



## **Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007**

The Council for Licensed Conveyancers (“CLC”) has made an application under the Legal Services Act 2007 (“the Act”) to change its regulatory arrangements to alter the standard of proof required in its disciplinary matters to the civil standard.

The CLC’s application related to initial hearing and appeals for its functions as an Approved Regulator and as a Licensing Authority should the CLC be designated.<sup>1</sup>

In this decision notice the Legal Services Board (LSB) approves the changes relating to the CLC’s functions as an Approved Regulator. The LSB cannot approve the changes relating to the CLC’s functions as a licensing authority because these rules will only come into force if the Lord Chancellor designates the CLC.<sup>2</sup>

Consequently the amendments to the CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011 and the Council for Licensed Conveyancers’ Discipline and Appeals Committee (Procedure) Rules 2011 have been approved by this decision notice. The CLC’s Adjudication Panel (No.2) Rules 2011 and the CLC’s Licensing Authority (Disciplinary Procedure) Rules 2011 are not approved by this decision but will come into force in the event and at the time that the CLC is designated as a licensing authority.

This Notice sets out the basis for the LSB approval and the decision taken, including a brief description of the changes.

### **Introduction**

The LSB is required by Part 3 of Schedule 4 of the Act to review and approve or reject alterations to the regulatory arrangements of the Approved Regulators. The Council for Licensed Conveyancers is an approved regulator.

1. Paragraph 25 of Schedule 4 explains that the LSB must approve a proposed change to the Regulatory Arrangements unless we are “...satisfied that...” the approval would fall within one or more of the criteria specified in sub paragraph 25(3) (and listed in

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<sup>1</sup> as a result of the Lord Chancellor responding to the recommendation made by the LSB to him on 12 May 2011 under paragraph 14(2) of Part 1 of Schedule 10 of the Act.

<sup>2</sup> at which point those rules would be treated as approved by the LSB as part of that designation decision when the Lord Chancellor exercises his authority under Paragraph 16(1) of Part1 of Schedule 10 of the Act

the footnote below<sup>3</sup>). If the LSB is not satisfied that one or more of the criteria are met, then it must approve the application in whole, or at least the parts of it that can be approved when only part of the application meets the criteria.

2. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules about how the application to alter the Regulatory Arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) requires that each proposed alteration has been made or is likely to be made in accordance with the procedures which apply in relation to making of the alteration. This includes the LSB's rules.
3. The LSB will approve Regulatory Arrangements in so far that they appear to achieve their intended outcome and satisfy the sub paragraph 25(3) criteria. Most notably there must be no adverse impact on the Regulatory Objectives overall and the alterations and the process by which they have been produced must be consistent with Better Regulation Principles.
4. The chronology for handling of this application can be found at the end of this Decision Notice.

### **Decision**

5. The application was a supplementary application for approval for changes to the CLC's regulatory arrangements relating to disciplinary processes which was made in February 2010 and which was part approved on 21 March 2011.
6. The CLC also made an application to the LSB under Schedule 10 of the Act for a recommendation to be designated as a licensing authority. That application was granted and on 12 May 2011 a recommendation was made to the Lord Chancellor that CLC be designated as a licensing authority.
7. In granting that application the Board had to be satisfied that there would be a body with the power to hear and determine appeals which may be made against the decisions of the licensing authority (Schedule 10, 11(2)(b)).

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<sup>3</sup> The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the Regulatory Objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

8. The CLC decided to select the General Regulatory Chamber of the First Tier Tribunal as this appellate body. This will take effect through the Section 80 Order which has now been through Parliamentary debate and the motion was made on 7 July 2011. The General Regulatory Chamber uses the civil standard of proof in its determinations. The CLC was therefore prompted to consider whether it should use the civil standard for all of its initial and appellate disciplinary processes rather than maintain its current arrangements where matters that are disciplinary but which are also capable of criminal prosecution are determined at the criminal standard of proof while all other matters are determined at the civil standard. Having consulted on their proposal the CLC now considers that all initial and appellate disciplinary hearings should be assessed to the civil standard of proof.
9. As a result of this decision, this application is for approval of consequential amendments to the CLC's rules.
10. Having considered the application in the context of the criteria in Schedule 4, 25(3), we are satisfied that we have no grounds for refusing the application and therefore the amendments to the CLC's Approved Regulator (Disciplinary Procedure) Rules 2011 and the Council for Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2011 are approved. Copies of the rules are attached to this Decision Notice.

