
STATUTORY INSTRUMENTS

1985 No. 1580**OPTICIANS****The General Optical Council (Disciplinary Committee)
(Procedure) Rules Order of Council 1985**

Made - - - - - *16th October 1985*

At the Council Chamber, Whitehall, the 16th day of October 1985.
By the Lords of Her Majesty's Most Honourable Privy Council

Whereas in pursuance of section 15(2) of the Opticians Act 1958(a) the General Optical Council have made rules to be observed in proceedings before its Disciplinary Committee:

And whereas by section 15(4) of the said Act such rules shall not come into force until approved by order of the Privy Council:

Now, therefore, Their Lordships, having taken the said rules into consideration, do hereby approve the same as set out in the Schedule to this Order.

This Order may be cited as the General Optical Council (Disciplinary Committee) (Procedure) Rules Order of Council 1985.

G. I. de Deney,
Clerk of the Privy Council.

SCHEDULE**THE GENERAL OPTICAL COUNCIL DISCIPLINARY COMMITTEE
(PROCEDURE) RULES 1985**

The General Optical Council, having complied with the provisions of section 15(3) of the Opticians Act 1958, in exercise of their powers under section 15(2) of the Act hereby make the following rules:—

PART I**CITATION AND INTERPRETATION**

1.—(1) These rules may be cited as the General Optical Council Disciplinary Committee (Procedure) Rules 1985.

(a) 1958 c. 32.

(2) In these rules, unless the context otherwise requires:

“the Act” means the Opticians Act 1958(a);

“the Chairman” means the Chairman or the Acting Chairman of the Committee;

“charge” includes an allegation that an entry in the register or list has been fraudulently or incorrectly made;

“the Committee” means the Disciplinary Committee set up by the Council in pursuance of section 10(1) of the Act;

“the complainant” means any person by whom a complaint has been made to the Council;

“conviction” means a conviction by any Court in the United Kingdom of any criminal offence;

“the Council” means the General Optical Council;

“disciplinary case” means a disciplinary case as defined in section 9(1) of the Act referred by the Investigating Committee to the Committee pursuant to section 9(2) of the Act;

“inquiry” means the proceedings at which the Committee consider and determine any case to which these rules apply;

“the Investigating Committee” means the Committee set up by the Council in pursuance of section 9(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 16 of the Act;

“party” means the Solicitor or the respondent;

“the Registrar” means the registrar of the Council;

“the respondent” means any person or body corporate whose name has been entered in a register or list under the provisions of the Act and in respect of whom a disciplinary case 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 an inquiry includes counsel instructed by the solicitor to act on his behalf.

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—

- (i) in a case under section 11 of the Act, the alleged convictions or other facts relied on in relation to each charge and the provision of section 11 of the Act under which any charge is brought; or
- (ii) in a case under section 13 of the Act, the nature of the fraud or mistake alleged;

(a) As amended by the Health and Social Security Act 1984 (c. 48).

and stating also the day, time and place at which the Committee will hold an inquiry into these matters, and enclosing a copy of these rules. A copy of the notice shall be sent to the complainant.

(2) The said notice and copy of the rules shall be sent by post in a registered letter or by the recorded delivery service addressed to the respondent in accordance with the provisions of section 13A of the Act as though it were a notification to which that section applies.

(3) 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.

(4) Except with the agreement of the respondent the inquiry shall not be held within twenty-eight days after the date of posting the notice of inquiry.

Postponement or Cancellation of Inquiry

3.—(1) The Chairman, upon the application of a party to the inquiry, may postpone the inquiry.

(2) The Chairman may refer a disciplinary case back to the Investigating Committee for further consideration either upon the application of a party to the inquiry or upon the emergence of fresh evidence justifying such a reference.

(3) 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.

(4) The Solicitor shall, as soon as may be, give to all parties 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. Subject to rule 10(iii), upon application by the respondent, the Solicitor shall send him a copy of any statutory declaration, complaint, answer, admission, explanation or other similar document which the Council has received in connection with his case.

