



2016 CHAPTER 14

PROSPECTIVE

**PART 3**

**COMPLAINTS AGAINST SOLICITORS**

*Complaints procedures for solicitors*

**Complaints procedures for solicitors**

**29.—**(1) The Law Society must make regulations requiring every solicitor

- (a) to establish and maintain procedures for the resolution of relevant complaints; or
- (b) to participate in, or make arrangements to be subject to, such procedures established and maintained by such person or body as may be specified in the regulations,

and provision must be made in the regulations for the enforcement of that requirement.

(2) The Law Society must make regulations requiring every solicitor to provide the Law Society with such information about the number of relevant complaints made in relation to that solicitor as may be specified in the regulations.

(3) The Law Society must consult the Legal Services Oversight Commissioner before making regulations under subsections (1) and (2).

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(4) Regulations made under subsections (1) and (2) must be made with the concurrence of the Lord Chief Justice.

(5) In subsection (1) “relevant complaint” means a complaint which relates to professional services provided by a solicitor.

### *Solicitors Complaints Committee*

#### **Solicitors Complaints Committee**

**30.**—(1) The Law Society must, in accordance with the provisions of this Part, establish and maintain a committee to be known as the Solicitors Complaints Committee to deal with any complaint in relation to professional services provided by a solicitor made by or on behalf of a complainant within section 33.

(2) Article 73A of the 1976 Order shall not apply to the Solicitors Complaints Committee.

(3) Schedule 3 makes further provision in relation to the Solicitors Complaints Committee.

#### **Jurisdiction of the Solicitors Complaints Committee**

**31.**—(1) A complaint which relates to an act or omission of a solicitor or his or her firm (“the respondent”) in the course of providing professional services is within the jurisdiction of the Solicitors Complaints Committee if—

- (a) the complaint is not excluded from the jurisdiction of the Committee by section 32; and
- (b) the complainant is within section 33 and wishes to have the complaint dealt with by the Committee.

(2) The right of a person to make a complaint to the Committee, and the jurisdiction of the Committee to investigate, consider and determine a complaint, may not be limited or excluded by any contract term.

#### **Excluded complaints**

**32.**—(1) A complaint is excluded from the jurisdiction of the Solicitors Complaints Committee if the complainant has not first used the respondent's complaints procedures in relation to the complaint.

(2) The respondent's complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulations made under section 29.

(3) Rules made by the Committee under section 36(1) must provide that subsection (1) of this section does not apply in such circumstances as may be specified in the rules.

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### **Complainants**

- 33.—**(1) A complainant (“C”) is within this section if C—
- (a) meets the first and second conditions; and
  - (b) is not excluded by subsection (4).
- (2) The first condition is that C is—
- (a) an individual; or
  - (b) a person (other than an individual) or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 34.
- (3) The second condition is that—
- (a) the services to which the complaint relates were provided by the respondent to C;
  - (b) the services to which the complaint relates were provided by the respondent—
    - (i) in the respondent's capacity as a personal representative or trustee; or
    - (ii) to a person acting as a personal representative or trustee, and C is a beneficiary of the estate or trust in question; or
  - (c) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Department in accordance with a recommendation made under section 34.
- (4) C is excluded if, at the time when the act or omission to which the complaint relates took place—
- (a) C was a solicitor and the services to which the complaint relates were procured by C on behalf of another person; or
  - (b) C was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 34.
- (5) An order made under this section is subject to negative resolution.

### **Orders under section 33**

- 34.—**(1) An interested body may recommend to the Department that the Department make an order under section 33(2)(b), (3)(c) or (4)(b).
- (2) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (1).
- (3) An interested body must, before making a recommendation under subsection (1)—

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- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(4) Where the Department receives a recommendation under subsection (1), the Department must consider whether to follow the recommendation.

(5) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(6) In this section “interested body” means—

- (a) the Solicitors Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

### **Continuity of complaints**

**35.** The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body.

### **Procedure for complaints**

**36.—**(1) The Solicitors Complaints Committee must make rules setting out the procedure for—

- (a) the making of complaints to the Committee; and
- (b) the investigation, consideration and determination of complaints by the Committee.

