



Opticians Act 1989

1989 CHAPTER 44

PART III

DISCIPLINARY PROCEEDINGS

14 Disciplinary orders

In this Act—

“disciplinary order” means—

- (a) an erasure order;
- (b) a suspension order;
- (c) a penalty order;

“erasure order” means—

- (a) in relation to a registered optician, an order that his name shall be erased from the register; and
- (b) in relation to an enrolled body corporate, an order that its name shall be erased from the list in which it is enrolled;

“suspension order” means—

- (a) in relation to a registered optician, an order that his registration shall be suspended for a period specified in the order; and
- (b) in relation to an enrolled body corporate, an order that its enrolment in the list in which it is enrolled shall be suspended for a period specified in the order; and

“penalty order” means an order that a registered optician or an enrolled body corporate shall pay to the Council a sum specified in the order.

15 Suspension orders

- (1) The period specified in a suspension order shall not exceed twelve months.

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- (2) While the registration of a person in the register is suspended by virtue of a suspension order, he shall be treated as not being registered, notwithstanding that his name still appears in the register.
- (3) While the enrolment of a body corporate is suspended by virtue of a suspension order, it shall be treated as not being enrolled, notwithstanding that its name still appears in the list.
- (4) Where a suspension order is made against a person or body corporate, the registrar shall make in the register or list a note of that fact and of the period for which the registration or enrolment is to be suspended; and the registrar shall erase the note at such time as the order for any reason ceases to have effect.

16 Penalty orders

- (1) A penalty order may specify any sum not exceeding the maximum penalty.
- (2) In this section “the maximum penalty” means £1,000 or such sum as is for the time being substituted in this definition by an order in force under subsection (3) below.
- (3) If it appears to the Privy Council that there has been a change in the value of money since the last occasion when the maximum penalty was fixed, whether by the coming into force of the original penalty provision or by order under this section, the Privy Council may by order substitute for the sum specified in subsection (2) above such other sum as appears to them justified by the change.
- (4) An order under subsection (3) above shall not affect the punishment for an offence committed before the order comes into force.
- (5) A penalty order shall specify a period within which the sum specified in it is to be paid.
- (6) The Council may recover the sum specified in a penalty order from the person or body against whom the order was made if that person or body does not pay it within the period specified in the order.
- (7) The Council shall pay a sum paid under a penalty order or recovered under subsection (6) above into the Consolidated Fund.
- (8) In subsection (3) above “the original penalty provision” means section 10C of the Opticians Act 1958 (which was inserted in that Act by section 4 of the Health and Social Security Act 1984 and is replaced by this section).

17 Powers of Disciplinary Committee

- (1) If any registered optician—
 - (a) is convicted by any court in the United Kingdom of any criminal offence; or
 - (b) is judged by the Disciplinary Committee to have been guilty of serious professional misconduct,the Committee may make a disciplinary order against him.
- (2) If—
 - (a) an enrolled body corporate is convicted of an offence under this Act, or of aiding, abetting, counselling or procuring the commission of, or inciting another person to commit, such an offence; or

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- (b) in the case of a body corporate which is for the time being enrolled by virtue of paragraph (a), (c) or (d) of section 9(2) above, the Disciplinary Committee is of opinion that the condition, or any of the conditions, for the enrolment of the body corporate under that subsection is no longer satisfied,
the Committee may make a disciplinary order against that body corporate.
- (3) Where a registered optician dies while he is either a director of an enrolled body corporate or the manager of that part of the business of an enrolled body corporate which consists of the testing of sight or the fitting and supply of optical appliances, he shall be deemed, for the purposes of subsection (2) above, to have continued to be a director of that body or a manager of that part of its business, as the case may be, until the expiration of three months beginning with the date of his death or until a director or manager is appointed in his place, whichever occurs first.
- (4) If it appears to the Disciplinary Committee that a registered optician or an enrolled body corporate—
- (a) has contravened or failed to comply with any rules made under section 30 below; or
 - (b) has failed to pay the sum specified in a penalty order within the period there specified,
- the Committee may make a disciplinary order against the optician or body corporate.
- (5) If it appears to the Disciplinary Committee—
- (a) that a registered optician or enrolled body corporate is engaged in the fitting and supply of optical appliances; and
 - (b) that the arrangements made by the optician or body corporate for carrying on his practice or his or its business are not such as to secure that the fitting and supply of optical appliances in the course of that practice or business are carried out by, or under the supervision of—
 - (i) an ophthalmic optician registered in the register of ophthalmic opticians engaged or proposing to engage both in the testing of sight and in the fitting and supply of optical appliances; or
 - (ii) a registered dispensing optician,
- the Committee may make a disciplinary order against that optician or body corporate.
- (6) Where—
- (a) a disciplinary order is made against a director of an enrolled body corporate; or
 - (b) a responsible officer of an enrolled body corporate is convicted of an offence under this Act; or
 - (c) a disciplinary order is made against a registered optician employed by an enrolled body corporate and the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate, or, if the act or omission was a continuing act or omission, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance,
- the Disciplinary Committee may make a disciplinary order against the body corporate.
- (7) In a case—
- (a) where—

