

# **NRCPD**

The National Registers of Communication Professionals  
working with Deaf and Deafblind People

## **Fitness to Practice Procedure**

**Consultation Draft  
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## Introduction

1. The National Registers of Communication Professionals working with Deaf and Deafblind People ('NRCPD') is established to promote standards of British Sign Language interpreters and other professions working with d/Deaf\* and deafblind people and to regulate those professions in order to protect the public. NRCPD's public protection responsibilities are to maintain registers of the relevant language service professionals, to set professional conduct standards by our Code of Conduct and to investigate reports of misconduct i.e. potential breaches of the Code. NRCPD takes appropriate steps to improve practice and protect the public where breaches of the Code are found.
2. This document explains the Fitness to Practice Procedure that the NRCPD will follow when a report is received about misconduct by a Registrant or Regulated Trainee.
3. The Fitness to Practice Procedure should be used in conjunction with the Code of Conduct.
4. The NRCPD Code of Conduct applies to all current Registrants and Regulated Trainees. Registrants/Trainees agree by contract to abide by it on first registration with one of our registers and thereafter annually on renewal.
5. The Fitness to Practice Procedure is the procedure we use to deal with reported breaches of the Code of Conduct in order to improve practice and protect the public. This ensures that all allegations of breaches of the Code of Conduct are considered fairly by due process, are independently decided and that professionals are not arbitrarily sanctioned.
6. The procedure is intended to identify whether a breach of the code has occurred, if so whether a professional's practice is still affected, and what should be done to prevent risk to the public from that misconduct by that professional in future.
7. It is not intended to be punitive but to look forward at preventing future misconduct by either improving the individual's practice, by restricting their practice for a period or in the most serious cases to remove them from the registers.
8. It is consistent with the relevant laws and principles that apply to professional regulation in the UK.

9. It is not the procedure used to remove people from the register for failing to meet any of the other minimum requirements or contractual undertakings (such as Continuous Professional Development compliance or paying the registration fee).

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## Outline of the Procedure

10. If anyone believes that an NRCPD registrant or regulated trainee has breached the NRCPD Code of Conduct they may report that to us in a misconduct report and NRCPD then begins an investigation. NRCPD may also begin an investigation on evidence of misconduct obtained from other sources.
11. All misconduct reports are investigated and if there is relevant evidence of a breach of the NRCPD Code of Conduct, NRCPD will bring a misconduct case against the registrant or regulated trainee. The case is first brought to Case Examiners who will consider the case and if a breach is evident will recommend an appropriate sanction. Where appropriate, Case Examiners will refer the case to a Professional Conduct Committee.
12. Case examiners recommendations may be rejected by the professional and the case also then goes to a Professional Conduct Committee. A professional may appeal a Professional Conduct Committee outcome at an Appeals Committee after which there is no further appeal.
13. Anyone who is unsure about how to produce a misconduct report and what should be in it, can ask for advice from the Professional Conduct team. The procedure is also accessible in BSL for people whose preferred language is BSL. This includes remote meetings with NRCPD staff supported by interpreters, VRS calls, receiving reports in BSL, and translation of statements and reports from or into BSL as required.
14. The investigation of misconduct allegations begins with NRCPD making initial checks on the report. NRCPD will make sure that:
  - a. the professional in question is registered with NRCPD and
  - b. was registered with NRCPD at the time of the alleged breach, and
  - c. the misconduct reported is in scope of the Code of Conduct.

NRCPD will also check the extent to which the Registrant or Regulated Trainee has been approached about what happened. We also have to check the identity of the reporter, that they are a real person and they are correctly stating who they are. These checks are carried

out at the start.

15. The following checks will then be carried out and monitored regularly throughout the investigation as further evidence is gathered:

- a. Communication preferences of participants.
- b. Reasonable adjustments requested and/or required to accommodate illness, capacity or disability.
- c. Whether there is risk to the public from continued practise of the respondent.
- d. That there is relevant evidence.
- e. That there is no malicious intent.
- f. That the report is not vexatious or trivial.
- g. That the allegations fall within scope of the Code of Conduct.

If at any stage the case fails the checks at 15.d to 15.g NRCPD may pause or discontinue the case. The reasons for pausing or discontinuing must be reasonable and recorded.

16. If a case against a professional is upheld, they will receive one or more of the following sanctions:

- a. advice,
- b. warning,
- c. training requirement,
- d. supervision requirement,
- e. practice restriction,
- f. suspension, or
- g. register removal.

The last three may only be awarded by a Professional Conduct Committee or an Appeals Committee.

17. After a case is finally concluded, including any appeal, the result of the case will be published in summary form. The case summary will be anonymised unless the sanction is a practice restriction, suspension or register removal, for which the public must be informed that the Registrant or Regulated Trainee has had limits placed on their registered practice.

## Stage 1 | Reporting Misconduct

18. Wherever possible minor concerns about a Registrant or Trainee's conduct should be raised as soon as possible to the Registrant or Trainee and/or the organisers of the assignment, event or activity. Every effort should be made to resolve problems informally and before a misconduct report is made to the NRCPD. If a conduct issue cannot be resolved informally, or where a serious breach of the Code of Conduct is alleged, the alleged misconduct should be reported to NRCPD.
19. Any professional misconduct which has been reported to the police, is pending court action, has been referred to a statutory regulator, or sent to any other national regulatory body will not be investigated by the NRCPD until the conclusion of action by the relevant authority. Where, in the opinion of the Professional Conduct Manager, reports of misconduct should be referred to the police or to another regulatory body prior to investigation, the person making the misconduct report will be advised to do so before any investigation commences.
20. NRCPD may at its own discretion report any matter that comes to light during an investigation to another relevant statutory authority.
21. All misconduct reports should be sent to the Professional Conduct Manager, by using the 'misconduct report' form, or by video letter, written letter or email. Reports by video letter, written letter or email, should follow the structure of the questions in the misconduct report form as far as possible. Reports cannot be accepted solely by telephone or text message, social media channels or by fax. For improved accessibility in BSL, a Case Officer may draft a report in English on behalf of the BSL user from an interpreted call (VRS or a Zoom meeting) for verification soon after by the BSL user.
22. The NRCPD may initiate a misconduct investigation acting on information received and without receiving a formal report. NRCPD may seek additional information or evidence to assist an investigation or a Committee hearing as it sees fit.
23. All misconduct reports must identify the name, address and contact details of the originator. Anonymous misconduct reports, or any evidence received from an anonymous source will not be accepted unless independently verified by other means.

24. The Professional Conduct Manager will assess the misconduct report to make sure: -
- a. it is about a NRCPD Registrant or Regulated Trainee;
  - b. the misconduct alleged took place less than six months ago;
  - c. what the Registrant or Trainee is alleged to have done is a breach of the Code of Conduct;
  - d. the evidence provided is relevant
  - e. it is not a malicious, vexatious or trivial report; and
  - f. it is not an anonymous report.

NRCPD will get in touch with the person making the report within five working days of the report being received to acknowledge the report and to assist with the above assessment.

25. If the Misconduct Report does not satisfy those conditions the Professional Conduct Manager may decide there is no case to answer. The Professional Conduct Manager may take professional advice. If there is no case to answer, the Professional Conduct Manager will inform the person reporting the alleged misconduct that the matter is closed. If it will assist their practice improvement, the Professional Conduct Manager may inform the Registrant/Trainee of the nature of any allegation of misconduct made against them that falls within the scope of the Code of Conduct, but that no action is being taken. Without the consent of the person making the report no such disclosure is to be made that may allow that person to be identified.

26. If the misconduct report does satisfy the conditions at Section 24. the Professional Conduct Manager will accept the report and initiate an investigation. NRCPD will aim to inform the person making the report of this within five working days of the misconduct report having been accepted or as soon as possible after that.

