

DRIVING FORWARD PROFESSIONAL
STANDARDS FOR TEACHERS



The General Teaching Council for Scotland Fitness to Teach and Appeals Rules 2012

These Rules are available in alternative formats on request

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Part 1 - General

1.1 Introduction

- 1.1.1 These Rules may be referred to as the General Teaching Council for Scotland Fitness to Teach and Appeals Rules 2012 (the Rules) and will come into force on 2 April 2012.
- 1.1.2 These Rules are made by the General Teaching Council for Scotland (GTC Scotland) in accordance with The Public Services Reform (General Teaching Council for Scotland) Order 2011 and its statutory function to determine the fitness to teach of those applying to be registered with it, as well as those already registered. These Rules are made and will be applied with regard to the interests of the public.
- 1.1.3 In accordance with the transitional arrangements set out in rule 1.3 below, the Conduct, Competence and Disciplinary Rules 2006 are revoked by these Rules.

1.2 Interpretation

- 1.2.1 In these Rules, unless the context otherwise requires:
- “the Act” means the Teaching Council (Scotland) Act 1965¹ which will be repealed on 2 April 2012 by the Order.
 - “appeal” means, as the context requires, either:
 - (i) an application made to the Appeals Board to request a review of a decision made by GTC Scotland; or
 - (ii) an appeal made to the Court of Session against a decision made by GTC Scotland.
 - “Appellant” means a person who has made an appeal to the Appeals Board.
 - “Appeals Board” means the appeals board established by GTC Scotland to determine appeals (other than those reserved to the Court of Session in accordance with the Order).
 - “application” means an application for registration (or re-registration) with GTC Scotland and “Applicant” will be construed accordingly.
 - “case” means the complaint, application, recommendation or appeal at issue.
 - “complaint” means either:
 - (i) a complaint made against a Registrant or Applicant; or
 - (ii) information received by GTC Scotland,that is, may amount to or purports to be, a Relevant Complaint.
 - “conditional registration order” means an order made by a Fitness to Teach Panel that imposes conditions on a person’s registration.
 - “Convener” means the convener of the Panel.
 - “days” means calendar days.
 - “Disciplinary Sub-Committee” means the Sub-Committee established by GTC Scotland in accordance with the Act.

¹ 1965 c.19, as amended

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- “educational establishment” has the same meaning as in the Order.
 - “electronic communications” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000².
 - “employer” means any person employing a Registrant to work in an educational establishment.
 - “Fitness to Teach Panel” means a panel of individuals appointed by GTC Scotland to adjudicate, in accordance with these Rules, any case referred to it and, where the context so requires, may also mean its historic equivalents, the Disciplinary Sub-Committee and Professional Standards Panel.
 - “impairment of fitness to teach” (and any related expression) means that the person’s conduct or professional competence falls short of the standard expected of a registered teacher.
 - “Investigating Panel” means a panel of individuals appointed by GTC Scotland to consider complaints in accordance with these Rules and, where the context so requires, may also mean its historic equivalent, the Investigating Sub-Committee.
 - “Investigating Sub-Committee” means the Sub-Committee established by GTC Scotland in accordance with the Act.
 - “lay person” means a person that (i) is not, nor has been, nor is eligible to be, entered in the Register; and (ii) has not obtained a “recognised teaching qualification”, as defined by the Order.
 - “Legal Assessor” means a legal assessor appointed by GTC Scotland under paragraph 3 of Schedule 4 of the Order.
 - “the Order” means The Public Services Reform (General Teaching Council for Scotland) Order 2011³.
 - “Panel” means the panel adjudicating or considering the particular case or matter and, unless the context otherwise requires, shall include the Appeals Board.
 - “parties” means GTC Scotland (or any person acting for it, or on its behalf) and the Respondent or Appellant (and any appointed representative).
 - “Presenting Officer” means a person nominated by GTC Scotland to present a case and act on its behalf.
 - “private” means –
 - in the context of a hearing generally, in the absence of the wider public but in the presence of all those involved in hearing proceedings (including the parties, witnesses, and any persons appointed by GTC Scotland to administer proceedings, record proceedings, provide legal advice or carry out Panel member performance reviews);
 - in the context of the deliberations of a Fitness to Teach Panel as part of hearing proceedings, in the presence of the members of the Panel, the Servicing Officer, any appointed Legal Assessor and any person appointed by GTC Scotland to carry out Panel member performance reviews;
 - in the context of an Investigating Panel meeting, in the presence only of the Panel and any persons appointed by GTC Scotland to administer proceedings, record proceedings, provide legal advice or carry out Panel member performance reviews; and

² 2000 c.7

³ S.S.I. 2011/215

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- in any other context, in the absence of the wider public but in the presence of all those involved in the proceedings concerned.
 - “Professional Standards Panel” means the panel established by GTC Scotland to adjudicate probationary service prior to 2 April 2012.
 - “recommendation” means a recommendation made by an employer or previous employer with regard to a Registrant’s period of probationary service and registration.
 - “Register” means the register kept and maintained by GTC Scotland of those persons fully, provisionally or otherwise registered with it, and “Registrant”, “registered” and “registration” will be construed accordingly.
 - “Registered Address” means the postal, electronic mail or other address provided by the Respondent or Appellant for entry in the Register.
 - “Relevant Complaint” means:
 - (a) a complaint to the effect that the fitness to teach of an Applicant or Registrant is alleged to be impaired by reason of -
 - (i) a conviction for an offence, or
 - (ii) professional misconduct,
 - (b) a complaint to the effect that the fitness to teach of an Applicant or Registrant is alleged to be impaired because an entry in the Register relating to that Applicant or Registrant has been fraudulently sought, procured or incorrectly made, or
 - (c) a complaint made by an educational establishment to the effect that the fitness to teach of a person marked as fully registered on the Register is alleged to be impaired by reason of a lack of professional competence.

For the avoidance of doubt, any such complaint may be based on a matter alleged to have occurred outside the United Kingdom or at a time when a Registrant was not registered.

- “Respondent” means the Applicant or Registrant responding in the particular case.
- “Servicing Officer” means the person responsible for servicing the Panel. The Servicing Officer has no role in a Panel’s decision making process.
- “subsequent registration application” means an application made by a person subsequent to a Fitness to Teach Panel having directed either that (i) his/her name be removed from the Register; or (ii) an application made by him/her be refused.
- “temporary restriction order” means an order made by a Fitness to Teach Panel to temporarily restrict a Respondent’s registration pending conclusion of an investigation of his/her fitness to teach.
- “unfit to teach” means that the person’s conduct or professional competence falls significantly short of the standards expected of a registered teacher.
- “vulnerable witness” has the same meaning as set out in section 271 of the Criminal Procedure (Scotland) Act 1995⁴.
- “witness” means a person who provides a Panel with evidence (for the avoidance of doubt, this may include a Respondent).

⁴ 1995 c.46

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- 1.2.2 Any reference to legislation, rules, standards, processes, publications, schemes, panels, or committees will be construed as a reference to such legislation, rule, standard, process, publication, scheme, panel, or committee as it may be supplemented, amended, substituted, re-named or replaced from time to time.
- 1.2.3 Any reference to a numbered:
- (a) rule or Part, refers to the rule or Part bearing that number in these Rules;
 - (b) schedule, refers to a schedule bearing that number in these Rules; and
 - (c) paragraph, refers to the paragraph bearing that number in these Rules.
- 1.2.4 Headings set out in these Rules will not affect the interpretation of the Rules themselves.
- 1.2.5 These Rules will be construed and applied in accordance with GTC Scotland's obligations under the Order, the Human Rights Act 1998⁵, the Data Protection Act 1998⁶ and the Equality Act 2010⁷, as well as any other relevant and applicable legislation that may be enacted from time to time.

