2001 No. 2797

LEGAL SERVICES, ENGLAND AND WALES

The Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules Approval Order 2001

Made - - - - -	*27th July 2001*
Laid before Parliament	*3rd August 2001*
Coming into force - -	*30th September 2001*

Whereas the Council for Licensed Conveyancers have, in exercise of their powers under paragraph 1 of Schedule 4 to the Administration of Justice Act 1985(**a**), made rules of procedure and submitted them to the Lord Chancellor for his approval:

Now, therefore, the Lord Chancellor, in exercise of the powers conferred on him by that paragraph, hereby approves the rules in the form set out in the Schedule to this Order.

This Order may be cited as the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules Approval Order 2001 and shall come into force on 30th September 2001.

Signed by authority of the Lord Chancellor

Patricia Scotland
Parliamentary Secretary
Lord Chancellor's Department

27th July 2001

SCHEDULE

The Council for Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001

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Citation and commencement

1.—(1) These Rules may be cited as the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001.

(2) These Rules shall come into force on 30th September 2001 on which date the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 1987 shall cease to have effect save as provided for in these Rules or otherwise where the same still subsist or are capable of subsisting.

Interpretation

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

"the Act" means the Administration of Justice Act 1985;

"the 1990 Act" means the Courts and Legal Services Act 1990(**a**);

"appellant" means a person appealing to the Committee under section 29 of the Act (appeals from decision of Council in relation to licences) or, as the case may be, paragraph 8 of Schedule 6 to the Act (appeals against decision of Council in relation to grant of recognition);

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

"the Committee" means the Discipline and Appeals Committee established under section 25(1) of the Act;

"the complainant" means the person whose complaint has been referred to the Committee by the Investigating Committee under section 24(1)(b) of or paragraph 3(1)(b) of Schedule 6 to the Act or who has made a complaint directly to the Committee under paragraph 17(1) of Schedule 8 to the 1990 Act;

"the Council" means the Council for Licensed Conveyancers;

"the Director" means the Director of the Council or any person appointed by the Council temporarily to perform the duties of that office;

"the Investigating Committee" means the committee established under section 24 of the Act;

"the Legal Assessor" means a person appointed under paragraph 3 of Schedule 4 to the Act(**b**);

"licensed conveyancer"—

(a) means a person who holds a licence in force under Part II of the Act, and

(b) in relation to a particular allegation or complaint, includes a person who held such a licence at the time when the conduct to which the allegation or complaint relates took place;

"party" has the meaning at paragraph 1(5) of Schedule 4 to the Act.

"recognised body"—

(a) means a body for the time being recognised under section 32 of the Act, and

(b) in relation to a particular allegation or complaint, includes a body corporate which was so recognised at the time when the conduct to which the allegation or complaint relates took place;

"respondent" means—

(a) in the case of an allegation or complaint referred to the Committee under section 24 of, or paragraph 3 of Schedule 6 to, the Act or a complaint made under paragraph 17 of Schedule 8 to the 1990 Act:—

(i) the licensed conveyancer or recognised body about whom the allegation is made or the complaint is made or treated as made, and

(ii) in any case where the recognition of a recognised body may be revoked under paragraph 5 of Schedule 6 to the Act and the Chairman or Committee so direct, includes the recognised body in question;

(**a**) 1990 c. 41.

(**b**) Paragraph 3 was amended by paragraph 64 of Schedule 10 to the Courts and Legal Services Act 1990.

(b) in the case of an appeal under section 29 of, or paragraph 8 of Schedule 6 to the Act, the Council;

(c) in the case of an application under section 27 or 28(2) of, or paragraph 7(2) of Schedule 6, to the Act, the Council;

(d) in the case of a reference under rule 4, the person or recognised body whose licence or recognition may be revoked;

"the Solicitor", in relation to any function under these Rules, means a solicitor authorised by the Council to act on its behalf for the purposes of that function and, in relation to a hearing, includes counsel instructed to act on the Council's behalf.

(2) The Interpretation Act 1978(**a**) applies to these Rules as it applies to an Act of Parliament.

MAKING REFERENCES, APPLICATIONS AND APPEALS TO THE COMMITTEE

References and complaints

3.—(1) A reference in the form of an allegation or complaint by the Investigating Committee to the Committee under section 24 of, or paragraph 3 of Schedule 6 to, the Act or a complaint by the Council to the Committee under paragraph 17(1) of Schedule 8 to the 1990 Act must—

(a) be made in writing,

(b) specify the statutory provision under which it is made, and

(c) set out the allegation or complaint and a summary of the facts relied on to support it.

