

SCHEDULE

PART II

cases relating to conviction and relating to conduct
and cases relating to licences obtained through fraud

Application of Part II

3. Where, in accordance with the provisions of Section 24 of the Act, the Investigating Committee decide to refer a case to the Discipline and Appeals Committee, the provisions contained in this part of these Rules shall have effect.

Notice of Hearing

4.—(1) As soon as possible after the case has been referred to the Committee the Solicitor shall send to the respondent a “notice of hearing” as nearly as possible in the form set out in the Appendix to these Rules specifying the matters alleged against the respondent in the form of a charge or charges, and stating the day, time and place at which the Committee will hold a hearing into these matters, together with a copy of these Rules, in a registered letter addressed to the respondent at his registered or last known address.

(2) In any case in which there is a complainant, the Solicitor shall send him a copy of the notice of hearing and a copy of these Rules.

(3) The Committee shall not hold a hearing unless a notice of hearing has been served on the respondent or unless the Committee are satisfied that all reasonable efforts have been taken to serve the notice and that the substance of the matters alleged therein against the respondent and the likelihood of a hearing resulting therefrom are well known to him.

(4) Except with the agreement of the respondent, the hearing shall not be held on any day earlier than twenty eight days after the date of posting the notice of hearing.

Postponement or cancellation of hearing

5.—(1) The Chairman of his own motion or upon the application of any party, may postpone the hearing.

(2) Where, before the hearing opens, it appears to the Chairman or, at any stage of the proceedings, it appears to the Committee that a notice of hearing is defective, he or they shall cause the notice to be amended unless it appears 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, shall direct that the hearing shall be postponed or shall not be held.

(3) The solicitor shall, as soon as possible, give to all parties to whom a notice of hearing has been sent notification of any decision to postpone or not to hold a hearing, informing them of the date fixed for a postponed hearing.

Access to documents

6. Upon application by any party to the hearing the Solicitor shall send to that party copies of any statutory declaration, explanation, answer, admission or other statement or communication sent to the Council by any party to the hearing, provided that nothing in this Rule shall compel the Solicitor to produce copies of any written advice sent by himself to the Council which would be privileged from discovery in any legal proceedings to which the Council was a party.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Procedure at hearing

7. The procedure at any hearing held by the Committee under Section 25 of the Act shall be that set out in the following provisions contained in this part and in Part V of these Rules.

Appearance and representation

8. Any party (including an applicant to whom Part III of these Rules applies) may appear either in person, or by counsel or solicitor, or by an officer or member of any professional organisation of which he is a member, or by a professional colleague, or by any member of his family, or, where the respondent is a recognised body, by an officer or employee of that body.

The reading of the charge

9.—(1) The charge shall be read in the presence of the parties provided that if the respondent does not appear but the Committee nevertheless decide that the hearing shall proceed the charge shall be read in his absence.

(2) As soon as the charge has been read the respondent may, if he so desires, object to the charge, or to any part of it, on a 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 that charge or on that part of the charge.

Proof of Conviction in a case relating to conviction

10.—(1) In cases arising out of a complaint or information from which it appears that a licensed conveyancer or recognised body has been convicted of a criminal offence the following order of proceedings shall be observed concerning proof of the convictions alleged in the charge:—

- (a) the complainant, or, if no complainant appears, the Solicitor shall adduce evidence of the convictions;
- (b) if no evidence is adduced concerning any particular conviction, the Chairman shall thereupon announce that that conviction has not been proved;
- (c) if the respondent appears, then the Chairman shall ask him concerning each conviction of which evidence is so adduced whether he admits the conviction; and if he admits it the Chairman shall thereupon announce that the conviction has been proved.

(a) (2) (a) Where the respondent appears, the following further order of proceedings shall be observed:—

- (i) if the respondent submits that a conviction elsewhere than in the United Kingdom was for an offence which, if committed in England and Wales would not have constituted a criminal offence, he may adduce evidence and may address the Committee in that behalf;
- (ii) if the respondent does not admit all the convictions, he may then adduce evidence concerning any conviction which he has not admitted on the question whether he was convicted as alleged, and may address the Committee on that question;

Provided that only one address may be made under either of the aforementioned subparagraphs and, where the respondent adduces evidence, that address shall be made either before that evidence is begun or after it is concluded;

- (b) on the conclusion of proceedings under the last foregoing paragraph, the Committee shall consider every conviction of which evidence has been adduced and shall determine whether or not it has been proved; and the Chairman shall announce their determination in such terms as they may approve.

