



Guidance issued by the Council for Licensed Conveyancers for the appointment, service and duties of Legal Advisers to the Discipline and Appeals Committee

1. Commencement, Savings and Interpretation

- 1.1 This Guidance comes into effect on 31 March 2009.
- 1.2 The Legal Assessors appointed under paragraph 3(1) of Schedule 4 to the 1985 Act whose terms of office remain unexpired at the coming into force of this Guidance shall at that date be deemed to have been duly appointed as Legal Advisers in accordance with this Guidance for a term of office expiring on 31 May 2009.
- 1.3 In this Guidance unless the context otherwise requires:
- 1.3.1 words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;
- 1.3.2 “the 1985 Act” the Administration of Justice Act 1985;
- “Chairman” the Chairman of the Discipline and Appeals Committee;
- “the Council” the Council for Licensed Conveyancers established under section 12 of the 1985 Act;
- “DAC Hearing Committee” the Hearing Chairman and DAC Members selected under the DAC Rules for the purpose of the hearing of a case;
- “DAC Rules” the Licensed Conveyancers’ Discipline and Appeals Committee Rules 2009
- “the Discipline and Appeals Committee” the Committee established under section 25 of the 1985 Act;
- “Hearing Chairman” the Chairman or Deputy Chairman selected by the Chairman to act as chairman of a hearing of the Discipline and Appeals Committee;
- “Legal Adviser” the adviser to the Discipline and Appeals Committee appointed by the Council in accordance with this Guidance;
- “Party” (a) the applicant;

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

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

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

2. Appointment and remuneration of the Legal Adviser

2.1 The Council shall appoint up to three Legal Advisers, one of whom shall attend each sitting of the Discipline and Appeals Committee.

2.2 Each of the Legal Advisers must :

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

2.3 Other than as provided at paragraph 1.2 which makes different provisions, any Legal Adviser shall be appointed following an open recruitment process conducted by the Council taking into account good practice guidance for public appointments.

2.4 The appointment of any Legal Adviser shall be made by a selection panel.

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

2.6 Subject to paragraphs 2.7, 2.8 and 2.9 the persons appointed in accordance with paragraph 2.4 or 2.11 shall serve for a period not exceeding four years from the date of their respective appointments.

2.7 Subject to paragraphs 2.8 and 2.9, a person appointed as Legal Adviser shall be eligible subject to review for re-appointment once only, for a further period not exceeding four years.

2.8 A person appointed as Legal Assessor deemed in accordance with paragraph 1.2 to have been appointed Legal Adviser shall be eligible subject to review, on the expiry of his term of office as provided by paragraph 1.2, for re-appointment in accordance with this Guidance once only, for a term of office not exceeding four years even if he has already served more than one term of office in accordance with paragraph 3(1) of schedule 4 to the 1985 Act.

2.9 A vacancy in the office of Legal Adviser shall automatically occur:

- (a) on his death;
- (b) on the acceptance by the Council of his written resignation;
- (c) on the expiration of his term of office;
- (d) on his becoming a member of the Council;
- (e) if he is convicted of a criminal offence involving fraud, dishonesty or deception or an indictable offence which has not been spent by virtue of a period of rehabilitation without offending under the Rehabilitation of Offenders Act 1974;
- (f) if he is adjudged bankrupt, is the subject of a bankruptcy restrictions order or makes a composition or arrangement with his creditors;
- (g) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him; or
- (h) if professional misconduct is proved against him by the disciplinary process of his professional body.

2.10 A Legal Adviser may be removed from office by the Council on the advice of the Discipline and Appeals Committee.

2.11 Where a vacancy occurs, it shall be filled as soon as possible in accordance with paragraphs 2.4 and 2.5.

2.12 The Council will pay to the Legal Advisers and members of the selection panel attendance fees and reasonable expenses, such fees to be determined by the Council and reviewed periodically.

3. Appearance of the Legal Adviser at Hearings before the Discipline and Appeals Committee

3.1 As directed by the Chairman in accordance with the DAC Rules, a Legal Adviser shall advise the Discipline and Appeals Committee as provided by this Guidance.

3.2 If a case has been part heard on the expiry of the term of office of a Legal Adviser under paragraph 2.9(c) (but for no other reason), that Legal Adviser may with the agreement of the Hearing Chairman be treated as remaining a Legal Adviser and hear the case until its conclusion even though for all other purposes that individual has ceased to be a Legal Adviser.

3.3 If an individual ceases to be a Legal Adviser under paragraph 2.9 (other than as a result of the operation of paragraph 2.9(c)) where a case has been part heard the Hearing Chairman may appoint another Legal Adviser to the DAC Hearing Committee to enable the hearing of that case to continue until its conclusion provided he is satisfied that it is in the interests of natural justice.

4. Duties of the Legal Adviser

4.1 It shall be the duty of the Legal Adviser selected by the Chairman to attend before the DAC Hearing Committee to:

- (a) advise it on any questions of law and the admission of evidence

arising from the proceedings which they may refer to him;

- (b) inform it of any irregularity in the conduct of proceedings before them which may come to his knowledge and to advise them of his own motion where it appears to him that, but for such advice, there is a possibility of a mistake of law being made.

- 4.2 Where the Legal Adviser advises the DAC Hearing Committee on any question of law as to evidence, procedure or any other matter specified in this Guidance, he shall do so in the presence of every Party to the proceedings, or every person representing such a Party, who appears at the proceedings, or, if the advice is tendered after the DAC Hearing Committee has begun to deliberate as to its findings, every such Party or person shall be informed what advice the Legal Adviser tendered when the hearing is resumed.
- 4.3 If on any occasion the DAC Hearing Committee do not accept the advice of the Legal Adviser, a record shall be made of the question referred to him, of the advice given and of the refusal to accept it (together with the reason for such a refusal), and a copy of the record shall be given to every Party, or person representing a Party, to the proceedings who has appeared at the hearing.
- 4.4 Copies of written advice made for the purpose of paragraphs 4.2 or 4.3 shall be available on application to every Party to the proceedings who does not appear at the hearing.

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