(2) A copy of such a reference or complaint must be served on the respondent, together with a copy of these Rules, and a copy lodged with the Chairman of the Committee, within 14 days of the making of the reference or the decision to make the complaint.

(3) A complainant other than the Council wishing to refer a complaint to the Committee under paragraph 17(1) of Schedule 8 to the 1990 Act must comply with paragraph (1) above, sub-paragraphs (a), (b) and (c) above and, save as to the reference to time, paragraph (2) and in addition must at the same time serve a copy of the complaint on the Council.

Revocation of licences and recognitions obtained through fraud or error

4.—(1) Where—

(a) it is considered that a licence was issued to any person as a result of error or of fraud on his part, and

(b) the Council decide that there is any question of the Committee exercising their powers under section 28(1) of the Act,

the Council must refer the matter to the Committee.

(2) Where—

(a) it is considered that recognition was granted to any body as a result of error or of fraud on its part, and

(b) the Council decide that there is any question of the Committee exercising their powers under paragraph 7(1) of Schedule 6 to the Act,

the Council must refer the matter to the Committee.

(3) A reference under this rule must—

(a) be made in writing,

(b) state that it is made under this rule, and

(c) set out the allegation and a summary of the facts relied on to support it.

(4) A copy of such a reference must be served on the respondent, together with a copy of these Rules.

(5) On such a reference, the Committee must hold a hearing to determine the allegation.

(**a**) 1978 c. 30.

Applications after disqualification or revocation

5. An application to the Committee under section 27(1) or 28(2) of, or paragraph 7(2) of Schedule 6 to, the Act must—

(a) be made in writing and sent to the Council's principal place of business, and

(b) specify the statutory provision under which it is made, and

(c) set out any facts which support the application.

Making appeals

6. An appeal to the Committee under section 29 of, or paragraph 8 of Schedule 6 to, the Act must—

(a) be made in writing and sent to the Council's principal place of business,

(b) specify—

(i) the statutory provision under which it is made,

(ii) the refusal or decision appealed against and its date, and

(iii) the grounds of appeal.

Appeals against deemed refusal of recognition under section 32 of the Act

7.—(1) This rule applies where—

(a) an application for recognition has been made in accordance with section 32 of the Act; and

(b) the Council has neither refused nor granted the application before the expiry of the period of 42 days beginning with the date when the application was received by the Council.

(2) For the purposes of these Rules—

(a) the application is deemed to have been refused by the Council on the last day of that period, and

(b) the applicant is deemed to have been notified of the refusal on that day.

(3) The applicant may appeal to the Committee under paragraph 8 of Schedule 6 to the Act before the expiry of the period of one month beginning with that day.

(4) As soon as possible after receiving an application for recognition made under section 32 of the Act, the Council must notify the applicant in writing of the date on which it was received.

PROCEDURE BEFORE HEARINGS

Notice of hearing

8.—(1) As soon as reasonably possible after the making of—

(a) a reference or complaint within rule 3,

(b) a reference under rule 4,

(c) an application within rule 5, or

(d) an appeal within rule 6,

the Council must serve on the other parties and the Legal Assessor a notice in writing, stating the date, time and place at which the Committee will hold a hearing into the matter and which includes a statement as to the parties' rights under rule 16.

(2) In the case of a reference or complaint within rule 3 or a reference under rule 4, the notice also must contain details of the matters alleged against the respondent in the form of an allegation or complaint dealing with each matter separately and specifying the provision under which each reference or complaint is made, and setting out each allegation or complaint and a summary of the facts relied on to support it.

(3) A hearing must not be held earlier than 28 days after the notice of hearing is served under paragraph (1), unless the parties agree or these Rules provide otherwise.

(4) The Council must also serve on the other parties and the Legal Assessor a notice in writing of a postponed, adjourned, or preliminary hearing, stating the date, time and place of the hearing, unless, in the case of an adjourned hearing, all parties and the Legal Assessor are present at the hearing which is adjourned and agree upon the date, time and place of the postponed hearing.

Postponement of hearing

9.—(1) The Chairman or the Committee may postpone a hearing at any stage of the proceedings if any party applies for a postponement or it appears appropriate.

