STATUTORY INSTRUMENTS

1978 No. 1458

INSURANCE

The Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules Approval Order 1978

Made - - - -	*9th October* 1978
Laid before Parliament	*10th October* 1978
Coming into Operation	*31st October* 1978

The Secretary of State, in exercise of the powers conferred by sections 27(1) and 28(1) of the Insurance Brokers (Registration) Act 1977(a) and of all other powers enabling him in that behalf, hereby makes the following Order—

1. This Order may be cited as the Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules Approval Order 1978 and shall come into operation on 31st October 1978.

2. The Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules 1978 made by the Insurance Brokers Registration Council in exercise of their powers under section 19(4) of the Insurance Brokers (Registration) Act 1977 are hereby approved as set out in the Schedule to this Order.

Stanley Clinton Davis,
Parliamentary Under-Secretary of State,
Department of Trade.

9th October 1978.

(a) 1977 c. 46.

SCHEDULE

THE INSURANCE BROKERS REGISTRATION COUNCIL (PROCEDURE OF THE DISCIPLINARY COMMITTEE) RULES 1978

The Insurance Brokers Registration Council, having complied with the provisions of section 19(5) of the Insurance Brokers (Registration) Act 1977, in exercise of their powers under section 19(4) of the Act, hereby make the following Rules—

Part I

CITATION AND INTERPRETATION

1.—(1) These Rules may be cited as the Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules 1978.

(2) In these Rules, unless the context otherwise requires—

"the Act" means the Insurance Brokers (Registration) Act 1977;

"case" means any disciplinary case or other case to which these Rules apply;

"the Chairman" means the Chairman or the Acting Chairman of the Committee;

"the Committee" means the Disciplinary Committee set up by the Council in pursuance of section 14(1) of the Act;

"the complainant" means a person or body by whom a complaint has been made to the Council in a case to which these Rules apply; a complainant shall not be deemed to appear in any proceedings if he takes part therein only as a witness;

"conviction" means a conviction within the meaning of section 15(1)(*a*) of the Act;

"disciplinary case" means a disciplinary case within the meaning of section 13(1) of the Act which has been referred to the Disciplinary Committee pursuant to section 13(2) of the Act;

"inquiry" means the proceedings at which the Committee consider and determine any case;

"the Investigating Committee" means the Committee set up by the Council in pursuance of section 13(1) of the Act for the preliminary consideration of disciplinary cases;

"the Legal Assessor" means an assessor appointed by the Council or the Committee for the purposes of section 20 of the Act;

"party to the inquiry" means the complainant (if any), the Solicitor and any person on whom a notice of inquiry has been served in accordance with these Rules: provided that if the complainant does not appear at the inquiry he shall not thereafter be included in the said phrase;

"the respondent" means any person or body corporate whose name has been entered in the register or list under the provisions of the Act and in respect of whom a case to which these Rules apply has been referred to the Committee for inquiry;

"the Solicitor" means a solicitor nominated by the Council to act as their solicitor for the purposes of these Rules, and in relation to an inquiry includes counsel instructed by the Solicitor to act on his behalf.

(3) The Interpretation Act 1889(a) shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

Part II

Preliminary Proceedings

Notice of inquiry

2.—(1) The Solicitor shall, as soon as may be after a disciplinary case has been referred to the Committee, serve upon the respondent a notice of inquiry as nearly as may be in the form set out in the Appendix to these Rules stating the substance of the allegation or complaint (set out as a charge or charges) and specifying the facts relied on in relation to each allegation or complaint and the provision of section 15 of the Act which the Committee considers relevant, and stating also the day, time and place at which the Committee will hold an inquiry into these matters, and enclosing a copy of these Rules and of the Act. The said notice and copies shall be sent by post in a registered or recorded delivery letter addressed to the respondent.

(2) If there is a complainant the Solicitor shall send him a copy of the notice of inquiry and a copy of these Rules.

(3) The Committee shall not hold an inquiry unless a notice of inquiry has been served upon the respondent in accordance with the foregoing provisions of this rule.

