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STATUTORY INSTRUMENTS

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**1989 No. 1343**

**The Solicitors (Amendment)(Northern Ireland) Order 1989**

**Powers of the Tribunal**

**19.**—(1) For Article 51 of the Solicitors Order there shall be substituted—

**“Orders of Tribunal on inquiry**

**51.**—(1) Where the Tribunal hold an inquiry, they may make an order providing for one or more than one of the following—

- (a) the dismissal of the application or complaint;
- (b) the admonishing of the solicitor and, if they think fit, the imposing on him of a fine not exceeding £3,000 to be paid to and applied for the purposes of the Society;
- (c) the restricting of the solicitor from practising on his own account, whether in partnership or otherwise;
- (d) the removal of a restriction on the solicitor from practising on his own account, whether in partnership or otherwise;
- (e) the suspension of the solicitor from practice;
- (f) the termination of the solicitor’s suspension from practice;
- (g) the striking off the roll of the name of the solicitor;
- (h) the replacement on the roll of the name of a former solicitor whose name has been struck off the roll;
- (i) the termination of the solicitor’s exclusion from legal aid work;
- (j) the payment by any party to the inquiry of the costs of any other party to be measured by the Tribunal, or of a stated sum as a contribution towards such costs;
- (k) the payment by any party to the inquiry of a sum to be measured by the Tribunal for the costs incurred by the Tribunal, or of a stated sum as a contribution towards such costs;
- (l) the making by any party of such restitution or satisfaction to any aggrieved party as the Tribunal think fit.

(2) Paragraph (1) does not apply where the Tribunal hold an inquiry into an application under Article 42(5A).

(3) Where the Tribunal hold an inquiry into a complaint under Article 41A(8) relating to a direction given under Article 41A, they may, without prejudice to their powers under paragraph (1) or Article 51A, make an order providing for the direction to be treated for the purposes of this Order as if it were contained in an order of the Tribunal.

(4) An order made by the Tribunal under paragraph (1)(f) or (h) may impose the restriction that the solicitor shall not practise on his own account, whether in partnership or otherwise.

(5) An order made by the Tribunal under paragraph (1)(k) for the payment by any party of the costs of the Tribunal or of a sum towards those costs shall direct such payment to be

made by that party to the Society; and any money so paid shall be appropriated by the Society towards the defrayal of the costs referred to in Article 43(11).

(6) The Tribunal may postpone the making of an order under this Article, Article 51A or Article 51B.

(7) Where the making of an order is postponed under paragraph (6), the Tribunal may, on request made to them in that behalf when the matter is considered after such postponement, allow the application or complaint to be withdrawn without any order being made.

(8) The Tribunal may, on the application of the solicitor to whom an order under this Article, Article 51A or Article 51B relates, or of any other party, suspend in whole or in part the operation of the order pending an appeal under Article 53.

(9) Where an order is suspended under paragraph (8)—

- (a) nothing in Article 52(1), (2) or (3) shall apply to the filing, enforcement or lodgment of copies of, or to the publication of, that order while it remains suspended; and
- (b) neither Article 15(1) nor Article 54(1) shall have effect in relation to that order while it remains suspended.

(10) Any person who practises as a solicitor on his own account, whether in partnership or otherwise, in contravention of—

- (a) any regulation for the time being in force under Article 26(2)(a); or
- (b) any order made by the Tribunal under paragraph (1)(c) or (4), or by the Lord Chief Justice or the High Court on an appeal under Article 53,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(11) If it appears to the Department of Finance and Personnel that there has been a change in the value of money since the relevant date, that Department may by order, subject to negative resolution, substitute for the sum for the time being specified in paragraph (1)(b) such other sum as appears to that Department to be justified by the change.

(12) In paragraph (11) “the relevant date” means—in relation to the first order made under that paragraph, the date of the coming into operation of Article 19(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989; and

- (b) in relation to each subsequent order, the last occasion on which the sum specified in paragraph (1)(b) was altered.