Proof of the facts alleged in cases relating to conduct

11.—(1) In cases relating to conduct the following order of proceedings shall be observed as respects proof of the charge or charges:—

- (a) the case against the respondent shall be opened by the complainant (if any appears) or else by the Solicitor;
- (b) thereafter evidence shall be adduced of the facts alleged in the charge or charges;
- (c) if no evidence is adduced concerning any particular charge the Committee shall announce a finding that the respondent is not guilty in respect of the matters to which that charge relates.

(2) Where the respondent appears the following further order of proceedings shall be observed:—

- (a) at the close of the case against him the respondent may, if he so desires, make either or both of the following submissions relating to any charge concerning which evidence has been adduced, namely—
 - (i) that no sufficient evidence has been adduced upon which the Committee could find that the facts alleged in the charge have been proved;
 - (ii) that the facts alleged in the charge are not such as to justify the charge;

and where such a submission is made, any other party may reply thereto.

- (b) If a submission is made under the last foregoing sub-paragraph, the Committee shall consider and determine whether it should be upheld. If the Committee determine to uphold it they shall record, and the Chairman shall announce, their finding that, in relation to the matters to which that charge relates, the respondent is not guilty.
- (c) The respondent may adduce evidence in answer to any charge concerning which evidence has been adduced and, whether he adduces evidence or not, may address the Committee. Except with the leave of the Committee only one address may be made under this paragraph and, where the respondent adduces evidence, shall be made either before that evidence is begun or after it is concluded.
- (d) At the close of the case for the respondent, the complainant or the Solicitor, as the case may be, may, with the leave of the Committee, 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 rebutting evidence.
- (e) The complainant or the Solicitor, as the case may be, may address the Committee by way of reply to the respondent's case—
 - (i) if oral evidence (not being evidence as to character) other than that of the respondent himself has been given on the respondent's behalf; or
 - (ii) with the leave of the Committee, where no such evidence has been given.
- (f) Without prejudice to that last foregoing sub-paragraph, if the respondent has made a submission to the Committee on a point of law any other party shall have a right of reply limited to that submission.

(3) On the conclusion of the aforesaid proceedings, the Committee shall consider and determine as respects each charge which remains outstanding which, if any, of the facts alleged in the charge have been proved to their satisfaction.

(4) If under the last foregoing paragraph the Committee determine as respects any charge, either that none of the facts alleged in the charge has been proved to their satisfaction, or that such facts as have been so proved would be insufficient to justify the charge, the Committee shall record a finding that the respondent is not guilty in respect of the matters to which that charge relates.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Procedure upon proof of conviction or of the facts alleged

12.—(1) Where in a case relating to conviction the Committee have found that a conviction has been proved the following order of proceedings shall be observed:—

- (a) the Chairman shall invite the complainant or the Solicitor, as the case may be, to address the Committee, and to adduce evidence as to the circumstances leading up to the conviction and as to the character and previous history of the respondent;
- (b) the Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(2) Where in a case relating to conduct the Committee have found that the facts or any of them alleged in any charge have been proved to their satisfaction (and have not on those facts recorded a finding of not guilty) the following order of proceedings shall be observed:—

- (a) the Chairman shall invite the complainant or the Solicitor, as the case may be, to address the Committee and to adduce evidence as to the circumstances leading up to the facts in question, the extent to which such facts support the charge against the respondent, and as to the character and previous history of the respondent;
- (b) the Chairman shall then invite the respondent to address the Committee by way of mitigation and to adduce evidence as aforesaid.

(3) The Committee shall next consider and determine whether it shall be sufficient to conclude the case. If the Committee determine not to conclude the case, they shall next consider and determine whether to postpone judgment.

(4) If the Committee determine to postpone judgment, the judgment of the Committee shall stand postponed until such future meeting of the Committee as they may determine.

(5) If the Committee determine not to postpone judgment, they may make one or more of the orders referred to in Section 26(2) of or paragraph 4(2) of Schedule 6 to the Act.

Announcement of determination

13. The Chairman shall announce the determination or determinations of the Committee under the foregoing Rules in such terms as the Committee may approve.

Revocation of order for interim suspension

14. If in any case an order has been made by the Investigating Committee under Section 24(5) of the Act for interim suspension the Discipline and Appeals Committee shall, when they have determined the case, revoke such order if it has not previously expired.

