



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 2

CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

- 47 Conduct complaints: duty of relevant professional organisations to investigate etc.**
- (1) Where a conduct complaint is remitted to a relevant professional organisation under section [F16(2)(a)] or 15(5)(a), the organisation must, subject to section 15(1) and (6), investigate it.
 - (2) After investigating a conduct complaint, the relevant professional organisation must make a written report to the complainer and the practitioner of—
 - (a) the facts of the matter as found by the organisation;
 - (b) what action the organisation proposes to take, or has taken, in the matter.
 - (3) Each relevant professional organisation must ensure that its procedures for dealing with conduct complaints do not conflict with the duty imposed on it by section 24(4) or (5) in relation to any report sent to it under that section or any direction by the Commission under section 24(6).
 - (4) In this section and sections 48 to 52, words and expressions have the same meanings as in section 46.

Textual Amendments

- F1** Word in s. 47(1) substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(11)** (with reg. 4)

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48 Conduct complaints and reviews: power of relevant professional organisations to examine documents and demand explanations

- (1) Where a relevant professional organisation is satisfied that it is necessary for it to do so for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, it may—
 - (a) give notice in writing in accordance with subsection (2) to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner;
 - (b) give notice in writing in accordance with subsection (4) to the complainer.
- (2) Notice under subsection (1)(a) may require—
 - (a) the production or delivery to any person appointed by the relevant professional organisation, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);
 - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.
- (3) The documents are—
 - (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner's partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.
- (4) Notice under subsection (1)(b) may require—
 - (a) the production or delivery to any person appointed by the relevant professional organisation at a time and place specified in the notice, of all documents mentioned in subsection (5) which relate to the matters to which the complaint relates (whether or not they relate to other matters);
 - (b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.
- (5) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.
- (6) Schedule 4 makes further provision about the powers of a relevant professional organisation under this section.

49 Conduct complaints: financial impropriety

- (1) If, in the course of an investigation into a conduct complaint under section 47, a relevant professional organisation has reasonable cause to believe that the practitioner, the practitioner's firm (or any employee thereof) or, as the case may be, the employing

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practitioner, has been guilty of any financial impropriety it may apply to the court for an order under subsection (2).

- (2) An order under this subsection is that no payment be made by any banker, building society or other body named in the order out of—
- (a) any banking account in the name of such practitioner or firm; or
 - (b) any sum deposited in the name of such practitioner or firm,
- without the leave of the court.

50 Power of relevant professional organisations to recover certain expenses

- (1) A relevant professional organisation is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 48(1)(a) or 49, any expenditure reasonably incurred by it in so doing.
- (2) Expenditure incurred in taking action by virtue of section 48(1)(a) is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 4 in connection with that action and—
- (a) no application has been made in consequence under paragraph 3 of that schedule; or
 - (b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

51 Powers in relation to documents and information from third parties

- (1) Where a relevant professional organisation has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it into a conduct complaint under section 47 or a review by it of a decision in relation to a conduct complaint, and the person refuses or fails to produce the documents or information, the organisation may apply to the court for an order under subsection (2).
- (2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the relevant professional organisation within such time as the court may order.
- (3) Subsections (3) to (7) of section 19 apply for the purposes of this section as they apply for the purposes of that section but subject to the modification that for the references in subsections (4) to (6) to “the Commission” substitute “ the relevant professional organisation ”.

52 Restriction upon disclosure of information: relevant professional organisations

- (1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.
- (2) The information is information—
- (a) contained in a conduct complaint;
 - (b) which is given to or obtained by a relevant professional organisation or any person acting on its behalf in the course of, or for the purposes of—
 - (i) any consideration of such a complaint;

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- (ii) an investigation (including any report of such an investigation) into such a complaint.
- (3) Such information may be disclosed—
 - (a) for the purpose of enabling or assisting the relevant professional organisation to exercise any of its functions in relation to such a complaint;
 - (b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.
- (4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, a relevant professional organisation is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

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;
 - (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—

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- (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—
 - (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

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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.
- (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—

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- (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, 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.

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- (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—

“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.

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- (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.
- (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.

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- (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”.

54 Unsatisfactory professional conduct: conveyancing or executry practitioners

- (1) The 1990 Act is amended as follows.
- (2) After section 20 (professional misconduct etc. by conveyancing or executry practitioners), insert—

“20ZA Remission of complaint by Tribunal to Council

- (1) Where, after holding an inquiry under section 20(2A) into a complaint of professional misconduct against a practitioner, the Tribunal—
 - (a) are not satisfied that he has been guilty of professional misconduct;
 - (b) consider that he may be guilty of unsatisfactory professional conduct, they must remit the complaint to the Council.
- (2) Where the Tribunal remit a complaint to the Council under subsection (1), they may make available to the Council any of their findings in fact in their inquiry into the complaint under section 20(2A).

