



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 2

CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

53 Unsatisfactory professional conduct: solicitors

- (1) The 1980 Act is amended as follows.
- (2) After section 42, insert—

“42ZA Unsatisfactory professional conduct: Council's powers

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—
 - (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
 - (b) given the solicitor an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 53ZA, the Council—
 - (a) must—
 - (i) notify the solicitor specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
 - (ii) so investigate the complaint;
 - (iii) having so investigated the complaint and given the solicitor an opportunity to make representations, determine the complaint;

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- (b) may rely, in their investigation, on any findings in fact which the Tribunal makes available to them under section 53ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
 - (a) shall censure the solicitor;
 - (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
 - (a) where the Council consider that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, to direct the solicitor to undertake such education or training as regards the law or legal practice as the Council consider appropriate in that respect;
 - (b) subject to subsection (6), to direct the solicitor to pay a fine not exceeding £2,000;
 - (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the Court upholding a complaint against the solicitor of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the solicitor to pay a fine under subsection (4)(b) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (8) The Council shall intimate—
 - (a) a determination under subsection (1) or (2);
 - (b) any censure under subsection (3)(a);
 - (c) any direction under subsection (4),
 to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A solicitor in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—

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- (a) determination;
 - (b) direction (whether or not he is appealing against the determination).
- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the solicitor under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a solicitor under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.
- (13) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
 - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (14) A statutory instrument containing an order under—
- (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (15) In this section, “complainer” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person.

42ZB Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 42ZA(4)

- (1) The Council shall, by notice in writing, require every solicitor who is specified in—
- (a) a direction made under section 42ZA(4); or
 - (b) such a direction as confirmed or varied on appeal by—
 - (i) the Tribunal; or
 - (ii) the Court,

to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.

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- (2) Where an appeal is made under section 42ZA(9) or (12) or 54A(1) or (2) against a direction made under section 42ZA(4), any notice under subsection (1)(a) above relating to the direction shall cease to have effect pending the outcome of the appeal.”
- (3) After section 53 (powers of Tribunal), insert—

“53ZA Remission of complaint by Tribunal to Council

- (1) Where, after holding an inquiry under section 53(1) into a complaint of professional misconduct against a solicitor, the Tribunal—
- (a) is not satisfied that he has been guilty of professional misconduct;
 - (b) considers that he may be guilty of unsatisfactory professional conduct,
- it must remit the complaint to the Council.
- (2) Where the Tribunal remits a complaint to the Council under subsection (1), it may make available to the Council any of its findings in fact in its inquiry into the complaint under section 53(1).

53ZB Powers of Tribunal on appeal: unsatisfactory professional conduct

- (1) On an appeal to the Tribunal under section 42ZA(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
 - (b) if it quashes the determination, shall quash the censure accompanying the determination;
 - (c) may quash, confirm or vary the direction being appealed against;
 - (d) may, where it considers that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, direct the solicitor to undertake such education or training as regards the law or legal practice as the Tribunal considers appropriate in that respect;
 - (e) may, subject to subsection (5), fine the solicitor an amount not exceeding £2000;
 - (f) may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (2) On an appeal to the Tribunal under section 42ZA(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
 - (b) if it does so, may, where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
 - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 42ZA(11) the Tribunal may, where it considers that the complainer has been directly affected by the conduct,

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direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct.

- (4) On an appeal under section 42ZA(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the solicitor to pay a fine under subsection (1) (e) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (6) Any fine directed to be paid under subsection (1)(e) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Scottish Ministers may by order made by statutory instrument—
 - (a) amend subsection (1)(e) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
 - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1) (f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
 - (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (10) In this section, “complainer” has the same meaning as in section 42ZA.

53ZC Enforcement of Council direction: unsatisfactory professional conduct

Where a solicitor fails to comply with a direction given by the Council under section 42ZA(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the Court) before the expiry of the period specified in the notice relating to that direction given to him under section 42ZB(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.”

- (4) After section 54 (appeals from decisions of Tribunal), insert—

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“54A Appeals from decisions of Tribunal: unsatisfactory professional conduct

- (1) A solicitor in respect of whom a decision has been made by the Tribunal under section 53ZB(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the Court against the decision.
 - (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53ZB to which this subsection applies is intimated to him, appeal to the Court against the decision.
 - (3) Subsection (2) applies to the following decisions of the Tribunal under section 53ZB—
 - (a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;
 - (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the solicitor pay compensation;
 - (c) a decision under subsection (1)(f) directing the solicitor to pay compensation;
 - (d) a decision under subsection (2)(b) not to direct the solicitor to pay compensation;
 - (e) a decision under subsection (2)(c) confirming the Council's decision not to uphold the complaint;
 - (f) a decision under subsection (3) confirming the Council's decision not to direct the solicitor to pay compensation;
 - (g) a decision under subsection (4) quashing the Council's direction that the solicitor pay compensation or varying the amount of compensation directed to be paid.
 - (4) On an appeal under subsection (1) or (2), the Court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the Court and as to any order by the Tribunal relating to expenses.
 - (5) A decision of the Court under subsection (4) shall be final.
 - (6) In this section, “complainer” has the same meaning as in section 42ZA.”.
- (5) After section 55 (powers of Court), insert—

“55A Powers of Court: unsatisfactory professional conduct

- (1) In the case of unsatisfactory professional conduct by a solicitor the Court may—
 - (a) fine the solicitor an amount not exceeding £2000;
 - (b) where it considers that the complainer has been directly affected by the conduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
 - (c) find the solicitor liable in any expenses which may be involved in the proceedings before it.

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- (2) A decision of the Court under subsection (1) shall be final.
- (3) The Scottish Ministers may by order made by statutory instrument—
 - (a) amend subsection (1)(a) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
 - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (1) (b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (4) A statutory instrument containing an order under—
 - (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (5) In this section, “complainer” has the same meaning as in section 42ZA.”.
- (6) In section 65(1) (interpretation), after the definition of “unqualified person” insert “; “unsatisfactory professional conduct” as respects a solicitor has the meaning given (as respects a practitioner who is a solicitor) by section 46 of the 2007 Act”.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 2(6)(ba) inserted by [2010 asp 16 s. 118\(4\)](#)