

Estate Agents Authority

Disciplinary Committee

Proceedings Rules on Inquiry Hearings

Proceedings Rules on Inquiry Hearings conducted by the Estate Agents Authority or its Disciplinary Committee 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 (“the Ordinance”). In these rules, unless the context otherwise requires:

“Administration” means the Administration of the Authority;

“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 temporarily to perform the duties of that office;

“document-based inquiry hearing” means an inquiry hearing conducted in accordance with Rule 20 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;

“respondent” means any licensee 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 of the Authority; 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 at an inquiry hearing.

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 of the Authority 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 of the Authority 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 date of hearing

- (1) Where in the opinion of the Authority or the Disciplinary Committee, an inquiry hearing shall be conducted, the Authority or the Disciplinary Committee shall fix a date for the hearing and, subject to Rule 20, the clerk shall serve notice of hearing specifying the date, time and place of a 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.
- (2) Subject to Rule 20, there shall be such period of not less than 21 days between the service of any such notice and the day fixed therein for the hearing as the Authority or the Disciplinary Committee may direct.

4. Service

- (1) Service of any notice or document under these rules may be effected personally or by ordinary post addressed, in the case of a licensee, to his registered address and in every other case, to the last known place of business or abode of the person to be served and the date of service shall, unless the contrary is shown, be deemed to be the fifth day after the date on which the notice or document was sent to the address in question.

- (2) Notwithstanding the provisions of sub-rule (1), the Authority or the Disciplinary Committee may make such order for substituted service as in 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 inquiry hearing shall be three, and at least one shall be a person performing estate agency work.
- (3) The Chairman shall be the chairman for the hearing. If the Chairman is not present, the members shall elect among themselves a chairman for the hearing.
- (4) Each member of the Disciplinary Committee present at the hearing shall have a vote. Every matter for decision or determination at the 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 case of emergency, a member of the Disciplinary Committee who decides to sit for the hearing shall sit through the entire hearing.
- (6) Should there be insufficient members to constitute a quorum, the Disciplinary Committee shall forthwith fix another date for the hearing. The clerk shall notify the parties of such arrangement and the date so fixed.
- (7) Subject to Rule 20, at least 7 days before the hearing date, the clerk shall deliver to the members of the Disciplinary Committee who will be attending the hearing copies of all documents mentioned in Rule 6 below.

6. Exchange of documents

- (1) Subject to Rule 20, a notice of hearing under Rule 3 shall require the party to whom it is addressed to furnish to the clerk at least 14 days before the date of the hearing, unless the Authority or the Disciplinary Committee

directs otherwise, copies of all documents on which he intends to rely.

- (2) Subject to Rule 20, on receipt of the documents, 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 Authority or the Disciplinary Committee decides otherwise, a hearing shall be conducted in public.
- (2) The Authority or the Disciplinary Committee may direct that a hearing, or a part or parts of it, be conducted in private.
- (3) The Authority or the Disciplinary Committee may give directions prohibiting or restricting the publication or disclosure by any or all of the persons present at the 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 15, any party to an inquiry hearing may be represented by solicitor or counsel, or with the consent of the Authority or the Disciplinary Committee, by some other person.
- (2) Any party who wishes to be represented by a person other than his solicitor or counsel shall make an application in writing to the Authority or the Disciplinary Committee for its consent as appropriate at least 14 days before the date of the hearing.

9. Failure to appear

If the respondent fails to appear at the inquiry hearing, the Authority or the Disciplinary Committee may, upon proof of service on the respondent of the notice of hearing, at its discretion, adjourn the hearing or proceed to hear and determine the case in his absence; and 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 Authority or the Disciplinary Committee may, at its discretion, dismiss the case or adjourn the hearing.

10. Adjournments

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

(2) Any party wishing to apply to the Disciplinary Committee for adjournment of a hearing before the date fixed for the hearing shall make such application in writing, supported with reasons, to the clerk as soon as is practicable. Members who have confirmed that they will attend the hearing shall determine whether or not to grant such application.

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

The Authority or the Disciplinary Committee may dispense with any requirements of these rules respecting notices, statutory declarations, documents, service, and may extend or abridge time, in any case where it appears to the Authority or the Disciplinary Committee to be just and not prejudicial to any of the parties concerned.

12. Summons

A summons issued under section 34 of the Ordinance shall be in the prescribed form set out in the Schedule.

13. Evidence

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

14. Presentation

- (1) The presenter shall present the case against the respondent and adduce evidence in support.
- (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 submission to the Authority or the Disciplinary Committee once to close his case.

15. Application to be the presenter

- (1) A complainant desirous of presenting by himself or by his counsel or solicitor the case against the respondent under section 34(3) of the Ordinance at an inquiry hearing to be conducted by the Disciplinary Committee shall apply to the Disciplinary Committee to be the presenter and the Disciplinary Committee shall consider the application at the inquiry hearing or at such earlier time as the Disciplinary Committee deems fit.
- (2) Before making any direction on an application made under sub-rule (1), the Disciplinary Committee shall receive submissions from the applicant and the Administration.
- (3) Subject to sub-rules (1) and (2), in the case of an inquiry hearing on a matter submitted by the Chief Executive Officer of the Authority 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.

16. Exercise of disciplinary powers

At the conclusion of the inquiry hearing where the Authority or the Disciplinary Committee finds that any allegation against the respondent has been proved, the Authority or the Disciplinary Committee may exercise such of the powers as mentioned in section 30 of the Ordinance as it considers appropriate.