#### **Rules not approved at this time**

11. The application included the Adjudication Panel Rules (No2) 2011 and the CLC Licensing Authority (Disciplinary Procedure) Rules 2011. These rules will be needed should the CLC be designated as a licensing authority. The Lord Chancellor is considering the recommendation from the LSB that CLC be so designated. If that recommendation is accepted then the regulatory arrangements for the licensing authority (which would include the Adjudication Panel Rules (No 2) 2011 and the CLC Licensing Authority (Disciplinary Procedure) Rules 2011) will be deemed to be approved at that time.

#### **Chronology**

- The LSB received the application from the Council for Licensed Conveyancers on 31 May 2011
- The 28 day initial decision period for considering the application ended on 27 June 2011
- The Decision Period was extended to 28 August 2011 on 27 June 2011
- This Decision Notice is being published on our website on 15 July 2011

**Chris Kenny, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**14 July 2011**

**Annex 1 – CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011**

**The CLC’s  
Approved Regulator (Disciplinary Procedure) Rules 2011**

Made on **[date]** by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A and 38 and paragraph 5 of Schedule 3 and paragraph 3 of Schedule 6 to the Administration of Justice Act 1985, Part II of Schedule 8 to the Courts and Legal Services Act 1990 and section 20 and Part 3 of Schedule 4 to the Legal Services Act 2007.

PRELIMINARY

**1. Citation and commencement**

1.1 These Rules may be cited as the CLC’s Approved Regulator (Disciplinary Procedure) Rules 2011.

1.2 These Rules come into force on [date].

**2. Interpretation**

2.1 In these Rules, unless the context otherwise requires: -

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

"the 1990 Act"           the Courts and Legal Services Act 1990;

"Adjudication Chair "	the chair of the Adjudication Panel;
"the Adjudication Panel"	the committee established by the CLC by which the functions conferred on the Investigating Committee under Part II of the 1985 are to be discharged;
"Adjudication Panel Rules"	the Licensed Conveyancers' Adjudication Panel Rules currently in force;
"Adjudicator"	the Authorised Officer, alternatively the Adjudication Panel, nominated under rule 3.1(iv) to make the determination;
"Authorised Officer"	an employee of the CLC appointed to exercise the functions delegated to him by the Adjudication Panel Rules;
"the CLC"	the Council for Licensed Conveyancers established under section 12 of the 1985 Act;
"the CLC's Representative"	in relation to any function under these Rules, a solicitor or other representative authorised by the CLC to act on its behalf for the purposes of that function and, in relation to a hearing, includes counsel instructed to act on the CLC's behalf;
"Company"	has the meaning given by section 1(1) of the Companies Act 2006;
"the Discipline and Appeals Committee "	the Discipline and Appeals Committee established under section 25(1) of the 1985 Act;
"Individual Respondent"	a Respondent who is a Licensed Conveyancer, Manager or employee;

“Lay Member”	a person appointed as a member of the Committee, who is not eligible to sit as a Licensed Conveyancer Member;
“Licensed Conveyancer”	(a) a person who holds a licence in force under Part II of the 1985 Act, and  (b) in relation to a particular allegation, includes a person who held such a licence at the time when the conduct to which the allegation relates took place;
“Licensed Conveyancer Member”	an individual appointed as a member to the Panel who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a Recognised Body regulated by the CLC;
“Limited Liability Partnership”	a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;
“Limited Liability Partnerships Act 2000”	the Limited Liability Partnerships Act 2000, the Limited Liability Partnerships Regulations 2001 and any other regulations made under that Act;
“LLP Member”	a member of a Limited Liability Partnership;
“Manager”	in relation to a Recognised Body, means a person who is:  (a) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members; (b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply; (c) a partner, if the Recognised Body is a partnership; (d) a LLP member, if the Recognised Body is a Limited Liability Partnership; (e) a member of its governing body, if the Recognised Body is an unincorporated body (other than a partnership); and (f) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not

apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;

- “Party”
- (a) the CLC (and includes the CLC’s Representative);
  - (b) the Respondent; or
  - (c) the complainant;
- “Recognised Body”
- (a) means a body for the time being recognised under section 32 of the 1985 Act, and
  - (b) in relation to a particular allegation, includes a body which was so recognised at the time when the conduct to which the allegation relates took place;
- (“Recognised Body” is an entity regulated by the CLC and includes, without limitation, a partnership, a sole principal, a limited company and a Limited Liability Partnership);
- “Resolution”
- the form in which each determination, decision, order or direction of the Panel is to be announced by the Adjudication Chair;
- “Respondent”
- the Licensed Conveyancer, Manager, employee, Recognised Body about whom the reference is made or treated as made;
- “Standing Orders”
- the Standing Orders made for the Adjudication Panel by the CLC pursuant to paragraph 9(2) of schedule 3 to the 1985 Act.

