



## **Discipline and Appeals Committee Rules 2009**

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## **Discipline and Appeals Committee Rules 2009**

Made on 21 January 2009 by the Council for Licensed Conveyancers with the concurrence of the Secretary of State pursuant to sections 25 and 38, paragraph 5 of Schedule 3 and paragraph 4 of Schedule 6 to the Administration of Justice Act 1985 and section 53 and Part II of Schedule 8 to the Courts and Legal Services Act 1990.

### **1. Citation, Commencement, Savings and Interpretation**

1.1 These Rules may be cited as the Licensed Conveyancers' Discipline and Appeals Committee Rules 2009 and shall come into effect on 31 March 2009 on which date the Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 shall cease to have effect save that:-

1.1.1 The terms of office of the Chairman, Deputy Chairmen and members of the members panel appointed in accordance with the Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 shall continue in effect until 30 September 2012 unaffected by the coming into force of these Rules. These persons shall be deemed to be appointed in accordance with these Rules; and

1.1.2 Any case referred to the Discipline and Appeals Committee in accordance with the Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 which has not been finally determined on the coming into force of these Rules, shall continue and shall be determined by the Discipline and Appeals Committee in accordance with these Rules.

1.2 In these Rules unless the context otherwise requires:

1.2.1 words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

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

"Chairman" the Chairman of the Discipline and Appeals Committee;

"the Council" the Council for Licensed Conveyancers established under section 12 of the 1985 Act;

"Company" has the meaning given by section 735(1) of the Companies Act 1985;

"DAC Hearing Committee" the Hearing Chairman and DAC Members selected under rule 3.3 for the purpose of the hearing of a case;

“DAC Member”	a member of the Discipline and Appeals Committee and shall where the context permits include the Chairman and any Deputy Chairman;
“Deputy Chairman”	the Deputy Chairman of the Discipline and Appeals Committee;
“the Discipline and Appeals Committee”	the Committee established under section 25 of the 1985 Act;
“Hearing Chairman”	the Chairman or Deputy Chairman selected by the Chairman to act as chairman of a hearing of the Discipline and Appeals Committee;
“the Investigating Committee”	the Investigating Committee established under section 24 of the 1985 Act;
“Legal Adviser”	the adviser to the Discipline and Appeals Committee as appointed by the Council;
“Licensed Conveyancer Member”	an individual appointed as a member to the Committee 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;
“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: <ul style="list-style-type: none"> <li>(a) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members;</li> <li>(b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply;</li> <li>(c) a partner, if the Recognised Body is a partnership;</li> <li>(d) a LLP member, if the Recognised Body is a Limited Liability Partnership;</li> <li>(e) a member of its governing body, if the Recognised Body is an unincorporated body (other than a partnership); and</li> </ul>

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 applicant;
  - (b) the appellant;
  - (c) the respondent; or
  - (d) the complainant;

“the Procedure Rules” the rules made in accordance with paragraph 1 of Schedule 4 to the 1985 Act;

“Recognised Body” a body recognised by the Council under section 32 of the 1985 Act to provide Regulated Services to the public.

“Regulated Services” Conveyancing Services and such other services, including Probate Services, regulated by the Council;

Other expressions shall have the meanings given by Section 39(1) of the 1985 Act.

## **2. Membership and remuneration of the Discipline and Appeals Committee**

2.1 The Discipline and Appeals Committee shall consist of a Chairman and up to two Deputy Chairmen and a members’ panel comprising not more than ten other members.

2.2 The Chairman and each of the Deputy Chairmen must :

- (a) have a ten year general qualification within the meaning of section 71 Courts and Legal Services Act 1990; and
- (b) not have been a member of the Council during the 18 months preceding their appointment.

2.3 Of the members of the members’ panel, at least one half shall be Licensed Conveyancer Members and none shall be a member of the Council or shall have been a member of the Council during the 18 months preceding their appointment.