20ZB Unsatisfactory professional conduct

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner 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 practitioner an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 20ZA, the Council—
 - (a) must—
 - (i) notify the practitioner 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;

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- (iii) having so investigated the complaint and given the practitioner an opportunity to make representations, determine the complaint;
 - (b) may rely, in their investigation, on any findings in fact which the Tribunal make available to them under section 20ZA(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 practitioner;
 - (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 practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, to direct him to undertake such education or training as regards the law or legal practice concerned as the Council consider appropriate in that respect;
 - (b) subject to subsection (6) below, to direct the practitioner 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 practitioner 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 practitioner 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 practitioner to pay a fine under subsection (4)(b) above where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence 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 practitioner by sending to each of them a copy of the determination, the censure or, as the case may be, the direction and by specifying the reasons for the determination.

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- (9) A practitioner 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—
- (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 practitioner 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 practitioner 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.

20ZC Unsatisfactory professional conduct: Council's powers to monitor compliance with direction under section 20ZB(4)

- (1) The Council shall, by notice in writing, require every practitioner who is specified in—
- (a) a direction made under section 20ZB(4); or
 - (b) such a direction as confirmed or varied on appeal by—
 - (i) the Tribunal; or
 - (ii) the court,

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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.

(2) Where an appeal is made under section 20ZB(9) or (12) or 20D(1) or (2) against a direction made under section 20ZB(4), any notice under subsection (1) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.

(3) After section 20A (review by Council of certain of their decisions), insert—

“20B Unsatisfactory professional conduct: powers of Tribunal on appeal

- (1) On an appeal to the Tribunal under section 20ZB(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
 - (b) if they quash the determination, shall quash the censure accompanying the determination;
 - (c) may quash, confirm or vary the direction being appealed against;
 - (d) may, where they consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, direct him to undertake such education or training as regards the law or legal practice concerned as the Tribunal consider appropriate in that respect;
 - (e) may, subject to subsection (5), fine the practitioner an amount not exceeding £2000;
 - (f) may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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.
- (2) On an appeal to the Tribunal under section 20ZB(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
 - (b) if they do so, may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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;
 - (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 20ZB(11) the Tribunal may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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.
- (4) On an appeal under section 20ZB(12) the Tribunal may quash, confirm or vary the direction being appealed against.

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- (5) The Tribunal shall not direct the practitioner to pay a fine under subsection (1) (e) where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence 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) 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.

20C Unsatisfactory professional conduct: enforcement of Council direction

Where a practitioner fails to comply with a direction given by the Council under section 20ZB(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 the practitioner under section 20ZC(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.

20D Unsatisfactory professional conduct: appeal from decisions of Tribunal

- (1) A practitioner in respect of whom a decision has been made by the Tribunal under section 20B(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 20B to which this subsection applies is intimated to him, appeal to the court against the decision.

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- (3) Subsection (2) applies to the following decisions of the Tribunal under section 20B—
- (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 practitioner pay compensation;
 - (c) a decision under subsection (1)(f) directing the practitioner to pay compensation;
 - (d) a decision under subsection (2)(b) not to direct the practitioner 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 practitioner to pay compensation;
 - (g) a decision under subsection (4) quashing the Council's direction that the practitioner 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.

20E Unsatisfactory professional conduct: powers of court on appeal

- (1) On an appeal under section 20D, the court may—
- (a) fine the practitioner an amount not exceeding £2000;
 - (b) where it considers that the complainer has been directly affected by the conduct, direct the practitioner 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 practitioner liable in any expenses which may be involved in the proceedings before it.
- (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;

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- (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.”.