1.3 Application

- 1.3.1 These Rules will apply to any complaint, application, recommendation or appeal raised, initiated, made or lodged on or after 2 April 2012, including, for the avoidance of doubt, any complaint, application, recommendation or appeal for which continued provision is made by Schedule 5 of the Order.
- 1.3.2 In accordance with the Order, these Rules will also apply to any complaint, application, recommendation or appeal raised, initiated, made or lodged that is still awaiting disposal on or after 2 April 2012. Any action or decision taken by GTC Scotland in terms of any such complaint, application, recommendation or appeal prior to 2 April 2012 will be treated as if it were an action or decision taken by GTC Scotland in accordance with these Rules. For the avoidance of doubt, this means that any such appeal will be deemed to have been referred to the Appeals Board in terms of these Rules and will be adjudicated by the Appeals Board accordingly. Similarly, any such complaint, application or recommendation will be deemed to have been referred to an Investigating Panel or a Fitness to Teach Panel in terms of these Rules with reference to the stage that it has reached prior to 2 April 2012 and will be adjudicated from then on in accordance with these Rules.
- 1.3.3 Subject to the provisions of these Rules and any other provisions that GTC Scotland may make from time to time, a Panel may regulate its own procedures as it sees fit. A Panel may also relieve any party from the consequences of a failure to comply with a provision in these Rules which is shown to be due to mistake, oversight or other excusable cause, on such conditions as it thinks fit where it determines that it is just and fair to do so.
- 1.3.4 The provisions set out in this Part 1 apply, as appropriate, to all procedures carried out under these Rules.

Overriding Objective

- 1.3.5 These Rules have the overriding objective of enabling Conveners and Panels, with the assistance of the parties, to deal with cases fairly and justly.
- 1.3.6 Dealing with a case fairly and justly includes, so far as practicable, dealing with it in ways which:
- (a) are proportionate to the complexity of the issues;
 - (b) seek informality and flexibility in proceedings;
 - (c) ensure that parties are able to participate fully in proceedings; and

⁵ 1998 c.42

⁶ 1998 c.29

⁷ 2010 c.15

(d) avoid delay, so far as compatible with the proper consideration of the issues.

1.3.7 The Conveners and Panels will give effect to this overriding objective when exercising any power under these Rules and interpreting and applying them.

1.4 Quorum

1.4.1 The quorum of any Panel shall be three and, subject to the below, a Panel shall comprise a majority of Registrants and at least one lay person.

1.4.2 In the context of hearing proceedings, where a hearing has commenced and a Panel member is no longer able to remain a member of the Panel for any reason, provided that the Panel determines that it is just and fair to proceed, the Panel may do so notwithstanding that it no longer comprises a majority of Registrants or a lay person.

1.5 Decision-making

1.5.1 All Panel decisions shall be determined by majority. In the absence of such a majority, the decision shall fall in favour of the Respondent or Appellant concerned.

1.6 Notice

1.6.1 Any notice that requires to be served in terms of these Rules will be served either by:

- (a) post in which delivery or receipt is recorded;
- (b) hand delivery by or on behalf of GTC Scotland; or
- (c) electronic mail in which acknowledgement of delivery or receipt is provided.

1.6.2 Any such notice may be sent to, or delivered at, the Registered Address. Alternatively, if the Respondent or Appellant is represented by a solicitor or trade union/defence organisation and has informed GTC Scotland that they may be used as an address for communications, the notice may be served instead to the address provided for that party using any of the methods outlined above.

1.6.3 Notice will be taken to have been served on the day after posting, on the day of hand delivery or on the day of acknowledgement of electronic mailing.

1.6.4 The service of the notice may be proved by:

- (a) confirmation of delivery or receipt issued by or on behalf of the Post Office (or other postal operator or delivery service);
- (b) a signed statement from any person serving the notice by hand;
- (c) an electronic mail delivery receipt; or
- (d) confirmation of receipt by (or on behalf of) the Respondent.

1.6.5 Where, before a hearing begins or at any stage of the hearing, it appears that the notice fails to comply with any provision of these Rules, the Panel will, on cause shown, allow the notice to be amended. If the Panel considers that the nature of the amendment is such as to require that the amended notice should be re-served on the Respondent or Appellant, it will so direct and the hearing will be postponed or adjourned accordingly.

1.7 Hearing proceedings

Attendance and representation

- 1.7.1 A Respondent or Appellant will be entitled to attend and be represented at a hearing, whether by a legally qualified person or otherwise.

Attendance of the public

- 1.7.2 Subject to the provision set out below or as provided otherwise elsewhere in these Rules, hearings will be held in public.

- 1.7.3 All or any part of a hearing may be conducted in private where the Panel is satisfied, having given the relevant parties an opportunity to make representations, that either -

- (a) publicity would prejudice the administration of justice; or
- (b) there is a need to protect the privacy, confidentiality or other interests of a party, third party or witness concerned,

and that the interests of the Respondent and the public in the hearing being held in public are outweighed. Any such decision (and the reasons for it) will be announced in public.

- 1.7.4 Where these Rules specify that a hearing is to take place in private, all or any part of it may be conducted in public where the Panel is satisfied, having given parties an opportunity to make representations, that the interests of the Respondent, the public or any third party require the hearing to be held in public.

Use of electronic communications

- 1.7.5 All or any part of a hearing may be conducted by use of electronic communications provided that –

- (a) the Panel has given the parties an opportunity to make representations on the matter and the Panel considers it just and equitable for electronic communications to be used;
- (b) the method used allows the parties, the Panel and any witnesses to hear each other; and
- (c) where all or any part of the hearing is to be held in public, the method used also allows the public to hear proceedings.

- 1.7.6 Where all or any part of a hearing is conducted by use of electronic communications, for the purposes of these Rules, the meaning of being “present” at a hearing (and any related expressions) will be construed accordingly.

Absence of Respondent or Appellant

- 1.7.7 If a Respondent or Appellant fails to attend or to be represented at the time and place fixed for a hearing without any known good cause, the Panel –

- (a) will require to satisfy itself that notice of the hearing has been served upon that Respondent or Appellant in accordance with these Rules or that all reasonable efforts have been made so to do; and
- (b) may, where the Panel is satisfied that notice has been so served or such reasonable efforts have been made, proceed to hear and dispose of the case or matter presented in the absence of that party.

Recording of proceedings

- 1.7.8 Hearing proceedings will normally be recorded. Subject to payment of any reasonable charge that GTC Scotland may prescribe, an electronic copy of any recording made will be made available to the Respondent or Appellant on request.

Exclusion from proceedings

- 1.7.9 A Panel may exclude from the whole or part of a hearing, any person (including, for the avoidance of doubt, a Respondent or Appellant) whose conduct, in its opinion, has disrupted or is likely to disrupt the hearing provided that it is satisfied that it is just to do so.

Postponements and adjournments

- 1.7.10 The Convener of a Panel may, of his/her own volition, or upon the application of a party, postpone a hearing before the hearing begins provided that he/she has given the parties an opportunity to make representations on the matter.
- 1.7.11 A Panel considering any matter may, of its own volition, or upon the application of a party, adjourn the proceedings at any stage provided that –
- (a) it is satisfied that no injustice is caused; and
 - (b) the parties have been given an opportunity to make representations on the matter.
- 1.7.12 Where the proceedings have been adjourned, the Panel will, as soon as practicable, notify the parties to the proceedings of the date, time and venue of the resumed hearing.
- 1.7.13 In considering whether or not to grant a request for postponement or adjournment, regard will be had, amongst other things, to –
- (a) the interests of the public and the Respondent or Appellant in expeditious proceedings;
 - (b) the potential inconvenience caused to a party or any witnesses to be called by that party; and
 - (c) fairness to the Respondent or Appellant.

