



Solicitors (Scotland) Act 1988

1988 CHAPTER 42

3 Functions of Scottish Solicitors' Discipline Tribunal

After section 53 of the 1980 Act there shall be inserted the following sections—

“53A Inadequate professional services: powers of Tribunal

- (1) Subject to the other provisions of this Part where—
 - (a) a complaint is made to the Tribunal that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
 - (b) the Tribunal, after inquiry and after giving the solicitor an opportunity to make representations, upholds the complaint,it may take such of the steps mentioned in subsection (2) as it thinks fit.
- (2) The steps referred to in subsection (1) are—
 - (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—
 - (i) nil; or
 - (ii) such amount as the Tribunal may specify in the determination, and by order direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to it to be necessary to give effect to the determination;
 - (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Tribunal may specify;
 - (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Tribunal may specify.
- (3) The requirements referred to in subsection (2)(a) are—
 - (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;

Status: This is the original version (as it was originally enacted).

- (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (4) Before making a determination in accordance with subsection (2)(a) the Tribunal may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.
- (5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.
- (6) A direction of the Tribunal under this section 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.
- (7) Section 54(1) shall apply to a direction of the Tribunal under this section (but not to a decision to submit an account for taxation under subsection (4)) as it applies to a decision of the Tribunal relating to discipline under this Act.
- (8) In the foregoing provisions of this section "solicitor" and "client" have the same meanings as in section 42A(8).

53B Inadequate professional services: appeal to Tribunal against Council determination or direction

- (1) On an appeal to the Tribunal under section 42A(7) the Tribunal may quash, confirm or vary the determination or direction being appealed against.
- (2) Section 54(1) shall apply to a decision of the Tribunal under subsection (1) as it applies to a decision of the Tribunal relating to discipline under this Act.

53C Inadequate professional services: enforcement by Tribunal of Council direction

- (1) Where a solicitor fails to comply with a direction given by the Council under section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under section 42B(1), or such longer period as the Council may allow, the Council shall make a complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.
- (2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, 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.
- (3) Paragraph 9 of Schedule 4 shall not apply to a complaint made under subsection (1)."