



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

Powers of Council to intervene

[^{F1}42ZA Unsatisfactory professional conduct: Council's powers

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner who is a solicitor is remitted to the Council under section [^{F2}6(2)(a)] or 15(5)(a) of the 2007 Act, the Council must have—
 - (a) investigated the complaint under section 47(1) of that Act and made a written report under section 47(2) of that Act;
 - (b) given the solicitor an opportunity to make representations, determine the complaint.
- (2) Where a complaint is remitted to the Council under section 53ZA, the Council—
 - (a) must—
 - (i) notify the solicitor specified in it and the complainer of that fact and that the Council are required to investigate the complaint as a complaint of unsatisfactory professional conduct;
 - (ii) so investigate the complaint;
 - (iii) having so investigated the complaint and given the solicitor an opportunity to make representations, determine the complaint;
 - (b) may rely, in their investigation, on any findings in fact which the Tribunal makes available to them under section 53ZA(2) as respects the complaint.
- (3) Where the Council make a determination under subsection (1) or (2) upholding the complaint, they—
 - (a) shall censure the solicitor;

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- (b) may take any of the steps mentioned in subsection (4) which they consider appropriate.
- (4) The steps are—
- (a) where the Council consider that the solicitor does not have sufficient competence in relation to any aspect of the law or legal practice, to direct the solicitor to undertake such education or training as regards the law or legal practice as the Council consider appropriate in that respect;
 - (b) subject to subsection (6), to direct the solicitor to pay a fine not exceeding £2,000;
 - (c) where the Council consider that the complainer has been directly affected by the conduct, to direct the solicitor to pay compensation of such amount, not exceeding £5,000, as they may specify to the complainer for loss, inconvenience or distress resulting from the conduct.
- (5) The Council may, in considering the complaint, take account of any previous determination by them, the Tribunal or the Court upholding a complaint against the solicitor of unsatisfactory professional conduct or professional misconduct (but not a complaint in respect of which an appeal is pending or which has been quashed ultimately on appeal).
- (6) The Council shall not direct the solicitor to pay a fine under subsection (4)(b) where, in relation to the subject matter of the complaint, the solicitor has been convicted by any court of an act involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (7) Any fine directed to be paid under subsection (4)(b) above shall be treated for the purposes of section 211(5) of the Criminal Procedure (Scotland) Act 1995 (fines payable to HM Exchequer) as if it were a fine imposed in the High Court.
- (8) The Council shall intimate—
- (a) a determination under subsection (1) or (2);
 - (b) any censure under subsection (3)(a);
 - (c) any direction under subsection (4),
- to the complainer and the solicitor specified in it by sending to each of them a copy of the determination, censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A solicitor in respect of whom a determination upholding a conduct complaint has been made under subsection (1) or (2), or a direction has been made under subsection (4) may, before the expiry of the period of 21 days beginning with the day on which the determination or, as the case may be, the direction is intimated to him, appeal to the Tribunal against the—
- (a) determination;
 - (b) direction (whether or not he is appealing against the determination).
- (10) A complainer may, before the expiry of the period of 21 days beginning with the day on which a determination under subsection (1) or (2) not upholding the conduct complaint is intimated to him, appeal to the Tribunal against the determination.
- (11) Where the Council have upheld the conduct complaint but have not directed the solicitor under subsection (4)(c) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the determination

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- upholding the complaint is intimated to him, appeal to the Tribunal against the Council's decision not to make a direction under that subsection.
- (12) A complainer to whom the Council have directed a solicitor under subsection (4)(c) to pay compensation may, before the expiry of the period of 21 days beginning with the day on which the direction under that subsection is intimated to him, appeal to the Tribunal against the amount of the compensation directed to be paid.
- (13) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (4)(b) by substituting for the amount for the time being specified in that subsection such other amount as appears to them to be justified by a change in the value of money;
 - (b) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (4)(c) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (14) A statutory instrument containing an order under—
- (a) subsection (13)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (13)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.
- (15) In this section, “complainer” means the person who made the complaint and, where the complaint was made by the person on behalf of another person, includes that other person.]

Textual Amendments

- F1** Ss. 42ZA, 42ZB inserted (1.10.2008) by [Legal Profession and Legal Aid \(Scotland\) Act 2007 \(asp 5\)](#), [ss. 53\(2\)](#), 82 (with s. 77); S.S.I. 2008/311, [art. 2](#)
- F2** Word in s. 42ZA(1) substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), [3\(1\)](#) (with reg. 4)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 12A(2)(ba) inserted by [2010 asp 16 s. 118\(3\)](#)
- s. 32(1)(d) and word inserted by [2010 asp 16 s. 118\(2\)\(a\)\(i\)](#)
- s. 32(2D) inserted by [2010 asp 16 s. 118\(2\)\(a\)\(iv\)](#)
- Sch. 4 para. 1A(b)(iia) inserted by [2010 asp 16 s. 118\(2\)\(b\)](#)