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- (i) an enrolled body corporate is convicted of an offence under this Act; and
- (ii) the offence was instigated or connived at by a responsible officer of the body corporate, or, if the offence was a continuing offence, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance; or
- (b) where—
 - (i) a disciplinary order is made against an enrolled body corporate; and
 - (ii) the act or omission constituting the ground on which the order was made was instigated or connived at by a responsible officer of the body corporate, or, if the act or omission was a continuing act or omission, a responsible officer of the body corporate had or reasonably ought to have had knowledge of its continuance,
 the Disciplinary Committee may, if the responsible officer is a registered optician, make a disciplinary order against him.
- (8) The Disciplinary Committee shall not take a case into consideration—
 - (a) during any period within which proceedings by way of appeal may be brought which may result in subsection (6) or (7) above being rendered inapplicable in that case; or
 - (b) while any such proceedings are pending.
- (9) Where it appears to the Disciplinary Committee—
 - (a) that a body corporate which carries on business as an ophthalmic or dispensing optician at more than one set of premises is liable to have a disciplinary order made against it; and
 - (b) that the events giving rise to the liability were confined, or substantially confined, to a particular set of premises,
 the Committee may, instead of making a disciplinary order against the body corporate, direct that the body corporate shall not use the title of optician, ophthalmic optician, dispensing optician, registered optician, enrolled optician or optometrist in connection with that set of premises; and if at any time thereafter it appears to the Committee that the body corporate has contravened a direction in force under this subsection, the Committee may make a disciplinary order against the body corporate.
- (10) A direction under subsection (9) above shall remain in force until revoked, on an application made to them in that behalf, by the Disciplinary Committee.
- (11) When the Disciplinary Committee—
 - (a) make a disciplinary order against an individual or body corporate; or
 - (b) direct that a body corporate shall not use any of the titles specified in subsection (9) above in connection with a set of premises,
 the registrar shall serve on that individual or body a notification of the order or direction.
- (12) Any power conferred by this section to make a disciplinary order is a power to make—
 - (a) an erasure order;
 - (b) a suspension order;
 - (c) a penalty order; or
 - (d) an erasure order or suspension order together with a penalty order.

- (13) In this Act “responsible officer” means any director, manager, secretary or other similar officer of a body corporate, or of a branch or department of a body corporate, or any person purporting to act in any such capacity.

18 Restoration of names erased as result of disciplinary cases etc

- (1) Where an erasure order has been made against an individual or body corporate, the name of that individual or body corporate shall not again be registered in any of the registers or lists unless the Disciplinary Committee on application made to them in that behalf otherwise direct.
- (2) An application under subsection (1) above for the restoration of a name to the register or list from which it has been erased or for the entry of a name in one of the other registers or lists shall not be made to the Committee—
- (a) within ten months of the date of erasure; or
 - (b) within ten months of the Committee’s decision on a previous application under that subsection.

19 Erasure from register and list on grounds of fraud or error

- (1) If it is proved to the satisfaction of the Disciplinary Committee that any entry in a register or list has been fraudulently or incorrectly made, the Committee may, if they think fit, direct that the entry shall be erased.
- (2) An individual may be registered or a company enrolled in pursuance of any provision of this Act notwithstanding that his or its name has been erased under this section, but if it was so erased on the ground of fraud, that individual or company shall not be registered or enrolled except on an application in that behalf to the Disciplinary Committee, and on any such application the Committee may, if they think fit, direct that the individual or body corporate shall not be registered or enrolled, or shall not be registered or enrolled until the expiration of such period as may be specified in the direction.
- (3) Where the Disciplinary Committee direct that the name of an individual or body corporate shall be erased from a register or list under this section, the registrar shall serve a notification of the direction on that individual or body.

20 Service of notifications

- (1) A notification under section 17 or 19 above which is required to be served on a person may be served by being delivered personally, or being sent by post in a registered letter or by the recorded delivery service.
- (2) For the purposes of this section, and of section 7 of the Interpretation Act 1978 (which defines “service by post”) in its application to this section, a letter to a person other than a body corporate containing such a notification shall be deemed to be properly addressed if it is addressed to him 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 the notification is more likely to reach him at his last known address.
- (3) A notification which is required to be served on a body corporate shall be duly served if it is served on the secretary or clerk of that body.

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- (4) For the purposes of this section, and of section 7 of the Interpretation Act 1978 in its application to this section, the proper address of a person, in the case of a body corporate or the secretary or clerk of a body corporate, shall be its address in the list or the address of its registered or principal office if that address differs from its address in the list and it appears to the registrar that the notification is more likely to reach the body corporate or its secretary or clerk there.