27. Normally misconduct reports will only be considered where the conduct or incident giving rise to the report occurred within six months of the Misconduct Report being made. This time limit may be extended for misconduct reports which:
- a. are based upon a criminal conviction or caution or determination of another regulatory body,
  - b. in the opinion of the Professional Conduct Manager, appear to be serious and

in respect of which the time limit should be extended in the public interest.

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## Stage 2 | Investigation

28. Notification to Reporting Witness of Case Opened. Within five working days of NRCPD accepting a misconduct report and so opening a case file, the assigned Case Officer will contact the person making the report to:

- a. explain the investigation process;
- b. tell them their report and identity will be shared with the Registrant or Trainee, and check consent;
- c. tell them they might need to provide additional information, which will also be shared with the Registrant or Trainee.

29. Notification to Registrant/Trainee of Case Opened. Within five working days of a misconduct report being accepted, the Case Officer assigned to the investigation should contact the Registrant/Trainee to:

- a. tell them someone has made an allegation of misconduct against them;
- b. tell them an investigation into the alleged misconduct has begun;
- c. give them a copy of the misconduct report and any supporting evidence so far available;
- d. summarise the details of the alleged misconduct and how it may be a breach of the Code of Conduct;
- e. provide details of the process to be followed for investigations;
- f. tell them they will have up to two opportunities to make formal responses to the claims;
- g. tell them their response may be shared with the person reporting the alleged misconduct; and
- h. tell them they will have the opportunity to respond to additional evidence or information collected by the NRCPD before any decision is taken.

NRCPD may delay notification of the misconduct investigation to the Registrant/trainee in order to secure sources of evidence and witness statements, if it is assessed that informing the Registrant may compromise other evidence and that any delay is reasonable and proportionate.

30. Initial Investigation. The Case Officer proceeds with investigating the alleged misconduct by making reasonable efforts to gather witness statements and evidence to

support the allegations made in the misconduct report. The case file is made up with a first statement by the Reporting Witness and all relevant evidence from verifiable sources. Evidence may include but is not limited to written statements, video or audio recordings, impact statements, photographs and images, business records, screenshots of online activity.

- a. NRCPD aims to complete this stage within 20 working days of accepting the misconduct report;
- b. The precise timescale will depend on the evidence being received promptly and the scale of evidence being sought. If necessary, the time period will be extended.
- c. Time extensions will be limited to what is reasonable and proportionate given the nature of the allegations, the potential importance of the evidence, and the impact of delay on parties to the case.

31. Registrant/Trainee's First Statement in Response. The collected evidence is then presented to the Registrant/Trainee for their first statement in response. This is a formal request for the Registrant/trainee to provide a statement of whether they contest or admit each of the allegations and to provide evidence to support their case. The Registrant/Trainee's first statement, with their supporting evidence, must be submitted within 20 working days of the request. The Case Officer reviews the Registrant's first statement and in conjunction with the Professional Conduct Manager considers if additional evidence is required and takes reasonable steps to obtain it. Registrants/Trainees may submit further evidence at any stage in the investigation after this first statement is made.

32. Reporting Witness Second Statement. The Registrant's first statement and accompanying evidence, and any further evidence collected by NRCPD, is sent to the person reporting the misconduct for them to provide a second statement. The Reporting Witness's second statement should be produced within a further 10 working days if they wish to make one.

33. Registrant/Trainee's Second Statement. Once received, any such second statement by the Reporting Witness and all new evidence is sent within 5 working days to the Registrant/Trainee for their second statement which should be received by NRCPD within a further 10 working days.

34. Collation of Evidence for Consideration by Case Examiners. Once the above exchange of statements and evidence gathering has concluded the case is prepared for consideration by Case examiners. NRCPD may seek legal advice on any matter relating to the case, may seek further evidence, may add additional allegations of breaches of the Code of Conduct as supported by evidence (to which the Registrant will have a further 10 working days to respond) or may strike out others if evidence is insufficient, or take any other steps to ensure the case is progressed efficiently and fairly. NRCPD will aim to complete this stage within 10 working days.
35. Interim Suspension or Restriction. At any point after the receipt of a misconduct report, the Registrar may decide the nature of the allegations and the available evidence suggests the Registrant/Trainee's practice is still a risk to the public. If so, the Registrant/Trainee may be temporarily suspended from the registers pending the outcome of the case – this is an Interim Suspension. Alternatively, the NRCPD may impose temporary practice restrictions – this is an Interim Restriction.
- a. The aim of an Interim Suspension or Interim Restriction is to minimise the risk of harm to the public and is consistent with NRCPD's public protection responsibilities. When considering either measure, NRCPD will assess whether the misconduct alleged presents the potential of significant current risk to the public, and whether an interim suspension, or practice restriction is a proportionate measure in the circumstances to reduce that risk. The decision and reasons for it must be recorded.
  - b. The Registrant or Trainee may appeal the decision to impose an interim suspension or restriction on the grounds of new, substantial and relevant information. They may appeal to the Professional Conduct Manager in writing setting out the new evidence and explaining why the suspension or restriction should be lifted.
  - c. The appeal will be considered by a panel of two retained legal and/or standards professionals, who have had no prior knowledge of the misconduct reported and no significant prior knowledge of anyone involved. The appeal will be considered against the same factors under which the suspension or restriction was first applied and whether the risk to the public has changed as a result of the appeal presented.

- d. If the Registrant/Trainee's appeal is denied they may submit another appeal after 20 working days if further new, substantial and relevant evidence is available.
- e. If an interim suspension is still in place after six months the Professional Conduct Manager must refer it to a retained legal professional for a mandatory review, and every six months thereafter.

36. Reasonable adjustments. Anyone who is part of a case, whether having reported misconduct or provided a witness statement or as the Registrant/Trainee, may make requests for reasonable adjustments to the procedure to enable them to engage effectively, if otherwise they would find it substantially more difficult to do so by reason of health, disability, communication preference, personal circumstances or other relevant factors. Such a request must be supported by sufficient disclosure of circumstances and relevant evidence for NRCPD to consider it. NRCPD will regularly ask parties to a case if reasonable adjustments are to be requested.

37. Delay. NRCPD will always try to avoid delay and adhere to the timeline guides set out above and elsewhere in this procedure. However, delay is often introduced where the number of allegations and misconduct reports and the volume, complexity and difficulty of securing evidence makes delay unavoidable or even necessary. The above timeline guides (around 90 working days or 18 weeks) are indicative for simple cases based on one misconduct report generating a small number of allegations and a limited volume of evidence. Complex cases may take considerably longer. The Registrant/Trainee and Reporting Witness will be kept informed of any delay and the reasons for it.

38. Time Extensions. In exceptional circumstances, parties to a case may request time extensions for their responses. Deadlines may be extended by NRCPD in the interests of fairness, to allow parties sufficient time to consider complex evidence submitted against them, and also sufficient time to obtain and submit evidence upon which they intend to rely. Any extension will be limited to what is reasonable and proportionate having regard to the need to be fair and to avoid delay. Time extensions may also be requested as a reasonable adjustment.

39. Admission of Facts. A Registrant/Trainee subject to allegations of breaches of the Code

of Conduct may in honesty and good faith recognise that their conduct did amount to a breach of the Code and may decide to admit some or all of the facts. Such an Admission of Facts will significantly reduce the time and stress of the investigation, and the insight shown will be a positive mitigating factor in deliberations by Case Examiners or by a Professional Conduct Committee if referred. The Registrant/Trainee will be advised of the opportunity to admit some or all of the facts when asked for their first statement, their second statement and if their case is referred to the Professional Conduct Committee.

