



Disciplinary Committee

Proceedings Rules on Inquiry Hearings

This document sets out the rules governing inquiry hearings conducted by the Disciplinary Committee of the Estate Agents Authority under section 29 of Estate Agents Ordinance, Cap. 511.

1. Interpretation

All words and expressions not defined herein shall have the meanings ascribed to them by the Estate Agents Ordinance (Cap.511) (“the Ordinance”). Words and expressions importing the masculine gender include the feminine and neuter genders. Words and expressions in the singular include the plural and words and expressions in the plural include the singular. In these rules, unless the context otherwise requires:

“Authority” means the Estate Agents Authority;

“Chairman” means the chairman of the Disciplinary Committee appointed by the Authority;

“clerk” means any person appointed by the Disciplinary Committee to perform the duties of that office;

“Disciplinary Committee” means the disciplinary committee as defined in section 2(1) of the Ordinance;

“document-based hearing” means an inquiry hearing conducted in accordance with rule 19 of these rules;

“complaint” means a complaint made to the Authority under section 29(1) of the Ordinance, and the expression “complainant” shall be construed accordingly;

“registered address” means the address as mentioned in section 14 of the Ordinance;

“respondent” means any licensee or former licensee (as the case may be) against whom a complaint is made pursuant to section 29(1) of the Ordinance or to whom the Chief Executive Officer has reason to believe that section 29(1)(a), (b), (c) or (d) of the Ordinance applies;

“presenter” means, as the case may be, the complainant, or his counsel or solicitor; or the Chief Executive Officer; or any officer expressly appointed by the Authority as regards the inquiry hearing; or any counsel or solicitor instructed by the Authority; who presents the case against the respondent in an inquiry hearing;

“working day” means any day other than a Saturday, Sunday, public holiday, gale warning day or black rainstorm warning day.

2. Parties

- (1) In the case of an inquiry hearing on a complaint made under section 29(1) of the Ordinance, the complainant and the respondent shall be the parties, and in the case of an inquiry hearing on a matter submitted by the Chief Executive Officer under section 29(2) of the Ordinance, the Authority and the respondent shall be the parties.
- (2) For the avoidance of doubt, in the case of an inquiry hearing on a matter submitted by the Chief Executive Officer under section 29(2) of the Ordinance, any person who attends the hearing as a witness for the Authority does not have the status of a party within the meaning of these rules, even if he is the person who originally drew the matter to the attention of the Authority.

3. Notice of hearing

- (1) Where in the opinion of the Disciplinary Committee an inquiry hearing shall be conducted, the Disciplinary Committee shall fix a date for the hearing and, subject to rule 19, the clerk shall serve a notice of hearing specifying the date, time and place of the hearing on each party to the hearing and shall in every case serve on the respondent a copy of a statement containing the particulars of the allegations and copies of the

documents submitted by the presenter on which the presenter intends to rely.

- (2) Subject to rule 19 and save and except for adjourned hearings, there shall be a period of not less than 21 days between the day any such notice and documents mentioned in sub-rule (1) are served and the day fixed for the hearing.

4. Service

- (1) Any notice or document to be served on the respondent under these rules shall be deemed served if:

- (a) in the case of an individual, it is—

- (i) delivered to him;
- (ii) left at his registered address or last known address;
- (iii) sent by post to his registered address or last known address; or
- (iv) inserted into the letter box of his registered address or last known address;

- (b) in the case of a company, it is—

- (i) delivered to an officer of the company;
- (ii) left at the company's registered address;
- (iii) sent by post to the company's registered address; or
- (iv) inserted into the letter box of the company's registered address.

- (2) The date of service effected under sub-rule (1)(a)(iii) and (b)(iii) shall, unless the contrary is shown, be deemed to be the fifth day after the date on which the notice or document was so posted. The date of service effected other than under sub-rule (1)(a)(iii) and (b)(iii) shall be deemed to be the day the notice or document was so delivered, left or inserted.

- (3) Notwithstanding the provisions of sub-rule (1), the Disciplinary Committee may make such order for substituted service as the circumstances of the case may appear to be just.

