

**2005 No. 1477**

**HEALTH CARE AND ASSOCIATED PROFESSIONS**

**OPTICIANS**

**The General Optical Council (Registration Appeals Rules) Order of  
Council 2005**

<i>Made</i> - - - -	<i>27th May 2005</i>
<i>Laid before Parliament</i>	<i>8th June 2005</i>
<i>Coming into force</i> - -	<i>30th June 2005</i>

At the Council Chamber, Whitehall, the 27th day of May 2005

By the Lords of Her Majesty's Most Honourable Privy Council

Whereas, in exercise of their powers under sections 10, 23C, 23D(7), 23E(8) and 31A of the Opticians Act 1989(a) and of all other powers enabling them in that behalf, the General Optical Council have made the General Optical Council (Registration Appeals) Rules 2005 as set out in the Schedule to this Order:

And whereas by section 34(1) of that Act, such Rules shall not come into force until approved by Order of the Privy Council:

Now, therefore, Their Lordships, having taken these Rules into consideration, are pleased to, and do hereby approve them.

This Order may be cited as the General Optical Council (Registration Appeals Rules) Order of Council 2005, and shall come into force on 30th June 2005.

*A. K. Galloway*  
Clerk of the Privy Council

# SCHEDULE

## THE GENERAL OPTICAL COUNCIL (REGISTRATION APPEALS) RULES 2005

The General Optical Council, in exercise of their powers under sections 10, 23C, 23D(7), 23E(8) and 31A of the Opticians Act 1989(a), after consultation with such organisations representing the interests of registrants as the Council consider appropriate(b), hereby make the following Rules:

### PART 1

#### CITATION, COMMENCEMENT AND INTERPRETATION

##### Citation and commencement

1. These Rules may be cited as the General Optical Council (Registration Appeals) Rules 2005 and shall come into force on 30th June 2005.

##### Interpretation

2.—(1) In these Rules—

“appellant” means—

- (a) a person making an appeal under paragraph 4(1) of Schedule 1A (appeals from an appealable registration decision)(c); and
- (b) in relation to a hearing, includes any representative of that person who attends a hearing in accordance with the provisions of rule 14(2);

“applicant” means—

- (a) a person applying for restoration of registration under section 13K(1) (which provides for restoration to a register following an erasure of registration or removal of an entry relating to a specialty on a direction by the Fitness to Practise Committee)(d); and
- (b) in relation to a hearing, includes any representative of that person who attends a hearing in accordance with the provisions of rule 14(2);

“clinical adviser” means a clinical adviser appointed under section 23E(1)(a) (other advisers);

“the Council” means the General Optical Council;

“Fitness to Practise Committee” means the Committee referred to in section 5C(1) (the Fitness to Practise Committee)(e);

“hearing” means a hearing of the Registration Appeals Committee to determine—

- (a) an appeal made under paragraph 4(1) of Schedule 1A; or
- (b) whether to give a direction under section 13K(6) for the registrar to restore to the register a registrant’s name or a registrant’s entry relating to a specialty;

“legal adviser” means a legal adviser appointed under section 23D(1) (legal advisers);

“practice address” means—

- (a) in relation to an individual, the address of a practice or place of business from which he practises the profession of an optometrist or a dispensing optician, other than an address at which he practises that profession—

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(a) 1989 c. 44. Section 10 was amended, and sections 23C, 23D, 23E and 31A were inserted, by S.I. 2005/848.

(b) See section 23D(10) of the Opticians Act 1989.

(c) Schedule 1A was inserted by S.I. 2005/848.

(d) Section 13K was inserted by S.I. 2005/848.

(e) Section 5C was inserted by S.I. 2005/848.