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## Stage 3 | Case Examiners Consideration of the Case

40. Once all the statements and evidence have been gathered, the Case Officer will within 10 working days pass the case materials, including a list of breaches to be considered, Registrar's guidance, and a case summary, to a Case Examiner team. The Case Officer will as far as possible separate evidence on the facts from statements in mitigation. The Case Examiner team consists of two case examiners but NRCPD may appoint a team of three as necessary for a fair consideration of the case. The Case Examiners will consider all the material and make a recommendation to NRCPD for how the case should conclude. The standard for all Case Examiner conclusions is the balance of probabilities, that is that something is more likely than not. In all their deliberations, Case examiners will apply the three-step procedure below, and the guidance on evidence and sanctions.

41. Case Examiners Three-Step Consideration Procedure. The Case Examiners will consider the case in three steps:

a. Step 1 - Misconduct. Consider and decide upon the evidence whether, on the balance of probability, there was likely a breach of the Code of Conduct in relation to the allegations listed. If they decide there is likely to have been at least one breach, then they go on to Step 2. If not, they take no further steps and they recommend to NRCPD that there is no case to answer.

b. Step 2 - Affected Practice and Sanction. Case Examiners now consider whether the evidence shows that on the balance of probability, the Registrant/Trainee's practice is still affected and then what the appropriate sanction should be. They will look at the evidence on mitigation and character, and any corrective learning and reflection, or any other factor that is fair and relevant.

i. If they consider that practice is not still affected, and therefore the misconduct leading to the breach is unlikely to occur again, then they may recommend the following sanctions to NRCPD:

a) to give relevant advice to the Registrant/Trainee; or

b) give a written warning.

- ii. If Case Examiners consider that, on the balance of probability, the Registrant/Trainee's practice is still affected, and therefore is still below standard and a further breach is likely, then they will come to a provisional conclusion as to an appropriate sanction and go to Step 3.

c. Step 3 – Referral to a Professional Conduct Committee - The Public Interest Test.

Case Examiners will now consider whether it is in the public interest for the case to be referred to a Professional Conduct Committee to be decided.

- i. The factors that will be taken into account are:
  - a) The complexity of the case;
  - b) The seriousness of the breach or breaches;
  - c) The likelihood of the appropriate sanction being one that only a Professional Conduct Committee can award;
  - d) Health or disability of the Registrant/trainee as a potential significant factor in either the alleged misconduct or in their ability to engage with the fitness to practice process.
- ii. If the Case Examiners consider that one or more of these factors is present to a significant degree then it is in the public interest for the case to be referred to the Professional Conduct Committee and they must make that recommendation to NRCPD. The Professional Conduct Committee will have the necessary procedures and legal advice to fairly consider the case in these circumstances.
- iii. If Case Examiners consider that none of these factors are present to a significant degree then they must recommend to NRCPD one or more of the following as the appropriate sanction for the Registrant/Trainee:
  - a) written warning;
  - b) undertaking a program of training and/or supervision;
  - c) practice restriction for a Regulated Trainee of up to 6 months duration;

Case Examiners may also offer relevant advice but only in combination with any of these.

42. Evidence in Mitigation. Evidence as to mitigation and character is not relevant to Step 1 deliberations. The Case Officer will provide any available statements of mitigation and character to the Case Examiners for their Step 2 considerations. Evidence on mitigation and character that is inseparable from evidence of fact in statements provided shall be disregarded by Case Examiners at Step 1.

43. Previous Sanctions for Misconduct. The record of any previous in-date sanctions for Misconduct against the Registrant/Trainee will be provided for consideration by Case Examiners for Step 2. Previous findings of Misconduct are in-date for consideration if at the time of the newly alleged misconduct they were:

- a. In the case of written warnings, issued to the registrant less than 2 years prior.
- b. In the case of all other sanctions, the term concluded less than 2 years prior.

When taking previous misconduct into account, Case Examiners will consider to what extent the previous misconduct is relevant to the case before them. Where previous sanctions are for relevant misconduct Case Examiners may consider this a reason to recommend a more substantial sanction or elevate the sanction to one only a Committee can award.

44. Impact Statements. During the investigation NRCPD will invite people most personally affected by the alleged misconduct to provide statements on the impact they believe the misconduct had on them. Such statements will be provided to Case Examiners for Step 2.

45. Guidance for Case Examiners on Considering Evidence. All evidence that is relevant and from a verifiable source is provided to Case Examiners by the Case Officer. Case Examiners must then determine how the evidence supports the allegations or not. Relevance, corroboration, consistency, credibility and the weight of it in relation to the allegations should be considered.

- a. Relevance – does the evidence relate to the alleged breach;
- b. Corroboration – is the evidence matched by another piece of evidence;
- c. Consistency - is the evidence consistent with other things stated or recorded elsewhere by the same witness.
- d. Credibility – is it reasonable to believe that the evidence is of plausible events, actions or omissions given the nature of the case and other evidence.

- e. Weight – to what extent does the evidence reliably support the allegation of the specific breach alleged. For example, a signed witness statement by a person present at the time will hold more weight than a reported conversation about the incident

Case examiners come to their conclusion on the balance of probabilities so evidence need not fully meet all the above factors. It is for case examiners to use their judgement with this guidance in mind as to the weight of the evidence.

46. Sanctions Guidance for Case Examiners. Sanctions should be proportionate and the least restrictive on the Registrant/Trainee that in the view of Case Examiners will likely minimise the risk to the public. General guidance on sanctions is:

- a. Case Examiners will always take the most serious breach as the start point for what to recommend as a sanction.
- b. Case Examiners may consider that several breaches taken together may justify a more severe sanction than just for one similar breach.
- c. In all cases where misconduct is found and fitness to practice is still affected, Case Examiners will recommend a written warning as a minimum.
- d. In cases of fundamental ethical breaches, Case Examiners will set a high standard for the scale and quality of evidence required to decide that practice is not still affected, especially if in the assessment of the Case Examiners the Registrant/Trainee should have reasonably been aware of that misconduct. Examples of this type of misconduct are: being under the influence of non-prescription drugs or alcohol, abandoning assignments without good reason, exploitation of a client, lewd behaviour, reckless or deliberate professional conduct leading to significant harm or serious offense, bullying, discrimination or harassment (including sexual harassment), or conduct that risks seriously undermining the professions.
- e. Where a breach, or collection of breaches, warrants a more severe sanction than is available to Case Examiners then it is in the public interest to refer the case to a Professional Conduct Committee.
- f. Advice, training requirements, supervision requirements and practice restrictions recommended by Case Examiners will always be proportionate and relevant to the misconduct found and must be implementable. Cost to the

Registrant/Trainee is not a factor in determining the sanction.

And with regard to the specific sanctions available to Case Examiners:

- g. Advice. Advice to the Registrant/Trainee must be constructive and relevant to the misconduct. There is no follow up monitoring of this sanction by NRCPD.
- h. Written Warning. A warning is given when it is the intention that:
  - i. the Registrant/Trainee stays alert to and takes active measures to prevent similar misconduct in future, and
  - ii. this misconduct is drawn to the attention of Case Examiners and/or Professional Conduct Committees in future if the Registrant/Trainee is again found in breach of the Code of Conduct.A warning stays active for two years from when it is given.
- i. Program of training and/or supervision. This sanction is given when there are clear learning and reflection points to be tackled by the Registrant/Trainee in order to improve their practice and that 'giving advice' is not regarded as sufficient to ensure the Registrant/Trainee makes the necessary practice improvements. Such a program may be up to twelve months duration. NRCPD monitors compliance through periodic reports from the Registrant/Trainee. Non-compliance with the required program is a breach of the Code of Conduct and is treated as a new Misconduct Report.
- j. Practice Restriction. A practice restriction is applied where the Regulated Trainee must not practice in a particular field or specialism while they improve their practice in that field. It may include a stipulation for practice in a given setting without restricting it completely – for example, to 'always co-work with an RSLI' in that field. It should always be accompanied by relevant advice or a targeted program of learning and/or supervision over the restriction period. Case Examiners may only recommend a practice restriction for a Regulated Trainee and for up to six months duration. Non-compliance with a practice restriction is a breach of the Code of Conduct and is treated as a new Misconduct Report.