55 Report by Commission to Council under section 10(2)(e)

- (1) After section 42ZB of the 1980 Act (as inserted by section 53(2) of this Act), insert—

“42ZC Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council's powers

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner who is a solicitor, they may direct him to undertake such education or training as regards the law or legal practice as the Council consider appropriate in the circumstances.
- (2) The Council shall by notice in writing—
 - (a) intimate a direction under subsection (1) to the solicitor;
 - (b) require the solicitor 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.
- (3) Where an appeal is made under section 42ZD(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

42ZD Direction under section 42ZC(2): appeal by practitioner

- (1) A solicitor in respect of whom a direction has been made under section 42ZC(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
 - (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
 - (3) The solicitor may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the Court against the decision.
 - (4) On an appeal to the Court under subsection (3), 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 on an appeal under subsection (3) shall be final.”.
- (2) After section 20ZC of the 1990 Act (as inserted by section 54(2) of this Act), insert—

“20ZD Report by Commission to Council under section 10(2)(e) of the 2007 Act: Council's powers

- (1) Where the Council receive a report from the Commission under section 10(2)(e) of the 2007 Act as respects a practitioner, they may direct him to undertake

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such education or training as regards conveyancing law or legal practice or, as the case may be, executry law or legal practice as they consider appropriate in the circumstances.

- (2) The Council shall by notice in writing—
 - (a) intimate a direction under subsection (1) to the practitioner;
 - (b) require the practitioner 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.
- (3) Where an appeal is made under section 20ZE(1) or (3) against a direction under subsection (1), any notice under subsection (2)(b) relating to the direction shall cease to have effect pending the outcome of the appeal.

20ZE Direction under section 20ZD(1): appeal by practitioner

- (1) A practitioner in respect of whom a direction has been made under section 20ZD(1) may, before the expiry of the period of 21 days beginning with the day on which it is intimated to him, appeal to the Tribunal against the direction.
- (2) On an appeal to the Tribunal under subsection (1), the Tribunal may quash, confirm or vary the direction being appealed against.
- (3) The practitioner may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's decision under subsection (2) is intimated to him, appeal to the court against the decision.
- (4) On an appeal to the court under subsection (3), 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 on an appeal under subsection (3) shall be final.”.

56 Powers to fine and award compensation for professional misconduct etc.

- (1) In section 53 of the 1980 Act (powers of Tribunal)—
 - (a) in subsection (2), after paragraph (ba) insert—
 - “(bb) where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;
 - (b) after subsection (7B) (as inserted by paragraph 1(19)(b) of schedule 5 to this Act), insert—
 - “(7C) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bb) of subsection (2) by substituting for the amount for

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the time being specified in that paragraph such other amount as they consider appropriate.

(7D) A statutory instrument containing an order under subsection (7C) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”;

(c) after subsection (8), insert—

“(9) In subsection (2)(bb), “complainer” has the same meaning as in section 42ZA.”.

(2) In section 55 of the 1980 Act (powers of Court)—

(a) in subsection (1)—

(i) after paragraph (bb), insert—

“(bc) where the Court considers that the complainer has been directly affected by the misconduct, 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 misconduct; or”;

(ii) in paragraph (c), after “solicitor” insert “ an amount not exceeding £10,000 ”;

(b) after subsection (4) insert—

“(5) The Scottish Ministers may by order made by statutory instrument—

(a) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bc) of subsection (1) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate;

(b) amend paragraph (c) of subsection (1) 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.

(6) A statutory instrument containing an order under—

(a) subsection (5)(a) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament;

(b) subsection (5)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(7) In this section, “complainer” has the same meaning as in section 42ZA.”.

(3) In section 20 of the 1990 Act (professional misconduct, etc.)—

(a) in subsection (2), after paragraph (c) insert—

“(ca) where the Council consider that the complainer has been directly affected by the professional misconduct or, as the case may be, the matter referred to in paragraph (d) of subsection (1), to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Council may specify to the complainer for loss, inconvenience or distress

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- resulting from the misconduct or, as the case may be, the matter;
- (cb) subject to subsection (2ZA) below, to impose on the practitioner a fine not exceeding £2,000;”;
- (b) after that subsection, insert—
- “(2ZA) The Council shall not impose a fine under subsection (2)(cb) above where, in relation to the subject matter of the complaint, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (2ZB) Any fine imposed under subsection (2)(cb) 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.”;
- (c) in subsection (2B), after paragraph (a) insert—
- “(aa) where the practitioner has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;
- (d) after subsection (11F) (as inserted by paragraph 3(4)(k) of schedule 5 to this Act), insert—
- “(11G) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (2) (ca) or (2B)(aa) by substituting for the amount for the time being specified in that provision such other amount as they consider appropriate.
- (11H) A statutory instrument containing an order under subsection (11G) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.