(2) The postponement may be on such terms as the Chairman or, as the case may be, the Committee think fit.

(3) The Council must notify all parties and the Legal Assessor of such a postponement as soon as possible and must then comply with rule 8(4) of these Rules.

Preliminary hearings etc.

10. The Committee may hold a preliminary hearing—

(a) in the case of a hearing of an allegation or complaint within rule 3 or a reference under rule 4, in order to ask the respondent whether he admits or denies the allegation or complaint against him, and

(b) in any case to determine issues relating to giving evidence, and to give directions as to the conduct of the proceedings;

or the Chairman may give such directions without a preliminary hearing.

Documents upon which a party proposes to rely

11.—(1) At least 21 days before the date of a hearing (other than the hearing of an appeal), each party must—

(a) supply a collection of copies of all the documents on which that party proposes to rely (other than any affidavit), with all pages numbered, to every other party, and

(b) inform every other party in writing of the address where those documents may be inspected if notice is given under paragraph (3).

(2) If a party who proposes to rely on an affidavit is requested in writing by any other party to supply that party with a copy of any document referred to in the affidavit, but not exhibited to it, he must, not later than 7 days after receiving the request, supply that party with a copy of it and a notice in writing of the address where the document may be inspected if notice is given under paragraph (3).

(3) Each party may during normal office hours inspect the documents of which copies have been supplied under this rule, if he gives the party who supplied them 3 days' notice of his wish to do so.

Notice requiring indication of contested matters in rule 3 or 4 cases

12.—(1) At least 21 days before the date of a hearing of an allegation or complaint within rule 8(2) the Council may by notice in writing require the respondent to give an indication to the Council within 14 days of the receipt of the notice as to which of the allegations or complaints or of the facts set out in it are in dispute.

(2) A respondent is not bound at the hearing by any indication given by him to the Council under this rule.

Admission of and challenge to documents

13.—(1) Any party ("the first party") may, by notice in writing served not later than 14 days before the day of the hearing, call upon any other party ("the other party") to admit the authenticity of any document.

(2) If such a notice is served, the other party is deemed to have admitted the document's authenticity, unless—

(a) by a notice in writing served on the first party not later than 7 days before the day of the hearing the other party requires its authenticity to be proved at the hearing, or

(b) the Committee determines that it should be so proved.

Amending allegations or complaints or grounds of appeal

14.—(1) If—

(a) the Council wishes to amend allegations or complaints or a summary of facts set out in an allegation or complaint served in accordance with rule 8,

(b) an applicant under section 27 or 28(2) of, or paragraph 7(2) of Schedule 6 to, the Act wishes to amend the facts set out in the application in accordance with rule 5(c) or add further facts, or

(c) an appellant wishes to amend his grounds of appeal or add further grounds,

it may be done by serving an amended notice under rule 8 or using the same procedure as applied for the original reference, complaint, application or appeal, but the consent of the Committee is required for an amendment less than 21 days before the date of the hearing.

(2) Where an amendment or addition is made under this rule, on an application by the respondent the Committee may postpone the hearing.

PROCEDURE AT HEARINGS ETC.: GENERAL

Hearing and adjournment

15.—(1) Subject to paragraphs (2) and (3), any hearing before the Committee must be held in public.

(2) If it appears to the Committee to be appropriate in the interests of any child or for the protection of the private life of any party or in the interests of justice, the Committee may direct that the public are to be excluded from the whole or part of the proceedings.

(3) Subject to paragraph 3 of Schedule 4 to the Act(**a**) and any Rules made under that paragraph, the Committee may at any time and for any purpose during or after a hearing deliberate in private, with or without the Legal Assessor.

(4) The Committee may adjourn the hearing of any proceedings from time to time as they think fit.

Representation and non-appearance

16.—(1) Any party may appear at a hearing before the Committee under these Rules—

(a) in person,

(b) by counsel or a solicitor,

(c) by an officer or member of any professional organisation of which he is a member,

(d) by a licensed conveyancer, or

(e) if the party is a recognised body or body corporate, by one of its officers or employees;

and references in these Rules to the parties are to be taken in appropriate cases to include the persons representing them.

(2) If a party fails to appear—

(a) the Committee may proceed to hear and determine the matter in the absence of that party, and

(b) if the party who has not appeared is the appellant or applicant, the Committee may determine the matter on the evidence before them and may dismiss the appeal or application without hearing any further evidence.