1.8 Decisions and reasons

- 1.8.1 Unless otherwise provided in these Rules, notice of any decision made as to disposal in terms of rules 3.11, 4.5 or 5.6 together with a statement of any facts found proven in proceedings and the reasons for the direction given will be served on the Respondent within 14 days of the date the decision was made. This notice will include details of any right of appeal that the Respondent may have. Where all or part of the hearing has taken place in public, this notice will be made available to the public appropriately. Where the Respondent is known by GTC Scotland to be employed as a teacher in an educational establishment, the Servicing Officer will also advise the employer of any such decision.
- 1.8.2 Reasons for the direction given at disposal of a case may be provided orally at the time of issuing a decision or may be reserved to be given in writing as soon as it is reasonably practicable to do so. If a Panel's decision as to disposal of a case is not announced on the day of a hearing, it will not be necessary to hold a hearing for the purpose of announcing its decision.
- 1.8.3 Clerical mistakes or errors arising from an accidental slip or omission in any decision notice issued may at any time be corrected by the Convener in writing.

1.9 Referrals back after an appeal

- 1.9.1 Where an appeal against a decision of a Panel is upheld in whole or in part by the Appeals Board or Court of Session and has been referred back to a Panel for re-consideration, the Panel will re-consider the matter in accordance with the decision or direction given and, insofar as is compatible with that direction or decision, these Rules.

1.10 Orders for expenses

- 1.10.1 A Panel must not normally make an order for expenses against a party but may do so where it is of the opinion that his/her conduct in hearing proceedings has been vexatious or unreasonable and has resulted in increased expenses being incurred.
- 1.10.2 An order for expenses may include the legal expenses of the successful party; the reasonable expenses of witnesses in attending any hearings; the costs of any investigation, including the fees and expenses of any expert witness; and the costs of the Panel. The total sum payable under any such order shall not exceed such sum as the Panel considers just and reasonable in all the circumstances, and may be fixed at a proportion of the expenses actually and reasonably incurred.
- 1.10.3 No such order may be made without first giving the parties an opportunity to make representations on the matter.
- 1.10.4 In making an order for costs and expenses, a Panel must take into account the resources of the parties, details of which shall be disclosed to the Panel on request.
- 1.10.5 Where a Panel orders a party to pay expenses, the Convener may –
- (a) summarily assess the expenses to be paid; or
 - (b) appoint a suitably qualified independent person to assess the expenses to be paid.
- 1.10.6 A Panel may make such provision regarding the manner and timescale for payment of any such expenses order by the party concerned as it considers appropriate in the circumstances.
- 1.10.7 Non-payment of any instalment will render due the whole sum outstanding at that time under any order for expenses.
- 1.10.8 GTC Scotland may by civil proceedings recover from any party such sums as may at any time be due and unpaid under an order for expenses.

1.11 Consequences of non-compliance

- 1.11.1 A Fitness to Teach Panel may take such action as it considers appropriate in respect of the failure by a party to comply with any directions issued to him/her in terms of these Rules. As regards a Respondent, a Fitness to Teach Panel may, in particular, direct that any such failure be raised against him/her as a professional misconduct complaint and be considered in accordance with the provisions set out in these Rules.

Part 2 - Investigating complaints

2.1 Initial consideration

2.1.1 Where a complaint is made to, or raised by, GTC Scotland, it will be referred to an Investigating Panel Convener as soon as is reasonably practicable. The Convener may do one or more of the following:

- (a) determine that the complaint:
 - (i) is not a Relevant Complaint;
 - (ii) is frivolous, malicious or vexatious; or
 - (iii) does not contain sufficient detail to render it capable of investigation,

and does not justify an investigation of the Respondent's fitness to teach.

If such a determination is made, the Servicing Officer will, where appropriate, be instructed to notify the Respondent and any complainant accordingly;

- (b) instruct the Servicing Officer to serve a notice of referral upon the Respondent as soon as is reasonably practicable and carry out such further investigations as are seen fit; or
- (c) refer the complaint to a Fitness to Teach Panel for a Temporary Restriction Hearing and instruct the Servicing Officer to inform the Respondent accordingly.

2.2 Notice of referral

2.2.1 A written notice of referral served upon a Respondent in respect of a complaint that has not been dismissed will:

- (a) set out the complaint made;
- (b) have attached to it, copies of any documents to be placed before the Investigating Panel in support of the complaint;
- (c) state that any written representations in respect of the complaint must be submitted by the Respondent within 28 days of the date of the notice;
- (d) inform the Respondent that any representations or information submitted by him/her may be shown to the person who has made the complaint (where applicable) for comment; and
- (e) inform the Respondent that GTC Scotland will carry out such further investigations as it considers appropriate in seeking to determine his/her fitness to teach in light of the complaint made.

2.3 Full consideration

2.3.1 Where any information in respect of a complaint is received from a source other than the Respondent after a notice of referral has been served, and is to be placed before the Investigating Panel for consideration, a written notice will be served upon the Respondent which will have attached to it copies of such information. The Respondent will be provided no fewer than 14 days from the date of the notice to submit to the Investigating Panel any further written representations to the Investigating Panel.

2.3.2 An Investigating Panel will meet in private to consider all of the information provided to it in writing in respect of a complaint and decide whether in its opinion there is a case to answer. The Investigating Panel may not hear oral evidence.

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- 2.3.3 An Investigating Panel may seek such legal advice in making its decision as it sees fit.
- 2.3.4 An Investigating Panel may adjourn its consideration of a complaint and the making of its decision until further information has been obtained where it sees fit.
- 2.3.5 If the Investigating Panel ultimately determines that in its opinion there is a case to answer, it may decide to:
- (a) refer the complaint to a Fitness to Teach Panel; or
 - (b) where the Respondent is a Registrant, instruct the Servicing Officer to issue a reprimand consent order in such form as GTC Scotland reasonably sees fit with the reprimand being for such period of time and in such terms as it specifies. Such an order will only be issued where the Investigating Panel considers that there is a realistic prospect that, if the complaint was referred to a Fitness to Teach Panel, a Fitness to Teach Panel would direct that a reprimand be issued to the Respondent in similar terms. Should the Respondent fail to consent to the order within 28 days of the date of receipt, the Servicing Officer will refer the complaint to a Fitness to Teach Panel. Should the reprimand consent order be agreed, it will be made available to the public, a reprimand will be recorded against the Respondent's name in the Register accordingly and the case will be considered disposed of.
- 2.3.6 The Investigating Panel will instruct the Servicing Officer to serve notice of its decision upon the Respondent and notify any complainant appropriately.

2.4 Re-consideration

- 2.4.1 Where an Investigating Panel decides that there is no case to answer or that a complaint does not justify an investigation of fitness to teach, if a fresh complaint is raised against the Registrant concerned, an Investigating Panel may take account of that previous complaint when considering whether or not there is a case to answer in respect of the fresh complaint provided that it considers it just and fair to do so. An Investigating Panel may also issue a reprimand consent order in respect of both the previous complaint and the new complaint, or refer both to a Fitness to Teach Panel.

Part 3 - Adjudicating Complaints

3.1 General

- 3.1.1 The general provisions set out below will apply, as appropriate, to any matter considered by a Fitness to Teach Panel under this Part 3.

Burden and standard of proof

- 3.1.2 Where facts alleged by the Presenting Officer are in dispute, the burden of proving such facts rests with the Presenting Officer. The required standard of proof will be on the balance of probabilities. The burden will rest with the Presenting Officer in seeking to satisfy the Panel that the Respondent's fitness to teach is impaired, or that he/she is unfit to teach.

