STATUTORY INSTRUMENTS

1971 No. 754

HEARING AID COUNCIL

The Hearing Aid Council Disciplinary Committee (Procedure) Rules Approval Instrument 1971

Made - - - - *3rd May* 1971

Coming into Operation *1st June* 1971

Whereas the Hearing Aid Council have, in exercise of their powers under sections 5(3), 6(2) and 10(4) of the Hearing Aid Council Act 1968(a), made rules of procedure and have submitted them to the Lord Chancellor for his approval:

Now, therefore, the Lord Chancellor, in exercise of the powers conferred on him by sections 5(3), 6(4) and 10(6) of the said Act, hereby approves the said rules as set out in the Schedule hereto.

This instrument may be cited as the Hearing Aid Council Disciplinary Committee (Procedure) Rules Approval Instrument 1971 and shall come into operation on 1st June 1971.

Dated 3rd May 1971.

Hailsham of St. Marylebone, C.

SCHEDULE

SECTION A

The Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1971

The Hearing Aid Council in exercise of their powers under sections 5(3) and 6(2) of the Hearing Aid Council Act 1968, hereby make the following Rules:—

1. These Rules may be cited as the Hearing Aid Council (Investigating and Disciplinary Committees) Rules 1971.

(a) 1968 c. 50

2.—(1) In these Rules—

"the Act" means the Hearing Aid Council Act 1968 and "the Schedule" means the Schedule to the Act;

"the Investigating Committee" means the Investigating Committee established under section 5 of the Act;

"the Disciplinary Committee" means the Disciplinary Committee established under section 6 of the Act;

"the register" means the register maintained in accordance with section 2(1)(*a*) or section 2(1)(*b*) of the Act, as the case may be.

(2) The Interpretation Act 1889(a) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Investigating Committee

3.—(1) For the purpose of undertaking the preliminary investigation of cases in which it is alleged that a person is liable to have his name erased from the register on any grounds specified in section 7 of the Act and in order to decide whether a disciplinary case ought to be referred to the Disciplinary Committee, there shall be a Committee of the Council known as "the Investigating Committee".

(2) The Investigating Committee shall consist of the person who for the time being is Chairman of the Council and three other members of the Council who shall be nominated by the Chairman for a particular case of whom at least one shall be a person qualified for appointment under paragraph 1(3)(*a*) of the Schedule to the Act.

(3) At any meeting of the Investigating Committee the Chairman of the Council, or in his absence such member of the Committee as the Committee may choose, shall be Chairman. The Chairman shall have a casting vote.

(4) The validity of any proceedings of the Investigating Committee shall not be affected by any vacancy among the members thereof or by any defect in the appointment of a member thereof.

(5) Notwithstanding anything in these Rules, a member of the Investigating Committee shall upon vacating office as a member of the Council also cease to be a member of the Investigating Committee.

(6) The quorum of the Investigating Committee shall be three.

(7) A member of the Investigating Committee may at any time by notice in writing addressed to the Chairman of the Council resign his appointment.

(8) The Investigating Committee shall meet at such interval before a meeting of the Disciplinary Committee as the Chairman of the Council may determine and at such time and place as he may determine.

Disciplinary Committee

4.—(1) For the purpose of considering and determining disciplinary cases referred to them under section 5 or any other provisions of the Act, there shall be a Committee of the Council known as "the Disciplinary Committee".

(2) The Disciplinary Committee shall consist of the person who for the time being is Chairman of the Council and eight other members of the Council who shall be nominated by the Chairman for a particular case of whom at least three shall be persons qualified for appointment under paragraph 1(3)(*a*) of the Schedule to the Act:

Provided that a person, other than the Chairman of the Council, who has acted in relation to any disciplinary case as a member of the Investigating Committee shall not be nominated to act in relation to that case as a member of the Disciplinary Committee.

(3) At any meeting of the Disciplinary Committee the Chairman, or in his absence such member of the Committee as the Committee may choose, shall be Chairman. The Chairman shall have a casting vote.