(4) Except with the agreement of the respondent the inquiry shall not be held within twenty-eight days after the date of posting the notice of inquiry in accordance with paragraph (1) of this rule.

Postponement or cancellation of inquiry

3.—(1) The Chairman, of his own motion or upon the application of any party thereto, may postpone the hearing of an inquiry, or may refer a disciplinary case to the Investigating Committee for further consideration as to whether an inquiry should be held.

(2) Where before the inquiry opens it appears to the Chairman, or at any stage of the proceedings it appears to the Committee, that a notice of inquiry is defective, he or they shall cause the notice to be amended, unless it appears to him or them that the required amendment cannot be made without injustice, or, if he or they consider that the circumstances in which an amendment is made require it, he or they may direct that the amended notice shall be served on the respondent and that the inquiry shall be postponed.

(3) The Solicitor shall, as soon as may be, give to all parties to whom a notice of inquiry has been sent notification of any decision to postpone or not to hold an inquiry, and inform them of any date fixed for the hearing of a postponed inquiry.

Access to documents

4. Upon application by any party to the inquiry the Solicitor shall send to that party a copy of any statutory declaration, complaint, answer, admission,

(a) 1889 c. 63.

explanation or other similar document received by the Council from any party to the inquiry.

Part III

Disciplinary Cases

The reading of the charge or charges

5.—(1) The charge or charges shall be read in the presence of the respondent, and of the complainant if one appears:

Provided that if the respondent does not appear at the inquiry but the Committee nevertheless decide that the inquiry shall proceed the charge or charges shall be read in his absence.

(2) As soon as the charge or charges have been read the respondent may, if he so desires, object to the charge or charges, or to any part thereof, in point of law, and any other party may reply to any such objection; and, if any such objection is upheld, no further proceedings shall be taken on a charge or on a part of a charge to which the objection relates.

Proof of the facts alleged

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

(2) The complainant or, if no complainant appears, the Solicitor shall then open the case and may call witnesses and adduce evidence of any facts not admitted by the respondent and of any matter connected with the facts alleged which may be relevant. The respondent may cross-examine any such witness and the witness may thereafter be re-examined.

(3) The respondent may then submit that the evidence adduced by the complainant or the Solicitor does not establish the charge alleged or does not justify the erasure of his name from the register or list. The Committee shall consider and determine any such submission, and the Chairman shall thereupon announce their determination.

(4) If no such submission is made, or if any such submission is not upheld, the respondent may then call witnesses and adduce evidence; such witnesses may be cross-examined and re-examined, and the respondent may address the Committee either before or after such evidence but not more than once save with the leave of the Committee. The complainant or, if no complainant appears, the Solicitor may address the Committee on any point of law raised by the respondent.

(5) Where the respondent adduces evidence the complainant or, if no complainant appears, the Solicitor may address the Committee thereon and may call witnesses and adduce evidence in rebuttal and such witnesses may be cross-examined and re-examined. The respondent shall have the right to address the Committee upon such address or evidence in rebuttal.

(6) The Committee shall then deliberate, and decide in relation to each charge which remains outstanding whether the facts alleged in such charge have been proved and in relation to any facts found by the Committee to have been proved whether they are such as to substantiate such charge, and the Chairman shall announce the Committee's findings:

Provided that if the Committee find that any charge under section 15 of the Act is not proved a finding to that effect shall be recorded and in cases where it is alleged that the respondent is guilty of unprofessional conduct its finding shall specifically record that the respondent is not guilty of such conduct in respect of the matters to which the allegation relates and in cases where it is alleged that the respondent was liable to have his or its name erased from the register or list under section 15(2) of the Act its finding shall specifically record that the respondent is not guilty of the matters alleged. A copy of any finding so recorded shall be sent, in the manner provided for the service of notices under rule 2, to the respondent and such other persons, being persons likely to be affected by the finding, as the Chairman may direct.

7.—(1) Where the Committee find that a charge is proved the Chairman shall invite the complainant or, if no complainant appears, the Solicitor to adduce evidence of the circumstances leading up to the facts found proved and as to the character and antecedents of the respondent.

(2) The respondent may then address the Committee in mitigation and adduce any relevant evidence.