5. Members

- (1) At least 14 days before the date fixed for a hearing, the clerk shall confirm with the members of the Disciplinary Committee whether they will attend the hearing.
- (2) The quorum of the Disciplinary Committee for an inquiry hearing or for any application made under these rules shall be three, and at least one shall be a person who does estate agency work.
- (3) The Chairman shall be the chairman of a hearing. If the Chairman is not present, the members shall elect among themselves a chairman of the hearing.
- (4) Each member of the Disciplinary Committee present at a hearing shall have a vote. Every matter for decision or determination at a hearing shall be decided or determined by a majority of votes of the members present and entitled to vote and, in the event that voting is equally divided, the chairman at the hearing shall have a casting vote.
- (5) Except in emergency, a member of the Disciplinary Committee who sits for the hearing shall sit through the entire hearing.
- (6) Should a quorum not be attained or maintained, the Disciplinary Committee shall fix another date for the hearing and the clerk shall notify the parties of such arrangement and the date so fixed.
- (7) Subject to rule 19, at least 7 days before the hearing date, the clerk shall deliver to the members of the Disciplinary Committee who will be conducting the hearing copies of all documents submitted by the presenter and the respondent mentioned in rule 3 and rule 6.

6. Documents

- (1) Subject to rule 19, a notice of hearing under rule 3 shall require the respondent to furnish to the clerk at least 14 days before the date of the hearing, unless the Disciplinary Committee directs otherwise, copies of all the documents on which the respondent intends to rely.
- (2) Subject to rule 19, on receipt of the documents from the respondent, the clerk shall arrange the documents into a bundle and shall furnish the bundle of documents to the parties to the hearing at least 7 days before the date of the hearing.
- (3) If the submission to be made by any party to the hearing or on his behalf at the hearing shall include any argument on legal issues and/or matters of statutory interpretation, he shall furnish to the clerk at least 2 working days before the date of the hearing an outline sufficiently setting out the issues and/or matters and the arguments thereon together with copies of all statutes, cases and authorities to be relied on.

7. Hearing in public

- (1) Unless the Disciplinary Committee decides otherwise, a hearing shall be conducted in public.
- (2) The Disciplinary Committee may direct that a hearing, or a part or parts of it, be conducted in private.
- (3) The Disciplinary Committee may give directions prohibiting or restricting the publication or disclosure by any or all of the persons present at a hearing of any evidence given at the hearing or of any matter contained in any document or thing produced or received in evidence for the purposes of the hearing.

8. Representation

- (1) Subject to rule 14, any party to an inquiry hearing may be represented by a solicitor or counsel, or with the consent of the Disciplinary Committee, by some other person.

- (2) Any party who wishes to be represented by a solicitor and/or counsel shall, not less than 10 days before the date of the hearing, inform the clerk of the name of his solicitor and counsel, if instructed.
- (3) Any party who wishes to be represented by a person other than his solicitor or counsel shall make an application in writing to the Disciplinary Committee for consent at least 14 days before the date of the hearing.

9. Failure to appear

- (1) If the respondent fails to appear at an inquiry hearing, the Disciplinary Committee may:
 - (a) adjourn the hearing;
 - (b) upon proof of service of the notice of hearing on the respondent in accordance with rule 4, proceed to hear and determine the case in his absence; or
 - (c) make such order or direction as it thinks fit.
- (2) In the case of an inquiry hearing on a complaint made under section 29(1) of the Ordinance, if the complainant fails to appear at the hearing, the Disciplinary Committee may dismiss the case or adjourn the hearing or make such order or direction as it thinks fit.

10. Adjournments

The Disciplinary Committee may on its own motion, or upon the application of any party, adjourn a hearing upon such terms as to costs, or otherwise, as the Disciplinary Committee shall think fit.

11. Summons

- (1) A summons issued under section 34 of the Ordinance shall be in the form prescribed by the Ordinance.