2.4 Other than as provided at rule 1.1.1 which makes different provisions, the DAC Members shall be appointed following an open recruitment process conducted by the Council taking into account good practice guidance for public appointments.

2.5 The appointment of the DAC Members shall be made by a selection panel.

2.6 The selection panel shall comprise up to three members, chosen by the Council after considering the advice of the Chief Executive Officer of the Council.

- 2.7 Subject to rules 2.8, 2.9 and 2.10 the persons appointed in accordance with rule 2.4 or 2.12 shall serve for a period not exceeding four years from the date of their respective appointments.
- 2.8 Subject to rules 2.9 and 2.10, a person appointed as DAC Member shall be eligible subject to review for re-appointment once only, for a further period not exceeding four years.
- 2.9 A person appointed as Chairman, Deputy Chairman or member of the Discipline and Appeals Committee in accordance with the Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 shall be eligible subject to review, on the expiry of his term of office in accordance with rule 1.1.1, for re-appointment in accordance with these Rules once only, for a period not exceeding four years even if he has already served more than one term of office under the Licensed Conveyancers' Discipline and Appeals Committee Rules 2004.
- 2.10 A vacancy in the office of Chairman or Deputy Chairman or a member of the members' panel shall automatically occur:
- (a) on his death;
  - (b) on the acceptance by the Council of his written resignation;
  - (c) on the expiration of his term of office;
  - (d) on his becoming a member of the Council;
  - (e) if he is convicted of a criminal offence involving fraud, dishonesty or deception or an indictable offence which has not been spent by virtue of a period of rehabilitation without offending under the Rehabilitation of Offenders Act 1974;
  - (f) if he is adjudged bankrupt, is the subject of a bankruptcy restrictions order or makes a composition or arrangement with his creditors;
  - (g) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him; or
  - (h) if professional misconduct is proved against him by the disciplinary process of his professional body.
- 2.11 A DAC Member may be removed from office by resolution passed in accordance with the provisions of rule 7.
- 2.12 Where a vacancy occurs, it shall be filled as soon as possible in accordance with rules 2.4 and 2.5.
- 2.13 If there is a vacancy in the office of Chairman or if the Chairman is unable or unwilling to act within a reasonable time, the Deputy Chairman (or if more than one, one of them) may act in his place.
- 2.14 The Council will pay to the DAC Members and members of the selection panel attendance fees and reasonable expenses, such fees to be determined by the Council and reviewed periodically.

### **3. Composition of and Hearings before the Discipline and Appeals Committee**

- 3.1 Hearings before the Discipline and Appeals Committee shall be convened at the direction of the Chairman to determine proceedings under the Procedure Rules.
- 3.2 To enable the Chairman to decide whether a hearing before the Discipline and Appeals Committee must be convened, the Council shall:
- a) serve and lodge notice of any allegation or complaint in accordance with the Procedure Rules; or
  - b) if rule 3.2(a) is not applicable, inform the Chairman of the following other circumstances:-
    - (i) the service of an application or appeal to the Discipline and Appeals Committee as soon as is practicable after receipt by the Council of that application or appeal;
    - (ii) a requirement by a complainant as defined by paragraph 17(1) of schedule 8 to the Courts and Legal Services Act 1990 that a hearing before the Discipline and Appeals Committee should be convened to hear and determine the complaint.
- 3.3 When the Chairman directs that a hearing before the Discipline and Appeals Committee is to be convened the Chairman shall select the Hearing Chairman and the two DAC Members to constitute the DAC Hearing Committee for the purpose of that hearing, provided that at least one of the DAC Members shall be a Licensed Conveyancer Member. The Hearing Chairman shall determine the date, time and place for the hearing and notify the Council.
- 3.4 When he directs that a hearing be convened as provided by rule 3.3, the Chairman must at that time also select a Legal Adviser to attend the hearing to advise the Discipline and Appeals Committee in accordance with Guidance issued by the Council.
- 3.5 Without prejudice to any restriction that would apply under the general law, a person who acted in relation to any case, as a member of the Investigating Committee or otherwise as a member of the Council, shall not be eligible to act in relation to that case as a DAC Member.
- 3.6 The Council shall as soon as reasonably possible send notice of the hearing to each member of the DAC Hearing Committee and the appropriate Parties in the manner prescribed by the Procedure Rules.
- 3.7 When the DAC Hearing Committee direct that a new hearing date be fixed for the purposes of a preliminary meeting or to hear or continue to hear and determine the matter before them, the Hearing Chairman shall determine the date, time and place for the hearing and notify the Council.
- 3.8 The Council shall as soon as reasonably possible send notice of the hearing to every member of the DAC Hearing Committee and the appropriate Parties and the Legal Adviser in the manner prescribed by the Procedure Rules.
- 3.9 If a case has been part heard on the expiry of the term of office of one or