47. Case Examiners Report to NRCPD. On completion of their deliberations, Case Examiners will make their recommendations to the NRCPD as to the conclusion of the case. Their report will follow the three-step process at s.41. above and will include their reasons for each recommendation, including any advice, training or supervision requirement. The Registrar will decide whether to:

- a. accept the Case Examiners recommendations; or
- b. refer the report back to Case Examiners for clarification; or
- c. issue the case back to Case Examiners for review:
  - i. in light of new evidence not originally available,
  - ii. or with revised Registrar's guidance,
  - iii. or if there is a risk that procedural guidance has not been followed.

Such a review may, if the Registrar decides, be referred once to a new Case Examiner team.

48. Communication of the Case Examiners Outcome. Once the Case Examiner's report is final and accepted by the NRCPD, the Professional Conduct Manager will communicate the outcome to the Registrant/Trainee and to the Reporting Witness within 10 days or will give reasons if there is delay.

49. Acceptance of Sanction by Registrant/Trainee. If the outcome is a recommendation of one or more sanctions available to Case Examiners, these will be put to the Registrant/Trainee to accept. If the Registrant/Trainee does not accept the sanctions in full within 20 working days, the case is automatically referred to the Professional Conduct Committee. If a case is referred to the Professional Conduct Committee in these circumstances, and the Registrant/Trainee changes their mind at any time before the Committee is convened and fully accepts the Case Examiners recommended sanctions, then the proceedings for the Committee will be discontinued and the sanctions applied.

50. Implementation of Sanctions. On acceptance of the sanctions by the Registrant/Trainee, NRCPD will take the necessary steps for implementation and notify the registrant/Trainee of actions required of them within 10 working days. Where a program of training or supervision is required NRCPD will require periodic reports as evidence of compliance. If NRCPD obtains evidence of non-compliance a new misconduct case will be opened, investigated, and referred to Case Examiners.

51. Publication of Outcome. If the Registrant/Trainee does not accept the sanction recommendations then the case has not concluded, there is no outcome publication at this stage and the case goes to a Professional Conduct Committee. If the Registrant/Trainee accepts the sanctions, the case outcome is published by NRCPD as follows:

- a. Any outcome that includes a practice restriction will be published as a case summary with the Regulated Trainee named. (Registrants may not be given this sanction at Case Examiner stage). No other party to the case will be named.
- b. Any other outcome will be published as an anonymised case summary.

## Stage 4 | Professional Conduct Committee

### *Convening The Professional Conduct Committee*

52. Once a case is referred by Case Examiners to Committee or if the Registrant/Trainee has not fully accepted the Case Examiners' recommendations on sanction within 20 days, NRCPD will take the necessary steps to convene a Professional Conduct Committee on a suitable date and for the number of days required, typically three to five days. To ensure availability of all involved, it may not be possible for the hearing to be on consecutive days but to be arranged over a period, that period being as short as possible.
53. Registrant/Trainees are expected to prioritise attendance at a hearing above all other professional commitments in view of the challenge to their professional conduct that charges before a Professional Conduct Committee represent.
54. The case will be brought by the NRCPD as complainant and will be contested by the Registrant/Trainee as the respondent. The NRCPD and the Registrant/Trainee are the parties to the case.

### *Make-Up of the Professional Conduct Committee*

55. The Professional Conduct Committee will consist of three members:
  - a. two retained professional standards advisers with experience and status in the professional fields covered by the NRCPD, or in the training, assessment, use and employment of Registered professionals in the deaf and deafblind field; and
  - b. one retained legal professional, someone who is neither a Registrant nor a Trainee, with either a legal or professional regulation background and with experience in relevant tribunals, disciplinary committees or professional conduct hearings.

The retained legal professional will chair the Professional Conduct Committee.

56. No person shall be appointed to the Professional Conduct Committee:

- a. who has previously been involved in the case or the investigation;
- b. who has significant prior knowledge of the reported misconduct; or
- c. who has significant prior knowledge of the Registrant/Trainee or the witnesses involved in the case,

to the extent that that this would bring into question the fairness of any hearing.

57. NRCPD will appoint an independent legal adviser (normally a barrister) to support the Professional Conduct Committee to advise on relevant law and on process or procedure. All legal advice provided to the Committee will be shared with the parties who will be able to challenge such advice if they so choose. The legal adviser to the Committee is wholly independent and plays no role on behalf of either of the parties to the case.
58. In addition to any expert witness statements obtained by the parties to the case, the Professional Conduct Committee may instruct further professional expert opinion to support their consideration of the case. The parties will be informed of any such expertise received by the Professional Conduct Committee and will be able to challenge this expertise if they so choose.

### *Notice and Arrangements for the Hearing*

59. Responsibility for Setting up the Hearing. The Professional Conduct Manager, or someone in the Professional Conduct Team on their behalf, will make all the administrative arrangements for the hearing and facilitate any requests from the Committee.
60. Communication about the Hearing. All correspondence relating to the hearing will be sent to all parties by email and require acknowledgement. Additionally, paper copies of the notice of the hearing, charges and the evidence bundle for the hearing will be sent by registered, recorded or special delivery mail to the Registrant/Trainee; and also to the Committee if required. Other documents may be sent by registered, recorded or special delivery mail as required for the efficient management of the case. The Registrant/Trainee will be written to at the address and email address which the Registrant/Trainee last provided to the NRCPD.

61. Giving Notice of the Hearing. The Professional Conduct Manager will give notice of the hearing to the Registrant/Trainee at least 40 working days' in advance, and provide them with information on Committee procedure and on preparing for the hearing. The notice to the Registrant/Trainee will include dates, timings, location, the identity of the committee and other administrative detail. Hearings will normally take place remotely via video conference but application can be made by either party for the hearing to be conducted in person.
62. Reasonable Adjustments. The Registrant/Trainee will be invited to notify The Professional Conduct Manager as soon as possible of any reasonable adjustment requests to enable a fair access to the hearing process.
63. Service of the NRCPD Case and Evidence. Also provided with the notice of the hearing, or as soon as possible afterwards, is a full list of all the charges or allegations to be presented at the hearing and all the evidence to be relied on by the NRCPD, along with information on any witnesses NRCPD intend to call. All subsequent evidence or information which arises in the NRCPD case shall be sent to the Registrant/Trainee immediately.
64. Service of the Registrant/Trainee's Evidence. The Registrant/Trainee will provide the Professional Conduct Manager with details of witnesses the Registrant/Trainee intends to call and all evidence, statements or documents they intend to rely on in their case, within 20 working days after receipt of the notice of a hearing. Significant importance should be placed on this point by any Registrant/Trainee subject to a Professional Conduct Committee hearing: it is not the responsibility of the Professional Conduct Manager to decide on and collate the evidence upon which any Registrant/Trainee intends to rely on at the hearing, even if submitted to NRCPD by the Registrant/Trainee as part of the initial investigation process. The Professional Conduct Manager can provide to the Registrant/Trainee copies of any evidence previously submitted if requested.
65. Service of the Full Hearing Bundle. Once the Registrant/Trainees evidence pack is received it will be added to the NRCPD's evidence and other materials for the hearing and finalised as the hearing bundle. It will be sent to all parties, committee members, and the legal adviser 10 working days before the hearing, or as soon after that as possible.

66. Registrant/Trainee Attendance and Representation. The Registrant/Trainee will be asked to confirm their attendance, whether they will be represented (and if so by whom, see sections 78 and 79 below) and if not attending or represented whether they wish to submit a written defence of their case. Such written submission should be received by NRCPD 5 working days before the hearing convenes.