- (i) only in an emergency,
  - (ii) in the place of an individual registrant who is ill or on holiday,
  - (iii) as a fee-earning visiting practitioner, or
  - (iv) on less than twelve days in any year;
- (b) in relation to a body corporate, the address of any practice or place of business from which it carries on the business of an optometrist or a dispensing optician, or both;

“registrant”, in relation to a hearing—

- (a) includes any representative of the registrant attending the hearing in accordance with the provisions of rule 14(2) or (3); and
- (b) means, for the purposes of the service of any notification or other notice under these Rules or the provision of information, a person whom the registrar has been informed is instructed to represent him;

“registrar” except in rule 7(2)(d)(ii) means the registrar of the Council referred to in section 1(3) (constitution and functions of the Council);

“Registration Appeals Committee” means the Committee referred to in section 5A(1) (the Registration Appeals Committee)(a);

“regulatory body” means a regulatory body which has the function of authorising persons to practise as members of a health or social care profession;

“respondent”—

- (a) in relation to an appeal made under paragraph 4(1) of Schedule 1A, means the registrar or the Council (as the case may be);
- (b) in relation to an application under section 13K(1) for restoration of registration or restoration of a registrant’s entry relating to a specialty, means the Council;

“specialist adviser” means a specialist adviser appointed under section 23E(1)(b); and

“specialty” means a specialty or level of proficiency particulars of which may, by virtue of rule 10 of the General Optical Council (Registration) Rules 2005(b), be entered in a register against a registrant’s name.

(2) In these Rules any reference to a numbered section, or to a numbered Schedule, is a reference to the section of, or Schedule to, the Opticians Act 1989 which bears that number.

## PART 2

### APPLICATIONS FOR RESTORATION FOLLOWING ERASURE OF REGISTRATION OR REMOVAL OF ENTRY RELATING TO A SPECIALTY

#### **Information to accompany applications for restoration of registration or entry**

**3.—**(1) This rule applies to an application under section 13K (which provides for restoration to a register following an erasure of registration or removal of an entry relating to a specialty on a direction by the Fitness to Practise Committee)(c).

(2) The application shall be submitted to the registrar in such form (including electronic) as is specified by the Council, together with—

- (a) any information required under rules 4 to 8; and
- (b) any application fee prescribed by the Council in relation to applications of that description under section 10(1)(c)(i) or section 10(1A)(d) (general provisions as to registers)(d)).

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(a) Section 5A was inserted by S.I. 2005/848.

(b) The Rules are scheduled to S.I. 2005/ 1478

(c) Section 13K was inserted by S.I. 2005/848.

(d) Section 10(1) was amended, and section 10(1A) was inserted, by S.I. 2005/848.

### **Information required from individual applicants for restoration of registration**

4. An application under section 13K for restoration of an applicant's registration as an individual registrant shall include—

- (a) the applicant's full name;
- (b) his former names, if any;
- (c) his date of birth;
- (d) a declaration as to whether he—
  - (i) has any convictions (including a conviction by court martial) or cautions in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence,
  - (ii) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992<sup>(b)</sup> (penalty as alternative to prosecution),
  - (iii) in proceedings in Scotland for an offence, has been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely,
  - (iv) is the subject of any determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body outside the United Kingdom to the same effect, or
  - (v) is currently the subject of any investigation or proceedings which might lead to any of the results set out in sub-paragraphs (i) to (iv);
- (e) in any case falling within paragraph (d), details of any investigations (including approximate dates), the place where any relevant proceedings are being or were brought and, where possible, the outcome;
- (f) details of any adverse physical or mental health which a reasonable person would think may impair his fitness to practise; and
- (g) a photograph which is signed and dated by—
  - (i) a registered optometrist or registered dispensing optician,
  - (ii) a registered medical practitioner,
  - (iii) a solicitor or barrister,
  - (iv) a justice of the peace,
  - (v) an accountant,
  - (vi) a principal of an educational institution which granted the applicant a relevant qualification or a person authorised by the principal of that institution, or
  - (vii) another person of similar standing in the community,who has known the applicant for at least two years and who certifies that the photograph is a true likeness of the applicant.

### **Additional information required from individual applicants for restoration of registration as a student**

5. In addition to the information required under rule 4, an application for restoration of an applicant's registration as a student undertaking training as an optometrist or a dispensing optician shall also include—

- (a) a contact address for the applicant;

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(a) 1995 c.46. Section 302(9)(a) was amended by Schedule 17 to the Communications Act 2003 (c. 21).

(b) 1992 c.5. Section 115A(7A) and (7B) were inserted by section 14 of the Social Security Fraud Act 2001 (c. 11).

- (b) if he is proposing to receive education or training as an optometrist or a dispensing optician at an establishment where instruction is given, the name and address of that establishment; and
- (c) if, as part of the education or training, he is proposing to undertake practical experience in the work of an optometrist or a dispensing optician—
  - (i) the full name of all persons who may act as his supervisors (if his application for restoration is granted and if the names are known),
  - (ii) a contact address for such supervisors,
  - (iii) if applicable, an indication of the trading name under which such supervisors practise or are employed, and
  - (iv) all practice addresses at which the applicant is proposing to obtain that experience.