Procedure in cases relating both to conviction and to conduct

15. Where in any case allegations are made against the respondent which relate both to conviction and to conduct, the Committee shall proceed upon the charge or charges of each kind separately under Rule 10 or Rule 11 of these Rules according as the charge relates to conviction or to conduct and shall then proceed under so much of Rule 12 of these Rules as may be applicable either upon the charge or charges of each kind separately or upon the charges of both kinds concurrently, according as the circumstances of the case may require.

Procedure upon postponement of judgment

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

(2) The Solicitor shall, not later than forty two days before the day fixed for the resumption of the proceedings, send to the respondent a notice, which shall:

- (a) specify the day, time and place at which the proceedings are to be resumed and invite him to appear thereat;
- (b) unless the Chairman otherwise directs, invite the respondent to furnish the Secretary with the names and addresses of persons to whom reference may be made confidentially or otherwise concerning his character and conduct; and
- (c) invite the respondent to send to the Solicitor not less than twenty one days before the day fixed for the resumption of the proceedings a copy of any statement or statutory declaration, whether made by the respondent or not, relating to his conduct since the hearing of his case or setting out any material facts which have arisen since that hearing.

(3) 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 a party to the proceedings, and he may in turn, if he so desires, send to the Solicitor a statement or statutory declaration, whether made by himself or not, concerning any matter raised by the respondent.

(4) 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 in relation to the conduct or the respondent since the hearing and evidence of any conviction recorded against the respondent which has not been the subject of a charge under these Rules, and shall hear any other party to the proceedings who desires to be heard.

(5) The Committee shall then consider and determine whether it shall be sufficient to conclude the case.

(6) If the Committee determine not to conclude the case, they shall next consider and determine whether they should further postpone their judgment on the charges on which their judgment was previously postponed; and if the Committee determine further to postpone judgment, the judgment of the Committee shall stand postponed until such future meeting of the Committee as they may determine; and the Chairman shall announce their determination in such terms as the Committee may approve.

(7) The provisions of this Rule shall apply to any case in which judgment is further postponed.

(8) If the Committee determine that judgment shall not be further postponed paragraph (5) of Rule 12 of these Rules shall apply.

(9) 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 Rules 9 and 11 and so much of Rule 12 as may be applicable and if the Committee determine neither to conclude the case nor to postpone judgment in respect of any such new charge, the Committee may apply paragraph (5) of Rule 12 simultaneously to the new charge and the charge in respect of which they had postponed judgment.

Cases where it is alleged that a licence or recognition was obtained through fraud

17.—(1) Where it is alleged that a respondent was issued a licence or granted recognition as a result of fraud on his part, the Solicitor shall send to the respondent a notice of hearing:

- (a) specifying the nature of the fraud alleged, stating the day, time and place at which the Committee will hold a hearing on the question;
- (b) inviting his attendance at such hearing; and
- (c) containing such further information as the nature of the case may require.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) The provisions of Rule 4 shall apply as though such notice were a notice of hearing such as is mentioned in that rule.

(3) A copy of the notice shall be sent to any person who is alleged to have been a party to the fraud alleged and to such other persons (if any) as the Chairman may direct, and any such person may with the leave of the Chairman appear at the hearing as an additional party thereto.

(4) The hearing shall proceed as though the question were a charge contained in a notice of hearing in a case relating to conduct and the provisions of Rule 11 shall accordingly apply thereto.

(5) If the Committee are satisfied that the licence has been issued or recognition granted as a result of fraud, they shall make an order in writing, under the hand of the Chairman, that the licence or recognition, having been proved to the satisfaction of the Committee to have been issued or granted as a result of fraud, shall be revoked and the Chairman shall announce the determination in such terms as the Committee may approve.

(6) Whether or not the Committee proceed to determine that a licence or recognition has been proved to their satisfaction to have been issued or granted as a result of fraud, they may, if they are satisfied that the licence or recognition has been issued or granted as a result of error, recommend the Council to revoke or amend the licence or grant of recognition in accordance with their conclusions.

(7) Where a hearing relates to two or more licences or recognition of bodies, the Committee may proceed under the foregoing provisions of this rule in respect of those licences or recognitions either separately or taken together, as the Committee think fit.

Procedure where there is more than one respondent

18. Nothing in this part of these Rules shall prevent one hearing being held into charges against two or more respondents; and where such a hearing 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 those Rules by or in relation to the several respondents, so however that any of the rights ensured to a respondent under those Rules shall be exercised separately by each of the respondents who desires to invoke that right.