### *Preliminary Steps at the Hearing*

67. At the hearing, the Professional Conduct Committee will hear the misconduct allegations and consider all the available evidence. The Professional Conduct Committee considers the case afresh, and without any knowledge or awareness of any considerations or reasoning by Case Examiners. Where there are procedural matters to decide before the hearing of charges and evidence begins, the Professional Conduct Committee may decide to issue case management directions. Examples include, but are not limited to: requiring the hearing in private, changing from a remote to an in-person hearing or delay for health reports.

68. Consideration of Health and Disability Matters. On completion of preliminary matters the Professional Conduct Committee may invite arguments from all parties on matters of the Registrant's health and disability in relation to the events giving rise to the allegations of misconduct; or in relation to reasonable adjustments that may be requested to enable the registrant to fairly participate in proceedings. Such matters will be dealt with in private session. The Committee may then make any necessary directions for progressing the case fairly as it deems necessary and/or practical. This may include adjournment, requests for additional medical reports or evidence, or for additional practical measures to be put in place for the hearing.

69. Evidence available to the Committee. The Professional Conduct Committee may hear any evidence that would be admissible in civil proceedings in the appropriate part of the United Kingdom, and may decide to admit further evidence during the hearing if it would be helpful to the Professional Conduct Committee and in the interests of a fair hearing to do so. The purpose of submitting all the evidence in advance of the hearing is so all parties may prepare properly.

- a. The Committee may admit evidence served outside the timetable for service of evidence if it assists the Committee in making their decision and it is in the

interests of justice and the public interest; and may allow itself and the parties additional time to consider new evidence.

- b. Other factors the Committee will consider in its decision to admit late evidence include whether the evidence is relevant and substantial, and the impact on delay and the availability of witnesses attending in-person.

### *Hearing the Evidence and Deciding on Charges and Sanction – Overview*

70. Hearing the Evidence. The Professional Conduct Committee considers the case afresh, and without any knowledge or awareness of any considerations or reasoning by Case Examiners. The Committee will hear the misconduct allegations and consider all the available evidence. All parties and the Committee will have the chance to ask questions regarding the evidence and both parties will be able to state their arguments for or against the charges.
71. Deciding on the Charges. The Professional Conduct Committee will then consider and decide on the facts in regard to each of the charges, that is to say on the balance of probabilities, whether there was a breach of the Code of Conduct. The Committee will decide on each charge individually whether it is upheld or not.
72. Deciding on Misconduct and whether Practice is Affected. If the Committee decides there is at least one breach of the Code they will then go on to decide whether on the evidence, the Registrant/Trainee's practice is still affected and what the appropriate sanction should be. Whether practice is still affected will be a factor in the Committee's choice of sanction. The Committee will hear further evidence from both parties on mitigation, character, impact statements and other relevant material to assist in their decision.
73. Deciding on the Sanction. Finally, if there is at least one breach of the Code, the Committee will decide what sanction or sanctions to award and may decide on one or more of the following:
  - a. any sanction that may be recommended by Case Examiners;
  - b. a restriction order limiting practice in certain settings or specialisms for up to 12 months
  - c. suspension from the registers for a period to be determined by the Committee,

of up to twelve months; and/or

d. permanent removal from the registers.

74. Previous NRCPD Misconduct Findings. Where a Registrant/Trainee has in-date findings against them following previous breaches of the code, the Professional Conduct Committee will be informed of this after they have upheld one or more of the charges but before they consider which sanction to apply. It is for the Committee's discretion how this will be taken into consideration.
75. Variation in Hearing Procedure. The Professional Conduct Committee may vary the exact procedure for the hearing with advice from the appointed legal adviser if it is in the interests of justice and/or for the efficient conduct of proceedings to do so.
76. Right of Appeal. If the Registrant/Trainee is awarded any sanction by the Professional Conduct Committee they may lodge an appeal against the outcome within 20 days.
77. Publication of Outcome. Unless under appeal, sanctions given to the Registrant/Trainee by the Professional Conduct Committee will be published on the NRCPD website and the electronic record and case materials will be retained. Summary details of the findings will be published, and the Registrant will be named if the sanction is a restriction, suspension or removal.

### *Committee Proceedings in Detail*

#### **Representation**

78. The Registrant/Trainee may appear in person or be represented at the hearing by a solicitor, barrister, Trade Union Representative, or by a 'McKenzie friend' or other appropriate person. If they wish to be represented, it is the Registrant/Trainee's responsibility to make the arrangements and to notify the Committee and the NRCPD as soon as possible. A person who is represented at the hearing shall be treated for the purposes of these procedures as having attended the hearing even if they are not present themselves in person.
79. If unrepresented, the Registrant/Trainee may also submit their defence and mitigation in

writing, without attending in person. The Professional Conduct Committee shall consider a written defence as part of the hearing and determine the weight to attach to it, taking into account that the Registrant/Trainee has not made themselves available to answer questions about their case and evidence.

80. NRCPS may appoint a member of staff, solicitor, barrister or another suitable person to present its case to the Professional Conduct Committee.

### **The start of the hearing**

81. At the start of each hearing:

- a. The identity of the Registrant/Trainee and all parties present shall be confirmed;
- b. the procedure for the hearing shall be explained;
- c. the charge or charges shall be read out;
- d. and for each charge as read out, the Registrant/Trainee, or their legal representative, shall be asked whether the facts alleged are admitted.

82. The Chair of the Professional Conduct Committee may at any stage of the hearing, on behalf of the Committee, or if applied for by either party, decide to pause the hearing and postpone it (adjourn) to a later date. It must be in the interests of justice and a fair hearing to do so and applications for adjournment by parties must set out the specific reasons.

83. If, upon application or upon legal advice, it appears to the Chair that a charge should be amended, the Chair shall give such directions for the amendment of the charge as they may think necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without unduly prejudicing the Registrant/Trainee's case.

### **Uncontested charges**

84. Where the Registrant/Trainee admits, either in writing or present at a hearing, alleged facts and one or more charge of misconduct, or that their practice is still affected in relation to any charge or charges against them, the Professional Conduct Committee shall consider that all such admitted facts, charges and affected practice have been

proven. The Committee will then go on to hear the evidence of the charges still contested.

85. Where the Registrant/Trainee admits, either in writing or present at a hearing, all charges, the Committee shall declare all charges as proven and then move to determine misconduct, whether practice is affected and the appropriate sanction. The Committee will invite further evidence from both parties to inform the Committee's decision on sanction:

- a. The NRCPD shall then provide evidence of the circumstances leading to the charges, any aggravating factors, and on the character of the Registrant/Trainee, and any relevant previous history of the Registrant/Trainee, or other evidence relevant to the decision on sanction.
- b. The Registrant/Trainee or their legal representative shall then be invited to address the Professional Conduct Committee on any mitigation and may present evidence as to the circumstances leading up to the relevant facts, the extent to which such facts relate to the matters set out in the charges, and their character and previous history.

86. Where all charges are admitted, and having received relevant additional evidence from either or both parties on sanction and mitigation, the Committee will retire to deliberate the appropriate sanction. Where some, but not all, of the charges are admitted, the Committee will not decide on sanction for the admitted charges but will proceed to hear the evidence on the remaining contested charges as below.

### **Contested charges with the Registrant/Trainee present**

87. In a case where a Registrant or Trainee does not admit all the charges, the following order of proceedings will be followed as far as reasonably possible. The Committee may vary the exact procedure with advice from the appointed legal adviser if it is in the interests of justice and/or the efficient conduct of proceedings to do so.