**Additional information required from individual applicants for restoration of registration as an optometrist or a dispensing optician**

6. In addition to the information required under rule 4, an application for restoration of an applicant's registration as an optometrist or a dispensing optician shall also include—

- (a) a contact address for the applicant;
- (b) an indication of whether or not the contact address provided under paragraph (a) is a proposed practice address and—
  - (i) if it is, either the trading name under which the applicant proposes to practise at that address or the name under which his employer undertakes the business of an optometrist or a dispensing optician (or both); and
  - (ii) all proposed practice addresses of the applicant, other than the contact address, together with, in each case, an indication of the trading name, if any, under which the applicant proposes to practise at each address;
- (c) evidence that, if his name were to be entered in the register, he would be covered by an insurance policy for the purposes of complying with section 10A (insurance for individual registrants and persons applying for their name to be registered)(a); and
- (d) a copy of that policy of insurance or a means of identifying the terms of the policy that will cover him, together with any number the policy has and its expiry date.

**Information required from applicants for restoration of registration as a business registrant**

7.—(1) An application under section 13K for restoration of an applicant's registration as a body corporate carrying on business as an optometrist or a dispensing optician (or both) shall include the following information—

- (a) the applicant's name;
- (b) the applicant's former names, if any;
- (c) the applicant's date of incorporation (if applicable);
- (d) if sub-paragraph (c) is not applicable, the date the applicant commenced trading;
- (e) the company registration number of the applicant (if applicable);
- (f) a registered address for the applicant or, if it does not have one, a contact address, together with an indication of—
  - (i) whether or not this is a practice address, and
  - (ii) if it is, the trading name under which the applicant carries on such business at that address;
- (g) all practice addresses of the applicant, other than the address provided under sub-paragraph (f), together with an indication of the trading name under which the applicant practises at each address;

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(a) Section 10A was inserted by S.I. 2005/848.

- (h) a declaration, made on behalf of the applicant, as to whether it or any of its directors—
    - (i) has a conviction (including a conviction by court martial) or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England or Wales, would constitute a criminal offence,
    - (ii) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995**(a)**(fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)**(b)**,
    - (iii) in proceedings in Scotland for an offence, has been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely,
    - (iv) is the subject of a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that—
      - (aa) the business registrant’s fitness to carry on business as a member of that profession is impaired; or
      - (bb) the fitness of a director of the body corporate to practise that profession is impaired, or a determination by a regulatory body outside the United Kingdom to the same effect, or
    - (v) is currently the subject of any investigation or proceedings which might lead to any of the results set out in paragraphs (i) to (iv);
  - (i) in any case falling within sub-paragraph (h), details of any investigations (including approximate dates), the place where any relevant proceedings are being or were brought and, where possible, the outcome; and
  - (j) the information required by paragraph (2).
- (2) The information required by this paragraph is—
- (a) in the case of an application made in reliance upon section 9(2)(a) (register of bodies corporate carrying on business as opticians)**(c)**—
    - (i) if applicable, a copy of the most recent director’s report produced pursuant to section 234 of the Companies Act 1985**(d)** (duty to prepare directors’ report), and
    - (ii) the names and addresses of all directors and, if applicable, their registration numbers as optometrists or dispensing opticians;
  - (b) in the case of an application made in reliance upon section 9(2)(b), a certificate issued by the Secretary of State—
    - (i) that on 20th November 1957 the applicant’s name, or a name under which it carried on business, was included in one of the health service ophthalmic lists, or
    - (ii) if the applicant subsequently came into existence on the reconstruction of a body corporate, that it was entitled to be registered by virtue of section 9(2)(b),
  - (c) in the case of an application made in reliance upon section 9(2)(c)—
    - (i) a certificate issued by the applicant’s accountant that the greater part of its business consists of activities other than the testing of sight and the fitting and supply of optical appliances, together with—
      - (aa) the name of the registered optometrist under whose management the testing of sight is carried on, or
      - (bb) the name of the registered optometrist or registered dispensing optician under whose management the business of the fitting and supply of optical appliances is carried on,

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(a) 1995 c.46. Section 302(9)(a) was amended by Schedule 17 to the Communications Act 2003 (c. 21).