PART III

DISCIPLINARY CASES

Representation

5.—(1) A respondent or complainant, if an individual, may appear either in person or be represented by Counsel, by a Solicitor, by any officer or member of an organisation of which he is a member, or by a member of his family.

(2) A respondent or complainant who is a body corporate or an unincorporated body of persons may be represented by its Secretary (or other officer duly appointed for the purpose) or by Counsel or by a Solicitor.

The Reading of the Charge or Charges

6.—(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 the Solicitor or the complainant 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

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

(2) The Solicitor shall open the case and may call witnesses and adduce evidence of any such convictions or other facts not admitted by the respondent and of any matter connected with the facts alleged which may be relevant.

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

(4) The respondent may then submit that the evidence called by the Solicitor does not establish the charge alleged. The Committee shall consider and determine any such submission, and the Chairman shall thereupon announce their determination.

(5) If no such submission is made, or if any such submission is not upheld, the respondent may then adduce evidence and call witnesses with or without notice, and

- (i) any such witnesses may be cross-examined and re-examined; and
- (ii) the respondent may address the Committee either before or after such evidence but not more than once save with the leave of the Committee;

so, however, that the respondent shall have the right to make a final speech to the Committee whether or not he called witnesses.

(6) The Solicitor or the complainant may address the Committee on any point of law raised by the respondent.

(7) Where the respondent adduces evidence the Solicitor or the complainant may address the Committee thereon and may adduce evidence in rebuttal, and any witnesses called by the respondent may be cross-examined and re-examined.

(8) The respondent shall have the right to address the Committee upon such evidence in rebuttal.

(9) At any stage in any proceedings before them the Committee may cause any person to be called as a witness whether or not the parties consent thereto; and if any such witness gives evidence against the respondent the witness may be cross-examined and the respondent may adduce evidence in rebuttal.

(10) Questions may be put to any witness by the Committee through the Chairman or by the Legal Assessor with the leave of the Chairman.

(11) The Committee shall then deliberate, and decide in relation to each charge which remains outstanding whether the facts alleged in such charge have been proved and in

(2) Where, in such a case, an inquiry relates to two or more entries, the Committee may consider the allegations in respect of those entries either separately or taken together, as the Committee may think fit; and where an inquiry relates to an entry specifying two or more particulars, the Committee may proceed thereunder in respect of so much of the entry as specifies each of those particulars as if it were a separate entry.

PART IV

RESTORATION OF NAMES AFTER ERASURE AND REVOCATION OF DIRECTIONS

10. Where an application is made:

- (a) in accordance with section 12 of the Act by a person or body whose name has been erased from a register or list in pursuance of a direction made under section 11 of the Act; or
- (b) in accordance with section 13(2) of the Act by a person or body whose name has been erased from a register or list on the ground of fraud in pursuance of a direction by the Committee under section 13(1) or
- (c) in accordance with section 11(10) of the Act by a body corporate in respect of which a direction has been made by the Committee under section 11(9);

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 from the register or list, and for this purpose may receive written or oral evidence;
- (iii) where the applicant has supplied to the Registrar 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 and need not disclose the same to the applicant.
- (iv) subject to the foregoing provisions of this rule, and to Part V of these rules, the procedure of the Committee in connection with the application shall be such as they may determine.

PART V

GENERAL

Public Hearings

11.—(1) Subject to paragraph (2) of this rule and to rule 12, 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 paragraph (3) of this rule.

(2) For the purpose of the foregoing paragraph of this rule, “proceedings before the Committee” do not include deliberations of the Committee which may be held in camera in accordance with rule 12.

(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

relation to any facts found by the Committee to have been proved whether they are such as to substantiate such charge, and the Chairman shall announce their findings:

Provided that if the Committee find that any charge under section 11 of the Act is not proved a finding that the respondent is not guilty of the matters alleged shall be recorded.

Disposal of Cases under section 11 of the Act

8.—(1) Where the Committee find that a charge under section 11 of the Act 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 either—

(a) to take no further action, subject to the provisions of paragraph (6) of this rule; or

(b) to make a disciplinary order against the respondent or, in a case to which section 11(9) of the Act applies, to make a direction under that subsection.