21 Procedure of Disciplinary Committee

- (1) For the purposes of any proceedings under this Act before the Disciplinary Committee (whether relating to disciplinary cases or otherwise) in England and Wales or Northern Ireland—
- (a) the Committee may administer oaths; and
 - (b) any party to the proceedings may sue out writs of subpoena ad testificandum and duces tecum;
- but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (2) Section 36 of the Supreme Court Act 1981 and section 67 of the Judicature (Northern Ireland) Act 1978 (subpoena issued in High Court to run throughout United Kingdom) shall apply in relation to any such proceedings in England and Wales and in Northern Ireland respectively as they apply in relation to causes or matters in the High Court.
- (3) For the purposes of any such proceedings in Scotland, the Committee may administer oaths and the Court of Session shall on the application of any party to the proceedings have the like power as in any action in that court—
- (a) to grant warrant for the citation of witnesses and havers to give evidence or to produce documents before the Committee, and for the issue of letters of second diligence against any witness or haver failing to appear after due citation;
 - (b) to grant warrant for the recovery of documents; and
 - (c) to grant commissions to persons to take the evidence of witnesses or to examine havers and receive their exhibits and productions.
- (4) The Council shall make rules as to the procedure to be followed and the rules of evidence to be observed in proceedings before the Disciplinary Committee, and in particular—
- (a) for securing that notice that the proceedings are to be brought shall be given, at such time and in such manner as may be specified in the rules, to the individual or body corporate alleged to be liable to have a disciplinary order or a direction under section 19 above made against him or it;
 - (b) for securing that any party to the proceedings shall, if he so requires, be entitled to be heard by the Committee;
 - (c) for enabling any party to the proceedings to be represented by counsel or solicitor or (if the rules so provide and the party so elects) by a person of such other description as may be specified in the rules;
 - (d) for requiring proceedings before the Committee to be held in public except in so far as may be provided by the rules;
 - (e) for requiring, in cases where it is alleged that a registered optician has been guilty of serious professional misconduct, that where the Committee judge that the allegation has not been proved they shall record a finding that the

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optician is not guilty of such conduct in respect of the matters to which the allegation relates;

- (f) for requiring, in cases where it is alleged that a registered optician or enrolled body corporate is liable to have a disciplinary order made against him or it under section 17(4) or (5) above, that where the Committee judge that the allegation has not been proved they shall record a finding that the optician or body corporate is not guilty of the matters alleged.
- (5) As respects proceedings for the restoration of names to the register or list, or for the revocation of a direction under section 17(9) above, the Council shall have power to make rules with respect to all or any of the matters specified in subsection (4) above, but shall not be required to do so, and separate rules under this section may be made as respects such proceedings.
- (6) Before making rules under this section the Council shall consult such organisations representing the interests of opticians and bodies corporate carrying on business as opticians as appear to the Council requisite to be consulted.

22 Assessors to Disciplinary Committee

- (1) For the purpose of advising the Disciplinary Committee on questions of law arising in proceedings before them there shall in all such proceedings be an assessor to the Committee who shall be a barrister, advocate or solicitor of not less than ten years' standing.
- (2) The power of appointing assessors under this section shall be exercisable by the Council, but if no assessor appointed by them is available to act at any particular proceedings, the Disciplinary Committee may appoint an assessor under this section to act at those proceedings.
- (3) The Lord Chancellor may make rules as to the functions of assessors appointed under this section, and in particular, rules under this subsection may contain—
 - (a) such provisions for securing—
 - (i) that where an assessor advises the Committee on any question of law as to evidence, procedure or any other matters specified in the rules, he shall do so in the presence of every party, or person representing a party, to the proceedings who appears at the proceedings or, if the advice is tendered after the Committee have begun to deliberate as to their findings, that every such party or person shall be informed what advice the assessor has tendered;
 - (ii) that every such party or person shall be informed if in any case the Committee do not accept the advice of the assessor on any such question; and
 - (b) such incidental and supplementary provisions, as appear to the Lord Chancellor expedient.
- (4) Subject to the provisions of this section, an assessor under this section may be appointed either generally or for any particular proceedings or class of proceedings, and shall hold and vacate office in accordance with the terms of the instrument under which he is appointed.
- (5) Any remuneration paid by the Council to persons appointed to act as assessors shall be at such rates as the Privy Council may approve.

23 Appeals in disciplinary and other cases

- (1) At any time within 28 days from the service of a notification in relation to an individual or body corporate under section 17 or 19 above, that individual or body corporate may, in accordance with such rules as Her Majesty in Council may by Order provide for the purposes of this section, appeal to Her Majesty in Council; and the Judicial Committee Act 1833 shall apply in relation to the Disciplinary Committee as it applies to such courts as are mentioned in section 3 of that Act.
- (2) The Council may appear as respondent on any such appeal, and for the purpose of enabling directions to be given as to the costs of any such appeal the Council shall be deemed to be a party to the appeal, whether they appear on the hearing of the appeal or not.
- (3) Where—
 - (a) no appeal is brought against—
 - (i) a disciplinary order; or
 - (ii) a direction under section 17(9) above; or
 - (iii) a direction under section 19 above; or
 - (b) such an appeal is brought but withdrawn or struck out for want of prosecution, the order or direction shall take effect on the expiration of the time for appealing or, as the case may be, on the withdrawal or striking out of the appeal.
- (4) Subject as aforesaid, where an appeal is brought against any such order or direction, it shall take effect if and when the appeal is dismissed and not otherwise.