Evidence

- 3.1.3 Subject to the requirements of relevance and fairness, and upon receiving the advice of a Legal Assessor as appropriate, a Panel may admit at a hearing oral, documentary or other evidence, whether or not such evidence would be admissible in civil or criminal proceedings in the United Kingdom.
- 3.1.4 Subject to rule 3.1.5, where a Respondent has been convicted of a criminal offence (and provided that such conviction is neither pending appeal nor been successfully appealed) –
- (a) an extract conviction, or copy of the certificate of conviction certified by a competent officer of the relevant court, will be conclusive proof of the conviction; and
 - (b) any findings of fact upon which the conviction is based will be admissible as evidence of those facts.
- 3.1.5 The only evidence which may be adduced by the Respondent in rebuttal of a conviction extracted or certified in accordance with the provision above, is evidence for the purpose of proving that he/she is not the person referred to in the certificate or extract. For the avoidance of doubt, the Respondent may adduce evidence to explain the circumstances of any such conviction, or in mitigation of it.
- 3.1.6 A certificate as to a determination about a Respondent made by a body responsible under any enactment or otherwise for the regulation of any profession signed by an officer authorised by the body to sign such certificates will be admissible as prima facie evidence of the facts referred to in the determination.
- 3.1.7 A Respondent may admit a fact or description of a fact, and a fact or description of a fact so admitted may be treated as proved.
- 3.1.8 Where a party seeks to adduce evidence at a hearing and –
- (a) has failed to comply with any direction for service of evidence given under these Rules; and
 - (b) has shown no good cause for failure to comply with the direction given,
- a Panel may refuse to allow that party to admit the evidence in question.

Witnesses

- 3.1.9 Subject to a Convener or Panel ordering otherwise, any fact which needs to be proved by the evidence of a witness at a hearing may be proved by his/her evidence being provided in writing in the form of a written statement signed by him/her which contains the evidence that he/she would be permitted to provide orally at a hearing.

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- 3.1.10 The witness statement must, if reasonably practicable, be in the intended witness's own words, the statement should be expressed in the first person and should also:
- (a) specify his/her full name and address;
 - (b) specify his/her occupation, or if he/she has none, his/her designation;
 - (c) so far as practicable, set out the events described or matters explained in a chronological and suitably ordered manner;
 - (d) describe which of the statements in it are made from the witness's own knowledge and which are matters of belief;
 - (e) specify the source for any matters contained in the statement that are of belief;
 - (f) include a statement by the witness that he/she believes the facts stated in it are true; and
 - (g) be signed by him/her and dated.
- 3.1.11 The Respondent or the Presenting Officer may apply to the Panel for permission to cross-examine a witness or ask that the person be ordered to attend a hearing to provide his/her evidence orally. If a Panel so orders but the person in question does not attend, his/her evidence shall not be used unless the Panel gives permission.
- 3.1.12 Where a witness is called to give oral evidence, his/her witness statement will stand as his/her evidence in chief unless a Panel orders otherwise.
- 3.1.13 Any witness statement which is admitted in evidence by virtue of the provisions above will, unless the Panel directs otherwise, be read aloud at a hearing. Where a Panel directs that a statement or any part of it shall not be read aloud, reasons will be provided for so directing and, where appropriate, an account shall be given orally of what the Panel has directed not to be read aloud.
- 3.1.14 A witness giving oral evidence at a hearing may –
- (a) amplify his witness statement; and
 - (b) give evidence in relation to new matters which have arisen since the witness statement was prepared.
- 3.1.15 Witnesses will be required to take an oath, or to affirm, before giving evidence at any hearing.
- 3.1.16 Unless the Panel determines otherwise and with the exception of the Respondent, a witness will be excluded from a hearing until such time as they give, or have given, evidence.

Vulnerable witnesses

- 3.1.17 A Panel may, of its own volition or on the application of any party, treat as vulnerable, any witness defined as such in terms of these Rules.
- 3.1.18 Provided that the Presenting Officer and Respondent have been given the opportunity to make representations on the matter, a Panel may adopt such measures as it considers necessary to enable it to receive evidence from a vulnerable witness. These measures may include but will not be limited to –
- (a) use of video links;
 - (b) use of pre-recorded evidence, provided always that such witness is available at the hearing for cross-examination and questioning;

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- (c) use of interpreters; and
 - (d) the hearing of evidence in private.

3.1.19 Where –

- (a) any part of a complaint against a Respondent is sexual in nature;
- (b) a vulnerable witness is an alleged victim; and
- (c) the Respondent is not represented,

the Respondent will not be allowed to examine or cross-examine the witness. In such circumstances, examination or cross-examination of the witness will be undertaken by such means, or by such person, as the Panel considers appropriate.

Joinder

3.1.20 Unless a Panel is of the view that there is a risk of prejudice to the fairness of the proceedings, and upon taking the advice of the legal assessor, a Panel may consider a complaint against two or more Respondents at the same hearing where: the complaint against each Respondent arises out of the same circumstances; or in the view of the Panel, a joint hearing is necessary.

3.1.21 A Panel may consider one or more categories of complaint against a Respondent at the same hearing provided always that a complaint relating to a conviction is heard after any complaint relating to professional misconduct has been heard and determined to the extent that it is possible to do so in the circumstances of the case.

3.1.22 Where –

- (a) a complaint has been referred to a Fitness to Teach Panel;
- (b) that complaint has not yet been heard; and
- (c) a new complaint which is of a similar kind or is founded on the same facts is received by GTC Scotland,

a Panel may consider the new complaint at the same time as the original complaint, notwithstanding that such new complaint has not been included in the notice of the hearing.

3.1.23 Where it is proposed that a new complaint should be heard by a Panel, the Presenting Officer will –

- (a) inform the Respondent of the new complaint, and the alleged facts on which it is based; and
- (b) afford the Respondent the opportunity to make written representations on the new complaint and require any such representations to be received within 28 days of notification of the new complaint or within such period of time as is otherwise agreed by the parties.

3.2 Investigation following referral

3.2.1 After a complaint has been referred to a Fitness to Teach Panel by an Investigating Panel, GTC Scotland may carry out such further investigations as it considers appropriate in seeking to determine the fitness to teach of the person concerned.

3.3 Case management

3.3.1 Following the referral of a complaint to a Fitness to Teach Panel for a hearing, the Servicing Officer may arrange for a Convener to conduct a case management discussion. A Convener may, of his/her own volition or on the application of the Servicing Officer or any party, decide to hold further case management discussions at any time as he/she sees fit.

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- 3.3.2 Unless the parties agree otherwise, the Respondent will be given no fewer than 7 days notice of any case management discussion. This notice will:
- (a) where it is the first proposed case management discussion, set out the complaint made against the Respondent, including the alleged facts upon which it is based;
 - (b) specify the date, time and arrangements for holding the case management discussion;
 - (c) inform the Respondent of his/her right to attend the case management discussion and be represented; and
 - (d) inform the Respondent that the case management discussion may proceed in his/her absence.
- 3.3.3 A case management discussion will take place in private and may be conducted by telephone or by such other method as may be agreed between the parties or, where the parties fail to agree, as decided by the Convener.
- 3.3.4 The Convener may give case management directions –
- (a) at a case management discussion;
 - (b) upon the request of a party (in circumstances where there is no request or requirement to hold a case management discussion); or
 - (c) of his/her own volition,
- to secure the just, expeditious and effective running of proceedings before the Fitness to Teach Panel.
- 3.3.5 Directions issued by the Convener may include, but are not limited to, such of the following as he/she considers appropriate in the circumstances of the case:
- (a) that each party disclose to the other –
 - (i) any documentary evidence in their possession or power relating to the complaint,
 - (ii) details of the witnesses (including the Respondent) on whom they intend to rely and signed witness statements setting out the substance of their evidence, and
 - (iii) skeleton arguments.
 - (b) that each party provide an estimate as to the likely length of the hearing and date(s) on which they are available for a hearing.
 - (c) that the Respondent indicates, so far as is practicable –
 - (i) whether the complaint made is admitted,
 - (ii) what evidence is admitted and what remain in dispute,
 - (iii) which witnesses are required for oral evidence,
 - (iv) where the complaint is admitted, whether he/she is willing to consent to removal in terms of rule 3.7, and
 - (v) whether any preliminary legal arguments are to be made.
 - (d) where the complaint is admitted, that the parties produce a statement of agreed facts.

