hearing shall be provided to the Council by the clerk to the Committee.

## **5 Documents to be provided to the Committee**

5.1 No less than seven days before the hearing, the clerk to the Committee shall send to the Committee, 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 Conduct and Competence Committee that made the Removal Order;
- d. any documents relied on by the Council.

## **6 Procedure at a restoration hearing**

6.1 Proceedings of the Committee shall be held in private.

6.2 The Presenter shall outline the history of the Registrant's case and the circumstances in which the Order for removal of the Registrant's registration was made.

6.3 The Presenter may adduce to the Committee any documents which were exhibited to the Conduct and Competence Panel which made the Removal Order and any documents which have since come into the possession of the Council and which relate to the Applicant's good character, conduct, competence or health and may call witnesses to give evidence on these issues.

6.4 The Applicant or the Applicant's representative may then address the Committee as to the reasons why an Order for restoration should be made.

6.5 The Applicant may adduce evidence and call witnesses in support of the application for restoration.

6.6 Witnesses shall be examined by the Party calling them, and may be questioned by the other Party, by the Committee, and by the Legal, Medical or Registrant Adviser if appointed.

## **7 Decision of the Committee**

7.1 The Committee shall determine an application for restoration in two stages.

7.2 The Committee shall first consider whether the Applicant 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
- e. the public interest in maintaining confidence in complementary healthcare.

7.3 Where the Committee is minded to restore an Applicant's registration, it shall then consider whether the Applicant's registration should be made subject to conditions ("Registration Conditions") for a specified period not exceeding three years.

7.4 Where the Committee is minded to impose Registration Conditions on the Applicant's registration, it shall invite specific representations from the Applicant before making its decision.

7.5 In deciding whether to restore an Applicant's registration, and if so, whether an Applicant's registration should be made subject to Registration Conditions, the Committee shall take into account the principle of proportionality.

7.6 The Committee shall give reasons for its decision.



## 8 Notice of Decision

- 8.1 Within seven days of the conclusion of the proceedings, the clerk to the Committee shall send a Notice of Decision to the Applicant and to the Council
- 8.2 The Notice of Decision shall:
- record any advice given by the Legal, Medical or Registrant Adviser if appointed;
  - set out the Committee's decision;
  - specify the reasons for the Committee's decision;
  - clearly set out any Registration Conditions imposed on the Applicant's registration;
  - set out the Applicant's right of appeal.

## 9 Time limits for application

- 9.1 No application for restoration to the Register under this rule shall be made to the Committee:
- within five years from the date of removal; or
  - in any period of 12 months in which an application for restoration has already been made by or on behalf of the person who has been removed.

## 10 Barring Order

- 10.1 Where an Applicant has made a previous unsuccessful application for restoration and the Committee have refused the current application for restoration, the Committee may Order that the Applicant's right to make any further restoration applications be suspended indefinitely ('a Barring Order').
- 10.2 The Committee shall not make a Barring Order until it has heard representations on this issue from the Applicant.
- 10.3 In deciding whether or not to make a Barring Order, the Committee shall take into account the principle of proportionality.
- 10.4 Where a Barring Order has been made, the Applicant may apply to the Committee, in writing, for permission to make any further applications for restoration and the Committee shall grant such an application if the Applicant provides evidence to the Committee demonstrating that there has been a change in the circumstances which led to the

decision to remove the Applicant from the Register such that the Committee, acting reasonably, should consider the application for restoration.

## 11 Review of conditions imposed by the Committee

- 11.1 Where Restoration Conditions have been imposed against a Registrant's registration:
- they shall be reviewed before they expire; and
  - subject to 11.2 and 11.3 the Council or any person in respect of whom the Conditions were made may request a review at any other time.
- 11.2 A Panel shall not review any Registration Conditions imposed upon a Registrant's registration unless there has been a material change of circumstances since the Registration Conditions were imposed.
- 11.3 A decision whether to grant a request for a review and the conduct of a review will be undertaken by the Restoration Committee.
- 11.4 The procedure at a review hearing held in accordance with 11.1 above shall be as follows:
- the Presenter shall outline the facts of the case and the circumstances in which the Registration Conditions were imposed;
  - the Registrant or the Council, may then make submissions as to why the Registration Conditions should be revoked, varied or amended and may adduce documents and call witnesses in support.
- 11.5 Where the Registration Conditions were imposed following the Health Procedure, the Panel may require the Registrant to provide up-to-date medical reports from a registered medical practitioner nominated by the Council, at the Registrant's own expense.
- 11.6 Where the Registration Conditions were imposed following the Health Procedure, the review hearing shall be held under the Health Procedure.
- 11.7 The Panel may, after reviewing the Registration Conditions, revoke, vary or amend the conditions. The Panel may also impose further Registration Conditions to commence upon the expiry of the existing Registration Conditions.
- 11.8 The Powers of the Panel shall be the same as the Panel that imposed the Registration Conditions.

- 11.9 At the conclusion of the review hearing, the Panel shall announce its decision and the reasons for its decision, in the presence of the Parties.
- 11.10 Within seven days of the conclusion of the hearing, the clerk to the Panel shall send a Notice of Decision, containing the reasons for the Panel's decision to:
- a. the Registrant;
  - b. the Council;
  - c. the Complainant;
  - d. interested third party, if any.