(**a**) Paragraph 3 was amended by paragraph 64 of Schedule 10 to the Courts and Legal Services Act 1990.

Witnesses

17.—(1) Subject to the following provisions of this rule, evidence may be given in person or by affidavit.

(2) The evidence of a witness may not be given by affidavit, if—

(a) the Committee so directs, or

(b) notice is served by a party at least 14 days before the date of the hearing on the person proposing to adduce the evidence that he requires the witness to attend the hearing to give evidence in person;

(c) in such a case as referred to in sub-paragraph (b), the affidavit may nevertheless be treated as a written statement of the witness who is called to give evidence and may be used as provided for in paragraph (5).

(3) The evidence of a witness may only be given by affidavit—

(a) if—

(i) a copy of it has been served on all other parties at least 14 days before the date of the hearing, and

(ii) a copy of it has been sent to the Committee and the Legal Assessor at least 7 days before that date, or

(b) if all the parties agree.

(4) If a party proposes to call a witness who has not deposed to an affidavit, the party must, at least 14 days before the date of the hearing—

(a) notify all other parties of his proposal to do so,

(b) serve on them a copy of a written statement by the witness, which has been dated and signed by him on each page, and

(c) produce the original signed statement at the hearing.

(5) Such a written statement by a witness who has not deposed to an affidavit may be treated as the witness's evidence in chief, unless the Committee determine otherwise.

(6) The Committee may direct any party to call as a witness any person specified in the direction.

(7) The Chairman may examine any party or witness at any stage of a hearing and with his consent any member of the Committee or the Legal Assessor may do so.

Quality of evidence and standard of proof

18.—(1) Subject to paragraph (2), in any proceedings before the Committee—

(a) a fact is to be regarded as proved if the Committee consider that it has been proved on the balance of probabilities, and

(b) the Committee may consider any evidence which would be admissible in civil proceedings in England or Wales.

(2) In proceedings where a criminal act or any fraud or dishonesty is alleged—

(a) the allegation is only to be regarded as proved if the Committee consider that it has been proved beyond reasonable doubt, and

(b) the Committee may only consider evidence which—

(i) would be admissible in criminal proceedings in England or Wales, or

(ii) they are satisfied, after consulting with the Legal Assessor, it is desirable in the interests of justice to consider.

(3) This rule does not apply to an allegation to which rule 19 applies.

Proof of conviction

19.—(1) If—

(a) it is alleged that a respondent has been convicted of such an offence as is mentioned in section 24(1)(a)(i) of or paragraph 3(1)(a)(i) of Schedule 6 to, the Act, and

(b) the respondent denies the allegation or is deemed to have done so,

the conviction must be proved by the Council by the production of a certificate of conviction or the affidavit of a person who attended the trial.

(2) If the respondent denies a conviction, he may adduce evidence on the question whether he was convicted as alleged, and may address the Committee about that question.

(3) Only one address may be made by a respondent under paragraph (2) and, where the respondent adduces evidence, the address may be made either before that evidence is begun or after it is concluded.

(4) The Council is entitled to reply to any submission made by the respondent under paragraphs (1) to (3), and may call evidence in rebuttal.

(5) If the Council does call such evidence, the respondent may make a further address limited to the rebutting evidence.

(6) At the conclusion of submissions and the calling of evidence, the Committee must determine whether or not the conviction has been proved to their satisfaction.

(7) If they are not so satisfied, they must dismiss the allegation or complaint relating to the conviction.

(8) If they are so satisfied, the conviction is to be admitted in evidence against the respondent.

Announcements by the Committee

20. The Chairman must announce the decisions, direction, determinations and judgements of the Committee under these Rules in such terms and in such manner as the Committee agree.

Parties' rights as to record of proceedings

21. Any party to the proceedings is entitled to a copy of any matters recorded concerning the proceedings and kept by the Council, on payment of the cost of recording them and supplying the copy.

ADDITIONAL PROVISIONS ABOUT HEARINGS IN RULE 3 CASES

Procedure in rule 3 cases: general

22.—(1) This rule and rules 23 to 29 apply to hearings by the Committee in the case of a reference or complaint within rule 3.

(2) Where a hearing relates to two or more allegations or complaints the Committee may deal with them separately or together as the Chairman thinks fit.