(a) 1889 c. 63.

(4) The validity of any proceedings of the Disciplinary Committee shall not be affected by any vacancy among the members thereof or, subject to the proviso to paragraph (2) of this rule, by any defect in the appointment of a member thereof.

(5) Notwithstanding anything in these Rules, a member of the Disciplinary Committee shall upon vacating office as a member of the Council also cease to be a member of the Disciplinary Committee.

(6) The quorum of the Disciplinary Committee shall be five unless the respondent agrees to a smaller number.

(7) A member of Disciplinary Committee may at any time by notice in writing addressed to the Chairman of the Council resign his appointment.

(8) The Disciplinary Committee shall meet at such intervals, times and places as the Chairman of the Council may determine.

(9) Not less than 21 days before the date fixed by the Chairman of the Council for a meeting of the Disciplinary Committee, the Registrar of the Council shall send notice of the date, time and place of the meeting to every member of the Committee and, not less than 7 days before the date of the proposed meeting, shall send to every such member an agenda for that meeting which shall include particulars of every disciplinary case due for consideration.

Made by the Council on 12th March 1971.

David Reid,
Registrar to the Council.

SECTION B

The Hearing Aid Council Disciplinary Committee (Procedure) Rules 1971

PART I

CITATION AND INTERPRETATION

1.—(1) These Rules may be cited as the Hearing Aid Council Disciplinary Committee (Procedure) Rules 1971.

(2) In these Rules, unless the context otherwise requires—

"the Act" means the Hearing Aid Council Act 1968;

"the Chairman" means the Chairman or the Acting Chairman of the Committee;

"the Committee" means the Disciplinary Committee set up by the Council in pursuance of section 6(1) of the Act;

"the complainant" means a person or body by whom a complaint has been made to the Council in a case to which these Rules apply; a complainant shall not be deemed to appear in any proceedings if he takes part therein only as a witness;

"the Council" means the Hearing Aid Council;

"disciplinary case" means a disciplinary case as defined in section 5(1) of the Act which the Investigating Committee decide ought to be referred to the Disciplinary Committee pursuant to section 5(2) of the Act;

"inquiry" means the proceedings at which the Committee consider and determine any disciplinary case or other case to which these Rules apply;

"the Investigating Committee" means the Committee set up by the Council in pursuance of section 5(1) of the Act for the preliminary consideration of disciplinary cases;

"the Legal Assessor" means an assessor appointed by the Council or the Committee for the purposes of section 11 of the Act;

"party to the inquiry" means the complainant (if any), the Solicitor and any person on whom a notice of inquiry has been served in accordance with these Rules:

Provided that if the complainant does not appear at the inquiry he shall not thereafter be included in the said phrase;

"the register" means the register maintained in accordance with section 2(1)(*a*) of the Act, or the register maintained in accordance with section 2(1)(*b*) of the Act, as the case may be;

"the Registrar" means the Registrar of the Council;

"the respondent" means any person or body corporate whose name has been entered in a register under the provisions of the Act in respect to whom a case to which these Rules apply has been referred to the Committee for inquiry;

"the Solicitor" means a solicitor nominated by the Council to act as their solicitor for the purposes of these Rules, and in relation to any inquiry includes counsel instructed by the Solicitor to act on his behalf;

(3) The Interpretation Act 1889 shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

PART II

PRELIMINARY PROCEEDINGS

Notice of inquiry

2.—(1) The Solicitor shall, as soon as may be after a disciplinary case has been referred to the Committee, serve upon the respondent a notice of inquiry as nearly as may be in the form set out in the Appendix to these Rules stating the charge or charges and specifying the alleged facts relied on in relation to each charge and the provision of section 7 of the Act under which any charge is brought, stating also the day, time and place at which the Committee will hold an inquiry into these matters.

(2) The notice shall be served, together with a copy of these Rules and of the Act, by sending it by recorded delivery post addressed to the respondent at his address in the register or at his last known address if that address differs from his address in the register and it appears to the Registrar that service at his last known address would be more effective.