57 Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct

- (1) In section 54 of the 1980 Act (appeals from decisions of Tribunal in cases other than unsatisfactory professional conduct)—
- (a) after subsection (1), insert—
- “(1A) A solicitor or an incorporated practice may, before the expiry of the period of 21 days beginning with the day on which any decision by the Tribunal mentioned in subsection (1B) is intimated to him or, as the case may be, it appeal to the Court against the decision.
- (1B) The decision is—

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- (a) where the Tribunal was satisfied as mentioned in section 53(1)(a), the finding that the solicitor has been guilty of professional misconduct;
 - (b) where the Tribunal was satisfied as mentioned in section 53(1)(d), the finding that the incorporated practice has failed to comply with any provision of this Act or of any rule made under this Act applicable to the practice;
 - (c) in any case falling within paragraph (a) or (b), or where the decision was made because of the circumstances mentioned in section 53(1)(b) or (c), any decision under section 53(2) or (5).
- (1C) The Council may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53(2) or (5) is intimated to them, appeal to the Court against the decision; but the Council may not appeal to the Court against a decision of the Tribunal under section 53(2)(bb).
- (1D) Where the Tribunal has found that a solicitor has been guilty of professional misconduct but has not directed him under section 53(2)(bb) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated to him, appeal to the Court against the decision of the Tribunal not to make a direction under that subsection.
- (1E) A complainer to whom the Tribunal has directed a solicitor under section 53(2)(bb) 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 Court against the amount of the compensation directed to be paid.
- (1F) On an appeal under any of subsections (1A) to (1E), 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.
- (1G) A decision of the Court under subsection (1A), (1B), (1C), (1D), (1E) or (1F) shall be final.”;
- (b) in subsection (2), after paragraph (b) insert “;
 - (c) the Tribunal has exercised the power conferred by section 53(6B) to direct that its order shall take effect on the day on which it is intimated to the solicitor, firm of solicitors or incorporated practice concerned, the solicitor, firm of solicitors or incorporated practice may, before the expiry of the period of 21 days beginning with that day, apply to the court for an order varying or quashing the direction in so far as it relates to the day on which the order takes effect”;
 - (c) after that subsection, insert—
 - “(2A) In subsections (1D) and (1E), “complainer” has the same meaning as in section 42ZA.

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- (2B) Subsection (1) does not apply to any element of a decision of the Tribunal to which subsections (1A) to (1G) and paragraph (c) of subsection (2) apply.
- (2C) Subsections (1A) to (1G), and paragraph (c) of subsection (2), apply to any element of a decision of the Tribunal which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (2) In section 20 of the 1990 Act (professional misconduct etc. by conveyancing or executry practitioners)—
- (a) after subsection (8), insert—
- “(8A) Where the Council are satisfied that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner, the practitioner may—
- (a) before the expiry of the period of 21 days beginning with the day on which the finding by the Council to that effect is intimated to him, apply to the Council for a review by them of the finding;
- (b) before the expiry of the period of 21 days beginning with the day on which the outcome of the review is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash or confirm the decision.”;
- (b) after subsection (11), insert—
- “(11ZA) Where the Council find that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1) (d) apply as respects a practitioner but do not direct him under subsection (2)(ca) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Council's finding is intimated to him, apply to the Council for a review by them of their decision not to direct the practitioner under subsection (2)(ca) to pay compensation.
- (11ZB) A complainer to whom the Council have directed a practitioner under subsection (2)(ca) 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, apply to the Council for a review by them of the direction.
- (11ZC) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of the review under subsection (11ZA) or (11ZB) is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash, confirm or vary the decision.”;
- (c) in subsection (11A)—
- (i) in paragraph (a), after “subsection” insert “ (8A)(b) or ”;
- (ii) after that paragraph, insert—
- “(aa) a finding by the Tribunal that a practitioner is guilty of professional misconduct or that the circumstances

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- mentioned in subsection (1)(d) apply as respects the practitioner; or”;
- (iii) for the words “or, as the case may be,” substitute “ the finding referred to in paragraph (aa) or, as the case may be, the decision ”;
- (d) after that subsection, insert—
- “(11B) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of any appeal under subsection (11ZC) is intimated to him, appeal to the court against the Tribunal's decision in the appeal.
- (11C) Where after holding an inquiry into a complaint against a practitioner, the Tribunal find that he has been guilty of professional misconduct or that the circumstances referred to in subsection (2A)(b) apply as respects him, but do not direct the practitioner under subsection (2B) (aa) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal's finding is intimated to him, appeal to the court against the decision of the Tribunal not to make a direction under that subsection.
- (11D) A complainer to whom the Tribunal have directed a practitioner under subsection (2B)(aa) 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 court against the amount of the compensation directed to be paid.
- (11E) In an appeal under subsection (11C) or (11D), the court may make such order in the matter as it thinks fit.”.

Status:

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Changes to legislation:

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