2.2 The Interpretation Act 1978 applies to these Rules as it applies to an Act of Parliament.

#### INITIATING PROCEDURE

### 3. Summary Determination and Preliminary Consideration

- 3.1 Having carried out a preliminary investigation under section 24 of, or paragraph 3 of Schedule 6 to, the 1985 Act the Authorised Officer may refer a case to the Adjudication Panel, alternatively to the Discipline and Appeals Committee, for hearing and determination having formulated the case against the Respondent by:
- i) setting out the allegation,
  - ii) stating the statutory provision under which it is made,
  - iii) providing a summary of the facts relied on to support it, and
  - iv) whether the determination will be made by the Authorised Officer or by the Adjudication Panel, or by the Discipline and Appeals Committee.
- 3.2 A reference may contain more than one allegation but each allegation must be separately stated in accordance with rule 3.1.
- 3.3 A copy of the reference must be served on the Respondent, together with a copy of these Rules within 14 days of the making of a reference.

#### PROCEDURE BEFORE HEARINGS OF THE HEARING PANEL

#### **4. Notice of hearing**

- 4.1 As soon as reasonably possible after the making of a reference to the Adjudication Panel within rule 3, the Authorised Officer must serve on the Respondent a notice in writing, stating the date, time and place at which the Adjudication Panel will hold a hearing into the matter and which includes a statement as to the Parties' rights under rule 10.

4.2 The notice also must contain details of the matters alleged against the Respondent in the form of an allegation dealing with each matter separately and setting out the details as required by rule 3.1.

4.3 A hearing must not be held earlier than 28 days after the notice of hearing is served under rule 4.1 unless the Parties agree.

## **5. Postponement of hearing**

5.1 The Adjudicator may postpone a hearing at any stage of the proceedings if any Party applies for a postponement or it appears appropriate.

5.2 The postponement may be on such terms as the Adjudicator think fit.

5.3 The CLC must serve on the Respondent a notice in writing of a postponed or adjourned hearing stating the date, time and place of the hearing.

## **6. Referral to the Discipline and Appeals Committee**

6.1 Any Party may make an application for the case to be referred to the Discipline and Appeals Committee.

6.2 Whether or not such an application has been made the Adjudicator may at any time before the allegations have been determined direct the allegations against the Respondent be referred to the Discipline and Appeals Committee for hearing and determination in accordance with section 25 of the 1985 Act.

## **7. Documents upon which the CLC proposes to rely**

7.1 At least 21 days before the date of a hearing the CLC must supply to the Respondent a collection of copies of all the documents on which it proposes to rely with all pages numbered.

**8. Amending allegations**

- 8.1 The CLC may amend any allegation or summary of facts set out in an allegation served in accordance with rule 3 by serving an amended notice under rule 4, but where the case has been referred to the Adjudication Panel the consent of the Adjudication Panel is required for an amendment served less than 21 days before the date of the hearing.
- 8.2 Where an amendment is made under this rule and the case has been referred to the Adjudication Panel, on an application by any Party the Adjudication Panel may postpone the hearing.

PROCEDURE AT HEARINGS

**9. Hearing and adjournment**

- 9.1 Subject to rules 9.2 and 9.3, any hearing before the Adjudicator must be held in public.
- 9.2 If it appears to the Adjudicator 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 Adjudicator may direct that the public are to be excluded from the whole or part of the proceedings.
- 9.3 The Adjudicator may at any time adjourn the hearing of any proceedings as they think fit.

**10. Representation**

- 10.1 Any Party may either make written submissions to, or attend at a hearing before, the Adjudicator under these Rules –

(a) in person,

(b) represented by counsel or a solicitor,

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

(d) represented by a Licensed Conveyancer, or

(e) if the Party is a Recognised Body, represented by one of its Managers or employees;

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

10.2 If a Party does not answer the allegations either in writing or by attending before it, the Adjudicator may proceed to hear and determine the matter.