(3) Where the respondent is a body corporate, the notice of inquiry, together with a copy of these Rules and of the Act, shall be served by recorded delivery post addressed to that body at its address in the register or at the address of its registered or principal office if that address differs from its address in the register and it appears to the Registrar that service at its registered or principal office would be more effective.

(4) If there is a complainant, the Solicitor shall send him a copy of the notice of inquiry and a copy of these Rules.

(5) The Committee shall not hold an inquiry unless a notice of inquiry has been served upon the respondent in accordance with the foregoing provisions of this rule.

(6) Except with the agreement of the respondent the inquiry shall not be held within 28 days after the date of posting the notice of inquiry.

Postponement or cancellation of inquiry

3.—(1) The Chairman, of his own motion or upon the application of any party thereto, may postpone the hearing of any inquiry, or may refer the matter to the Investigating Committee for further consideration as to whether an inquiry should be held.

(2) Where before the inquiry opens it appears to the Chairman, or at any stage of the proceedings it appears to the Committee, that a notice of inquiry is defective, he or they shall cause the notice to be amended, unless it appears to him or them that the

required amendment cannot be made without injustice, or, if he or they consider that the circumstances in which an amendment is made require it, he or they may direct that the amended notice shall be served on the respondent, and that the inquiry shall be postponed.

(3) The Solicitor shall, as soon as it may be, give to all parties to whom a notice of inquiry has been sent notification of any decision to postpone or not to hold an inquiry, and inform them of any date fixed for the hearing of a postponed inquiry.

Access to documents

4. Upon application by any party to the inquiry the Solicitor shall send to that party a copy of any statutory declaration, complaint, answer, admission, explanation or other similar document received by the Council from any party to the inquiry.

PART III

DISCIPLINARY CASES

The reading of the charge or charges

5.—(1) The charge or charges shall be read in the presence of the respondent, and of the complainant if one appears:

Provided that if the respondent does not appear at the inquiry but the Committee nevertheless decide that the inquiry shall proceed the charge or charges shall be read in his absence.

(2) As soon as the charge or charges have been read the respondent may, if he so desires, object to the charge or charges, or to any part thereof, in point of law, and any other party may reply to any such objection and, if any such objection is upheld, no further proceedings shall be taken on a charge or on a part of a charge to which the objection relates.

Proof of the facts alleged

6.—(1) If the respondent has appeared at the inquiry the Chairman shall ask if all or any of the facts alleged in the charge or charges are admitted.

(2) The complainant or, if no complainant appears, the Solicitor shall then open the case and may call witnesses and adduce evidence of any such facts not admitted by the respondent and of any matter connected with the facts alleged which may be relevant.

The respondent may cross-examine any such witness and the witness may thereafter be re-examined.

(3) The respondent may then submit that the evidence called by the Solicitor does not establish the charge alleged or does not justify the erasure of his name from the register. The Committee shall consider and determine any such submission, and the Chairman shall thereupon announce their determination.

(4) If no such submission is made or if any such submission is not upheld the respondent may then call witnesses and adduce evidence; such witnesses may be cross-examined and re-examined, and the respondent may address the Committee either before or after such evidence but not more than once save with the leave of the Committee. The complainant or, if no complainant appears, the Solicitor may address the Committee on any point of law raised by the respondent.

(5) Where the respondent adduces evidence the compainant or, if no complainant appears, the Solicitor may address the Committee thereon and may, with the leave of the Committee, call witnesses and adduce evidence in rebuttal and such witnesses may be cross-examined and re-examined. The respondent shall have the right to address the Committee upon such address or evidence in rebuttal.

(6) The Committee shall then deliberate and decide in relation to each charge which remains outstanding whether the facts alleged in such charge or charges have been proved and in relation to any facts found by the Committee to have been proved whether they are such as to substantiate such charges, and the Chairman shall announce their findings:

Provided that if the Committee find that any charge under section 7 of the Act is not proved a finding to that effect shall be recorded, and a copy of the finding so recorded shall be sent, in the manner provided for the service of notices under rule 2, to the respondent and such other persons, being persons likely to be affected by the finding, as the Chairman may direct.