- (2) Any party intending to call a witness shall, not less than 14 days before the date fixed for a hearing, inform the clerk of the name, address and, where available, contact telephone number of the witness to be called, whether or not a summons is required to be issued to that witness.
- (3) Any application for the issuance of a summons shall be made to the clerk not less than 14 days before the date fixed for a hearing.

12. Evidence

- (1) The Disciplinary Committee may receive and consider any material, whether by way of oral evidence, written statements or otherwise as it considers relevant to the hearing irrespective of whether or not such material would be admissible in a court of law.
- (2) The Disciplinary Committee may act upon evidence given by statutory declaration or affidavit or affirmation provided that any party to the hearing may require the attendance upon summons of any declarant or deponent of such declaration, affidavit or affirmation for the purpose of giving oral evidence and of being cross-examined and re-examined.

13. Presentation

- (1) The presenter shall present the case against the respondent and adduce evidence in support thereof and may make submissions to the Disciplinary Committee.
- (2) The respondent, or his counsel, solicitor or authorized representative, may adduce evidence in support of his case in answer to the presenter's case and may make submissions to the Disciplinary Committee.

14. Application to be the presenter

- (1) A complainant desirous of presenting by himself or by his counsel or solicitor a case against the respondent at an inquiry hearing under section 34(3) of the Ordinance shall apply in writing to the Disciplinary Committee.

- (2) Before making any direction on an application made under sub-rule (1), the Disciplinary Committee shall receive submission from the complainant and the Chief Executive Officer.
- (3) Subject to sub-rules (1) and (2), in the case of an inquiry hearing on a matter submitted by the Chief Executive Officer under section 29(2) of the Ordinance, the Chief Executive Officer, or any other officer of the Authority expressly appointed by it as regards the inquiry, or the counsel or solicitor instructed by the Authority shall be the presenter.

15. Exercise of disciplinary powers

At the conclusion of an inquiry hearing where the Disciplinary Committee finds that the complaint or submission is well-founded, the Disciplinary Committee may exercise such of the powers as mentioned in section 30 of the Ordinance as it considers appropriate.

16. Findings and decision

- (1) The reasons for the decision of the Disciplinary Committee shall be signed by each member conducting the inquiry hearing.
- (2) No later than 21 days from the last day of a hearing, the Disciplinary Committee shall give its findings on whether one or more of the allegations against the respondent have been proved, and the clerk shall notify the respondent in writing of such findings.
- (3) Except as provided for in sub-rule (4), no later than 21 days from the last day of a hearing, the Disciplinary Committee shall (besides giving its findings as required under sub-rule (2)) also give its decision on the exercise of its powers (if any) under section 30 of the Ordinance against the respondent, and the clerk shall notify all parties to the hearing in writing of such decision and state the reasons for the decision and the details of the penalty including the effective date of the relevant decision.

- (4) Notwithstanding sub-rule (3), where pursuant to its findings that one or more of the allegations against the respondent have been proved, the Disciplinary Committee allows the respondent a certain period of time within which to make submissions in writing for its consideration, then the period of 21 days as provided for in sub-rule (3) shall not begin to run until the expiry of any such period so allowed for making submissions.
- (5) Any of the disciplinary powers exercised under section 30(1)(ii) to (v) of the Ordinance , whether or not any other disciplinary power is also exercised, shall be published in the Gazette.
- (6) Subject to sub-rule (5), any of the disciplinary powers exercised under section 30 of the Ordinance may also be published by the Disciplinary Committee in such manner as it thinks fit.

17. Record of hearings

- (1) The Disciplinary Committee may arrange for audio recording of a hearing and the clerk shall inform those attending the hearing of such arrangement.
- (2) The Disciplinary Committee may, on an application made by a party to the hearing and upon payment of a fee, levied on a cost recovery basis, direct that a transcript of the recording of that hearing, if any, be furnished to such party.
- (3) Any person who is not a party to the hearing shall not be provided with a transcript referred to in sub-rule (2), unless the Disciplinary Committee directs otherwise.
- (4) The Disciplinary Committee may, in its absolute discretion, direct that only such relevant part or parts of the transcript be provided to a person who is not a party to the hearing.
- (5) The chairman of the hearing shall take or cause to be taken in writing a record, so far as circumstances permit, of the following matters in respect of the hearing:

- (a) the issue in dispute;
- (b) the name of the complainant (if applicable);
- (c) the name of the respondent;
- (d) the name of the presenter;
- (e) the name of any person who appears as a witness for the presenter;
- (f) the name of any person who appears as a witness for the respondent;
- (g) the name of any person whom the Disciplinary Committee directs to attend the hearing as a witness;
- (h) the evidence of any person who gives evidence; and
- (i) the findings and decision made by the Disciplinary Committee.