## **11. Witnesses**

11.1 Subject to the following provisions of this rule, evidence of fact may be given in person or by witness statement.

11.2 The evidence of a witness (including the Respondent) shall be contained in a witness statement served in accordance with this rule unless the Adjudicator is satisfied that there is good reason for not serving a witness statement.

11.3 In the event that no witness statement is served for a witness, the Party calling that witness must provide a summary of the evidence which it is believed the witness will give in person.

11.4 A Party may only rely on evidence given by witness statement –

(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 Adjudication Panel at least 7 days before that date, or

(b) if all the Parties agree.

11.5 Such witness statement by a witness may be treated as the witness' evidence in chief, unless the Adjudicator determine otherwise.

11.6 The Adjudication Chair may examine any Party or witness at any stage of a hearing and with his consent any member of the Adjudication Panel may do so.

## **12. Quality of evidence and standard of proof**

12.1 In any proceedings before the Adjudicator –

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

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

## **13. Announcements by the Adjudicator**

13.1 The Adjudicator must announce the decisions and directions of the Adjudication Panel under these Rules in relation to the conduct of any case in such terms and in such manner as the Adjudicator determines.

13.2 All such decisions and directions shall be noted and sent to the Respondent.

## **14. Determinations of the Adjudicator**

14.1 The Adjudicator must announce each determination and order made.

14.2 Each determination and order made by the Adjudicator shall be filed with the CLC and sent to the Respondent within 28 days after it has been made.

14.3 Every determination and order signed by the Authorised Officer (if the determination has been made by him), alternatively by the Adjudication Chair or by some other member of the Adjudication Panel authorised by the Adjudication Chair for this purpose shall be filed with the CLC and shall be available for inspection during office hours.

**15. Procedure: general**

15.1 Where a hearing relates to two or more allegations the Adjudicator may deal with them separately or together as the Adjudicator thinks fit.

**16. The allegation**

16.1 Each allegation must be read out by the CLC's Representative and if he attends the hearing in the presence of the Respondent.

16.2 If the Respondent has appeared at the hearing, as soon as the allegations have been read, the Adjudicator must ask him if he wishes to object to any allegation, or any part of any allegation, on a point of law.

16.3 If the Respondent so wishes, he must make his objection and the CLC's Representative may reply to it.

16.4 If the Respondent does not attend the hearing but has made a written submission to the Adjudicator on a point of law, it shall be read out by the CLC's Representative who may reply to it.

16.5 If the objection is upheld and no amendment of the allegation is allowed by the Adjudicator, they must dismiss it.

16.6 If only part of the allegation is disallowed, no further proceedings may be taken on that part of it.

**17. Respondent's response to the allegation**

- 17.1 The Adjudicator must ask the Respondent attending the hearing to respond to each allegation against him, and his response must be recorded.
- 17.2 If the Respondent does not attend the hearing but the Adjudicator decide to proceed in his absence, he is deemed to have denied each allegation against him, and that denial must be recorded, unless the Respondent has made a submission to the Adjudicator in writing unequivocally admitting the allegations against him.
- 17.3 Any qualified or equivocal response by the Respondent must be recorded as a denial of the allegation.

**18. Admission of all allegations**

- 18.1 Where the Respondent unequivocally admits an allegation in writing or at the hearing, the Authorised Officer (if he is to determine the matter), alternatively Adjudication Chair must announce that the allegation has been admitted and determine that it is proved.
- 18.2 The CLC 's Representative must then in relation to any admitted allegation first –
- (a) summarise the facts supporting that allegation,
  - (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.
- 18.3 If the Respondent has attended the hearing, the Adjudicator must then invite the Respondent to -
- (a) adduce evidence relating to the allegation, any mitigating circumstances, his character and behaviour; and
  - (b) make representations to the Adjudicator if he wishes to do so.
- 18.4 If the Respondent has made an admission by written submission, the Adjudicator I may consider any of the matters referred to in rule18.3 (a) and (b) contained in that submission.

