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Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 1

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Establishment

1 The Scottish Legal Complaints Commission

(1) There is established a body to be known as the Scottish Legal Complaints Commission (referred to in this Act as "the Commission").

(2) Schedule 1 makes further provision about the status, constitution, proceedings etc. of the Commission.

Commencement Information

I1 S. 1 wholly in force at 23.11.2007; s. 1 not in force at Royal Assent, see s. 82; s. 1 in force for certain purposes at 19.3.2007 by S.S.I. 2007/140, **art. 2**; s. 1 otherwise in force at 23.11.2007 by S.S.I. 2007/497, **art. 2**

VALID FROM 01/10/2008

Conduct or services complaints against practitioners

2 Receipt of complaints: preliminary steps

(1) Where the Commission receives a complaint by or on behalf of any of the persons mentioned in subsection (2)—

(a) suggesting—

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(i) professional misconduct or unsatisfactory professional conduct by a practitioner other than a firm of solicitors or an incorporated practice;

(ii) that a conveyancing practitioner or an executry practitioner has been convicted of a criminal offence rendering the practitioner no longer a fit and proper person to provide conveyancing services as a conveyancing practitioner or, as the case may be, executry services as an executry practitioner,

(a complaint suggesting any such matter being referred to in this Part as a "conduct complaint");

(b) suggesting that professional services provided by a practitioner in connection with any matter in which the practitioner has been instructed by a client were inadequate (referred to in this Part as a "services complaint"),

it must, subject to subsection (3) and sections 3 and 4 and any provision in rules made under section 32(1) as to eligibility for making complaints, take the preliminary steps mentioned in subsection (4).

(2) The persons are—

(a) as respects a conduct complaint, any person;

(b) as respects a services complaint—

(i) any person who appears to the Commission to have been directly affected by the suggested inadequate professional services;

(ii) the Lord Advocate;

(iii) the Advocate General for Scotland;

(iv) any judge (including a sheriff);

(v) the Auditor of the Court of Session;

(vi) the Auditor of any sheriff court;

(vii) the Scottish Legal Aid Board;

(viii) any relevant professional organisation.

(3) The Commission is not to take the preliminary steps mentioned in subsection (4), and is not to take any further action under any other provision of this Part, in relation to any element of a conduct complaint which is about a practitioner acting in a judicial capacity in a court or tribunal specified by order by the Scottish Ministers.

(4) The preliminary steps are—

(a) to determine whether or not the complaint is frivolous, vexatious or totally without merit;

(b) where the Commission determines that the complaint is any or all of these things, to—

(i) reject the complaint;

(ii) give notice in writing to the complainer and the practitioner that it has rejected the complaint as frivolous, vexatious or totally without merit (or two or all of these things).

3 Existence of specified regulatory scheme

(1) Where any element of a complaint referred to in section 2(1) is capable of being dealt with under a specified regulatory scheme, the Commission is prevented from dealing

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with the element but only to the extent that the element is capable of being dealt with under the specified regulatory scheme.

(2) Where the circumstances referred to in subsection (1) apply, the Commission must give notice in writing to that effect to—
  (a) the complainer and the practitioner;
  (b) such other persons as may be specified by the Scottish Ministers by order.

(3) Notice under subsection (2) must specify under which specified regulatory scheme the Commission considers the element is capable of being dealt with.

(4) Where the circumstances referred to in subsection (1) apply, notice under subsection (2) must in addition specify that the fact that the Commission is prevented by subsection (1) from dealing with the complaint to the extent that the complaint is capable of being dealt with under the specified regulatory scheme does not prevent the Commission taking the preliminary steps referred to in section 2(4) and dealing with the complaint under any provision of this Part to the extent that it is able.

(5) In this section "specified regulatory scheme" means a scheme specified as such by the Scottish Ministers by order.

4 Complaint not made timeously or made prematurely

(1) Where a complaint referred to in section 2(1) is not made timeously, the Commission is not to take the preliminary steps referred to in section 2(4) in relation to it, and is not to take any further action under any other provision of this Part (except this section), in relation to it.

(2) Where a complaint referred to in section 2(1) is made prematurely, the Commission need not take the preliminary steps referred to in section 2(4) in relation to it, and need not take any further action under any other provision of this Part (except this section), in relation to it.

(3) For the purposes of subsection (1), a complaint is not made timeously where—
  (a) rules made under section 32(1) fix time limits for the making of complaints;
  (b) the complaint is made after the expiry of the time limit applicable to it;
  (c) the Commission does not extend the time limit in accordance with the rules.

(4) For the purposes of subsection (2), a complaint is made prematurely where—
  (a) the complainer has not previously communicated the substance of it to the practitioner, the practitioner's firm or, as the case may be, where the practitioner is an employee of another practitioner that other practitioner (referred to in this Part as the "employing practitioner") and given the practitioner, the firm or the employing practitioner what the Commission considers is a reasonable opportunity to deal with it;
  (b) rules made under section 32(1) either—
    (i) do not provide for circumstances in which the Commission will take the steps and further action referred to in that subsection; or
    (ii) do provide for such circumstances but none is applicable in relation to the complaint.

