



Bankruptcy and Diligence etc. (Scotland) Act 2007

2007 asp 3

PART 3

ENFORCEMENT

Disciplinary proceedings

71 Referrals to the disciplinary committee

- (1) In dealing with any matter referred to the disciplinary committee under section 67(6), 69(2) or 70(2) of this Act, the committee—
 - (a) must consider—
 - (i) any report made to the Commission under section 67(5)(a) of this Act; and
 - (ii) any other relevant information held by the Commission; and
 - (b) may, if it considers it appropriate, hold a hearing.
- (2) Where the judicial officer to whom a referred matter relates requests a hearing before the disciplinary committee, the committee must hold one.
- (3) The disciplinary committee must, when holding a hearing, afford the persons mentioned in subsection (4) below the opportunity to—
 - (a) make representations (whether orally or in writing); and
 - (b) lead, or produce, evidence.
- (4) Those persons are—
 - (a) the judicial officer to whom the hearing relates;
 - (b) where there was an investigation under section 67 of this Act, the person who carried it out; and
 - (c) any other person the committee considers appropriate.
- (5) The disciplinary committee may award expenses in any hearing in favour of or against the judicial officer to whom the hearing relates.

- (6) The Commission's expenses in any hearing include any payments made under section 66(4) and 67(7) of this Act.
- (7) Where expenses are awarded under subsection (5) above—
 - (a) in favour of the judicial officer, the expenses are recoverable by the officer from the Commission; or
 - (b) against the officer, the expenses are recoverable by the Commission from the officer.
- (8) The Commission may make rules in relation to the procedures, including the procedures to be followed during a hearing, of the disciplinary committee.
- (9) Any rules made under subsection (8) above must be approved by the Scottish Ministers.

72 Disciplinary committee's powers

- (1) This section applies where, after dealing with a matter referred to the disciplinary committee under section 67(6), 69(2) or 70(2) of this Act, the committee is satisfied that it is appropriate to take further action under this section.
- (2) Where the disciplinary committee is satisfied that—
 - (a) the judicial officer is guilty of misconduct; or
 - (b) the officer has admitted misconduct under section 67(4)(a) of this Act,the committee may make one or more of the orders mentioned in subsection (5) below.
- (3) Where the matter referred to the disciplinary committee is one to which section 70 of this Act applies, the committee may make an order under paragraph (a) or (c) of subsection (5) below.
- (4) Where the judicial officer has been convicted of an offence, the disciplinary committee may make an order under paragraph (a), (b) or (c) of subsection (5) below.
- (5) Those orders are—
 - (a) an order—
 - (i) suspending the judicial officer from practice for a period specified in the order; or
 - (ii) recommending that the Lord President of the Court of Session deprives the officer of office;
 - (b) an order censuring the officer;
 - (c) an order restricting—
 - (i) the functions which the officer may exercise; or
 - (ii) the activities which the officer may undertake,for such period as the committee considers appropriate;
 - (d) an order imposing a fine on the officer not exceeding level 4 on the standard scale;
 - (e) if the misconduct consists of or includes the charging of excessive fees or outlays, an order requiring the officer to repay so much of those fees or outlays as is excessive together with such interest as the disciplinary committee considers appropriate.

- (6) Where a judicial officer fails to comply with an order under subsection (5)(d) above the disciplinary committee may, if it has not already done so, make an order—
 - (a) suspending the officer from practice for a period specified in the order; or
 - (b) recommending that the Lord President of the Court of Session deprives the officer of office.
- (7) The disciplinary committee must send a copy of any decision it makes under this section to the judicial officer to whom that decision relates.

73 Orders under sections 68 and 72: supplementary provision

- (1) An order mentioned in section 72(5)(d) of this Act is enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (2) The Commission may recover any fine imposed by such an order.
- (3) The Commission must intimate any order made by the disciplinary committee under section 68(2) or (3) or 72 (other than an order under section 72(5)(a)(ii) or (6)(b)) of this Act to—
 - (a) the Court of Session;
 - (b) every sheriff principal; and
 - (c) the professional association.