**19. Denial of some or all allegations**

- 19.1 If the Respondent denies or is deemed to deny any allegation, the CLC's Representative must, in relation to any such allegation, first set out the case against the Respondent and then adduce evidence of the allegations.
- 19.2 If no evidence about an allegation is given, the Adjudicator must determine that they are not satisfied as to it and dismiss it.
- 19.3 If the Respondent attends the hearing he may cross-examine any witness called by the CLC's representative to give evidence;
- 19.4 If he attends the hearing the Respondent may –
- a) adduce evidence relating to any allegation, and
  - (b) at the conclusion of the evidence address the Adjudicator, (but only once, unless the Adjudicator gives leave for a further address).
- 19.5 Any witness who attends and gives evidence for the Respondent may be cross-examined by the CLC's Representative, and the Authorised Officer, alternatively the Adjudication Chair, may permit the Respondent to re-examine the witness.
- 19.6 The CLC's Representative may, at the conclusion of the evidence and the Respondent's address to the Adjudicator (if any), address the Adjudicator (but only once, unless the Adjudicator gives leave for a further address).

**20. Determination of allegations that have been denied or deemed to have been denied**

- 20.1 At the conclusion of the hearing the Adjudicator must determine whether the allegations have been proved to their satisfaction.
- 20.2 If the Adjudicator determines that any allegation has not been proved to their satisfaction, the Adjudicator must dismiss that allegation.
- 20.3 If the Adjudicator determines that any allegation has been proved to their satisfaction –
- (a) the Authorised Officer, alternatively the Adjudication Chair, must invite the CLC's Representative to address the Adjudicator and adduce evidence as to the Respondent's previous character and history,

- (b) if the Respondent appears the Authorised Officer, alternatively the Adjudication Chair, must then invite him to address the Adjudicator in relation to mitigation, character and matters relevant to penalty and to adduce evidence in support.

20.4 If the Respondent has chosen to make written representations, rather than to attend, the Adjudicator may consider any written submission relating to the matters specified under rule 20.3 (b).

## **21. Cases where some allegations are admitted and some denied**

21.1 If some allegations are admitted but others are denied, the procedure set out in rule 18 must be postponed until the determination of the denied allegations.

21.2 The procedure relating to mitigation in respect of admitted allegations must be dealt with in conjunction with mitigation in respect of any disputed allegations which the Adjudicator determines have been proved.

## **22. Judgment**

22.1 After an allegation has been proved and the procedures referred to in rules 18, 19, 20 and 21 have been concluded, the Adjudicator shall proceed to judgment by making any order directing the payment of a fine or costs by the Respondent, as the Adjudicator may determine.

22.2 If a matter is dismissed or is not proven, the Adjudicator may proceed to judgment by making any order directing the payment of costs by the CLC or the complainant, but such judgment must be postponed until after any allegation which remains outstanding has been determined.

## **23. Procedure where there is more than one Respondent**

23.1 A single hearing may be held into allegations against two or more Respondents.

23.2 Subject to rule 23.3 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 Adjudicator as to the order in which proceedings are to be taken in relation to each of the Respondents.

23.3 The rights of a Respondent under these Rules are to be exercised separately by each of the Respondents who wishes to exercise them.

## MISCELLANEOUS PROVISIONS

### **24. Service of documents**

24.1 Unless otherwise agreed by the Parties or unless the Authorised Officer, alternatively the Adjudication Chair or the Adjudication Panel, direct that service under these Rules may be effected by another method specified in the direction, such service on a Party may be effected only –

(a) by delivering the document personally;

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

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

(d) in the case of service on any person not within rule 24.1 (b) or (c), by first class post to his last known address; or

(e) by document exchange.

24.2 Any document required by these Rules to be served on the CLC must be served by a method mentioned in rule 24.1 at the principal place of business of the CLC .

24.3 Service by a method mentioned in rule 24.1 (b) to (e) is deemed to have been effected on the second business day after the document is dispatched.

## **25. Administration of Oaths**

25.1 For the purposes of any proceedings before the Adjudicator under these Rules—

(1) the Adjudicator may administer oaths; and

(2) any Party to the proceedings may issue a witness summons requiring a witness to give evidence before the Adjudicator on oath or produce documents, but no person shall be compelled under any such witness summons to produce any document which he could not be compelled to produce on the trial of an action.

## **26. Voting by the Adjudication Panel**

26.1 The Adjudication Panel shall vote and deliberate in private.

- 26.2 Any question put to the vote must be formulated and put to the Adjudication Panel members present by the Adjudication Chair.
- 26.3 The Adjudication Chair must call on the members present to vote for or against the question and must declare the result.
- 26.4 The Adjudication Chair is entitled to vote.
- 26.5 If an equal number of votes is cast for and against the question, the question is deemed to have been determined in favour of the Respondent.

