



Administration of Justice Act 1985

1985 CHAPTER 61

PART I

SOLICITORS

Solicitors' discipline

1 Imposition by Council of Law Society of disciplinary sanctions for inadequate professional services

After section 44 of the Solicitors Act 1974 there shall be inserted—

“Imposition by Council of disciplinary sanctions for inadequate professional services

44A Power of Council to impose sanctions for inadequate professional services.

- (1) Where it appears to the Council that the professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to subsection (3)), the Council may, if they think fit, do one or more of the following things, namely—
 - (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within subsection (2) as appear to them to be necessary in order to give effect to their determination;
 - (b) direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;

Status: This is the original version (as it was originally enacted).

- (c) direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.
- (2) The requirements referred to in subsection (1)(a) are—
 - (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter ;
 - (b) a requirement to remit the whole or part of those costs;
 - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (3) The Council shall not exercise any of their powers under subsection (1) unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Council may have regard—
 - (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings ; and
 - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (4) Where the Council have given a direction under subsection (1)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—
 - (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Council's determination; and
 - (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Council's determination.
- (5) Where a bill covering those costs has been taxed in accordance with subsection (4)(a), the Council's direction under subsection (1)(a) shall, so far as relating to those costs, cease to have effect.
- (6) If a solicitor fails to comply with a direction given by the Council under this section, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever shall be brought in respect of it.
- (7) On the hearing of a complaint under subsection (6) relating to a direction given by the Council the Tribunal may, if it thinks fit (whether or not it makes any order on the hearing under section 47(2)), direct that the Council's direction shall be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court.
- (8) The powers conferred on the Council by subsection (1)(a) shall be exercisable in relation to a person notwithstanding that his name has been removed from or struck off the roll, and references to a solicitor—
 - (a) in the provisions of this section so far as they relate to the exercise of those powers ; and

(b) if a complaint is made to the Tribunal under subsection (6), in section 47(2), shall be construed accordingly.

(9) In subsection (1)(c) and (3)(a) " client", in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.”.

2 Examination of solicitors' files in connection with complaints

After the section 44A inserted in the Solicitors Act 1974 by the preceding section there shall be inserted—

“Examination of files

44B Power of Society to examine files in connection with complaints.

(1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—

- (a) alleging professional misconduct by a solicitor ; or
- (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

(2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 1, together with paragraphs 12 to 16 of that Schedule, shall apply in relation to the powers conferred by subsection (1) as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—

- (a) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under subsection (1); and
- (b) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in subsection (1).”.

3 Powers of lay observers and Solicitors Disciplinary Tribunal in relation to inadequate professional services

(1) After section 45(5) of the Solicitors Act 1974 (investigation by lay observers of Law Society's treatment of complaints) there shall be inserted—

“(5A) Where it appears to a lay observer, in examining any such allegation as is mentioned in subsection (1)—

- (a) that there arises out of the complaint in respect of which the allegation has been made both—
 - (i) a question as to the professional conduct of a solicitor, and

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

- (ii) a question as to the quality of any professional services provided by him ; and
 - (b) that it would be appropriate for the latter question to be considered by the Tribunal with a view to determining whether to exercise any of its powers under section 47A in relation to the solicitor,
- the lay observer may make an application to the Tribunal with respect to the solicitor.”.
- (2) After section 47 of that Act there shall be inserted—

“47A Power of Tribunal to impose sanctions for inadequate professional services.

- (1) The powers conferred on the Tribunal by this section shall be exercisable on the hearing of—
 - (a) any application or complaint made to the Tribunal under this Act by or on behalf of the Society; or
 - (b) any application made to the Tribunal under section 45 (5A) by a lay observer.
- (2) Where, on the hearing of any such application or complaint with respect to a solicitor, it appears to the Tribunal that the professional services provided by the solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to subsection (4)), the Tribunal may, if it thinks fit, do one or more of the following things, namely—
 - (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in its determination and by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within subsection (3) as appear to it to be necessary in order to give effect to its determination;
 - (b) by order direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as it may specify;
 - (c) by order direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as it may specify.
- (3) The requirements referred to in subsection (2)(a) are-
 - (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter ;
 - (b) a requirement to remit the whole or part of those costs;
 - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (4) The Tribunal shall not exercise any of its powers under this section unless it is satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Tribunal may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings ; and
 - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (5) Where the Tribunal has given a direction under subsection (2) (a) in order to give effect to a determination by it under that provision as to the costs of a solicitor in respect of any services provided by him, then—
 - (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Tribunal's determination; and
 - (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Tribunal's determination.
- (6) Where a bill covering those costs has been taxed in accordance with subsection (5)(a), the Tribunal's direction under subsection (2) (a) shall, so far as relating to those costs, cease to have effect.
- (7) In subsections (2)(c) and (4) (a) " client", in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.”.