(3) The Committee shall then deliberate and decide whether they can properly reach a decision forthwith not to erase the name of the respondent from the register or list.

(4) If the Committee decide the question under the last foregoing paragraph in the negative they shall then decide whether to postpone judgement or forthwith to direct the Registrar to erase the name of the respondent from the register or list.

(5) If the Committee decide under the last foregoing paragraph to postpone judgement, they shall specify either a period for which judgement is postponed, or a further meeting of the Committee at which they will further consider the judgement.

(6) Any decision of the Committee under this rule shall be announced by the Chairman in such terms as the Committee may approve and a copy of the decision shall be sent, in the manner provided for the service of notices under rule 2 hereof, to the respondent and such other persons, being persons likely to be affected by the finding, as the Chairman may direct.

Procedure upon postponement of judgement

8.—(1) Where under the foregoing provisions of these Rules the judgement of the Committee in any case stands postponed, the procedure shall be as follows—

(*a*) The Solicitor shall, not less than six weeks before the day fixed for the resumption of proceedings, send to the respondent a notice which shall—

(i) specify the day, time and place at which the proceedings are to be resumed and invite him to appear thereat,

(ii) unless the Chairman otherwise directs, invite the respondent to furnish the Registrar with the names and addresses of persons to whom reference may be made confidentially or otherwise concerning his character and conduct, and

(iii) invite the respondent to send to the Solicitor, not less than three weeks before the day fixed for the resumption of proceedings, a

copy of any statement or statutory declaration, whether made by the respondent or not, relating to his conduct or setting out any material facts which have arisen since that hearing.

(*b*) 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 then a party to the inquiry and he may in turn, if he so desires, send to the Solicitor a statement or statutory declaration, whether made by himself or not, as to the matters mentioned in that sub-paragraph, or as to any other material facts which have arisen since the hearing. A copy of any such statement or statutory declaration shall thereupon be supplied to the respondent.

(*c*) 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 as to the conduct of the respondent or any material facts which may have arisen since the hearing, and shall hear any party to the inquiry who desires to be heard.

(*d*) The Committee shall then consider their decision, and paragraphs (3) to (6) of rule 7 shall apply to their procedure.

(2) 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 the provisions of rules 5 to 7 as may be applicable, and the Committee may apply paragraphs (3) to (6) of rule 7 simultaneously to the new charge and to the charge in respect of which they had postponed judgement.

(3) Nothing in the last foregoing paragraph shall prevent the Committee from receiving evidence at any resumed proceedings of any conviction recorded against the respondent which has not been made the subject of a charge under these Rules.

(4) Subject to the provisions of the Act, the validity of any resumed proceedings shall not be called into question by reason only that members of the Committee who were present at any former meeting were not present at the resumed meeting or that members present at the resumed meeting were not present at any former meeting.

(5) The Chairman, of his own motion or upon the application of any party thereto, may postpone the resumption of proceedings, and in that case the Solicitor shall so soon as may be inform all parties to whom notice of the resumption of proceedings has been given of the postponement and of any date now fixed for the resumption of proceedings.

Part IV

Removal of Name of Body Corporate from the List under Section 15(3) of the Act

9.—(1) This Part of these Rules applies to proceedings brought for the purpose of removing the name of a body corporate from the list, under section 15(3) of the Act.

(2) Where—

(i) the name of a director of an enrolled body corporate is erased from the register under section 15 of the Act, or

(ii) a director of an enrolled body corporate is convicted of an offence under the Act, or

(iii) the name of a registered insurance broker employed by an enrolled body corporate is erased from the register (unless the Committee have stated that they are satisfied that the act or omission constituting the ground on which it was erased was not instigated or connived at by a director of the body corporate or, if the act or omission was a continuing act or omission, that a director of the body had not nor was reasonably required to have had knowledge of the continuance thereof),

and the period within which proceedings might be brought by way of appeal under section 18 of the Act has expired, or any such appeal has been dismissed, withdrawn or struck out, the provisions or rule 10 shall apply.