(2) Rules under subsection (1)—

- (a) must provide that a complaint is to be entertained by the Committee only if the complainant has made the complaint before the applicable time limit (determined in accordance with the rules) has expired; and
- (b) may provide that the Committee may extend that time limit in specified circumstances.

(3) Rules under subsection (1) must make provision permitting such persons as may be specified to continue a complaint made by a person who has died or is otherwise unable to act, and for that purpose may modify references to the complainant in this Part and in the rules.

(4) Rules under subsection (1) may (among other things) make provision—

- (a) for the whole or part of a complaint to be dismissed, in such circumstances as are mentioned in subsection (5);
- (b) for the reference of a complaint, in such circumstances as may be specified and with the consent of the complainant, to another person or

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- body with a view to the complaint being determined by that person or body instead of by the Committee;
- (c) about the evidence which may be required or admitted and the extent to which it should be oral or written;
  - (d) subject to the provisions of sections 41 to 43, for requiring parties to the complaint to attend to give evidence, produce documents and provide information;
  - (e) for the Committee, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before the Committee;
  - (f) for the Committee to award costs against the respondent in favour of the complainant;
  - (g) for the Committee to award costs against the respondent in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint;
  - (h) for the Committee to award costs against the complainant in favour of the respondent if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
  - (i) for the Committee to award costs against the complainant in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
  - (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it;
  - (k) for specified persons or bodies to be notified of complaints made to the Committee.
- (5) The circumstances referred to in subsection (4)(a) are the following—
- (a) the Committee considers the complaint or part of the complaint to be frivolous or vexatious or totally without merit;
  - (b) the Committee considers that the complaint or part of the complaint would be better dealt with by arbitration or by legal proceedings;
  - (c) the Committee considers that there has been undue delay in the making of the complaint or part of the complaint, or in the provision of evidence to support it;
  - (d) the Committee is satisfied that the matter which is the subject of the complaint or part of the complaint has previously been dealt with by the Committee or by legal proceedings;

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- (e) the Committee considers that there are other compelling reasons why it is inappropriate for the complaint or part of the complaint to be dealt with by the Committee.
- (6) No person may be required by rules under subsection (1)—
  - (a) to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
  - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (7) An amount due under an award made in favour of the Committee by virtue of any provision made under subsection (4)(g) or (i) shall be payable to the Law Society.
- (8) Rules under subsection (1) may authorise the Committee, on making an award of costs, to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules.
- (9) An amount payable to a person by virtue of any provision made under subsection (4)(e) to (i) is recoverable as a debt due to that person.
- (10) In subsections (2), (3) and (4), “specified” means specified in rules made under subsection (1).

### **Notification requirements**

- 37.—**(1) This section applies where a complaint made to the Solicitors Complaints Committee—
- (a) is excluded from the jurisdiction of the Committee under section 32;
  - (b) is dismissed, or referred to another body, by virtue of rules under section 36(1);
  - (c) is settled, determined, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of rules under section 36(1)).
- (2) The Committee must notify—
- (a) the complainant;
  - (b) the respondent; and
  - (c) where the respondent is not a firm of solicitors, the respondent's firm, and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.
- (3) When the Committee has determined a complaint the Committee must prepare a written statement of the determination giving reasons for the Committee's determination.

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- (4) The Committee must give a copy of the statement to—
- (a) the complainant;
  - (b) the respondent;
  - (c) where the respondent is not a firm of solicitors, the respondent's firm;
  - (d) the Law Society; and
  - (e) the Legal Services Oversight Commissioner.

*Determinations by Solicitors Complaints Committee*

**Determination of complaints**

**38.—**(1) The Solicitors Complaints Committee may determine a complaint made in accordance with the provisions of this Part by—

- (a) upholding the complaint (or part of the complaint); or
- (b) dismissing the complaint (or part of the complaint).