The allegation or complaint

23.—(1) Each allegation or complaint must be read out by the Solicitor in the presence of the parties and the Legal Assessor appearing at the hearing.

(2) If the respondent has appeared at the hearing, as soon as the allegations or complaints have been read, the Chairman must ask him if he wishes to object to any allegation or complaint, or any part of any allegation or complaint, on a point of law.

(3) If the respondent so wishes, he must make his objection and any other party may reply to it.

(4) If the objection is upheld and no amendment of the allegation or complaint is allowed by the Committee, they must dismiss it.

(5) If only part of the allegation or complaint is disallowed, no further proceedings may be taken on that part of it.

Respondent's response to the allegation or complaint

24.—(1) The Chairman must ask the respondent to respond to each allegation or complaint against him, and his response must be recorded.

(2) If the respondent fails to attend the hearing but the Committee decide to proceed in his absence, he is deemed to have denied each allegation or complaint against him, and that must be recorded.

(3) Any qualified or equivocal response by the respondent must be recorded as a denial of the allegation or complaint.

(4) Where the respondent unequivocally admits an allegation or complaint—

(a) the Chairman must announce that the allegation or complaint has been admitted and is therefore treated as proved, and

(b) the procedure specified in rule 25 (admission of all allegations or complaints) must be followed.

(5) Where the respondent denies or is deemed to deny any allegation or complaint, the procedure specified in rule 26 (denial of some or all allegations or complaints) must be followed.

Admission of all allegations or complaints

25.—(1) The Solicitor must first—

(a) summarise the facts supporting the allegation or complaint,

(b) specify the circumstances leading up to the conduct or, as the case may be, the conviction in question, and

(c) adduce evidence of the previous history and character of the respondent.

(2) The Chairman must then invite the respondent to make representations to the Committee as to any mitigating circumstances and adduce evidence about the mitigating circumstances, if he wishes to do so.

(3) The Committee must next determine—

(a) whether there is sufficient evidence or information to conclude the case, and

(b) whether to determine the case immediately or to postpone their determination.

Denial of some or all allegations or complaints

26.—(1) The Solicitor must first set out the case against the respondent and then adduce evidence of the allegations or complaint.

(2) If the complainant is not called as a witness, he may be heard by the Committee if he wishes.

(3) If no evidence about an allegation or complaint is given, the Committee must determine that they are not satisfied as to it and dismiss it.

(4) If the respondent attends the hearing—

(a) he may cross-examine any witness and, if the Committee has heard the complainant, the complainant;

(b) after the Solicitor has set out the case against him, the respondent may make one or both of the following submissions about any allegation or complaint in respect of which evidence has been adduced against him—

(i) that sufficient evidence has not been adduced on which the Committee could find that the facts alleged in the allegation or complaint have been proved;

(ii) that the facts proved do not support the allegation or complaint.

(5) If the respondent makes such a submission—

(a) the Solicitor may reply to it;

(b) after hearing the Solicitor, the Committee must determine whether the submission should be upheld,

(c) if they determine to uphold it, they must dismiss the allegation or complaint, and

(d) if they determine not to uphold it, the proceedings on the application must continue as set out in paragraphs (6) to (10).

(6) The respondent may—

(a) adduce evidence rebutting any allegation or complaint, and

(b) may address the Committee, (but only once, unless the Committee gives leave for a further address);

and, if he chooses to adduce evidence under paragraph (a), may choose whether to address the Committee under paragraph (b), before beginning to adduce it or after its conclusion.

(7) Any witness who gives evidence for the respondent may be cross-examined by the Solicitor, and the Chairman may permit the respondent to examine the witness further.

(8) After that, if the Committee permit him to do so, the Solicitor may adduce evidence to rebut any evidence adduced by the respondent; and, if he does so, the respondent may make a further address limited to the Solicitor's evidence.

(9) If evidence, which does not relate to the respondent's character, is given by a person other than the respondent, the Solicitor may address the Committee by way of reply to the respondent's case; and the Committee may permit him to do so when no such evidence has been adduced.

(10) If the respondent makes a submission to the Committee on a point of law, the Solicitor has a right of reply limited to the submission (but without prejudice to his rights under paragraph (9)).

Determination of allegations or complaints

27.—(1) At the conclusion of the hearing the Committee must determine which allegations or complaints have been proved to their satisfaction.

(2) If the Committee determine that any allegation or complaint has not been proved to their satisfaction, the Committee must dismiss that allegation or complaint.

