



# Solicitors Act 1974

## 1974 CHAPTER 47

### PART II

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS AND CLERKS

##### *Disciplinary proceedings before Solicitors Disciplinary Tribunal*

#### **46 Solicitors Disciplinary Tribunal.**

- (1) Applications and complaints made by virtue of any provision of this Act shall be made, except so far as other provision is made by this Act or by any regulations under it, to the tribunal known as the “Solicitors Disciplinary Tribunal”.
- (2) The Master of the Rolls shall appoint the members of the Tribunal.
- (3) The Tribunal shall consist—
  - (a) of practising solicitors of not less than ten years’ standing (in this section referred to as “solicitor members”); and
  - (b) of persons who are neither solicitors nor barristers (in this section referred to as “lay members”).
- (4) A member of the Tribunal shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.
- (5) There shall be paid to the lay members out of money provided by Parliament such fees and allowances as the [F1 Secretary of State] may, with the approval of the Minister for the Civil Service, determine.
- (6) Subject to subsections (7) and (8), the Tribunal shall be deemed to be properly constituted if—
  - (a) at least three members are present; and
  - (b) at least one lay member is present; and
  - (c) the number of solicitor members present exceeds the number of lay members present.

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- (7) For the purpose of hearing and determining applications and complaints the Tribunal shall consist of not more than three members.
- (8) A decision of the Tribunal on an application or complaint may be announced by a single member.
- (9) Subject to subsections (6) to (8), the Tribunal, with the concurrence of the Master of the Rolls, may make rules—
- (a) empowering the Tribunal to elect a solicitor member to be its president; and
  - (b) about the procedure and practice to be followed in relation to the making, hearing and determination of applications and complaints.
- (10) Without prejudice to the generality of subsection (9)(b), rules made by virtue of that paragraph may in particular—
- (a) empower the president of the Tribunal to appoint a chairman for the hearing and determination of any application or complaint;
  - (b) provide that, if the president does not appoint a chairman, a solicitor member shall act as chairman; and
  - (c) provide, in relation to any application or complaint relating to a solicitor, that, where in the opinion of the Tribunal no prima facie case in favour of the applicant or complainant is shown in the application or complaint, the Tribunal may make an order refusing the application or dismissing the complaint without requiring the solicitor to whom it relates to answer the allegations and without hearing the applicant or complainant.
- (11) For the purposes of any application or complaint made to the Tribunal under this Act, the Tribunal may administer oaths, and the applicant or complainant and any person with respect to whom the application or complaint is made (or, in the case of an application under section 47(1)(b), any of the parties to the application) may issue writs of subpoena ad testificandum and duces tecum, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.
- (12) The power to make rules conferred by subsection (9) shall be exercisable by statutory instrument, and the <sup>M1</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing such rules in like manner as if the rules had been made by a Minister of the Crown.

#### Textual Amendments

- F1** Words in s. 46 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, **Sch. 2 para. 3**

#### Modifications etc. (not altering text)

- C1** S. 46 applied (with modifications) (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 89, **Sch. 14 Pt. II para. 15(1)**; S.I. 1991/1883, **art. 3**, Sch.
- C2** S. 46(7)-(10) extended by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), ss. 43(2), 69(5), **Sch. 9 para. 9** and (1.1.1992) by s. 9, Sch. 2 para. 17(a) of that Act; S.I. 1991/2683, **art. 2**
- C3** S. 46(10)(c) extended (1.1.1992) by [Administration of Justice Act 1985 \(c. 61, SIF 34\)](#), s. 9, **Sch. 2 para. 17(c)**; S.I. 1991/2683, **art. 2**
- S. 46(10)(c) extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 para. 10 (as amended by [The Legal Services Act 2007 \(Registered European Lawyers\) Order 2009 \(S.I. 2009/1587\)](#), **art. 3(10)**)

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- C4** S. 46(11) extended by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 43(2), 69(5), **Sch. 9 para. 9** and (1.1.1992) by s. 9, Sch. 2 para. 17(a) of that Act; S.I. 1991/2683, **art. 2**
- C5** S. 46(12) applied (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 89, **Sch. 14 Pt.II para. 16(3)**; S.I. 1991/1883, **art. 3**, Sch.

#### Marginal Citations

- M1** 1946 c. 36.