(b) 1992 c.5. Section 115A(7A) and (7B) were inserted by section 14 of the Social Security Fraud Act 2001 (c. 11).

(c) Section 9(2) was amended by S.I. 2005/848.

(d) 1985 c.6. Modifications and amendments of section 234 were made by section 8(1) of the Companies Act 1989 (c.40), section 9(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c.27) and S.I. 1996/189, 1997/571 and 2004/3219.

- (ii) a certificate issued by the applicant that so much of its business as consists of the testing of sight is carried on under the management of a registered optometrist, and
- (iii) a certificate issued by the applicant that so much of its business as consists of the fitting and supply of optical appliances is carried on under the management of a registered optometrist or registered dispensing optician; or
- (d) in the case of an application made in reliance upon section 9(2)(d)—
  - (i) a certificate described in sub-paragraph (c)(ii) and (iii), and
  - (ii) a copy of the acknowledgement of registration issued by the Financial Services Authority under section 2(3) of the Industrial and Provident Societies Act 1965<sup>(a)</sup> or the registrar under section 2(3) of the Industrial and Provident Societies Act Northern Ireland 1969<sup>(b)</sup>.

### **Information required from applicants for restoration of an entry relating to a specialty**

- 8.** An application under section 13K for the restoration of an entry relating to a specialty shall—
- (a) where the applicant is not registered, be made at the same time as an application under section 13K for restoration of the applicant’s registration; or
  - (b) where the applicant is registered, include his registration number.

## **PART 3**

### **ASSESSMENTS OF INDIVIDUAL APPELLANTS OR INDIVIDUAL APPLICANTS**

#### **Appointment of assessors and direction for assessment**

- 9.**—(1) The Registration Appeals Committee may—
- (a) appoint one or more persons to assess and report to them on—
    - (i) the health of the appellant or the applicant, or
    - (ii) the standard or quality of the work done or being done by the appellant or the applicant; and
  - (b) direct the appellant or the applicant to meet with the person or persons appointed and to submit to any examination required for the purposes of their assessment and report.
- (2) Where the Committee give a direction under paragraph (1)(b), they shall specify the matters upon which the appellant or the applicant is to be assessed.
- (3) This Rule shall not apply to an appellant or applicant which is a body corporate.

#### **Assessment notification**

- 10.** Where the Registration Appeals Committee have appointed an assessor under rule 9, the registrar shall—
- (a) serve on the appellant or the applicant a notification of the Committee’s appointment;
  - (b) fix the date of the meeting with the assessor; and
  - (c) serve on the appellant or the applicant, and on the assessor, a notification of—
    - (i) the date of the meeting, and
    - (ii) the direction the Committee have given under rule 9(1)(b).

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<sup>(a)</sup> 1965 c.12. Section 2(3) was amended by S.I. 2001/2617 and 2001/3649.  
<sup>(b)</sup> 1969 c.24.

### **Date of meeting**

11. The meeting referred to in rule 10 shall take place no earlier than 28 days after the date upon which the notification required by paragraph (c) of that rule was served on the appellant or the applicant.

### **Assessment report**

12. Each assessor appointed under rule 9 shall, once he has completed his assessment, send a report of the assessment to—

- (a) the registrar; and
- (b) the appellant or the applicant.

### **Failure to submit or comply with an assessment**

13. Where an appellant or an applicant has failed to submit to, or co-operate with, any examination required or directed to be carried out under rule 9, the Registration Appeals Committee shall draw such inferences as seem appropriate to them in respect of his appeal or application.

## **PART 4**

### **HEARINGS OF THE REGISTRATION APPEALS COMMITTEE: APPELLANTS AND APPLICANTS**

#### **Representation**

14.—(1) Each party to proceedings to be heard before the Registration Appeals Committee shall be entitled to be heard at any hearing of those proceedings by the Committee.