(4) If the Committee decide under the last foregoing paragraph to make a disciplinary order they shall then decide to make any of the following—

(a) an erasure order;

(b) a suspension order;

(c) a penalty order; or

(d) an erasure order or a suspension order together with a penalty order.

(5) If the Committee decide under the last foregoing paragraph—

(a) to make a suspension order (whether or not it is to be made together with a penalty order) it shall specify the period, not exceeding twelve months, during which the respondent's registration or enrolment shall be suspended;

(b) to make a penalty order (whether or not it is to be made together with an erasure order or a suspension order) it shall specify—

(i) the sum, (not exceeding the maximum penalty prescribed by subsection (2), or substituted by order under subsection (3), of section 10C of the Act) which the respondent shall pay to General Optical Council; and

(ii) the period within which the sum specified is to be paid.

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

Disposal of Cases under section 13 of the Act

9.—(1) If, in a case under section 13 of the Act, the Committee determine that an entry in the register or list has been proved to their satisfaction to have been fraudulently or incorrectly made, they shall make an order in writing, signed by the Chairman, that the entry having been proved to the satisfaction of the Committee to have been fraudulently or incorrectly made (as the case may be) shall be erased from the register or list, and the Chairman shall announce the determination in terms indicating whether in the view of the Committee the entry was made fraudulently or was made incorrectly but not fraudulently.

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.

Deliberations of the Committee

12. Subject to the provisions of section 16(3) of the Act, of any rules made thereunder and of rule 11 of these rules, 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.

Adjournment

13. The Committee may adjourn their proceedings from time to time as they think fit.

Evidence

14.—(1) Subject to the provisions of paragraph (2) of this rule, facts relevant to an inquiry shall be proved in accordance with the rules of criminal evidence.

(2) The Committee may dispense with the rules of criminal evidence if they decide—

- (i) in the interests of justice to receive documentary evidence of a fact which they are satisfied is sufficient; or
- (ii) to admit oral or documentary evidence of the respondent's character, conduct or reputation.

Voting

15. 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 10, as the case may be.

Procedure where there is more than one respondent

16. Nothing shall prevent one inquiry being held into charges against two or more respondents, and where such an inquiry is held the 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 desire to invoke that right.

Supplementary

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 IV 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 of any part of the inquiry at which the party was entitled to be present.

Operation of Rules

18. These rules shall come into operation on the 23rd day of October 1985 and the General Optical Council Disciplinary Committee (Procedure) Rules 1969, scheduled to

the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1969,(a) shall cease to have effect on that day.

Sealed on the 27th day of June 1985.

Attested by:



Mary G. Green,
Member of Council

J. P. Quilliam,
Member of Council

J. Daniel Devlin,
Registrar

APPENDIX

FORM OF NOTICE UNDER RULE 2

Sir/Madam,

On behalf of the General Optical 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 and state the section, subsection and paragraph of the Act under which each charge is brought. Specify the convictions or other facts constituting the basis of such charge or, in a case under section 13 of the Act, the nature of the fraud or mistake.]

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 of 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 make a disciplinary order against you pursuant to section 11 of the Opticians Act 1958, or give any other direction provided for in that section or in section 13 of that Act. You are invited to appear before

(a) S.I. 1969/1826.

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 General Optical Council in accordance with the General Optical Council Disciplinary Committee (Procedure) Rules 1985, a copy of which is sent herewith for your information.

Your attention is drawn to the provisions of Rule 5 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 General Optical Council

EXPLANATORY NOTE

(This Note is not part of the Order.)

The rules approved by this Order supersede those approved by the General Optical Council (Disciplinary Committee) (Procedure) Order of Council 1969 (S.I. 1969/1826) and reflect the new powers conferred on the Disciplinary Committee by the Health and Social Security Act 1984 (c. 48) to suspend the registration of an Optician (or enrolled corporate body) and to impose financial penalties.

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