VALID FROM 30/06/2008

### [<sup>F2</sup>46A Funding of the Tribunal

- (1) The Tribunal must submit to the Society in respect of each year a budget for the year approved by the Legal Services Board.
- (2) A budget for a year is a statement of the amount of money which the Tribunal estimates is required to enable it to meet all of its expenditure in that year (having regard to any amounts received but not spent in previous years).
- (3) Before approving a statement for the purposes of subsection (1) the Legal Services Board must consult the Society.
- (4) The budget for a year must be submitted to the Society under subsection (1) no later than the date in the preceding year specified by the Society for the purposes of this subsection.
- (5) Before specifying a date for this purpose the Society must consult the Tribunal.
- (6) The amount specified in a budget submitted under subsection (1) must be paid by the Society to the Tribunal—
  - (a) in such instalments and at such times as may be agreed between the Society and the Tribunal, or
  - (b) in the absence of such agreement, before the beginning of the year to which the budget relates.
- (7) The Society may pay the Tribunal such other amounts as the Society considers appropriate.
- (8) In this section “year” means a calendar year.]

#### Textual Amendments

- F2** S. 46A inserted (30.6.2008) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 48** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 2(d)(i)** (subject to art. 4)

### 47 Jurisdiction and powers of Tribunal.

- [<sup>F3</sup>(1) Any application—
- (a) to strike the name of a solicitor off the roll;
  - (b) to require a solicitor to answer allegations contained in an affidavit;

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- (c) to require a former solicitor whose name has been removed from or struck off the roll to answer allegations contained in an affidavit relating to a time when he was a solicitor;
- (d) by a solicitor who has been suspended from practice for an unspecified period, by order of the Tribunal, for the termination of that suspension;
- (e) by a former solicitor whose name has been struck off the roll to have his name restored to the roll;
- (f) by a former solicitor in respect of whom a direction has been given under subsection (2)(g) to have his name restored to the roll,

shall be made to the Tribunal; but nothing in this subsection shall affect any jurisdiction over solicitors exercisable by the Master of the Rolls, or by any judge of the High Court, by virtue of section 50.

- (2) Subject to subsection (3) and to section 54, on the hearing of any application or complaint made to the Tribunal under this Act, other than an application under section 43, the Tribunal shall have power to make such order as it may think fit, and any such order may in particular include provision for any of the following matters—
- (a) the striking off the roll of the name of the solicitor to whom the application or complaint relates;
  - (b) the suspension of that solicitor from practice indefinitely or for a specified period;
  - (c) the payment by that solicitor or former solicitor of a penalty not exceeding £5,000, which shall be forfeit to Her Majesty;
  - (d) in the circumstances referred to in subsection (2A), the exclusion of that solicitor from [<sup>F4</sup>providing representation funded by the Legal Services Commission as part of the Criminal Defence Service] (either permanently or for a specified period);
  - (e) the termination of that solicitor's unspecified period of suspension from practice;
  - (f) the restoration to the roll of the name of a former solicitor whose name has been struck off the roll and to whom the application relates;
  - (g) in the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of his name to the roll except by order of the Tribunal;
  - (h) in the case of an application under subsection (1)(f), the restoration of the applicant's name to the roll;
  - (i) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable.]

[<sup>F5</sup>(2A) An order of the Tribunal may make provision for the exclusion of a solicitor from [<sup>F6</sup>providing representation] as mentioned in subsection [<sup>F7</sup>(2)(d)] where the Tribunal determines that there is good reason for doing so arising out of—

- (a) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services [<sup>F8</sup>funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service]; or
- (b) his professional conduct generally.

(2B) Where the Tribunal makes any such order as is re-referred to in subsection (2A) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if it thinks fit, order that any other person who is for the time being a member of the

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firm shall be excluded (either permanently or for a specified period) from [F9 providing representation funded by the Legal Services Commission as part of the Criminal Defence Service].

(2C) The Tribunal shall not make an order under subsection (2B) F10. . . unless an opportunity is given to him to show cause why the order should not be made.

(2D) Any person excluded from [F11 providing representation funded by the Legal Services Commission as part of the Criminal Defence Service] by an order under this section may make an application to the Tribunal for an order terminating his exclusion F12. . . .]