10.—(1) The Solicitor shall send to the respondent body corporate and to the complainant (if any) a notice of inquiry in accordance with rule 2, the charges and facts to be specified being the circumstances falling under rule 9 which are relevant to the case.

(2) A copy of the notice shall be sent to every director of or registered insurance broker employed by the respondent who is named therein. The Chairman may direct that a copy of the notice shall also be sent to any other person or body.

(3) Any other person or body may with the leave of the Chairman or of the Committee appear at the inquiry as an additional respondent.

(4) Any erasure from the register shall be proved by a certificate to that effect signed by the Registrar.

(5) Subject to the provisions of this rule the provisions of Parts II (except as regards reference to the Investigating Committee) and III of these Rules shall apply to any proceedings to which this rule applies.

Part V

Cases under Section 17 of the Act relating to Fraudulent or Incorrect Entries in Register or List

11.—(1) Where any question whether an entry in the register or list has been fraudulently or incorrectly made has been referred to the Committee, the Solicitor shall send to the respondent (being the person or body corporate in relation to whom the entry was made) a notice of inquiry specifying the nature of the fraud or mistake alleged, stating the day, time and place at which the Committee will hold an inquiry into the question, inviting his attendance thereat, and containing such further information as the nature of the case may require.

(2) Subject to the provisions of this rule, the provisions of Part II of these Rules (except as regards reference to the Investigating Committee) shall apply to any proceedings to which this rule applies.

(3) Where the question is whether the entry in the register or list has been fraudulently made, a copy of the notice shall be sent to any person who is alleged to have been a party to the fraud and to any other person (if any) as the Chairman may direct. Any such person may with the leave of the Chairman or of the Committee appear at the inquiry as an additional party thereto.

(4) The inquiry shall proceed as though the question were a charge contained in a notice of inquiry in a disciplinary case and the provisions of rule 6 shall accordingly apply thereto so far as may be.

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

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

Part VI

Restoration of Names after Erasure

12. Where an application is made—

(*a*) in accordance with section 16 of the Act by a person or body whose name has been erased from the register or list in pursuance of a direction made under section 15 of the Act; or

(*b*) in accordance with section 17(2) of the Act by a person or body whose name has been erased from the register or list on the ground of fraud in pursuance of a direction by the Committee under section 17(1);

the following provisions shall have effect—

(i) the Committee shall afford the applicant an opportunity of being heard by the Committee and of adducing evidence;

(ii) the Committee may require such evidence as they think necessary concerning the identity or character of the applicant, or his conduct since his name was erased from the register or list, and for this purpose may receive written or oral evidence;

(iii) the application shall otherwise be disposed of as nearly as may be in accordance with the procedure provided by these Rules.

Part VII

General

Hearing and adjournment

13.—(1) Subject to the provisions of section 20(3) of the Act, and of any Rules made thereunder, the Committee may deliberate in camera (with or without the Legal Assessor) at any time and for any purpose during or after the hearing of any proceedings.

(2) Save as aforesaid all proceedings before the Committee shall take place in the presence of all parties thereto who appear therein and shall be held in public except as provided by the next following paragraph of this rule.

(3) Where in the interests of justice it appears to the Committee that the public should be excluded from any proceedings or part thereof, the Committee may direct that the public shall be so excluded; but a direction under this paragraph shall not apply to the announcement in pursuance of any of these Rules of a determination of the Committee.

(4) The Committee may adjourn their proceedings from time to time as they think fit.

Evidence

14.—(1) Where a respondent or an applicant under rule 12 has supplied to the Committee or to the Registrar on their behalf the name of any person to whom reference may be made confidentially as to his character or conduct, the Committee may consider any information received from such person in consequence of such reference without disclosing the same to the respondent or applicant.

(2) The Committee may receive oral, documentary or other evidence of any fact which appears to them relevant to the inquiry into the case before them—

Provided that, where a fact which it is sought to prove, or the form in which any evidence is tendered, is such that it would not be admissible in criminal proceedings in a court of law the Committee shall not receive evidence of the fact or in that form, unless after consultation with the Legal Assessor they are satisfied that it is desirable in the interests of justice to receive it having regard to the difficulty and expense of obtaining evidence which would be so admissible.