18. Conduct of the hearings

The Disciplinary Committee may, subject to the discretion allowed by law, conduct an inquiry hearing in such manner as it considers appropriate and shall have the power to adopt, where possible, simplified or expedited procedure to ensure the just, expeditious and economical determination of a case.

19. Document-based hearing

- (1) Without prejudice to the generality of rule 9, the Disciplinary Committee may hear and determine a case in the absence of the respondent provided that:
 - (a) the Chief Executive Officer has informed the respondent in writing of the allegation(s) against him, the brief facts and the proposed sanction(s); and
 - (b) the respondent confirms in writing that he (i) will not attend the inquiry hearing; (ii) consents to the hearing being conducted in his absence; (iii) admits to the allegation(s) and brief facts; and (iv) understands that the Disciplinary Committee may exercise against him the disciplinary sanction(s) proposed by the Chief Executive Officer.
- (2) At least 7 days before the date fixed for a hearing to be conducted in the absence of the respondent pursuant to sub-rule (1), the clerk shall deliver to the members of the Disciplinary Committee who will be attending the

hearing copies of all documents which the presenter may refer to at the hearing.

- (3) Where the Disciplinary Committee decides not to dispose of the respondent's case in an inquiry hearing conducted in the absence of the respondent for whatever reasons (including but not limited to the disciplinary sanction(s) proposed by the Chief Executive Officer not being considered by the Disciplinary Committee as appropriate), it shall adjourn the inquiry hearing.
- (4) Where an inquiry hearing is adjourned under sub-rule (3), it shall be resumed on another day in the presence of the respondent unless the Disciplinary Committee directs otherwise.
- (5) Where an inquiry hearing is resumed under sub-rule (4), all rules in these Proceedings Rules, save and except sub-rules (1) to (4) , shall apply in full tenor to the resumed hearing.
- (6) An inquiry hearing resumed under sub-rule (4) shall be heard afresh by members of the Disciplinary Committee.
- (7) Subject to this rule, all other rules shall apply mutatis mutandi to an inquiry hearing conducted pursuant to sub-rule (1).

20. Discontinuance of inquiry

- (1) The Disciplinary Committee may, upon application by either party or on its own motion, discontinue an inquiry hearing where the Disciplinary Committee considers that it is just to do so in all the circumstances.
- (2) Without prejudice to the generality of sub-rule (1), the Disciplinary Committee may, upon an *ex-parte* application made by the complainant or the Authority, discontinue an inquiry hearing where:
 - (a) the complainant has notified the Authority that he withdraws the complaint;



- (b) the inquiry hearing has been adjourned pending resolution between the complainant and the respondent themselves of any dispute relating to the complaint and, subsequent to the adjournment, either the dispute has been resolved or the complainant has not notified the Authority that he will continue to pursue the dispute with the respondent;
- (c) any person who is a material witness cannot be located, or is unable or unwilling to attend the inquiry hearing to testify;
- (d) there is new evidence or there is evidence supporting that continuation of a case against a respondent is no longer justified; or
- (e) the Disciplinary Committee is satisfied that for any other reason it is not just to continue with the inquiry hearing.

21. Power of the Disciplinary Committee to dispense with requirements of rules, extend or abridge time

Notwithstanding any rule stated herein, the Disciplinary Committee may dispense with any requirement of these rules and may extend or abridge time in any case where it appears to the Disciplinary Committee to be just and not prejudicial to any of the parties concerned.

Estate Agents Authority
September 2015