**27. Absence of the Adjudication Chair**

- 27.1 Subject to rule 28, anything authorised or required by these Rules to be done by the Adjudication Chair may, if he is absent or unable to act or continue to act, be done by any other member of the Adjudication Panel who is authorised for the purpose by the Adjudication Chair or, if no person is authorised, by the other members present.

**28. Quorum**

- 28.1 No meeting of the Adjudication Panel shall begin to hear and determine an allegation unless no less than three members of the Adjudication Panel (including the Adjudication Chair) are present the majority of whom are Lay Members including at least one Licensed Conveyancer Member and two Lay Members.
- 28.2 Paragraphs 8 and 9 of the Standing Orders shall not apply to meetings of the Adjudication Panel held under these Rules.

**29. Relaxation of rules**

- 29.1 At the request of any of the Parties (including the CLC) or on its own initiative, the Adjudicator may direct that any requirement of these Rules is not to apply or is relaxed in any manner they think fit provided the Adjudicator is satisfied that such disapplication or relaxation is not prejudicial to the interests of the Respondent; and such a direction may be given subject to such other requirements as they think fit.
- 29.2 Where it has given such a direction, the Adjudication Panel 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.

**Annex 2 – CLC’s Discipline and Appeals Committee (Procedure) Rules 2011**

**The Council for Licensed Conveyancers’  
Discipline and Appeals Committee  
(Procedure) Rules 2011**

Made on **[date]** by the Council for Licensed Conveyancers with the agreement of the Legal Services Board under section 38 and paragraph 1 of schedule 4 to the Administration of Justice Act 1985 and part 3 of schedule 4 to the Legal Services Act 2007

ARRANGEMENT OF RULES

PRELIMINARY

1. Citation and commencement
2. Interpretation

MAKING REFERENCES, APPLICATIONS AND APPEALS TO THE COMMITTEE

3. References and complaints
4. Revocation of licences and recognitions obtained through fraud or error
5. Applications after disqualification or revocation
6. Making appeals
7. Appeals against deemed refusal of recognition under section 32 of the Act

PROCEDURE BEFORE HEARINGS

8. Notice of hearing
9. Postponement of hearing
10. Preliminary hearings etc.
11. Documents upon which a party proposes to rely

12. Notice requiring indication of contested matters in rule 3 or 4 cases
13. Admission of and challenge to documents
14. Amending allegations or complaints or grounds of appeal

#### PROCEDURE AT HEARINGS ETC.: GENERAL

15. Hearing and adjournment
16. Representation and non-appearance
17. Witnesses
18. Quality of evidence and standard of proof
19. Proof of conviction
20. Announcements by the Committee
21. Parties' rights as to record of proceedings

#### ADDITIONAL PROVISIONS ABOUT HEARINGS IN RULE 3 CASES

22. Procedure in rule 3 cases: general
23. The allegation or complaint
24. Respondent's response to the allegation or complaint
25. Admission of all allegations or complaints
26. Denial of some or all allegations or complaints
27. Determination of allegations or complaints
28. Cases where some allegations or complaints are admitted and some denied
29. Procedure where there is more than one respondent

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

30. Licences and recognitions obtained through fraud or error
31. Applications for removal of licence disqualification or for further licence or recognition following revocation for fraud

## PROCEDURE ON APPEALS

32. Procedure etc. on appeals

## MISCELLANEOUS PROVISIONS

33. Service of documents

34. Procedure on postponement of determination

35. Committee voting

36. Absence of chairman

37. Relaxation of rules

## PRELIMINARY

### **Citation and commencement**

1.—(1) These Rules may be cited as the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2011.

(2) These Rules shall come into force on **[date]** on which date the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 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;

“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;

“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 Adviser” means a person appointed under paragraph 3 of Schedule 4 to the Act;

“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:—

(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;

(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 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 to the Committee under section 24 of, or paragraph 3 of Schedule 6 to, the 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.

### **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.

### **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 Adviser 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 Adviser 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 Adviser 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 Adviser 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 Adviser.

(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.

## 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 Adviser 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 Adviser may do so.

### **Quality of evidence and standard of proof**

**18.—**(1) 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) 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 Adviser 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 of 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 Adviser 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 Adviser 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 Adviser 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 as provided by the Civil Procedure Rules; 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 postponed 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.