### **Power of Tribunal to impose sanctions for inadequate professional services**

**51A.**—(1) The powers conferred on the Tribunal by this Article shall be exercisable on an inquiry into—

- (a) any application or complaint made to the Tribunal under this Order by or on behalf of the Society; or
- (b) any application made to the Tribunal under Article 42(5A) by a lay observer,

and, in the case mentioned in sub-paragraph (a), shall be exercisable whether or not they make any other order on the inquiry.

(2) Where, on an inquiry into 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 paragraph (4)), the Tribunal 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 by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (3) as appear to them to be necessary in order to give effect to their determination;
  - (b) by order direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
  - (c) 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 they may specify;
  - (d) 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 they may specify.
- (3) The requirements referred to in paragraph (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 their powers under this Article 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 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;
  - (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 have given a direction under paragraph (2)(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 Tribunal's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with subparagraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment 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 paragraph (5)(a), the Tribunal's direction under paragraph (2)(a) shall, so far as relating to those costs, cease to have effect.
- (7) In paragraphs (2)(d) 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.

**Power of Tribunal in relation to legal aid**

**51B.**—(1) On an inquiry into a complaint made to the Tribunal under Article 44(1) against a solicitor the Tribunal may, whether or not they make any other order on the inquiry,—

- (a) make an order providing for the exclusion (either permanently or for a specified period) of the solicitor from legal aid work;
- (b) order that any costs—
  - (i) otherwise payable under or in accordance with Part II or III of the Order of 1981; or
  - (ii) otherwise chargeable as mentioned in Article 8(1) of that Order,
 in connection with services provided by the solicitor shall be reduced or cancelled.

(2) The Tribunal shall not make an order under paragraph (1) unless they determine that there is good reason for doing so arising out of—

- (a) the conduct of the solicitor in connection with the giving of advice or assistance under Part II of the Order of 1981;
- (b) the conduct of the solicitor in connection with the provision of services for any person receiving legal aid under Part II or III of the Order of 1981 (including the provision of any such services in the capacity of agent for that person's solicitor); or
- (c) the professional conduct generally of the solicitor.

(3) Where the Tribunal make an order under paragraph (1)(a) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if they think fit, order that any other person who is for the time being a member of the firm shall be excluded (either permanently or for a specified period) from legal aid work.

(4) The Tribunal shall not make an order under paragraph (3) excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(5) In so far as any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981 has effect in relation to any costs reduced or cancelled by an order under paragraph (1)(b), it shall so have effect subject to the provisions of that order.

(6) In this Article—

- (a) “the Order of 1981” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981(1);
- (b) references to a person being excluded from legal aid work are references to his being excluded from both of the following classes of persons, namely—
  - (i) those who may be selected under Article 15(3) of the Order of 1981; and
  - (ii) those who may be assigned to give legal aid under Part III of that Order.

**Power of Tribunal to make recommendation for application of Schedule 1 to solicitor**

**51C.**—(1) Where the Tribunal hold an inquiry into any application or complaint made under this Order with respect to a solicitor, they may, whether or not they make any order on the inquiry, make a recommendation to the Council that the provisions of Schedule 1 should apply in relation to that solicitor and the other persons mentioned in that Schedule.

(2) A recommendation made by the Tribunal under paragraph (1) shall contain a statement of the findings on which the Tribunal based the recommendation.”.

(2) In Article 52 of the Solicitors Order—

(a) in paragraph (1) for the words from the beginning to “Article 51” there shall be substituted “An order made by the Tribunal on an inquiry”;

(b) in paragraph (2) for the words from the beginning to “restitution or satisfaction” there shall be substituted—

“Where the Tribunal make an order—

(a) under Article 51(1)(b) imposing a fine on a solicitor;

(b) under Article 51(1)(j), (k) or (l);

(c) under Article 51(3); or

(d) under Article 51A(2),”;

(c) in paragraph (5) for “Article 51(1)(c) or (d)” there shall be substituted “Article 51(1)(c) or (e) or (4)”.