(2) Each party to the proceedings shall be entitled to be represented at any such hearing by—

- (a) a person with a general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990);
- (b) an advocate in Scotland, or a solicitor entitled to appear in the Court of Session and the High Court of Justiciary;
- (c) a member of the Bar of Northern Ireland or Solicitor of the Supreme Court of Northern Ireland; or
- (d) in the case of the appellant or the applicant, any of the following—
  - (i) a representative of any professional organisation of which he is a member,
  - (ii) where the appellant or the applicant is a body corporate, a responsible officer of the body corporate, or
  - (iii) if the appellant or the applicant so requests and the Committee agree, any other suitable person.

(3) Subject to paragraph (4), where an individual appellant or an individual applicant is not represented, he may be accompanied and advised by any person, provided that such person shall not be entitled to address the Committee without their permission.

(4) A person who gives evidence at a hearing shall not, without the permission of the Committee, be entitled to represent or accompany the appellant or the applicant at the hearing.

#### **Proceedings in the absence of appellant or applicant**

15. Where the appellant or the applicant is neither present nor represented at a hearing, the Registration Appeals Committee may nevertheless proceed if—

- (a) they are satisfied that all reasonable efforts have been made to notify the appellant or the applicant of the hearing; and



- (b) having regard to any reasons for absence which have been provided by the appellant or the applicant, they are satisfied that it is in the public interest to proceed.

### **Joinder**

**16.**—(1) If the conditions specified in paragraph (2) are satisfied, the respondent may apply to the Registration Appeals Committee for a direction that one hearing may be held in relation to—

- (a) two or more appellants, or
- (b) two or more applicants.

(2) The conditions are that—

- (a) all reasonable efforts have been made to notify each appellant or applicant of the hearing at which the application under paragraph (1) is to be determined; and
- (b) each appellant or applicant is offered an opportunity to be heard on the application.

(3) The Registration Appeals Committee may, where just to do so, direct that one hearing be held in relation to two or more appellants or two or more applicants and, where such a direction is made—

- (a) these Rules shall have effect in relation to the hearing with the necessary adaptations; and
- (b) each appellant or applicant shall be able to exercise any of the rights granted to him or it under these Rules whether or not any other person wishes to exercise that right.

### **Hearings in public**

**17.**—(1) Subject to paragraphs (2) to (5) below, hearings before the Registration Appeals Committee shall be held in public.

(2) The Registration Appeals Committee may determine that the public shall be excluded from the proceedings, or any part of the proceedings, where the Committee consider that such exclusion would be appropriate, having regard to—

- (a) the interests of any patient or witness concerned;
- (b) the interests of the appellant or the applicant; and
- (c) all the circumstances, including the public interest.

(3) Subject to paragraph (4), the Registration Appeals Committee shall sit in private where they are considering the physical or mental health of the appellant or applicant.

(4) Where Registration Appeals Committee are considering matters referred to in paragraph (3), they may meet in public if they consider that it would be appropriate to do so having regard to the matters set out in paragraph (2)(a) to (c).

(5) The Registration Appeals Committee may at any time deliberate in the absence of the parties, their representatives and the public.

### **Exclusion from hearings**

**18.** The Registration Appeals Committee may exclude from the whole or any part of a hearing, any person (including a party or his or its representative) whose conduct, in the Committee's opinion, has disrupted or is likely to disrupt the proceedings.

### **Adjournment**

**19.**—(1) At any stage a party may apply to the Registration Appeals Committee for the adjournment of a hearing.

(2) Such an application shall be heard either at the hearing at which the application is made or, if the application is made otherwise than at a hearing, on the next date upon which the Registration Appeals Committee sit.

**20.**—(1) Upon the hearing of an application under rule 19, or of their own motion, the Registration Appeals Committee may adjourn a hearing.

(2) When announcing their decision, the Committee shall, if granting the application, fix a new date for the hearing.

**21.** Where the Registration Appeals Committee decide to adjourn a hearing under rule 20, the registrar shall serve on the appellant or the applicant a notification of the adjournment and the new date for the hearing.

### **Admissibility of evidence**

**22.**—(1) Subject to paragraphs (2) and (3), the Registration Appeal Committee may admit any evidence they consider fair and relevant to the case before them, whether or not such evidence would be admissible in a court of law.

(2) Where evidence would not be admissible in criminal proceedings in England and Wales, the Committee shall not admit such evidence unless, on the advice of the legal adviser, they are satisfied that their duty of making due inquiry into the case before them makes its admission desirable.

(3) Evidence which has not been disclosed in accordance with rule 31 shall be admitted only with the permission of the Registration Appeals Committee given at the hearing.