7.—(1) Where the Committee find that a charge is proved the Chairman shall invite the Solicitor to adduce evidence of the circumstances leading up to the facts found proved and as to the character and antecedents of the respondent.

(2) The respondent may then address the Committee in mitigation and adduce any relevant evidence.

(3) The Committee shall then deliberate and decide whether they can properly reach a decision forthwith not to erase the name of the respondent.

(4) If the Committee decide the question under the last foregoing paragraph in the negative they shall then decide whether to postpone judgment or forthwith to direct the Registrar to erase the respondent's name from the register.

(5) If the Committee decide under the last foregoing paragraph to postpone judgment, they shall specify either a period for which judgment is postponed, or a further meeting of the Committee at which they will further consider the judgment.

(6) Any decision of the Committee under this rule shall be announced by the Chairman in such terms as the Committee may approve.

(7) A copy of the decision shall be sent, in the manner provided for the service of notices under rule 2, to the respondent and such other persons, being persons likely to be affected by the finding, as the Chairman may direct.

Procedure upon postponement of judgment

8.—(1) Where under the foregoing provisions of these Rules the judgment of the Committee in any case stands postponed, the procedure shall be as follows:—

(*a*) The Solicitor shall, not less than six weeks before the day fixed for the resumption of the proceedings, send to the respondent a notice which shall—

(i) specify the day, time and place at which the proceedings are to be resumed and invite him to appear thereat;

(ii) unless the Chairman otherwise directs, invite the respondent to furnish the Registrar with the names and addresses of persons to whom reference may be made confidentially or otherwise concerning his character and conduct; and

(iii) invite the respondent to send to the Solicitor, not less than three weeks before the day fixed for the resumption of proceedings, a copy of any statement or statutory declaration, whether made by the respondent or not, relating to his conduct or setting out any material facts which have arisen since that hearing.

(*b*) A copy of the notice and of any statement or statutory declaration sent in accordance with the provisions of the last foregoing sub-paragraph shall be sent to the complainant, if any, if he is then a party to the inquiry and he may in turn, if he so desires, send to the Solicitor a statement or statutory declaration, whether made by himself or not, as to the matters mentioned in sub-paragraph (iii) of the last foregoing paragraph, or as to any other material facts which have arisen since the hearing. A copy of any such statement or statutory declaration shall thereupon be supplied to the respondent.

(*c*) At the meeting at which the proceedings are resumed the Chairman shall first invite the Solicitor to recall, for the information of the Committee, the position in which the case stands and the Committee may then receive further oral or documentary evidence as to the conduct of the respondent or any material facts which may have arisen since the hearing, and shall hear any party to the inquiry who desires to be heard.

(*d*) The Committee shall then consider their decision, and paragraphs (3) to (7) of rule 7 shall apply to their procedure.

(2) At any resumed proceedings any new charge alleged against the respondent in accordance with these Rules shall first be dealt with in accordance with such of the provisions of rules 5 to 7 as may be applicable, and the Committee may apply paragraphs (3) to (6) of rule 7 simultaneously to the new charge and to the charge in respect of which they had postponed judgment.

(3) Nothing in the last foregoing paragraph shall prevent the Committee from receiving evidence at any resumed proceedings of any conviction recorded against the respondent which has not been made the subject of a charge under these Rules.

(4) Subject to the provisions of the Act, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former meeting were not present at the resumed meeting.

(5) The Chairman, of his own motion or upon the application of any party thereto, may postpone the resumption of proceedings, and in that case the Solicitor shall, as soon as may be, inform all parties, to whom notice of the resumption of proceedings has been given, of the postponement and of any date now fixed for the resumption of proceedings

PART IV

REMOVAL OF NAME OF BODY CORPORATE FROM THE REGISTER UNDER SECTION 7(3) OF THE ACT

9.—(1) This Part of these Rules applies to proceedings brought for the purpose of removing the name of a body corporate from the register under section 7(3) of the Act.