(3) The Committee may cause any person to be called as a witness in any proceedings before them whether or not the parties consent thereto. Questions may be put to any witness by the Committee through the Chairman or by the Legal Assessor with the leave of the Chairman.

Voting

15.—(1) Any question put to the vote shall be put in the form of a motion by the Chairman. The Chairman shall call upon members present to vote for or against the motion and shall declare that the motion appears to him to have been carried or not carried as the case may be.

(2) Where the result so declared is challenged by any member, the Chairman shall call upon the Registrar to read the roll, and as his name is read every member present including the Chairman (who shall be called last) shall say "For" or "Against" according to whether his vote is given for or against the motion. The Chairman shall thereupon declare the number of members who have voted for the motion and the number who have voted against the motion, and whether the motion has been carried or not carried.

(3) Where on any question the votes are equal, the question shall be deemed to have been resolved in favour of the respondent or of the applicant under rule 12, as the case may be.

Procedure where there is more than one respondent

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

Supplementary

17.—(1) Any party being an individual may appear either in person or by counsel or solicitor, or if the party so elects by any officer or member of any organisation of which he is a member, or by any member of his family.

(2) Any party being a body corporate or an unincorporated body of persons may appear by their secretary or other officer duly appointed for the purpose or by counsel or solicitor.

18. A shorthand-writer shall be appointed by the Committee to take shorthand notes of proceedings before them (except that the Committee may dispense with a shorthand-writer in proceedings under Part VI of these rules) and any party to an inquiry shall, on application to the Solicitor and on payment of the proper charge on a scale fixed by the Council, be furnished by the Solicitor with a transcript of the shorthand notes of any part of the inquiry at which the party was entitled to be present.

Sealed on the 6th day of October 1978.

Attested by:

Francis Perkins,
Member of Council

J. E. Fryer,
Registrar

APPENDIX

Form of Notice under rule 2

Sir/Madam,

On behalf of the Insurance Brokers Registration Council notice is hereby given to you that in consequence of (a complaint made against you to the Council) [or] (information received by the Council) an inquiry is to be held into the following charges, on which evidence will be placed before the Committee at the meeting referred to below.

(Here set out the charge or charges, numbering them consecutively where there is more than one charge, State the section, sub-section and paragraph of the Act under which each charge is brought and the convictions or other facts constituting the basis of such charge).

You are hereby invited to send me an answer in writing, to the above-mentioned charge(s), stating whether you admit or deny it (them) and also specifying which, if any, of the facts set out above you admit. Any answer, admission, or other statement or communication which you may desire to make with respect to the said charge(s) should be addressed to me at the above address.

Notice is further given to you that on (day of the week), the ..... day of ..... 19..., a meeting of the Disciplinary Committee of the Council will be held at ..... (address) ..... at ..... (time) ..... to consider the above mentioned charge(s) against you and to determine whether or not they should direct the Registrar to erase your name from the register (list) pursuant to section 15 of the Insurance Brokers (Registration) Act 1977, or give any other direction provided for in that section. You are invited to appear before the Committee at the place and time specified above for the purpose of answering the charge(s). The Committee have power, if you do not appear, to hear and decide upon the said charge(s) in your absence.

If you desire to make an application that the inquiry should be postponed you should send it to me at the above address as soon as may be, stating the grounds upon which you desire a postponement. Any such application will be considered by the Chairman of the Disciplinary Committee of the Insurance Brokers Registration Council in accordance with the Insurance Brokers Registration Council (Procedure of the Disciplinary Committee) Rules 1978, a copy of which is sent herewith for your information, along with a copy of the Insurance Brokers (Registration) Act 1977.

Your attention is drawn to the provisions of rule 17 of these Rules with regard to your right to be represented by counsel, solicitor or other persons.

I am, Sir/Madam,

Your obedient servant,

Solicitor to the Insurance Brokers Registration Council.

EXPLANATORY NOTE

(This Note is not part of the Order)

This Order approves rules made by the Insurance Brokers Registration Council as to the procedure to be followed in proceedings before the Disciplinary Committee and related matters.

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