17. Findings and decision

- (1) The reasons of the decision of the Authority or the Disciplinary Committee, as the case may be, shall be signed by each Member sitting in the inquiry hearing.
- (2) No later than 21 days from the last day of a hearing, the Authority or the Disciplinary Committee shall give its findings on whether one or more 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 Authority or Disciplinary Committee shall (besides giving its finding 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 the respondent 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, and shall notify the other parties of such decision.
- (4) Notwithstanding sub-rule (3), where pursuant to its findings that one or more allegations against the respondent have been proved, the Authority or the Disciplinary Committee allows the respondent a certain time period 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 such period for making submissions in writing.
- (5) In case where any of the disciplinary powers under section 30(1)(ii) to (v) of the Ordinance are exercised, the Authority shall publish such decision in the Gazette.

- (6) In case where no sanction is imposed, or where any of the disciplinary powers under section 30(1)(i), (vi) and (vii) are exercised, the Authority or the Disciplinary Committee may determine whether such decision should be published and the manner of how it should be published.

18. Record of hearings

- (1) The Authority or the Disciplinary Committee may arrange for audio recording of a hearing, provided that the respondent is advised of it.
- (2) If a verbatim record of a hearing has been prepared, the clerk, on application made to him by any party to such a hearing and upon payment to him of a fee levied on a cost recovery basis, shall furnish such party a copy of such record.
- (3) Any person who is not a party to the hearing shall not be provided with a copy of the record referred to in sub-rule (2), unless the Disciplinary Committee directs otherwise.
- (4) The Disciplinary Committee may direct that only such relevant part or parts of the aforesaid record 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 full minute, 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 Authority or 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 Authority or the Disciplinary Committee.

19. Conduct of the hearings

The Authority or the Disciplinary Committee may, subject to the discretion allowed by law, conduct the inquiry hearings in such manner as it considers appropriate and shall have the power to adopt, whenever possible, simplified or expedited procedure and to conduct the hearings to ensure the just, expeditious and economical determination of the case, provided that the parties are treated with equality.

20. Inquiry hearings in the absence of the respondent

- (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 Administration 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 Administration.
- (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) above, 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 Administration not being considered by the Disciplinary Committee as appropriate), it shall order the inquiry hearing to be adjourned.
- (4) Where an inquiry hearing is adjourned under sub-rule (3) above, it shall be resumed on another day for an inquiry hearing in the presence of the respondent unless the Disciplinary Committee directs otherwise.

- (5) Where an inquiry hearing is resumed under sub-rule (4) above, all Rules in these Proceedings Rules (save and except sub-rules (1) to (4) of Rule 20) shall apply in full tenor to the resumed hearing.
- (6) An inquiry hearing resumed under sub-rule (4) above shall be heard by the Disciplinary Committee which will attend the resumed hearing *de novo* except that those members who have sat on the Disciplinary Committee which ordered the adjournment under sub-rule (3) shall not attend the resumed inquiry hearing.
- (7) Subject to this Rule, all other Rules in these Proceedings Rules shall apply *mutatis mutandi* to an inquiry hearing conducted in the absence of the respondent pursuant to sub-rule (1) hereinabove.

21. 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 and fair 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 presenter for the Authority, discontinue an inquiry hearing where:
 - (a) the complainant has notified the Administration that he withdraws the complaint;
 - (b) the inquiry hearing has been adjourned pending resolution between the complainant and the respondent themselves any dispute relating to the complaint and, subsequent to the adjournment, either the dispute has been resolved or there is no notification to the presenter by the complainant that the complainant 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; or
 - (d) the Disciplinary Committee is satisfied that for any other reasons it is not just and fair to continue with the inquiry hearing.

22. Role of the clerk

- (1) The clerk shall serve the Disciplinary Committee in inquiry hearings and perform administrative duties in relation thereto. The clerk may provide advice to the Disciplinary Committee in accordance with the provisions in sub-rules (3), (4) and (5) hereunder.
- (2) Subject to sub-rule (3), the clerk shall not be present at the private deliberations of the Disciplinary Committee.
- (3) The Disciplinary Committee may request the clerk to be present at the private deliberations of the Disciplinary Committee, for the purpose of giving advice on such aspects of the proceedings as requested by the Disciplinary Committee.
- (4) Where the Disciplinary Committee requests the clerk to be present at the private deliberations of the Disciplinary Committee, the request should be made in the presence of the parties.
- (5) A clerk who is a legally qualified person may give legal advice to the Disciplinary Committee. Any legal advice so given other than in the presence of the parties shall be clearly stated to be provisional only and the clerk shall subsequently repeat the substance of the advice in the presence of the parties, so that the parties may make representations to the Disciplinary Committee.
- (6) The clerk shall neither act for nor offer legal advice to any party to the proceedings. In particular, the clerk shall not have been involved in the investigation or the preparation of the case against the respondent.
- (7) The clerk shall not draft the Disciplinary Committee's reasons of decision. The clerk however may draw to the attention of the Disciplinary Committee any omission in the draft prepared by the Disciplinary Committee to address a point of significance that had been raised in argument during the hearing. The clerk's observations on the Disciplinary Committee's draft shall be reduced to writing and delivered to the Disciplinary Committee who may consider whether in consequence of them the draft needs any revision.