(2) Where—

(i) a director of a body corporate registered under section 2(1)(*b*) of the Act is convicted of an offence under the Act, or

(ii) the Committee are satisfied that a person whose name has been erased from one or both of the registers (and has not yet been restored) is a director of or taking part in the management of or has a controlling interest in such a body corporate,

the provisions of rule 10 shall apply.

10.—(1) The Solicitor shall send to the respondent body corporate and to the complainant (if any) a notice in accordance with the charges and facts to be specified being the circumstances falling under rule 9 which are relevant to the case.

(2) A copy of the notice shall be sent to every director of or registered dispenser of hearing aids employed by the respondent who is named therein. The Chairman may direct that a copy of the notice shall also be sent to any other person or body.

(3) Any other person or body may with the leave of the Chairman or of the Committee appear at the inquiry as an additional respondent.

(4) Any erasure from the register shall be proved by a certificate to that effect signed by the Registrar.

(5) Subject to the provisions of this rule the provisions of Parts II (except as regards reference to the Investigating Committee) and III of these Rules shall apply to any proceedings to which this rule applies.

PART V

RESTORATION OF NAMES AFTER ERASURE

11. Where an application is made in accordance with section 8 of the Act by a person or body whose name has been erased from a register in pursuance of a direction made under section 7 of the Act or removed from one of the registers pursuant to rules made under section 4(*e*) of the Act, the following provisions shall have effect:—

(i) the Committee shall afford the applicant an opportunity of being heard by the Committee and of adducing evidence;

(ii) the Committee may require such evidence as they think necessary concerning the identity or character of the applicant, or his conduct since his name was erased or removed from the register, and for this purpose may receive written or oral evidence;

(iii) subject to the foregoing provisions of this rule, and to Part VI of these Rules, the procedure of the Committee in connection with the application shall be such as they may determine.

PART VI

GENERAL

Hearing and adjournment

12.—(1) Subject to the provisions of subsection 11(3) of the Act, and of any rules made thereunder, the Committee may deliberate in camera (with or without the Legal Assessor) at any time and for any purpose during or after the hearing of any proceedings.

(2) Save as aforesaid all proceedings before the Committee shall take place in the presence of all parties thereto who appear therein and shall be held in public except as provided by the next following paragraph of this rule.

(3) Where in the interests of justice it appears to the Committee that the public should be excluded from any proceedings or part thereof, the Committee may direct that the public shall be so excluded; but a direction under this paragraph shall not apply to the announcement in pursuance of any of these Rules of a determination of the Committee.

(4) The Committee may adjourn their proceedings from time to time as they think fit.

Evidence

13.—(1) Where a respondent, or an applicant under rule 11, has supplied to the Committee or to the Registrar on their behalf the name of any person to whom reference may be made confidentially as to his character or conduct, the Committee may consider any information received from such person in consequence of such references without disclosing the same to the respondent or applicant.

(2) The Committee may receive oral, documentary, or other evidence of any fact which appears to them relevant to the inquiry into the case before them:

Provided that, where a fact which it is sought to prove, or the form in which any evidence is tendered, is such that it would not be admissible in criminal proceedings in an English court, the Committee shall not receive evidence of the fact or in that form, unless after consultation with the Legal Assessor they are satisfied that it is desirable in the interests of justice to receive it having regard to the difficulty and expense of obtaining evidence which would be so admissible.

(3) The Committee may cause any person to be called as a witness in any proceedings before them whether or not the parties consent thereto. Questions may be put to any witness by the Committee through the Chairman or by the Legal Assessor with the leave of the Chairman.

Voting

14.—(1) Any question put to the vote shall be put in the form of a motion by the Chairman. The Chairman shall call upon members present to vote for or against the motion and shall declare that the motion appears to him to have been carried or not carried as the case may be.

(2) Where the result so declared is challenged by any member, the Chairman shall call upon the Registrar to read the roll, and as his name is read every member present including the Chairman (who shall be called last) shall say "For" or "Against" according to whether his vote is given for or against the motion. The Chairman shall thereupon declare the number of members who have voted for and the number who have voted against the motion and whether the motion has been carried or not carried.