88. Hearing the NRCPD's Case and Evidence. The NRCPD will outline the case against the Registrant/Trainee, present the facts and present evidence on which the allegations of misconduct are based. Witnesses may be called to provide evidence (all Witnesses will be expected to give an affirmation unless they have indicated a preference for another religious oath). The Registrant/Trainee will have the opportunity to cross examine any

witnesses. The NRCPD will then have the opportunity to re-examine any witnesses on issues raised in cross examination.

89. No Evidence Offered. If in respect of any charge, no evidence is offered by NRCPD, the Professional Conduct Committee will announce a finding that the charge shall be dismissed.
90. Application to Dismiss Charges for Error or Lack of Evidence. After the NRCPD has presented its case on all the charges, the Registrant/Trainee or their legal representative may make the following submission relating to any charge: -
- a. that insufficient evidence has been presented upon which the Professional Conduct Committee could find the charge proved;
  - b. that a procedural flaw or error has been committed which should result in a charge being dismissed; or
  - c. that relevant law, including case law or other legal guidance, suggests that the charge should be dismissed.
91. If such a submission is made, the Professional Conduct Committee will invite the NRCPD to respond to the submission, seek any relevant legal advice, consider and determine whether the submission should be upheld and, if the Committee agrees, they shall record a finding that the relevant charge shall be dismissed.
92. Hearing the Registrant/Trainee's Case and Evidence. The Registrant/Trainee or their representative may then open their case to contest any charge which remains outstanding. The Registrant/Trainee may present the evidence they have admitted to the hearing bundle in answer to any such charge. Witnesses (whom the Registrant/Trainee has indicated they intend to call in accordance with timescales set out at section 60 above) may be called by the Registrant/Trainee to provide evidence. The NRCPD shall have the opportunity to cross examine any witnesses. The Registrant/Trainee will then have the opportunity to re-examine any witnesses on issues raised in cross examination.
93. Questions from the Professional Conduct Committee. The Professional Conduct Committee has the right to ask questions of witnesses giving evidence before them at any stage. Usually, the Committee will ask questions after the witness has been cross examined. The Committee may rely on the independent legal adviser at any stage in

proceedings for advice on matters of law and procedure, and may adjourn to do so.

94. Summary of the NRCPD Case. The NRCPD may then address the Professional Conduct Committee to summarise the facts of the case as presented by the NRCPD.
95. Summary of the Registrant/Trainee's Case. The Registrant/Trainee or their representative may then address the Professional Conduct Committee to summarise the facts of the case as presented by or on the Registrant/Trainee's behalf.

### **Contested and uncontested charges without the Registrant or Trainee present**

96. Confirming Service of Notice to the Registrant/Trainee. Where the Registrant/Trainee does not appear and is not represented and has not presented their case in writing, the Chair of the Professional Conduct Committee will ask the NRCPD to satisfy the Committee that notice for the hearing has been sent to the Registrant/Trainee as required, informing them of the hearing, the date upon which the hearing was to take place and where it was to take place (including whether remotely by video conference). If it appears to have been properly sent then the Committee shall consider the Registrant/Trainee to be voluntarily absent from the hearing and go on to consider whether or not to proceed in the absence of the Registrant/Trainee. If it does not appear to have been properly sent, the Committee may adjourn the hearing to another date.
97. Proceeding in Absence. The Professional Conduct Committee will decide whether to proceed with the hearing in the absence of the Registrant/Trainee if notice of the hearing was properly given.
  - a. Factors. Factors the Committee will consider when deciding whether to proceed in the absence of the Registrant/Trainee or not, include whether or not the absence is deliberate, (e.g. they have made their case in writing because they would not attend), whether an adjournment might result in the Registrant/Trainee's attendance, whether further delay to the proceedings is in the interest of justice, and the extent to which adjournment affects the availability of witnesses.
  - b. Procedure. Where the Registrant/Trainee does not appear and is not represented, and the Professional Conduct Committee has decided to proceed with the hearing, it shall hear evidence of the case presented by the NRCPD (as in sections 88-89) and any written submissions or evidence submitted by the Registrant/Trainee

(instead of the procedure at sections 90 to 92). The Committee will decide whether the evidence supports the charges.

If the Committee decides not to proceed in the absence of the Registrant/Trainee the hearing will be adjourned and arranged to reconvene at a later date.

### **Deciding on the Charges and Sanction**

98. Deciding on the Charges. On the conclusion of the proceedings above, the hearing will adjourn and the Professional Conduct Committee will consider in private session what they have heard and seen as evidence and come to an agreement on each outstanding charge. The Committee must consider whether each of the charges are supported by the evidence and dismiss those charges which are not.
99. The Burden and Standard of Proof. The Burden of Proof lies with the NRCPD, that is it is for the NRCPD to prove the charges. The Standard of Proof to be used by the Professional Conduct Committee when weighing the evidence is the civil law standard, 'on the balance of probabilities', that it is more likely than not that there was a breach of the Code of Conduct in relation to the particular charge.
100. Notifying the Decisions on Charges. The Committee will make their findings known to the NRCPD and the Registrant/Trainee on each of the charges once decided. The decision on each charge may be given orally when the hearing reconvenes that day or the following day. Alternatively, if the hearing has adjourned to reconvene much later the Committee may provide its finding on each of the charges in writing.
101. Deciding on Misconduct, Affected Practice and Sanction. It is then for the Professional Conduct Committee to decide whether in relation to each proven charge there was professional misconduct, gross professional misconduct, and whether practice of the Registrant/Trainee is still affected.
- a. The Committee will invite submissions from both parties on these points.

- b. The NRCPD shall in its submissions on these points inform the Professional Conduct Committee of any previous adverse misconduct findings in relation to the Registrant/Trainee. NRCPD may also include other matters which should be drawn to the Committee's attention that are relevant to the decision on sanction, for example aggravating factors in the misconduct, the Registrant/Trainee's insight, the nature of any program of training or supervision or the term of any sanction. The NRCPD may also include impact statements from those most affected by the misconduct and arguments about public protection.
- c. The Registrant/Trainee may consider including in their submission evidence on character, mitigation, subsequent training and other points relevant to the decision on sanction as they see fit.
- d. If the Professional Conduct Committee considers that one or more proven charges do not amount to professional misconduct or gross professional misconduct, it shall dismiss such charges.
- e. Where the Professional Conduct Committee finds that, for one or more proven charge, the conduct of the registrant/Trainee amounts to professional misconduct or gross professional misconduct, it shall go on to consider whether the Registrant/Trainee's practice is still affected.
- f. Finally, the Committee will decide on the appropriate sanction or combination of sanctions. The Committee does not have the power to award sanctions other than those set out in section 73. but may specify additional lawful and reasonable terms or conditions for the implementation of and compliance with any such sanction. In the case of a sanction of removal from the registers, the only term or condition the Committee may set is to allow the Registrant/Trainee to apply to rejoin the registers at some future time not less than six years from the date of the sanction being awarded.

102. If the Professional Conduct Committee is considering imposing requirements to undertake remedial action or training, it shall inform the Registrant/Trainee and consider any representations the NRCPD or the Registrant/Trainee may make as to such requirements before making such a decision.

103. Notifying the Committee's Full and Final Decisions. The Professional Conduct Committee will deliberate all matters in private. Once the Committee has made all decisions and directions it is required to, it shall communicate these orally to the hearing if it is reasonable and practical to reconvene. Whether decisions are communicated orally or not, the Committee will communicate its full set of decisions in writing within 10 days setting out the reasons for each decision. The parties will be informed of the Committee's decisions and sent the full written decisions as quickly as possible by email and also by recorded, registered or special delivery mail.

*Follow up actions to the Committee's Final Decision*

104. Right to Appeal. The Registrant/Trainee has 20 working days from being sent the written Committee decision to request an appeal of all or any part of that decision. The appeal request must comply with the rules for appeal set out from section 108 below if it is to be accepted.