(2) A determination by the Committee upholding a complaint may contain one or more of the following—

- (a) a direction that the respondent make an apology (which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings) to the complainant;
- (b) a direction that—
  - (i) the costs to which the respondent is entitled in respect of the services to which the complaint relates (“the costs”) are limited to such amount (if any) as may be specified in the direction, and
  - (ii) the respondent comply, or secure compliance, with such one or more of the requirements falling within subsection (3) as appear to the Committee to be necessary in order for effect to be given to the direction under sub-paragraph (i);
- (c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;
- (d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;
- (e) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;

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- (f) a direction that the respondent take such steps for the completion of the matter in question within such reasonable time as the direction may specify;
  - (g) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.
- (3) The requirements referred to in subsection (2)(b)(ii) are—
- (a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the costs be refunded;
  - (b) that the whole or part of the costs be remitted;
  - (c) that the right to recover the costs be waived, whether wholly or to any specified extent.
- (4) Where—
- (a) a direction is made under subsection (2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the costs be refunded; or
  - (b) a direction is made under subsection (2)(c) or (d),
- the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with rules made under section 36(1).
- (5) Where the Committee has given a direction under subsection (2)(b) in relation to the costs referred to in that paragraph, 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 (if any) specified in the Committee's direction; and
  - (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the complainant 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 (if any) specified in the Committee's direction.
- (6) Where a bill covering those costs has been taxed in accordance with subsection (5)(a), the Committee's direction under subsection (2)(b) shall, so far as relating to those costs, cease to have effect.
- (7) The amount of any compensation specified in a direction under subsection (2)(c) must not exceed £5,000.
- (8) The amount of any compensation specified in a direction under subsection (2)(d) must not exceed £5,000.

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(9) If a respondent who is a solicitor fails to comply with a direction given under this section which has taken effect, any person may make a complaint in respect of that failure to the Solicitors Disciplinary Tribunal.

(10) The powers conferred on the Committee by subsection (2)(b) shall be exercisable in relation to a person notwithstanding that the person's name has been removed from or struck off the roll of solicitors kept by the Law Society under Article 8 of the 1976 Order, and references to a respondent in—

- (a) 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 Solicitors Disciplinary Tribunal under subsection (9), Articles 46 and 51 of the 1976 Order,

shall be construed accordingly.

#### **Alteration of compensation limits**

**39.**—(1) The Department may by order subject to negative resolution amend subsection (7) or (8) of section 38 in accordance with a recommendation made by an interested body under subsection (2).

(2) An interested body may recommend to the Department that subsection (7) or (8) of section 38 should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in subsection (7) or, as the case may be, (8).

(3) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (2).

(4) An interested body must, before making a recommendation under subsection (2)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(5) Where the Department receives a recommendation under subsection (2), the Department must consider whether to follow the recommendation.

(6) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(7) In this section “interested body” means—

- (a) the Solicitors Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

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## *Appeals*

### **Appeals**

**40.**—(1) The Department must, with the concurrence of the Lord Chief Justice, make regulations providing for appeals to the High Court against such determinations of the Solicitors Complaints Committee as are specified in the regulations.

(2) Regulations under subsection (1) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

## *Information*

### **Information and documents**

**41.**—(1) The Solicitors Complaints Committee may, by notice, require a party to a complaint—

- (a) to produce such documents, or documents of such a description, as may be specified in the notice; or
- (b) to provide such information, or information of such a description, as may be specified in the notice.

(2) A notice under subsection (1) may require the documents or information to be provided or produced—

- (a) before the end of such reasonable period as may be specified in the notice; and
- (b) in the case of information, in such manner or form as may be so specified.

(3) The Committee may require any person producing a document under this section to provide an explanation of it.

(4) If a person who is required under this section to produce a document fails to do so, the Committee may require that person to state, to the best of that person's knowledge and belief, where the document is.

(5) No person may be required under this section—

- (a) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
- (b) to produce any document which that person could not be compelled to produce in such proceedings.

### **Reporting failures to provide information or produce documents**

**42.**—(1) This section applies where the Solicitors Complaints Committee is of the opinion that a respondent has failed to comply with a requirement imposed under section 41.

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(2) The Committee must give the Law Society a report which—

- (a) states that the Committee is of that opinion; and
- (b) gives details of the failure.

(3) A report under subsection (2) may require the Law Society to report to the Committee the action which has been or is to be taken by it in response to the report under that subsection and the reasons for that action being taken.