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- (e) where the parties agree, that a particular witness should be treated as a vulnerable witness.
 - (f) where the parties agree, directions as to how the evidence of a vulnerable witness should be obtained or presented to the Fitness to Teach Panel.
 - (g) that the case management discussion should be postponed or adjourned and continued to a later date.
 - (h) that a procedural hearing should be arranged.
 - (i) that a temporary restriction hearing should be arranged.
 - (j) time limits for compliance with any of the directions listed above (as appropriate).

3.3.6 A record of the directions made by the Convener will be issued in writing within 7 days of the date of issue.

3.4 Procedural hearing

3.4.1 At any stage of proceedings, a Fitness to Teach Panel of its own volition, on the Convener's direction or upon the application of a party, may hold a procedural hearing in order to:

- (a) determine any interim or preliminary matter that has arisen in the case;
- (b) resolve any issues of law;
- (c) consider a reasoned opinion under rule 3.5 and determine whether a case may be disposed of under that rule; or
- (d) consider a removal with consent order in terms of rule 3.7.

3.4.2 Unless the parties agree otherwise, the Respondent will be given no fewer than 7 days notice of any such hearing. This notice will:

- (a) inform the Respondent of the matter(s) to be considered at the hearing;
- (b) specify the date, time and venue of the hearing;
- (c) inform the Respondent of his/her right to attend the hearing and be represented; and
- (d) inform the Respondent that the hearing may proceed in his/her absence.

3.5 Cancellation

3.5.1 Where –

- (a) a complaint has been referred to a Fitness to Teach Panel; and
- (b) the Presenting Officer considers that for any reason the complaint should not proceed to a full hearing,

the Presenting Officer will inform the Servicing Officer of his/her opinion and of the reasons for such an opinion.

3.5.2 Upon receipt of the Presenting Officer's reasoned opinion, the matter will be considered at a procedural hearing arranged in accordance with rule 3.4. At this hearing, the Panel may give a direction that the full hearing should be cancelled and the case disposed of.

3.6 Temporary restriction

- 3.6.1 At any stage of proceedings, a Fitness to Teach Panel of its own volition, on the Convener's direction or upon the application of the Presenting Officer, may arrange a temporary restriction hearing. Such a hearing may be arranged to determine whether the registration of the Registrant concerned should be made subject to a temporary restriction order to restrict his/her registration pending conclusion of GTC Scotland's investigation of his/her fitness to teach.
- 3.6.2 A Respondent may be made subject to a temporary restriction order as part of a full hearing before a Fitness to Teach Panel. In those circumstances, and for the avoidance of doubt, the provisions related to the matter of a review of a temporary restriction order set out in rules 3.6.3, 3.6.4 and 3.6.5 apply but not the temporary restriction hearing procedures.
- 3.6.3 Where a Respondent is made subject to a temporary restriction order, at the conclusion of GTC Scotland's investigation of a Respondent's fitness to teach, a Panel shall direct that any temporary restriction order imposed be cancelled and that the mark on the Register be removed accordingly. If, however, before the conclusion of the investigation either -
- (a) GTC Scotland considers that the order should no longer remain in place, or
 - (b) the Registrant makes a written request (in such form as GTC Scotland may reasonably specify) for the order to be reviewed or revised,
- a hearing will be arranged to review the order.
- 3.6.4 Unless the parties agree otherwise, the Respondent will be given no fewer than 7 days notice of a temporary restriction hearing or any temporary restriction order review hearing. This notice will:
- (a) inform the Respondent of the reasons why a temporary restriction order is being sought, or being reviewed (as appropriate);
 - (b) specify the date, time and venue of the hearing;
 - (c) inform the Respondent of his/her right to attend the hearing and be represented;
 - (d) inform the Respondent that the hearing may proceed in his/her absence;
 - (e) invite the Respondent, if he/she chooses not to attend the hearing, to make written representations to be received by GTC Scotland no fewer than 2 days before the proposed hearing date; and
 - (f) where the notice is for a temporary restriction hearing, invite the Respondent to provide his/her consent to the imposition of a temporary restriction order.
- 3.6.5 Unless the Panel determines otherwise in accordance with rule 1.7, a temporary restriction hearing and any temporary restriction order review hearing will be held in private.
- 3.6.6 Should the Respondent consent to the imposition of a temporary restriction order, the Convener may direct that the order should be imposed without a temporary restriction hearing being held.
- 3.6.7 Unless a Panel determines otherwise as the circumstances may require, and where a Respondent is in attendance, the order of proceedings at a temporary restriction hearing will be as follows –
- (a) The Convener will require the parties present to identify themselves.
 - (b) The Convener will inquire whether the Respondent accepts that there are circumstances which on the face of it might cause GTC Scotland to remove his/her name from the Register.
 - (c) Where the Respondent does not accept that there are circumstances which on the face of it might cause GTC Scotland to remove his/her name from the Register, the Presenting Officer

and Respondent may each, in turn, adduce evidence or make submissions. Each party will be provided an opportunity to cross-examine any evidence of the other. The Panel will deliberate in private to make its finding as to whether there are circumstances which might on the face of it cause GTC Scotland to remove the Respondent's name from the Register and will then announce the finding that it has made to those present at the hearing.

- (d) The Convener will invite the Presenting Officer and then the Respondent to address the Panel on the matter of whether a temporary restriction should be imposed.
- (e) The Panel will deliberate in private and make its decision in accordance with rule 3.11.

3.7 Removal with consent

- 3.7.1 Where the Respondent is a Registrant, the Convener may instruct the Servicing Officer to issue a removal with consent order in such form as GTC Scotland reasonably sees fit.
- 3.7.2 Should the Respondent fail to provide his/her consent to removal from the Register within 28 days of the date of receipt of the removal with consent order, the adjudication procedure set out in this Part 3 will resume from rule 3.2 on as if this process had never been pursued.
- 3.7.3 Should the Respondent provide his/her consent to removal from the Register, the matter will be referred to a Fitness to Teach Panel and a procedural hearing will be arranged in accordance with rule 3.4.
- 3.7.4 If the Fitness to Teach Panel agrees that the order should be made:
 - (a) it will also consider whether a referral should be made in terms of rule 3.11.10;
 - (b) the terms of the order and the Panel's decision will be made available to the public and be announced at the hearing;
 - (c) the Respondent's name will be removed from the Register; and
 - (d) the case will be considered disposed of.
- 3.7.5 Should the order not be so made, the adjudication procedure set out in this Part 3 will resume from rule 3.2 on as if this process had never been pursued.

3.8 Full hearing

- 3.8.1 Unless the parties agree otherwise, the Respondent will be given no fewer than 28 days notice of a full hearing. Unless in exceptional circumstances the Convener or a Panel directs otherwise, this notice will:
 - (a) set out the complaint made against the Respondent;
 - (b) specify the date, time and venue of the hearing;
 - (c) inform the Respondent of his/her right to attend the hearing and be represented;
 - (d) inform the Respondent that the hearing may proceed in his/her absence;
 - (e) provide the Respondent with a list of any documents on which the Presenting Officer proposes to rely at the hearing, together with copies of any such documents;
 - (f) provide the Respondent with a list of any witnesses on whom the Presenting Officer proposes to rely at the hearing, together with copies of corresponding witness statements;

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- (g) inform the Respondent that he/she requires to provide a list of all the documents on which he/she proposes to rely at the hearing, together with copies of those documents, no fewer than 14 days before the date of the hearing;
 - (h) inform the Respondent that he/she requires to provide a list of witnesses on which he/she proposes to rely at the hearing, together with copies of witness statements, no fewer than 14 days before the date of the hearing; and
 - (i) inform the Respondent of the disposals available to a Panel in his/her case and, where the Respondent is a Registrant, its power to impose a temporary restriction order at any point in proceedings should it be considered appropriate to do so.