(3) If the Committee determine that any allegation or complaint has been proved to their satisfaction—

(a) the Chairman must invite the Solicitor to address the Committee and adduce evidence as to the respondent's previous character and history,

(b) the Chairman must then invite the respondent to address the Committee by way of mitigation and the respondent may adduce evidence in support, and

(c) the Committee must next decide whether to determine the case immediately or to postpone their determination.

Cases where some allegations or complaints are admitted and some denied

28.—(1) If some allegations or complaints are admitted but others are denied, the procedure set out in rule 25 must be postponed until the determination of the denied allegations or complaints.

(2) The procedure relating to mitigation in respect of admitted allegations or complaints must be dealt with in conjunction with mitigation in respect of any disputed allegations or complaints which the Committee determine have been proved.

Procedure where there is more than one respondent

29.—(1) A single hearing may be held into allegations or complaints against two or more respondents.

(2) Subject to paragraph (3), these Rules apply to such a hearing as they do to a hearing involving one respondent, but with the necessary adaptations and subject to any directions given by the Committee as to the order in which proceedings are to be taken in relation to each of the respondents.

(3) The rights or a respondent under these Rules are to be exercised separately by each of the respondents who wishes to exercise them.

ADDITIONAL PROVISIONS ABOUT HEARINGS ON REFERENCES UNDER RULE 4 AND SUBSEQUENT APPLICATIONS

Licences and recognitions obtained through fraud or error

30.—(1) Subject to paragraph (2), rules 22(2) and 23 to 29 apply to a hearing in the case of a reference under rule 4 as they apply to a hearing in the case of a reference or complaint within rule 3.

(2) The Committee may modify the procedure to be adopted in the case of any particular reference in such manner as they think fit, having regard to the particular circumstances of the case.

(3) Where a hearing relates to two or more licences or, as the case may be, the recognition of two or more bodies, the Committee may deal with them separately or together, as the Chairman thinks fit.

Applications for removal of licence disqualification or for further licence or recognition following revocation for fraud

31.—(1) Where an application is made under—

(a) section 27(1) (application for removal of disqualification from holding a licence),

(b) section 28(2) (application for a licence after previous licence has been revoked on the ground of fraud), or

(c) paragraph 7(2) of Schedule 6 (application for grant of recognition after previous recognition has been revoked on the ground of fraud),

the Committee must hold a hearing to determine the application.

(2) Such a hearing must be conducted in accordance with the following procedure.

(3) The hearing must be opened by the Council providing the Committee with a summary of their previous findings and order.

(4) Then the applicant may adduce evidence in support of the application, and then the Council may cross-examine the applicant and any witness called on his behalf.

(5) At the conclusion of the case for the applicant the Council may adduce evidence in response and the applicant may then cross-examine any witness called on behalf of the Council.

(6) At any stage of the hearing, the Chairman or, with his leave, any other member of the Committee or the Legal Assessor may examine any party or witness.

(7) At the conclusion of the evidence the applicant may address the Committee, and then the Council may address the Committee, but no further submissions are permitted, unless the Chairman allows them.

(8) The provisions of rules 8 to 21 have effect in the case of an application within paragraph (1), subject to such modifications as the Chairman or the Committee consider appropriate in the case of such an application.

PROCEDURE ON APPEALS

Procedure etc. on appeals

32.—(1) An appeal to the Committee under section 29 of, or paragraph 8 of Schedule 6 to, the Act is not by way of a full rehearing and must be conducted in accordance with the following procedure.

(2) The evidence which may be considered is limited to documents showing or recording the evidence which was before the Council at the time of the refusal or decision which is the subject of the appeal and relates to the grounds of the appeal, and fresh evidence may only be considered if—

(a) the Committee are satisfied that—

(i) it could not previously have been obtained with reasonable diligence, and

(ii) if it had been before the Council it would have had an important influence upon the determination of the matter; or

(b) it relates to conduct which occurred after the date of the refusal or decision which is the subject of the appeal.

(3) The Committee may hold a preliminary hearing for determining issues relating to the production of fresh evidence and the conduct of the appeal, and the Committee may give directions about the conduct of the appeal at such a preliminary hearing, or the Chairman may do so without a hearing.