(4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 41.

### **Enforcement of requirements to provide information or produce documents**

**43.—**(1) This section applies where the Solicitors Complaints Committee is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 41.

(2) The Committee may certify the defaulter's failure to comply with the requirement to the court.

(3) Where the Committee certifies a failure to the court under subsection (2), the court may enquire into the case.

(4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with—

- (a) the defaulter; and
- (b) in the case of a recognised body, any officer of the body,

as if that person were in contempt.

(5) Subsection (6) applies where the defaulter is a solicitor.

(6) The Committee may not certify the defaulter's failure to the court until a report by the Committee has been made as required by section 42(2) and the Committee is satisfied—

- (a) that the Law Society has been given a reasonable opportunity to take action in respect of the defaulter's failure; and
- (b) that the defaulter has continued to fail to produce the documents or provide the information to which the requirement under section 41 related.

(7) In this section “the court” means the High Court.

(8) References in subsection (4)(b) to an officer of a recognised body include references to a director, manager or secretary of that body and references to a director, in relation to a limited liability partnership, are references to a member of the limited liability partnership.

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### **Reports of investigation**

**44.**—(1) The Solicitors Complaints Committee may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made to it.

(2) A report under subsection (1) must not (unless the complainant consents)

- (a) mention the name of the complainant; or
- (b) include any particulars which, in the opinion of the Committee, are likely to identify the complainant.

### *Defamation*

### **Protection from defamation claims**

**45.** For the purposes of the law of defamation—

- (a) proceedings in relation to the investigation, consideration and determination of a complaint by the Solicitors Complaints Committee are to be treated as if they were proceedings before a court; and
- (b) the publication of any matter by the Committee under this Part is absolutely privileged.

### *Rules*

### **Consultation requirements for Solicitors Complaints Committee rules**

**46.**—(1) This section applies in relation to rules made by the Solicitors Complaints Committee under this Part.

(2) If the Committee proposes to make any rules, it must publish a draft of the proposed rules.

(3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Committee within the period specified in the notice.

(4) Before making the rules, the Committee must have regard to any representations duly made.

(5) Before making the rules, the Committee must consult the Legal Services Oversight Commissioner.

(6) The Committee must publish any rules it makes, and rules may not take effect before the time they are published.

(7) The Committee may make a reasonable charge for providing a person with a copy of—

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- (a) a draft published under subsection (2); or
- (b) rules published under subsection (6).

(8) In this section references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications.

### *The Solicitors Disciplinary Tribunal*

#### **The Solicitors Disciplinary Tribunal**

**47.—**(1) In Article 43 of the 1976 Order (the Solicitors Disciplinary Tribunal), in paragraph (6)—

- (a) in sub-paragraph (b) for “1 lay member is” substitute “ 2 lay members are ”;
- (b) in sub-paragraph (c)—
  - (i) for “solicitor members” substitute “ lay members ”;
  - (ii) for “lay members” substitute “ solicitor members ”.

### *Interpretation*

#### **Recognised bodies**

**48.—**(1) References in this Part to a recognised body are references to a body corporate for the time being recognised under Article 26A of the 1976 Order.

(2) References in this Part to a recognised body in relation to a complaint include references to a body corporate that was recognised under Article 26A of the 1976 Order at the time when the conduct to which the complaint relates took place.

(3) In this Part (except in section 38(10))—

- (a) any reference to a solicitor shall be construed as including a reference to a recognised body; and
- (b) any reference to professional services provided by a solicitor shall be construed as including a reference to professional services provided by a recognised body.

(4) The powers conferred on the Solicitors Complaints Committee by section 38(2)(b) shall be exercisable in relation to a body corporate in accordance with this section notwithstanding that it is no longer a recognised body.

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### **Interpretation of Part 3**

**49.** In this Part—

“complainant”, in relation to a complaint, means the person who makes the complaint;

“party”, in relation to a complaint, means—

- (a) the complainant;
- (b) the respondent;
- (c) any other person who, in accordance with rules made under section 36(1), is to be regarded as a party to the complaint;

“respondent”, in relation to a complaint, is to be construed in accordance with section 31.

**Status:**

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