### **Vulnerable witnesses**

**23.**—(1) In proceedings before the Registration Appeal Committee, the following may, if the quality of their evidence is likely to be adversely affected as a result, be treated as a vulnerable witness—

- (a) any witness under the age of 17 at the time of the hearing;
- (b) any witness with a mental disorder within the meaning of the Mental Health Act 1983(a);
- (c) any witness who is significantly impaired in relation to intelligence and social functioning;
- (d) any witness with physical disabilities who requires assistance to give evidence;
- (e) any witness, where the allegation against the registrant is of a sexual nature and the witness was the alleged victim; and
- (f) any witness who complains of intimidation.

(2) Subject to the advice of the legal adviser, and upon hearing representations from the parties, the Committee may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

(3) Measures adopted by the Committee may include, but shall not be limited to—

- (a) use of video links;
- (b) use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such witness is available at the hearing for cross-examination and questioning by the Committee;
- (c) use of interpreters (including signers and translators) or intermediaries;
- (d) use of screens or such other measures as the Committee consider necessary in the circumstances in order to prevent—
  - (i) the identity of the witness being revealed to the press or the general public; or
  - (ii) access to the witness by the appellant or the applicant; and
- (e) the hearing of evidence by the Committee in private.

(4) Where—

- (a) the evidence to be given by a witness relates to facts which are sexual in nature;
- (b) the witness is an alleged victim; and
- (c) the appellant or the applicant is acting in person,

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(a) 1983 c.20.

the appellant or the applicant shall not without the written consent of the witness be allowed to cross-examine the witness in person.

(5) In the circumstances set out in paragraph (4), in the absence of written consent, the appellant or the applicant shall no less than 7 days before the hearing appoint a legally qualified person to cross-examine the witness on his behalf, and in default, the Council shall appoint such person on behalf of the appellant or applicant.

### **Evidence on oath**

24. Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at a hearing.

### **Legal advisers**

25. The Registration Appeals Committee shall be advised by a legal adviser who shall—

- (a) be present at all hearings;
- (b) advise the Committee on any matters of law, evidence or procedure which are referred to him by the Committee;
- (c) advise the Committee on an issue of law where it appears to him that, without his intervention, there is the possibility of a mistake of law being made;
- (d) intervene to advise the Committee of any irregularity in the conduct of the proceedings which comes to his knowledge;
- (e) ensure that—
  - (i) advice given to the Committee under paragraph (b) is tendered by the legal adviser in the presence of the parties attending the hearing, or
  - (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, every such party is informed as to the advice tendered; and
- (f) if the Committee so require, advise on the drafting of the Committee's decisions.

### **Clinical advisers**

26. Where an appellant's or an applicant's physical or mental health is to be considered by the Registration Appeals Committee, the Committee shall be advised by a clinical adviser who shall—

- (a) be present at the hearing at which the appellant's or the applicant's physical or mental health is to be considered;
- (b) advise the Committee on the significance of any evidence before them pertaining to the appellant's or the applicant's physical or mental health; and
- (c) ensure that—
  - (i) advice given to the Committee under paragraph (b) is tendered by the clinical adviser in the presence of the parties attending the hearing, or
  - (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, every such party is informed as to the advice tendered..

### **Specialist Advisers**

27. Where a specialist adviser has been appointed in relation to a matter to be considered at a hearing before the Registration Appeals Committee, the adviser shall—

- (a) be present at the hearing;
- (b) advise the Committee on matters relating to the specialty for which he has been appointed; and
- (c) ensure that—
  - (i) advice given to the Committee under paragraph (b) is tendered by the specialist adviser in the presence of the parties attending the hearing, or

- (ii) if the advice is tendered after the Committee have begun to deliberate as to their findings, every such party is informed as to the advice tendered.