## 12 Notice of Review Hearing

- 12.1 As soon as practicable after the Registrant or the Council has requested a review of her or his Restoration Conditions or a review becomes necessary by virtue of 11.1a above, the clerk to the Panel shall send the Registrant and the Council a Notice of Review which shall:
- a. inform the Registrant of the right to attend the hearing;
  - b. state the date, time and venue of the hearing;
  - c. specify the grounds of the review (if applicable);
  - d. provide the Registrant with:
    - i. the notice of decision made by the Panel that made the Removal Order;
    - ii. the notice of decision made by the Panel that made the Registration Conditions;
    - iii. a copy of the transcript of the hearing of the Panel that made the Removal Order;
    - iv. a copy of the transcript of the hearing of the Committee that made the Restoration Conditions;
  - e. inform the Registrant of the right to give evidence in person, 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 Committee in person or to be represented by a:
    - i. solicitor;
    - ii. barrister;

- iii. representative from the Registrant's Professional Body or;
  - iv. representative from the Registrant's Trade Union;
  - g. request confirmation as to whether the Registrant intends to:
    - i. attend the hearing;
    - ii. be represented at the hearing;
  - h. inform the Registrant that if acting in person, they may be accompanied and advised by some other representative (not listed in (f) above) and that such representative shall not be entitled to address the Panel without permission, nor may they be called as a witness at the hearing.
- 12.2 The hearing shall not be fixed for any date earlier than 28 days from the day after the posting of the Notice of Review Hearing except with the agreement of the Registrant.
- 12.3 The clerk to the Panel may send with the Notice of Review Hearing:
- a. a copy of these Procedures; and
  - b. any reports, written statements or other documents which the Panel will have before it.

# Appendix 5

## Criteria and process for informal resolution

There are some types of complaint that are not suitable for informal resolution. These include:

1. serious misconduct
2. abuse of trust, boundary violations, predatory or manipulative behaviour
3. lapses in professional competence
4. dishonesty
5. fraud or other criminal acts
6. findings by a statutory regulator
7. serious concerns arising from the health of the registrant
8. alcohol or substance abuse
9. a registrant who has frequently been the subject of complaints

### Informal resolution

When a complaint that is suitable for informal resolution is made by a client of a CNHC registrant (or someone acting on behalf of a client), CNHC seeks the agreement of the client before offering the registrant the opportunity for informal resolution of the complaint. If the complainant is another therapist or a member of the public who has no personal experience of the registrant, CNHC does not consider it is necessary to seek their agreement and they have no right of appeal against this action by the CNHC.

If informal resolution is not successful, or if other information emerges that changes the nature of the complaint, then the CNHC formal procedures are commenced.

## Note I The ‘Realistic Prospect’ Test

The CNHC Complaints Procedure includes within its policies that where an allegation is referred to the Investigating Committee they shall decide based on the evidence before it whether there is a ‘case to answer’.

In deciding whether there is a case to answer, the test to be applied by a Panel is whether based upon the evidence before it, there is a ‘realistic prospect’ that the Council will be able to establish that the Registrant’s fitness to practise is impaired.

The test, which is known as ‘the realistic prospect test’ is widely used in a variety of proceedings as it is relatively easy to understand and apply. Lord Woolf noted in *Swain v Hillman* 2001:

The words ‘no real prospect of succeeding’ do not need amplification, they speak for themselves. The word ‘real’ distinguishes fanciful prospects of success...or, as (Counsel) submits, they direct the court to the need to see whether there is a ‘realistic’ as opposed to a ‘fanciful prospect of success’.

### Applying the test

In determining whether there is a case to answer, the Panel must decide whether, in its opinion, there is a ‘realistic prospect’ that the Council (which has the burden of proof) will be able to establish that the Registrant’s fitness to practise is impaired.

The test applies to the whole allegation, that is;

- > the facts set out in the allegation;
- > whether those facts amount to the ‘ground’ of the allegation (e.g. amount to misconduct or a lack of competence)
- > in consequence, whether the Registrant’s fitness to practise is impaired.

In the majority of cases, the evidence will relate solely to the facts and typically, this will be evidence that certain events involving the Registrant occurred on the dates, and at the places and times alleged. It will be rare for separate evidence to be provided on the ‘ground’ or the issue of impairment and these will largely be a matter of inference

for the Panel, such as where the factual evidence suggests that the care provided by the Registrant fell below the standards expected of a reasonably competent practitioner or that the Registrant’s actions constitute misconduct when judged against established norms of the profession. In reaching the decision the Panel should have regard to the CNHC’s Standards of Proficiency and Code of Conduct, Ethics and Performance.

The test does not require that the Panel conducts a detailed enquiry. It only needs to be satisfied that there is a realistic prospect (as opposed to a remote or fanciful one) that the Council will be able to establish its case.

In reaching its decision, the Panel;

- > must recognise that it is conducting a limited, paper-based, exercise and should not seek to make findings of fact on the substantive issues;
- > may assess the overall weight of evidence but should not seek to resolve substantial conflicts of evidence. The assessment of the relative strengths of the evidence can only be properly undertaken at a full hearing, when it will be for the Council to prove its case.

Registrants are not obliged to provide any evidence to the Panel but many will do so voluntarily and any such evidence should be considered by the Panel. The Panel may decide that the matter cannot be resolved at this stage because typically there will be a conflict between the evidence provided by Council and the Registrant that needs to be tested at a hearing.

A decision of ‘no case to answer’ should only be made where there is no realistic prospect of Council proving its case, for example, because there is insufficient evidence to substantiate the allegation or the evidence is manifestly unreliable or discredited. In all other cases there will be a ‘case to answer’ and the issues will be considered at a full hearing.

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