3.8.2 Unless a Panel determines otherwise as the circumstances may require, and where a Respondent is in attendance, the order of proceedings at a full hearing will be as follows –

- (a) The Convener will require the parties to identify themselves.
- (b) The Convener will cause the complaint against the Respondent to be read out.
- (c) The Convener will inquire whether the Respondent wishes to make any admissions.
- (d) Where facts have been admitted by the Respondent, the Convener will announce that such facts have been found proved.
- (e) Where an impairment of fitness to teach has been admitted by the Respondent, the Convener will announce that his/her fitness to teach is impaired.
- (f) Where facts remain in dispute, the parties may each, in turn, adduce evidence. Each party will be provided an opportunity to cross-examine the evidence of the other and to provide concluding remarks. The Panel will deliberate in private to make its finding in facts and will then announce the findings that it has made to those present at the hearing.
- (g) Where the matter of impairment of fitness to teach remains in dispute, the Panel will invite each party, in turn, to adduce evidence and make representations as to whether, on the basis of the facts found proved, the Respondent's fitness to teach is impaired. Each party will be provided an opportunity to cross-examine any evidence adduced by the other and to provide concluding remarks. The Panel will deliberate in private to make its decision on whether the Respondent's fitness to teach is impaired and will then announce its decision to those present at the hearing.
- (h) Where the facts are not found proved, or the Respondent's fitness to teach is not found to be impaired, proceedings will be at an end following any such determination. Otherwise, proceedings will continue as set out below.
- (i) The Convener will invite the Presenting Officer to address the Panel as to the character and previous history of the Respondent.
- (j) The Convener will invite the Respondent to address the Panel by way of mitigation and adduce evidence should he/she so wish. The Presenting Officer will be provided an opportunity to cross-examine any evidence so adduced.
- (k) The Convener will ask the Presenting Officer and then the Respondent to make representations as to disposal.
- (l) The Panel will deliberate in private and will dispose of the case in accordance with rule 3.11.

3.8.3 At any stage before making its findings of fact, the Panel may amend the complaint set out in the notice of hearing, unless, having regard to the merits of the case and the fairness of the proceedings, the Panel considers that the required amendment cannot be made without injustice. Before making any such amendment, the Panel will receive advice from a Legal Assessor and will consider any representations made on the issue from the Presenting Officer and the Respondent.

3.9 Subsequent registration application

- 3.9.1 Where GTC Scotland has received (in such form as it may reasonably specify) a subsequent registration application from a person who was removed from the Register in terms of Part 3 of these Rules (or the historic equivalent), GTC Scotland may carry out such investigations as it considers appropriate in seeking to determine the fitness to teach of the person concerned.
- 3.9.2 Upon receipt of a subsequent registration application, the Servicing Officer may arrange for a Convener to conduct a case management discussion.
- 3.9.3 Unless the parties agree otherwise, the Applicant will be given no fewer than 14 days notice of any such case management discussion. This notice will:
- (a) specify the date, time and arrangements for holding the case management discussion;
 - (b) inform the Respondent of his/her right to attend the case management discussion and be represented; and
 - (c) inform the Respondent that the case management discussion may proceed in his/her absence.
- 3.9.4 A case management discussion may be conducted as the Convener sees fit, and he/she may make such directions as are seen fit with reference to the provisions set out at rule 3.3 above.
- 3.9.5 A record of the directions made by the Convener will be issued within 7 days of the date of a case management discussion.
- 3.9.6 A Fitness to Teach Panel may dismiss any subsequent registration application where it considers that the application has not been properly made or has been abandoned.
- 3.9.7 Unless the parties agree otherwise, the Applicant will be given no fewer than 28 days notice of a hearing to consider his/her subsequent registration application. This notice will:
- (a) specify the date, time and venue of the hearing;
 - (b) inform the Applicant of his/her right to attend the hearing and be represented;
 - (c) inform the Applicant that the hearing may proceed in his/her absence; and
 - (d) invite the Applicant, if he/she chooses not to attend the hearing, to make written representations to be received by GTC Scotland no fewer than 14 days before the hearing.
- 3.9.8 Unless a Panel determines otherwise as the circumstances may require, and where a Respondent is in attendance, the order of proceedings at any subsequent registration application hearing will be as follows –
- (a) The Convener will require the parties present to identify themselves.
 - (b) The Presenting Officer will be invited to:
 - (i) address the Panel as to the background to the case and the circumstances in which the Applicant was removed from the Register; and
 - (ii) adduce evidence as to the Applicant's fitness to teach.
 - (c) The Applicant will be invited to address the Panel, cross-examine any evidence adduced by the Presenting Officer and adduce evidence as to his/her fitness to teach and suitability for registration.

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- (d) The Presenting Officer will be invited to cross-examine any evidence adduced by the Applicant and provide concluding remarks.
 - (e) The Applicant will be invited to provide concluding remarks.
 - (f) The Panel will deliberate in private and will dispose of the case in accordance with rule 3.11.

3.10 Conditional registration order

3.10.1 Where a Registrant has been made subject to a conditional registration order in accordance with a direction of a Panel and either -

- (a) GTC Scotland subsequently considers that the Registrant concerned has failed to comply with that order, or
- (b) the Registrant makes a written request (in such form as GTC Scotland may reasonably specify) for the order to be reviewed or revised,

subject to the provisions below, a hearing will be arranged to review the order.

3.10.2 Where it is alleged that a Registrant has failed to comply with a conditional registration order, the Servicing Officer will ask whether he/she is willing to consent to removal from the Register. If he/she is so willing, the removal process set out in rule 3.7 will be followed.

3.10.3 Unless the parties agree otherwise, the Respondent will be given no fewer than 14 days notice of a hearing to review a conditional registration order. This notice will:

- (a) specify the date, time and venue of the hearing;
- (b) inform the Respondent of his/her right to attend the hearing and be represented;
- (c) inform the Respondent that the hearing may proceed in his/her absence; and
- (d) invite the Respondent, if he/she chooses not to attend the hearing, to make written representations to be received by GTC Scotland no fewer than 7 days before the hearing.

3.10.4 Unless a Panel determines otherwise as the circumstances may require, and where a Respondent is in attendance, the order of proceedings at any such hearing will be as follows –

- (a) The Convener will require the parties present to identify themselves.
- (b) The Presenting Officer will be invited to:
 - (i) address the Panel as to the background to the case and the circumstances in which the Respondent was made subject to a conditional registration order; and
 - (ii) adduce evidence as to the Respondent's alleged failure to comply with that order.
- (c) The Respondent will be invited to address the Panel, cross-examine any evidence adduced by the Presenting Officer and adduce evidence as to his/her compliance with the order.
- (d) The Presenting Officer will be invited to cross-examine any evidence adduced by the Respondent and provide concluding remarks.
- (e) The Respondent will be invited to provide concluding remarks.
- (f) The Panel will deliberate in private and will dispose of the case in accordance with rule 3.11.