## PART 5

### PROCEDURE AND ORDER OF PROCEEDINGS: APPELLANTS AND APPLICANTS

#### **Notification of hearing date: appellants**

**28.** Where an appellant has served a notice of appeal on the registrar in accordance with paragraph 4(3) or (4) of Schedule 1A (appeals from an appealable registration decision), the registrar shall serve on the appellant a notification—

- (a) of the date of the hearing;
- (b) informing the appellant of—
  - (i) his right to attend the hearing and to be represented at the hearing in accordance with rule 14,
  - (ii) the power of the Fitness to Practise Committee to proceed in his absence under rule 15,
  - (iii) his right to adduce evidence in accordance with rule 34 and to call and cross-examine witnesses, and
  - (iv) the Committee's powers of disposal under paragraph 4(7) of Schedule 1A;
- (c) requesting the appellant to notify the registrar, within the period of 14 days beginning with the date of the notification whether he wishes to attend the hearing; and
- (d) inviting the appellant, if he chooses not to attend the hearing, to make written representations to be received by the registrar no later than 14 days before the hearing.

#### **Notification of hearing date: applicants**

**29.** Subject to section 13K(4) and (10), where an application has been referred to the Registration Appeals Committee under section 13K(3) (reference by registrar of any application for restoration to a register following erasure or removal at the direction of the Fitness to Practise Committee)(a), the registrar shall serve on the applicant a notification—

- (a) of the date of the hearing;
- (b) informing the applicant of:
  - (i) the information set out in rule 28(b)(i) to (iii), and
  - (ii) the Committee's powers of disposal under section 13K(6);
- (c) requesting the applicant to notify the registrar, within the period of 14 days beginning with the date of the notification whether he wishes to attend the hearing; and
- (d) inviting the applicant, if he chooses not to attend the hearing, to make written representations to be received by the registrar no later than 14 days before the hearing;
- (e) where the applicant has made a previous unsuccessful application, informing him of the Committee's power to suspend indefinitely his right to make further applications for restoration under section 13K(8); and
- (f) where the applicant has made a previous unsuccessful application and chooses not to attend the hearing, inviting him to make written representations on the issue of indefinite suspension of his right to make further applications, to be received by the registrar no later than 14 days before the hearing.

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(a) Section 13K was inserted by S.I. 2005/848.

### **Date of hearing: appellants and applicants**

30. Except with the agreement of the appellant or the applicant, the hearing shall not be held earlier than 28 days after the date upon which the notification of the date of hearing was served on the appellant or the applicant under rule 28 or 29.

### **Advance provision of information**

31.—(1) This rule applies to—

- (a) copies of any statements or reports made by witnesses; and
- (b) copies of any documentary evidence,

upon which a party intends to rely and which he agrees may be disclosed to the other party and to the Registration Appeals Committee in advance of the hearing.

(2) No later than 14 days before the date fixed for the hearing, each party shall provide to the other the copies of documents to which this rule applies.

### **Committee copies of documents**

32. No later than 7 days before the date fixed for the hearing, the registrar shall provide to the Registration Appeals Committee copies of all documents provided under rule 31.

### **Order of proceedings**

33.—(1) The appellant or the applicant may address the Registration Appeals Committee and may call witnesses and adduce documentary and other evidence in support.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the respondent and re-examined by the appellant or the applicant.

34.—(1) Following the presentation of evidence by the appellant or the applicant (if any), the respondent may address the Registration Appeals Committee and may call witnesses and adduce documentary and other evidence in support.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the appellant or the applicant and re-examined by the respondent.

### **Evidence in rebuttal**

35.—(1) The appellant or applicant may, with the permission of the Registration Appeals Committee, call witnesses and adduce documentary and other evidence in rebuttal of any matter raised by the respondent.

(2) Any witness who gives oral evidence under paragraph (1) may be cross-examined by the respondent and re-examined by the appellant or applicant.

### **Questions**

36. In addition to any question put to any witness pursuant to rules 33 to 35, questions may also be put by—

- (a) a member of the Registration Appeals Committee; and
- (b) with the permission of the Chairman of the Committee—
  - (i) a legal adviser,
  - (ii) a clinical adviser, where appointed, on matters relating to the physical or mental health of the registrant, and
  - (iii) a specialist adviser, where appointed, on matters relating to the specialty for which he has been appointed.

## **Submissions**

37.—(1) Following the presentation of evidence, including any evidence in rebuttal, the appellant or the applicant shall be entitled to address the Registration Appeals Committee.

(2) Following any address made by the appellant or applicant, the respondent shall be entitled to address the Registration Appeals Committee.

## **PART 6**

### **ORDERS OF THE REGISTRATION APPEALS COMMITTEE: APPELLANTS AND APPLICANTS**

#### **Voting**

38.—(1) Decisions of the Registration Appeals Committee shall be taken by a simple majority.