(3) On proof of the commission of an offence with respect to which express provision is made by any section of this Act, the Tribunal shall, without prejudice to its power of making an order as to costs, impose the punishment, or one of the punishments, specified in that section.

[F13(3A) Where, on the hearing of any application or complaint under this Act, the Tribunal is satisfied that more than one allegation is proved against the person to whom the application or complaint relates it may impose a separate penalty (by virtue of subsection (2)(c) ) with respect to each such allegation.]

[F14(4) If it appears to the [F15 Secretary of State] that there has been a change in the value of money since the relevant date, he may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament substitute for the sum for the time being specified in subsection (2)(c) above such other sum as appears to him to be justified by the change.

(5) In subsection (4) above “the relevant date” means—

- (a) in relation to the first order under that subsection, the date of the coming into force of section 56 of the Administration of Justice Act 1982; and
- (b) in relation to each subsequent order, the last occasion when the sum specified in subsection (2)(c) above was altered.]

F16(6) . . . . .

#### Textual Amendments

- F3 S. 47(1)(2) substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 92(2)
- F4 Words in s. 47(2)(d) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 para. 10(2) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a)(ii) (with transitional provisions and savings in Sch. 2 para. 2)
- F5 S. 47(2A)–(2D) added by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 44(3), 69(5), Sch. 9 para. 9 (as amended by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, Sch. 5 para. 19(a))
- F6 Words in s. 47(2A) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 para. 10(3)(a) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a)(ii) (with transitional provisions and savings in Sch. 2 para. 2)
- F7 Words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 92(3)
- F8 Words in s. 47(2A)(a) substituted (1.4.2000 subject to the transitional provision in art. 3 of the commencing S.I.) by 1999 c. 22, s. 24, Sch. 4 para. 10(3)(b) (with Sch. 14 para. 7(2)); S.I. 2000/744, arts. 2, 3
- F9 Words in s. 47(2B) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 para. 10(4) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a)(ii) (with transitional provisions and savings in Sch. 2 para. 2)
- F10 Words in s. 47(2C) repealed (2.4.2001) by 1999 c. 22, s. 106, Sch. 15 Pt. I (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, art. 3(b) (with transitional provisions and savings in Sch. 2 para. 2)
- F11 Words in s. 47(2D) substituted (2.4.2001) by 1999 c. 22, s. 24, Sch. 4 para. 10(5) (with Sch. 14 para. 7(2)); S.I. 2001/916, art. 3(a)(ii) (with transitional provisions and savings in Sch. 2 para. 2)

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- F12** Words in s. 47(2D) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 para. 2)
- F13** S. 47(3A) inserted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 92(4)**
- F14** S. 47(4)(5) added by Administration of Justice Act 1982 (c. 53, SIF 37), **s. 56(b)**
- F15** Words in s. 47 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), **art. 9, Sch. 2 para. 3**
- F16** S. 47(6) repealed (2.4.2001) by 1999 c. 22, s. 106, **Sch. 15 Pt. I** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2001/916, **art. 3(b)** (with transitional provisions and savings in Sch. 2 para. 2)

**Modifications etc. (not altering text)**

- C6** S. 47 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 10**
- C7** S. 47(2) extended by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 43(2), 69(5), **Sch. 9 para. 9**
- C8** S. 47(4) amended (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 89, **Sch. 14 Pt. II para. 15(5)**; S.I. 1991/1883, **art. 3, Sch.**
- C9** S. 47(4)(5) extended (1.1.1992) by Administration of Justice Act 1985 (c. 61, SIF 34), s. 9, **Sch. 2 para. 18(4)**; S.I. 1991/2683, **art. 2**

**F17** 47A .....

**Textual Amendments**

- F17** S. 47A repealed (1. 4. 1991) by Courts and Legal Services Act 1990 (c. 41, SIF 34), ss. 93(4), 125(6) (7), **Sch. 19 para. 14(b), Sch. 20** (with saving in Sch. 19 para. 14(b)); S.I. 1991/608, **art. 2, Sch.**