(3) Where on any question the votes are equal, the question shall be deemed to have been resolved in favour of the respondent or of the applicant under rule 11 as the case may be.

Procedure where there is more than one respondent

15. Nothing in this part of the Rules shall prevent one inquiry being held into charges against two or more respondents, and where such an inquiry is held the foregoing rules shall apply with the necessary adaptations, and subject to any directions given by the Committee as to the order in which proceedings shall be taken under any of these Rules by or in relation to the several respondents, so however that any of the rights of a respondent under these Rules shall be exercised separately by each of the respondents who desires to invoke that right.

Supplementary

16.—(1) Any party being an individual may appear either in person or by counsel or solicitor, or if the party so elects by any officer or member of any organisation of which he is a member, or by any member of his family.

(2) Any party being a body corporate or an unincorporated body of persons may appear by their secretary or other officer duly appointed for the purpose or by counsel or solicitor.

17. A shorthand-writer shall be appointed by the Committee to take shorthand notes of proceedings before them (except that the Committee may dispense with a shorthand-writer in proceedings under Part V of these Rules) and any party to an inquiry shall, on application to the Solicitor and on payment of the proper charge on a scale fixed by the Committee be furnished by the Solicitor with a transcript of the shorthand notes on any part of the inquiry at which the party was entitled to be present.

Made by the Council on 12th March 1971.

David Reid,
Registrar to the Council.

APPENDIX

FORM OF NOTICE OF PROCEEDINGS FOR THE PURPOSE OF SECTION 10 OF THE HEARING AID COUNCIL ACT 1968

SIR/MADAM,

On behalf of the Hearing Aid Council notice is hereby given to you that in consequence of (a complaint made against you to the Council) (*or*) (information received by the Council) an inquiry is to be held into the following charges, on which evidence will be placed before the Committee at the meeting referred to below.

[*Here set out the charge or charges, numbering them consecutively where there is more than one charge. State the section, subsection and paragraph of the Act under which each charge is brought and the facts constituting the basis of such charge*].

You are hereby invited to send me an answer in writing, to the above-mentioned charge(s), stating whether you admit or deny it (them) and also specifying which, if any, of the facts set out above you admit. Any answer, admission, or other statement or communication which you may desire to make with respect to the said charge(s) should be addressed to me at the above address.

Notice is further given to you that on (day of the week), the.....day of .....19....., a meeting of the Disciplinary Committee of the Council will be held at..... (address)..... at..... (time)..... to consider the above mentioned charge(s) against you and to determine whether or not they should direct the Registrar to erase your name from the register pursuant to section 7 of the Hearing Aid Council Act 1968. You are invited to appear before the Committee at the place and time specified above for the purpose of answering the charge(s). The Committee have power if you do not appear to hear and decide upon the said charge(s) in your absence.

If you desire to make an application that the inquiry should be postponed you should send it to me at the above address as soon as may be, stating the grounds upon which you desire a postponement. Any such application will be considered by the Chairman of the Hearing Aid Council in accordance with the Hearing Aid Council Disciplinary Committee (Procedure) Rules, a copy of which is sent herewith for your information, along with a copy of the Hearing Aid Council Act 1968.

Your attention is drawn to the provisions of rule 16 of these Rules with regard to your right to be represented by counsel, solicitor or other persons.

I am, Sir/Madam,
Your obedient servant,

Solicitor to the Hearing Aid Council.

EXPLANATORY NOTE

(*This Note is not part of the Instrument.*)

This Instrument contains the rules, approved by the Lord Chancellor, which are to govern the constitution of the Investigating Committee and the constitution and procedure of the Disciplinary Committee set up by the Hearing Aid Council in accordance with the provisions of the Hearing Aid Council Act 1968. These Committees adjudicate on breaches of the requisite standard of conduct of dispensers of hearing aids and employers of such dispensers.