(2) No Chairman of the Committee may exercise a casting vote.

(3) No member of the Committee may abstain from voting.

(4) Where the votes are equal the Committee shall decide the issue under consideration against the appellant or the applicant.

#### **Determination or direction of the Registration Appeals Committee**

39. The Registration Appeals Committee shall—

(a) make a determination under paragraph 4(7) of Schedule 1A (appeals from an appealable registration decision)(a); or

(b) determine whether it is appropriate to make any direction under section 13K(6) or (8) (direction to restore to a register a person's name or entry relating to a specialty)(b).

#### **Written decision**

40. The Registration Appeals Committee shall give the parties a written record of their decision under these Rules, together with the reasons for any decision made.

#### **Costs and expenses**

41. The Registration Appeals Committee may, if they think fit, summarily assess the costs of any party to the proceedings and order any party to pay all or part of the costs or expenses of any other party.

42. Where the Registration Appeals Committee are considering making an order under rule 41 and are considering making an award against an individual appellant or an individual applicant, they shall take into account his ability to pay.

#### **Period of Payment**

43. Where the Registration Appeals Committee have made an order under rule 41, they may specify the period within which the costs or expenses are to be paid.

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(a) Schedule 1A was inserted by S.I. 2005/848.

(b) Section 13K was inserted by S.I. 2005/848.

## PART 7

### RECORD OF HEARING AND SERVICE OF NOTICES AND DOCUMENTS

#### Record of Hearing

44. A verbatim record in either written or electronic form shall be taken of every hearing before the Registration Appeals Committee.

#### Service of documents

45.—(1) Any notice of hearing required to be served upon an appellant or applicant under these Rules shall be served in accordance with section 23A (service of notification)(a).

(2) If the appellant or applicant is represented by a solicitor, any such notice shall be served at the solicitor's practising address.

(3) Any other notice or document to be served on a person under these Rules may be sent by ordinary post.

(4) The service of any notice or document under these Rules may be proved by—

(a) a confirmation of posting issued by or on behalf of the Post Office, or other postal operator or delivery service; or

(b) a signed statement from any person serving the notice or document by hand.

Given under the official seal of the General Optical Council on the 9th day of May 2005.

Attested by:  
*Moira Black*  
Member of Council.



*Rosie Varley*  
Member of Council

*Peter Coe*  
Registrar

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(a) Section 23A was inserted by S.I. 2005/848.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Rules approved by this Order make provision for procedures to be followed on an appeal against an appealable registration decision or on an application for restoration of a person's registration or entry relating to specialty following erasure or removal on a direction of the Fitness to Practise Committee of the General Optical Council.

Part 1 provides for the Rules to come into force on 30th June 2005 and sets out the definitions of terms used in the Rules.

Part 2 applies only to applications for restoration following a direction by the Fitness to Practise Committee. An application must be submitted under rule 3 with the appropriate fee and certain supporting information specified in rules 4 to 8.

Part 3 deals with assessments of individual appellants or applicants. The Registration Appeals Committee may direct the individual to meet with a person appointed by the Committee to assess matters relating to his health or professional performance (rules 9 to 12). The Committee may draw such inferences as seem appropriate to them where a registrant fails to submit to, or cooperate with, an assessment (rule 13).

Parts 4 and 5 set out the rules for the hearings and procedures of the Registration Appeals Committee. Rule 14 provides for representation of the parties, rule 15 for a hearing to proceed in the absence of a party and rule 16 for where two or more cases may be heard together. Rule 17 provides that hearings are generally to be held in public with certain permitted exceptions. Rules 25 to 27 provide for certain advisers to be present at hearings. Part 5 contains provision for service of documents and exchange of evidence in advance of the substantive hearing. Rules 32 to 37 provide for other procedural matters.

Determinations by the Committee and the orders available to them must be made in accordance with the provisions of Part 6. This includes provision as to voting procedures, making of determinations, directions and orders (including as to costs) and written records of decisions which must include reasons.

Part 7 requires a verbatim record of each hearing before the Registration Appeals Committee to be made and makes provision for the service of notices and documents under the Rules.

£3.00

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's  
Stationery Office and Queen's Printer of Acts of Parliament.

E0883 6/2005 150883T 19585

ISBN 0-11-072907-2



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