3.11 Decision and disposal

- 3.11.1 In any case where a Panel is satisfied that a Respondent is unfit to teach, the Panel shall, as appropriate, direct either that:
- (a) the Respondent's application for registration be refused; or
 - (b) the Respondent's name be removed from the Register.
- 3.11.2 In any case where a Panel is satisfied that a Respondent's fitness to teach is impaired, it may make no order or, as appropriate and as it sees fit, direct in terms of one or more of the following that:
- (a) a reprimand be recorded against the Respondent's name in the Register for such period of time and in such terms as is specified by the Panel;
 - (b) the Respondent be subject to a conditional registration order for such period of time (which may be unlimited), and with such conditions attached, as may be specified by the Panel provided always that he/she is, and continues to be, eligible for registration and that any failure to comply with such an order may permit the Panel to direct that his/her name will be removed from the Register;
 - (c) the Respondent's application for registration be granted subject to a conditional registration order for such period of time (which may be unlimited) with such conditions attached as may be specified by the Panel provided always that he/she is, and continues to be, eligible for registration and that any failure to comply with such an order may permit the Panel to direct that his/her name will be removed from the Register;
 - (d) the Respondent's application for registration be refused; or
 - (e) the Respondent's name be removed from the Register.
- 3.11.3 In any case where a subsequent registration application is under consideration, a Panel may direct that:
- (a) provided that the Respondent is otherwise eligible for registration, the application be granted;
 - (b) provided that the Respondent is otherwise eligible for registration, the application be granted subject to a conditional registration order for such period of time (which may be unlimited) with such conditions attached as may be specified by the Panel provided always that he/she is, and continues to be, eligible for registration and that any failure to comply with such an order may permit the Panel to direct that his/her name will be removed from the Register; or
 - (c) the application be refused.
- 3.11.4 In any review of a conditional registration order, a Panel may direct that:
- (a) the conditional registration order be continued;
 - (b) the conditional registration order be amended with such conditions as may be specified by the Panel provided always that he/she is, and continues to be, eligible for registration and that any failure to comply with such an order may permit the Panel to direct that his/her name will be removed from the Register; or
 - (c) the Respondent's name be removed from the Register.
- 3.11.5 In any case where a Panel considers that there are circumstances which on the face of it might cause GTC Scotland to remove a Respondent's name from the Register, it may direct that a temporary restriction order be imposed pending conclusion of GTC Scotland's investigation of these circumstances and be marked on the Register accordingly. In any review of the imposition of such an order, a Panel may continue or revoke the order made and may direct that the Respondent be

prohibited from applying, or as the case may be applying again, for a further review until the expiry of such period as it may determine.

- 3.11.6 Where a Panel directs that the Respondent's application for registration will be refused, or the Respondent's name will be removed from the Register, the Respondent will not be entitled to be registered, or as the case may be re-registered, except in compliance with a direction of a Fitness to Teach Panel.
- 3.11.7 As part of making a direction that a Respondent's application for registration will be refused, or the Respondent's name will be removed from the Register, the Panel may also direct that the Respondent will be prohibited from applying, or as the case may be applying again, for registration until the expiry of such period (not exceeding 2 years) as it may determine.
- 3.11.8 Where a Panel directs that a Respondent is to be made subject to a conditional registration order (including any revised conditional registration order), the Respondent will be asked to accept the conditions imposed under that order. If these conditions are not accepted by the Respondent, the Panel will review and revise its disposal decision as it sees fit.
- 3.11.9 As part of any review of a conditional registration order, a Panel may direct that the Respondent will be prohibited from applying for a further review until the expiry of such period as it may determine.
- 3.11.10 A Panel will also consider whether a referral should be made to Scottish Ministers under the terms of the Protection of Vulnerable Groups (Scotland) Act 2007⁸ where it is appropriate so to do.

3.12 Appeal

- 3.12.1 A Respondent will have the right to lodge an appeal with the Appeals Board where there is no right to appeal the decision concerned to the Court of Session in accordance with Article 24 of the Order and there are grounds to ask for the decision concerned to be reviewed in terms of a Fitness to Teach Panel having either:
- (a) failed to act in accordance with these Rules; or
 - (b) made an error in law or in fact,
- that has had a significant impact on the decision made.
- 3.12.2 Any such appeal must specify the grounds of the appeal and be made within 28 days of the date of service of the notice of the decision.

⁸ 2007 asp 14.

Part 4 - Adjudicating Probationary Service

4.1 Recommendation

4.1.1 Where GTC Scotland receives a recommendation from an employer or previous employer:

- (a) that a Registrant's period of probationary service be extended to give the Registrant more time to demonstrate that he/she has met the standard of professional competence required to gain full registration; or
- (b) that a Registrant's provisional registration be cancelled as it is alleged that his/her fitness to teach is impaired by reason of a lack of professional competence,

GTC Scotland will notify the Registrant concerned in writing of that recommendation and provide him/her with no fewer than 14 days in which to intimate in writing that he/she wishes to challenge the recommendation made. If the Registrant does not so intimate, a Fitness to Teach Panel may direct that the recommendation is accepted. If the Registrant intimates a challenge or should a Fitness to Teach Panel be of the view that a hearing should be held, the Servicing Officer will arrange a probationary service hearing.

4.2 Notice

4.2.1 Unless the parties agree otherwise, the Respondent will be given no fewer than 21 days notice of a hearing arranged under this Part 4. This notice will:

- (a) specify the date, time and venue of the hearing;
- (b) inform the Respondent of his/her right to attend the hearing and be represented;
- (c) inform the Respondent that the hearing may proceed in his/her absence; and
- (d) invite the Respondent to make written representations to be received by GTC Scotland no fewer than 14 days before the proposed hearing date.

4.3 Probationary service hearing

4.3.1 Unless a Panel determines otherwise in accordance with rule 1.7, a probationary service hearing will be conducted in private.

4.3.2 Copies of all of the information submitted to the Panel that is to be considered by it as part of determining a case at a probationary service hearing will be provided to the Respondent (and may also be provided to other parties concerned with the case) no fewer than 7 days before the date of the hearing.

4.3.3 Subject to the requirements of relevance and fairness, a Panel may admit at a probationary service hearing oral, documentary or other evidence, whether or not such evidence would be admissible in civil or criminal proceedings in the United Kingdom. A panel may of its own volition (acting through the Servicing Officer as is seen fit), or on the application of any party, ask any person to provide information that it considers relevant at the hearing.

4.3.4 Subject to the requirements of relevance, the Panel may admit and consider information provided in writing at a probationary service hearing where such information has not been disclosed in advance in accordance with the provisions set out above where either (i) the Respondent or Applicant consents to this; or (ii) the Panel is satisfied that the admission of the information is necessary to ensure the fairness of the proceedings and, where there is possible prejudice to the Respondent or Applicant, that this is outweighed.

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- 4.3.5 Where facts advanced or arising in a probationary service hearing are in dispute, the Panel will only find such facts proved where it is satisfied that they have been established on the balance of probabilities.
- 4.3.6 Unless a Panel determines otherwise as the circumstances may require, and where a Respondent is in attendance, the order of proceedings at a probationary service hearing will be as follows –
- (a) The Convener will require the parties present to identify themselves.
 - (b) The Convener or Servicing Officer of the Panel will introduce the case.
 - (c) The Respondent will be invited to make his/her submission.
 - (d) The Panel will be invited to question the Respondent.
 - (e) Where the Panel see fit, the Panel will seek information from any other person and will question them accordingly.
 - (f) The Respondent will be invited to provide any concluding remarks.
 - (g) Any Legal Assessor participating in proceedings will be invited to provide the Panel with advice.
 - (h) The Panel will deliberate in private and make its decision in accordance with rule 4.5.

4.4 Subsequent registration application

- 4.4.1 Where GTC Scotland has received (in such form as it may reasonably specify) a subsequent registration application from a person who was removed from the Register in terms of Part 4 of these Rules (or the historic equivalent), GTC Scotland may carry out such investigations as it considers appropriate in seeking to determine the fitness to teach of the person concerned.
- 4.4.2 Upon receipt of a subsequent registration application, a hearing will be arranged.
- 4.4.3 A Fitness to Teach Panel may dismiss a subsequent registration application where it considers that the application has not been properly made or has been abandoned.
- 4.4.4 Unless a Panel determines otherwise as the circumstances may require, and where the Respondent is in attendance, the order of proceedings at any subsequent registration application hearing will be as follows –
- (a) The Convener will require the parties present to identify themselves.
 - (b) The Respondent will be invited to address the Panel and adduce evidence as to his/her fitness to teach and suitability for registration.
 - (c) The Panel will be invited to question the Applicant.
 - (d) Where the Panel see fit, the Panel will seek information from any other person and will question them accordingly
 - (e) The Respondent will be invited to provide concluding remarks.
 - (f) The Panel will deliberate in private and will dispose of the case in accordance with rule 4.5.