105. Implementation and Publication of Outcome. Any sanction handed down will not be implemented or published until after the appeal window closes:

- a. If within 20 working days no appeal has been accepted, the sanction is implemented immediately and any Interim Suspension or Interim Restriction that is still in place is immediately discontinued. The case outcome is published as set out in section 77 above.
- b. If an appeal is accepted within 20 working days, implementation and publication of the sanctions and case outcome is paused until the appeal has been heard (or is discontinued). Any Interim Suspension or Interim Restriction remains in place in line with the procedures for Interim Suspensions and Restrictions, and until the Registrant/Trainee's appeal is heard.

106. Sanction Compliance. The Registrant/Trainee's compliance with any sanction will be monitored. NRCPD will issue confirmation of the terms, conditions and time period of the sanction, and in the case of a program of training and/or supervision, will issue the Registrant/Trainee with instructions for periodic reporting of attainment and attendance

in line with the Committee's decision.

107. Sanction Non-Compliance. If there is evidence of a lack of compliance with any Committee sanction the Professional Conduct Manager will refer the matter to a retained legal professional. The Registrant/Trainee will have the opportunity to provide written reasons why they have not complied with the Committee's sanctions. The retained legal professional will decide if the matter shall be referred to another Professional Conduct Committee as a breach of the original Committee's directions and therefore a further breach of the Code of Conduct. If proven, failure to comply with sanctions issued by a Professional Conduct Committee may be considered as gross professional misconduct.

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## Stage 5 | Appeals

### Making an Appeal

108. Right of Appeal under this Procedure. Registrants/trainees may appeal any finding or sanction made against them by the Professional Conduct Committee and they have 20 working days from the Committee's full written decision being communicated to them to request an appeal and for it to be accepted. Registrants/Trainees considering an appeal are advised to contact the Professional Conduct team as soon as possible after the Committee decision is received to discuss the procedure and clarify any aspects of it. The general points on delay and time extensions set out in section 39 above also apply to the procedures for appeals.
109. Requesting an Appeal. To request an appeal, the Registrant/Trainee must write to the Professional Conduct Manager stating in outline what part of the Professional Conduct Committee's decision is being appealed, the grounds to be relied on (s 110) and the evidence that will be provided to support the appeal. If the request does not contain this information, it is not valid and will not be accepted. Appeals must be made by letter, email, or BSL video letter. Telephone, fax or text message communication will not be accepted. The request should be made in time for the Professional Conduct Manager to make the decision whether to accept it within the 20 working days window. The 20 working day period includes the time required to consider the request, refer it back to the Registrant/Trainee for clarification if necessary and then decide to accept it or not.
110. Grounds of Appeal. The allowable grounds for appeal are:
- a. errors in the procedure or conduct of the Professional Conduct Committee hearing; and/or
  - b. availability of substantial and relevant new evidence, which was not available at the Professional Conduct Committee hearing.
111. Decision to Accept an Appeal Request. The Professional Conduct Manager will confirm receipt of the appeal request and notify the Registrant/Trainee whether the request has been accepted within 2 working days. The decision to accept an appeal request is not

based on an assessment of the merits of the appeal only that it contains the relevant information to be considered an appeal. If the request is not accepted the reasons for this will be given and the Registrant/Trainee may resubmit the request after amendments. The appeal window will not be extended beyond 20 working days to allow resubmissions (unless in exceptional circumstances - see section 39).

112. Convening the Appeals Committee. If the Appeal request is accepted, the Professional Conduct Manager will convene an Appeals Committee. It will be formed in the same way as a Professional Conduct Committee (ss 55-58 above) and, in addition, no member of the Committee whose decision is being appealed shall be appointed to the Appeals Committee.
113. Notice and Arrangements for the Appeal Hearing. Sections 59 to 62 apply to the giving of notice and making arrangements for the Appeals committee.

### **The Registrant/Trainee's Appeal Case**

114. Service of Appeal Case and Evidence. The Registrant/Trainee must submit their full written appeal including all the evidence they intend to rely on within 20 working days of the Appeal being accepted by the Professional Conduct Manager. Registrants/Trainees are advised to contact the Professional Conduct team who can provide neutral advice on the practical aspects of organising the appeal document and the evidence. If the full written appeal submission is not received from the Registrant/Trainee within the timeframe the Appeal proceedings will be discontinued.
115. Service of Full Appeal Hearing Bundle. The Registrant/Trainee's appeal and evidence will be combined with the other relevant material from the original Professional Conduct Committee (such as a transcript if available) and provided to the Appeals Committee and the Registrant/Trainee 10 working days prior to the Appeal hearing or as soon after that as possible (as s.65 above).
116. The Burden and Standard of Proof. In an appeal the burden of proof lies with the Registrant/Trainee, that is to say that it is entirely for the Registrant/Trainee to prove their appeal case to the Appeals Committee and provide the supporting evidence. The standard of proof is 'on the balance of probabilities' so the Registrant/Trainee must

prove their case to the Appeals Committee to this standard.

117. Registrant/Trainee Attendance and Representation. The Registrant/Trainee will be asked to confirm their attendance at the appeal and whether they will be represented (and if so by whom). Registrants/Trainees have the same rights to be represented or accompanied as for a Professional Conduct Committee as set out in sections 78 and 79 above.

## The Appeal Hearing

118. Preliminary Steps at the Appeal Hearing. At the appeal hearing, the Appeals Committee will hear the appeal arguments and consider all the available evidence and the NRCPD arguments against the appeal. The Committee has full details of the original proceedings, evidence and reasoned decision of the Professional Conduct Committee. Where there are procedural matters to decide before the Registrant/Trainee presents their appeal, the Appeal Committee may decide to issue case management directions. Examples include but are not limited to: requiring the hearing in private, changing from a remote to an in-person hearing or delay for health reports. Section 82 above regarding adjournments also applies to the Appeals Committee.

119. If the Registrant/Trainee or their Representative does not Attend the Hearing. If the appeal hearing begins and the Registrant/Trainee or their representative is not present, the Appeals Committee shall decide whether to proceed in their absence and shall follow the procedure in sections 96 and 97 above. If the committee decides to proceed in the absence of the Registrant/Trainee they shall conduct proceedings on the basis of the Registrant/Trainee's written appeal submission and supporting evidence within the hearing bundle.

120. Health, Disability and Access to Proceedings. On completion of preliminary matters the Appeals Committee may invite submissions on matters of the Registrant/Trainee's health and disability in relation to reasonable adjustments that may be requested to enable the registrant to fairly participate in proceedings. If not already provided, such requests must be supported by sufficient disclosure of circumstances and relevant evidence for the Committee to consider it. Such matters will be dealt with in private

session. The Committee may then make any necessary directions for progressing the Appeal fairly as it deems necessary and/or practical.

121. Granting Leave to Appeal. The Appeals Committee will then hear the Registrant/Trainee's outline Appeal application and decide whether based on the evidence provided, that there are allowable and arguable grounds for appeal (Section 110. above). NRCPD will be invited to respond. If the Committee decides there are such grounds, then it will grant leave for the Appeal to go ahead, and this will normally continue straight away. If the Committee is not satisfied that there are grounds for appeal, the Appeal will be dismissed.
122. Form of the Appeal. If leave to appeal has been granted, the Appeals Committee will carry out the appeal as a review of the original proceedings as they relate to the Registrant/Trainee's appeal arguments. The Appeals Committee does not have the power to order a re-hearing.
123. Registrant/Trainee's Full Appeal Presentation. The Appeals Committee will then hear the Appeal from the Registrant/Trainee in full and consider all the evidence presented. The Appeals Committee does not have to look at everything that was considered by the original Committee, only those elements that assist in considering the Registrant/Trainee's appeal. The Appeals Committee may ask questions and ask for witnesses to attend if applicable and if that assists the Committee. Section 69 above regarding evidence also applies to the Appeals Committee.
124. NRCPD Response to the Appeal Case. The Appeals Committee will then invite NRCPD to ask questions of the Registrant/Trainee about their Appeal and evidence, and to make their own submission in defence against the Appeal, including the introduction of evidence to support the NRCPD response.
125. Variation in Hearing Procedure. If it is in the interests of justice and/or for the fair and efficient conduct of proceedings to do so, the Appeals Committee may vary the exact procedure for the hearing with advice from the appointed legal adviser and guided by applicable procedures for the Professional Conduct Committee where appeal procedures are silent.