(4) Unless a collection of all the documents relevant to determination of the matter which is the subject of the appeal with an index at the front and all pages numbered has been—

(a) prepared by the appellant or, at his request and expense, by the Council,

(b) served in duplicate on the Council at least 21 days before the date of the hearing of the appeal,

the Committee may dismiss the appeal.

(5) If any party to the appeal wishes to raise a point of law, he must serve a notice, summarising the point and his argument about it, on every other party and the Legal Assessor at least 14 days before the date it is heard.

(6) The Chairman may examine any party or witness at any stage of the hearing and with the Chairman's consent any member of the Committee or the Legal Assessor may do so.

MISCELLANEOUS PROVISIONS

Service of documents

33.—(1) Unless the Chairman or the Committee direct that service under these Rules may be effected by another method specified in the direction, such service may be effected only—

(a) by delivering the document personally;

(b) in the case of service on a licensed conveyancer, by sending it by first class ordinary post addressed to him at his address registered with the Council or one of his places of business or his last known address;

(c) in the case of service on a recognised body or body corporate, by sending it by first class ordinary post addressed to it at its registered or principal office or its last known address;

(d) in the case of service on any person not within paragraph (b) or (c), by first class post to his last known address;

(e) through a document exchange in accordance with Rule 6.2 of the Civil Procedure Rules 1998; or

(f) by sending it by first class ordinary post to a solicitor who has indicated that he has been instructed to accept service on behalf of the person to be served.

(2) Any document required by these Rules to be served on the Council must be served by a method mentioned in paragraph (1) at the principal place of business of the Council.

(3) Service by a method mentioned in paragraph (1)(b) to (e) is deemed to have been effected on the second business day after the document is dispatched.

Procedure on postponement of determination

34.—(1) Where under these Rules the Committee postpone making their determination in any case, the following procedure must be adopted.

(2) At the resumed hearing—

(a) the Chairman must invite the Solicitor to summarise for the information of the Committee the proceedings and determinations which have already taken place;

(b) the Committee may then hear further evidence in accordance with these Rules in relation to the conduct and character of the licensed conveyancer or recognised body in question.

(3) That further evidence may include evidence—

(a) of material facts, matters and events which may have arisen since the last hearing; and

(b) of any criminal conviction.

(4) The licensed conveyancer or recognised body may be heard by the Committee and may adduce evidence in respect of any matter raised under paragraph (3).

(5) If the Committee again postpone their determination, this rule applies with such modifications as they think fit.

(6) At any resumed hearing under this rule, if a new allegation or complaint has been made against a respondent—

(a) it must be dealt with first in accordance with these Rules, and

(b) any determination which has already been posponed must be further postponed and dealt with simultaneously with the determination or postponed determination about the new allegation or complaint.

(7) In a case within paragraph (6)(b), the resumed hearing may take place on the same day as the hearing of the new allegation or complaint, notwithstanding rule 8(3).

Committee voting

35.—(1) Any question put to the vote must be formulated and put to the Committee members present by the Chairman.

(2) The Chairman must call on the Committee members present to vote for or against the question and must declare the result.

(3) The Chairman is entitled to vote.

(4) If an equal number of votes is cast for and against the question, the question is deemed to have been determined—

(a) in the case of a hearing of an allegation or complaint within rule 3 or a reference under rule 4, in favour of the respondent,

(b) in the case of an application within rule 5, in favour of the applicant,

(c) in the case of an appeal, in favour of the Council, and

(d) in the case of the question whether a hearing is to be postponed, in favour of postponement.

Absence of chairman

36. Subject to paragraph 4 of Schedule 4 to the Act, anything authorised or required by these Rules to be done by the Chairman may, if he is absent or unable to act or continue to act, be done by any other member of the Committee who is authorised for the purpose by the Chairman or, if no person is authorised, by the other members present.

Relaxation of rules

37.—(1) At the request of any applicant, appellant or respondent (but, in a case where the respondent is the Council, only with the consent of the applicant or appellant), the Committee may direct that any requirement of these Rules is not to apply or is relaxed in any manner they think fit; and such a direction may be given subject to such other requirements as they think fit.

(2) Where they have given such a direction, they may give a further direction that the requirement is again to apply or, as the case may be, to apply without the relaxation or with others.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order contains the Lord Chancellor's approval of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001, which come into force on 30th September 2001 and form the Schedule to the Order.

STATUTORY INSTRUMENTS

2001 No. 2797

LEGAL SERVICES, ENGLAND AND WALES

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