4.5 Decision and disposal

- 4.5.1 Where appropriate in the particular case circumstances with reference to the relevant criteria for registration set out in GTC Scotland's Registration and Standards Rules as appropriate, a Panel may order in terms of one or more of the following that:

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- (a) the Respondent be granted provisional or full registration in part or parts of the Register;
 - (b) the Respondent's provisional registration be continued;
 - (c) the period of probationary service requiring to be completed by the Respondent be extended;
 - (d) the Respondent's name be removed from the Register;
 - (e) an application for re-registration be refused.

4.5.2 Where a Panel directs that a Respondent's name be removed from the Register, the Respondent will not be entitled to be re-registered except in compliance with a direction of a Fitness to Teach Panel.

4.5.3 As part of making a direction that a Respondent's name be removed from the Register, the Panel may also direct that the Respondent will be prohibited from applying, or as the case may be applying again, for registration until the expiry of such period (not exceeding 2 years) as it may determine.

4.6 Appeal

4.6.1 A Respondent will have the right to lodge an appeal with the Appeals Board where there are grounds to ask for the decision concerned to be reviewed in terms of a Fitness to Teach Panel having either:

- (a) failed to act in accordance with these Rules; or
- (b) made an error in law or in fact,

that has had a significant impact on the decision made.

4.6.2 Any such appeal must specify the grounds of the appeal and be made within 28 days of the date of service of the notice of the decision.

4.6.3 A Respondent may also have the right to appeal the decision concerned to the Court of Session in accordance with Article 24 of the Order.

Part 5 - Appeals

5.1 General

- 5.1.1 Provided that the Appellant is entitled to lodge an appeal with the Appeals Board, the decision concerned may be reviewed by the Appeals Board in accordance with these Rules.
- 5.1.2 The Appellant must lodge a notice of appeal in the form and manner prescribed by the Appeals Board. The notice of appeal must be lodged within any time period prescribed in the GTC Scotland rules under which the decision was made. If it is not lodged within any such time period, the Servicing Officer may dismiss the appeal.
- 5.1.3 The Convener may, on behalf of the Appeals Board, determine that a notice of appeal is invalid where he/she is of the opinion that any part of it has not been properly completed or lacks specification. Where the Convener makes any such determination, he/she may request that a revised notice of appeal be lodged in the form and manner prescribed by the Appeals Board within 7 days.
- 5.1.4 The Convener may, on behalf of the Appeals Board, dismiss any appeal application where he/she is of the reasonable opinion that:
- (a) the appeal is frivolous or vexatious;
 - (b) the Appellant has materially failed to comply with these Rules; or
 - (c) the appeal has been abandoned by the Appellant on the basis that either (i) a notice of appeal has not been provided in accordance with rule 5.1.2; (ii) an appropriately revised notice of appeal has not been provided where requested by the Convener; or (iii) a period of no fewer than 3 months has elapsed from the date of first service of the notice set out in rule 5.3 and he/she has failed to respond to that notice.
- 5.1.5 Where any appeal is dismissed by the Convener in terms of the above, the Appellant will be notified in writing of the decision.

5.2 Answers

- 5.2.1 Following the lodging of a notice of appeal which is not dismissed by the Convener in terms of rule 5.1 above, the Appeals Board will allow answers to be lodged by GTC Scotland in response to it within 28 days.
- 5.2.2 On the expiry of the date fixed for lodging answers, and unless the appeal is dismissed in terms of rule 5.1, a date will be fixed for the appeal to be heard by the Appeals Board.

5.3 Notice

- 5.3.1 Notice will be provided to the Appellant no fewer than 21 days before the date on which his/her appeal is to be heard by the Appeals Board. This notice period may be reduced if the Appellant and GTC Scotland consent.
- 5.3.2 This notice will:
- (a) specify the date, time and venue of the hearing;
 - (b) inform the Appellant of his/her right to attend the hearing and be represented;
 - (c) inform the Appellant that the hearing may proceed in his/her absence; and

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- (d) inform the Appellant that he/she requires to provide a list of all the documents on which he/she proposes to rely at the hearing, together with copies of those documents, no fewer than 14 days before the date of the hearing.

5.3.3 Copies of all of the information submitted to the Appeals Board that are to be considered by them as part of determining the appeal will be provided to the Appellant no fewer than 7 days before the date on which the case is to be considered.

5.4 Burden and standard of proof

5.4.1 Where facts advanced are in dispute, the burden of proving such facts rests with the party advancing those facts and the required standard of proof will be on the balance of probabilities.

5.4.2 The burden will rest with the Appellant in seeking to satisfy the Appeals Board that the appeal should be granted.

5.5 Hearing proceedings

5.5.1 Unless the Appeals Board determines otherwise in accordance with rule 1.7, the hearing will be conducted in private.

5.5.2 No member of the Appeals Board present at any hearing, nor the Servicing Officer, may have had any involvement in an earlier stage of the Appellant's case.

5.5.3 Unless a Panel determines otherwise as the circumstances may require, and where the Appellant is in attendance, the order of proceedings at an appeal hearing will be as follows –

- (a) the Convener will require the parties present to identify themselves.
- (b) the Convener or Servicing Officer will outline the appeal application and may then ask the Legal Assessor or Servicing Officer to clarify any procedural issues;
- (c) the Appellant will make their submission;
- (d) a Presenting Officer may make a submission to rebut the submission made by the Appellant;
- (e) the Appeals Board will be invited to question the Appellant;
- (f) where the Appeals Board see fit, the Appeals Board will seek information from any other person and will question them accordingly;
- (g) where present, the Presenting Officer will be invited to provide any concluding remarks;
- (h) the Appellant will be invited to provide any concluding remarks;
- (i) any Legal Assessor participating in proceedings will be invited to provide the Appeals Board with advice on any applicable law or procedure; and
- (j) the Appeals Board will dispose of the appeal in accordance with rule 5.6.

5.6 Decision and disposal

5.6.1 In making a decision, the Appeals Board will consider only the issues raised by the Appellant in making his/her appeal.

5.6.2 The Appeals Board will first consider whether or not there are grounds of appeal. If the Appeals Board is satisfied that there are such grounds, it will proceed to determine the appeal in accordance with the provisions below. If the Appeals Board considers that there are no grounds for appeal, the Appeals Board will make a direction to dismiss the appeal.

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- 5.6.3 The test that the Appeals Board will apply when considering the appeal is whether or not, in view of the grounds of appeal, the Appeals Board is satisfied that the decision made by the panel of first instance was a decision that no reasonable panel could properly have reached.
- 5.6.4 Where the Appeals Board is satisfied that the appeal should be granted, it may make a direction to refer the matter back to the appropriate panel of first instance together with, where it sees fit, a direction as to how the panel should proceed.
- 5.6.5 Subject to any further right of appeal that the Appellant may have to the Court of Session in terms of Article 24 of the Order, the decision of the Appeals Board will be final on the matters before it and takes immediate effect.



David Drever
Convener

Clerwood House
96 Clermiston Road
Edinburgh
EH12 6UT

20 March 2012



Anthony Finn
Chief Executive/Registrar

Approved and signed by Lord Hamilton,
Lord President of the Court of Session
(Arthur Campbell Hamilton)

22 March 2012

I approve these Rules
22/3/12 
Lord President of the Court of Session.

GTC Scotland aims to promote equality and diversity in all its activities

GTC Scotland

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Scotland

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