## After the Appeal Hearing

126. Deciding the Appeal Outcome. After both parties have presented their arguments, the Appeals Committee will retire and consider its decision. The Appeals Committee may decide: -

- a. To overturn the original Committee decisions on one or more of the charges appealed; or
- b. To substitute the sanction or sanctions imposed by the original Committee for a different sanction, including no sanction at all; or
- c. To do both a. and b.
- d. To dismiss the Appeal entirely.

In any decision to substitute the original sanction imposed with another, the Appeals Committee has the same powers as the Professional Conduct Committee set out in section 101.f above and should take the same steps as set out in section 102. above in determining the detail of the sanction.

127. Notification of the Appeal Committee's Decision. The Appeals Committee shall notify its decision to all parties as in section 103. above and the Professional Conduct Manager will ensure the Committee's full written decision is sent to the parties without undue delay, and on the day of receipt if possible.

128. Implementation and Publication of Outcome. There is no further right of appeal against an Appeal Committee decision therefore any sanction the Committee has imposed, substituted or left in place, will be implemented when the Committee's written decision is communicated to the Registrant/Trainee. Any Interim Suspension or Interim Restriction that is still in place is immediately discontinued. The case outcome is published as set out in section 77 above.

129. If the Appeal fails, the Registrant/Trainee has no further route of appeal under the NRCPD Fitness to Practice Procedure. The Registrant/Trainee may still have statutory rights, such as Judicial Review.

## Supplementary Notes and Provisions

### Publication of Case Outcomes

130. It is important for public protection and for confidence in the NRCPD Fitness to Practice Procedure that details of cases that have been dealt with are published. The following principles will be applied when publishing case outcomes:

- a. Identifying Registrants. Where a sanction of practice restriction, suspension or register removal has been applied in a case the Registrant or Regulated Trainee in question will be named in the case summary and enough detail will be published for members of the public to understand the general nature of their misconduct. The Registrant/Trainee may apply to the Committee for anonymity in exceptional cases and in deciding on this the Committee will balance the public interest in publication with the potential harm caused or other factors raised.
- b. Anonymity. For all other cases the registrant will remain unnamed, and details will be more limited in order to ensure that people unfamiliar with the case cannot indirectly identify the Registrant. Witnesses, Committee members and all other participants in the hearing will always remain unnamed.
- c. Appeals. Case summaries will not be published until any appeal window has closed or the Appeal has been heard.
- d. Duration. For practice restrictions, suspensions and register removals the case summary is taken down once the sanction has come to an end. For all other cases the case summary remains published for one year. NRCPD may at its own discretion take down case summaries to prevent harm or otherwise in the public interest.
- e. Statistics. A statistical record will be published and maintained that summarises archived outcomes of misconduct investigations.
- f. Interim Suspensions. Interim Suspensions are treated the same as suspensions for

publication purposes.

- g. The above principles apply in full whether or not a Registrant remains on the NRCPD registers.

### **Confidentiality of Proceedings and Case Information.**

131. When anybody first becomes involved in a misconduct investigation NRCPD requests that they keep information that they may learn about others safe and maintain confidentiality. We ask that people do not discuss the case with anyone else - either the facts of the case or speculation about it. NRCPD will limit the disclosure of information within the misconduct case only to those people that need to know to fairly investigate. We may disclose information more widely within the investigation than usual if it is in the interests of fairness and equity to do so or to prevent harm.

- a. Why we ask people to maintain confidentiality. Maintaining confidentiality ensures the Fitness to Practice Procedure has integrity, and that fairness is afforded to all parties. Confidentiality in this regard means that the parties to a misconduct investigation must not share any documents or information that they hold or are provided to them as part of the process with anyone, including witnesses involved in the matter and in particular must not share information or documents on social media. This includes all materials that form part of the investigation or proceedings such as witness statement prepared for them and any supporting documents or exhibits to their witness statement in whatever form and also includes records of proceedings, anything from the evidence bundle and legal advice and directions.
- b. What are the consequences of failing to maintain confidentiality? A failure to maintain confidentiality by a Registrant or Regulated Trainee may amount to a breach of the Code of Conduct (s.6.1, and/or s.7.4] and result in additional allegations or a separate misconduct investigation. A failure to maintain confidentiality by a complainant or witness may prejudice the fairness of the proceedings and could result a case being discontinued.

### **General Note on Sanctions.**

132. Sanctions must be proportionate to the misconduct found and the least restrictive necessary to minimise the risk to the public in the opinion of the Case Examiners or Committees, having due regard for the available evidence in the case. Evidence of remorse, insight, proactive remedy of skills, previous sanctions, severity of harm caused, culpability and relevant mitigation, including health, are all examples of factors to be considered in coming to a conclusion on sanctions. Case examiners and Committees may consider others.
133. Sanctions guidance is only guidance and Case Examiners and Committees will decide freely and independently on the appropriate sanction based on the facts of the specific case. Case Examiners and Committees may rebate the length of time of a sanction on the basis that there is evidence that the Registrant has already begun the relevant activities (eg an interim suspension with regard to a suspension). This does not apply to register removals.

### **Guidance on Malicious, Vexatious and Trivial Misconduct Reports**

134. The alleged misconduct should be sufficiently investigated by the Case Officer, so they can distinguish between allegations that are trivial, malicious or vexatious and genuine allegations. The Case Officer may take advice from a relevant person as appropriate. If a misconduct report is declared trivial, malicious or vexatious, the person making the misconduct report will be informed of the reasons why in writing. After a decision has been made, the NRCPD will not enter into any further correspondence on the subject.
135. A misconduct report may be regarded as trivial or vexatious where the NRCPD reasonably believe that a report is intended to harass, annoy, bully, distress, or otherwise cause trouble for the Registrant/Trainee who is the subject of the allegation. Malicious allegations are similar in nature but are made in a deliberate effort to cause professional and reputational harm on the basis of a false claim. This may include:

- a. cases which have already been investigated by the NRCPD and contain no

- new, relevant or substantial information.
- b. cases where the person making the report changes the substance of a misconduct report or raises further trivial or unrelated concerns or questions while the misconduct report is being addressed.
  - c. Misconduct reports with no clear substance or where the Complainant does not articulate the precise issues which may need to be investigated, despite reasonable efforts by the NRCPD to conduct such investigations.
  - d. Misconduct reports which focus solely on trivial matters.
  - e. Misconduct reports which are malicious, false or otherwise intended to cause harm or distress to a Registrant/trainee

### **Hearings Being Held in public.**

136. Hearings are to be held in public (in-person or online) with exceptions which may be applied in specific circumstances, allowing a hearing to take place fully or partly in private:

- a. Where the nature of the allegation is such that the registrant's fitness to practice is said to be affected due to a health concern or there is evidence that needs to be given in respect of the registrant's ill-health. Article 8 of the ECHR (right to private life) applies in respect of this exception.
- b. Where the attendance of members of the public would result in the administration of justice being rendered impracticable by their presence.
- c. Where there is one or more vulnerable witness and it is appropriate in the circumstances for the witness evidence to be heard in private.
- d. Where the particular circumstances of the case mean that the public interest in the case being heard in public is outweighed by another relevant factor, or a public hearing would otherwise cause exceptional hardship or prejudice to the registered person.