**48 Orders of Tribunal.**

- (1) An order of the Tribunal shall be filed with the Society, and a statement of the Tribunal's findings, signed by the chairman or by some other member of the Tribunal authorised by him in that behalf, shall either be prefaced to the order or added to the file containing the order as soon as may be after the order has been made.
- (2) Where an order which has been filed includes provision for any of the matters referred to in paragraphs <sup>F18</sup>(a) to (i) of section 47(2), the Society—
  - (a) shall cause a note of the effect of the order to be entered on the roll against the name of the solicitor <sup>F19</sup>[or former solicitor] with respect to whom the application or complaint was made; and
  - (b) except where it only makes provision for matters referred to in <sup>F20</sup>[paragraph (e), (f), (h) or (i) of section 47(2)], shall forthwith upon filing the order cause a notice stating its effect to be published <sup>F21</sup>.....
- (3) Subject to section 43(5), any file kept by the Society under this section may be inspected during office hours without payment.
- (4) An order which has been filed shall be treated, for the purpose of enforcement, as if it had been made by the High Court.

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#### Textual Amendments

- F18** In s. 48(2), “(a) to (i)” substituted for “(a) to (e)” by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 92(5)(a)**
- F19** S. 48(2)(a): words inserted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 92(5)(b)**
- F20** S. 48(2)(b): words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 92(5)(c)**
- F21** Words in s. 48(2)(b) repealed (7.3.2008) by Legal Services Act 2007 (c. 29), ss. 177, 210, 211, Sch. 16 para. 50(a)(ii) {Sch. 23} (with ss. 29, 192, 193); S.I. 2008/222, **art. 2(j)(i)**

#### Modifications etc. (not altering text)

- C10** S. 48 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 10**

## 49 Appeals from Tribunal.

- (1) An appeal from the Tribunal shall lie—
  - (a) in the case of an order on an application under section 43(3) or <sup>F22</sup>47(1)(d), (e) or (f) for the refusal of any such application, to the Master of the Rolls;
  - (b) in any other case, to the High Court.
- (2) Subject to subsection (3), an appeal shall lie at the instance of the applicant or complainant or of the person with respect to whom the application or complaint was made.
- (3) An appeal against an order under section <sup>F23</sup>43(3A)] shall lie only at the instance of the person with respect to whom the <sup>F24</sup>order] was made.
- (4) The High Court and the Master of the Rolls shall have power to make such order on an appeal under this section as they may think fit.
- (5) Subject to any rules of court, on an appeal against an order made by virtue of rules under section 46(10)(c) without hearing the applicant or complainant, the court—
  - (a) shall not be obliged to hear the appellant, and
  - (b) may remit the matter to the Tribunal instead of dismissing the appeal,
- (6) Any decision of the Master of the Rolls on an appeal under this section and any decision of the High Court on an appeal against an order under section <sup>F25</sup>43(3A)] shall be final.
- (7) The Master of the Rolls may make regulations about appeals to him under this section.

#### Textual Amendments

- F22** S. 49(1)(a): words substituted by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 92(6)**
- F23** Figure in s. 49(3) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 9(2)(a)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F24** Word in s. 49(3) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 9(2)(b)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**
- F25** Word in s. 49(6) substituted (27.9.1999) by 1999 c. 22, s. 48, **Sch. 7 para. 9(3)** (with Sch. 14 para. 7(2)); S.I. 1999/2657, **art. 2(a)**

#### Modifications etc. (not altering text)

- C11** S. 49 extended by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 43(5), 69(5), **Sch. 9 para. 9**

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S. 49 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 10**

VALID FROM 01/07/2009

**[<sup>F26</sup>49A Appeals to the Tribunal instead of the High Court**

- (1) The Society may, with the approval of the Tribunal, make rules which provide that in such circumstances as may be prescribed by the rules an appeal under any of the provisions listed in subsection (2) lies to the Tribunal and not to the High Court.
- (2) Those provisions are—
  - (a) section 8(4);
  - (b) section 13A(6);
  - (c) section 16(5);
  - (d) section 28(3D);
  - (e) section 41(3);
  - (f) paragraph 14 of Schedule 14 to the Courts and Legal Services Act 1990 (foreign lawyers: appeals against conditions or refusals).
- (3) Any decision of the Tribunal on an appeal by virtue of rules made under this section shall be final.]

**Textual Amendments**

**F26** S. 49A inserted (1.7.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 52** (with ss. 29, 192, 193); S.I. 2009/1365, **art. 2(a)(i)**



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