more members of the DAC Hearing Committee under rule 2.10(c) (but for no other reason), that DAC Member may with the agreement of the Hearing Chairman be treated as remaining a DAC Member and hear the case until its conclusion even though for all other purposes that individual has ceased to be a DAC Member.

- 3.10 If an individual ceases to be a DAC Member under rule 2.10 (other than as a result of the operation of rule 2.10(c)) where a case has been part heard the Hearing Chairman may appoint another DAC Member to the DAC Hearing Committee to enable the hearing of that case to continue until its conclusion provided he is satisfied that it is in the interests of natural justice.

#### **4. Quorum**

- 4.1 No hearing before the DAC Hearing Committee shall take place or shall continue unless there are present the three members of the Discipline and Appeals Committee constituted in accordance with Rule 3.

#### **5. Penalty**

- 5.1 The amount of any penalty required to be paid respectively under section 26(2) of and paragraphs 4(2)(b) and 4(2B)(a) of schedule 6 to the 1985 Act must be fair and proportionate and must not exceed £1,000,000.

#### **6. Meetings of the Discipline and Appeals Committee**

##### ***Meetings and Quorum***

- 6.1 The Chairman may, by giving not less than 14 nor more than 28 days notice to the other members of the Discipline and Appeals Committee, determine the time, date and place of a meeting for any purpose connected with the affairs of the Discipline and Appeals Committee other than a hearing.
- 6.2 The Chairman shall, if requested in writing by not less than three members, convene a meeting to take place under rule 6.1 and if he fails within 14 days to give notice under that rule the requisitionists may give notice under that rule to convene the meeting.
- 6.3 Any notice to convene a meeting shall state the matters proposed to be discussed at the meeting.
- 6.4 At any meeting held under this rule any three DAC Members present shall constitute a quorum. A simple majority of those present and voting shall suffice to pass any resolution. In case of equality of votes on a resolution requiring a simple majority the Chairman shall have a second or casting vote.

#### **7. Special Meetings**

- 7.1 A special meeting may be convened in like manner with the provisions of rule 6.1, 6.2 and 6.3 for the purpose of the proposed removal of a DAC Member under rule 2.11.
- 7.2 At any meeting held under this rule any six DAC Members present disregarding the DAC Member whose removal is proposed, shall constitute a quorum.

- 7.3 The DAC Member whose removal is proposed may attend in person with a nominated representative at any meeting held under this rule in order to state his case. Once the DAC Member whose removal is proposed has presented his case he and his nominated representative shall withdraw from the meeting while the Discipline and Appeals Committee deliberates.
- 7.4 The Discipline and Appeals Committee shall then determine the issue by way of secret ballot. There must be at least six affirmative votes for removal before the Discipline and Appeals Committee may pass a resolution to that effect, otherwise it must resolve to refuse removal.
- 7.5 Following determination of the secret ballot the Discipline and Appeals Committee shall pass a resolution in accordance with its decision in the presence of the DAC Member who has attended the meeting. The resolution shall be reduced to writing and a copy provided to the DAC Member concerned within 28 days of the meeting.

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