(5) Where the circumstances referred to in subsection (1) or (2) apply, the Commission must give notice in writing to the complainer and practitioner to that effect.

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(6) Where the circumstances referred to in subsection (2) apply, notice under subsection (5) must specify whether or not the Commission is proceeding to take the preliminary steps referred to in section 2(4).

5 Determining nature of complaint

(1) Where the Commission proceeds to determine under section 2(4) whether a complaint is frivolous, vexatious or totally without merit and determines that it is none of these things, it must determine whether the complaint constitutes—

(a) a conduct complaint;

(b) a services complaint,

including whether (and if so to what extent) the complaint constitutes separate complaints falling within more than one of these categories and if so which of the categories.

(2) Where it appears to the Commission that the complaint may constitute both—

(a) a conduct complaint; and

(b) a separate services complaint,

it must consult, co-operate and liaise with the relevant professional organisation and have regard to any views expressed by the organisation on the matter before making a determination under subsection (1) as respects the complaint.

(3) A relevant professional organisation must co-operate and liaise with the Commission in relation to subsection (2).

6 Complaint determined to be conduct complaint

Where, or to the extent that, the Commission determines under section 5(1) that a complaint is a conduct complaint, it must—

(a) remit the complaint to the relevant professional organisation to deal with (and give to the organisation any material which accompanies the conduct complaint);

(b) give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination and specifying—

(i) the reasons for the determination;

(ii) that the conduct complaint is being remitted under this section for investigation and determination by the relevant professional organisation;

(iii) the relevant professional organisation to which it is being remitted;

(iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.

7 Services complaint: notice

Where, or to the extent that, the Commission determines under section 5(1) that a complaint is a services complaint, it must give notice in writing to the complainer and the practitioner by sending to each of them a copy of the determination and specifying the reasons for the determination.

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8 Services complaint: local resolution or mediation

(1) This section applies where the Commission determines under section 5(1) that a complaint by or on behalf of a person referred to in section 2(2)(b)(i) is a services complaint.

(2) Where the Commission considers that either—

(a) the complaint has been made prematurely (within the meaning of section 4(4)); or

(b) the practitioner, the practitioner's firm or the employing practitioner has made no attempt, or an insufficient attempt, to achieve a negotiated settlement with the complainer,

the Commission may, by notice in writing to the complainer and the practitioner refer the complaint back to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner requesting that the practitioner, the firm or the employing practitioner attempt to achieve such a settlement.

(3) Where the Commission refers a complaint back to the practitioner, the practitioner's firm or the employing practitioner under subsection (2), it may, by notice in writing, require the practitioner, the firm or the employing practitioner to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner, firm or employing practitioner has taken to attempt to achieve a negotiated settlement.

(4) Where the Commission considers it appropriate to do so, it may, by notice in writing to the complainer and the practitioner, offer to mediate in relation to the complaint.

(5) The Commission may enter into mediation in relation to a complaint only if both the complainer and the practitioner accept the offer made under subsection (4).

(6) The Commission must discontinue mediation in relation to a complaint if either the complainer or the practitioner withdraws consent to the mediation and may do so in any other circumstances; and, if mediation is discontinued, the Commission must give notice in writing to the complainer and the practitioner of its decision.

9 Services complaint: Commission's duty to investigate and determine

(1) Where—

(a) the Commission does not refer a services complaint back to the practitioner, the practitioner's firm or the employing practitioner under section 8(2) (because it considers that the practitioner, firm or employing practitioner has made a sufficient attempt to achieve a negotiated settlement);

(b) the Commission refers a services complaint back to the practitioner, the practitioner's firm or the employing practitioner under that section but—

(i) no attempt to achieve a negotiated settlement takes place;

(ii) such an attempt takes place but is discontinued or a negotiated settlement is not accepted by both the practitioner and the complainer;

(c) mediation by virtue of section 8(5) in relation to the complaint—

(i) does not take place;

(ii) takes place but is discontinued or the outcome of the mediation is not accepted by both the complainer and the practitioner;

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(d) the Commission determines under section 5(1) that a complaint by or on behalf of any person referred to in sub-paragraphs (ii) to (viii) of section 2(2)(b) is a services complaint,

the Commission must, subject to section 15(2) and (5), investigate the complaint and after giving the complainer and the practitioner an opportunity to make representations, subject to subsections (2) to (4), determine it by reference to what the Commission considers is fair and reasonable in the circumstances.

(2) Where the complainer is a person referred to in section 2(2)(b)(i) the Commission must, subject to subsection (3), propose to the practitioner and the complainer a settlement as respects the complaint which it considers is fair and reasonable in the circumstances.

(3) Where the practitioner was, at the time the services were provided, an employee of an employing practitioner, a proposal under subsection (2) to the practitioner and the complainer must also be made to the employing practitioner.

(4) Where the practitioner and the complainer, and where subsection (3) applies the employing practitioner, accept a settlement proposed by the Commission under subsection (2) as respects the complaint, the Commission is not to determine the complaint under subsection (1).

10 Commission upholds services complaint

(1) Where the Commission makes a determination under section 9(1) upholding a services complaint, it may take such of the steps mentioned in subsection (2) as it considers fair and reasonable in the circumstances.

(2) The steps are, subject to subsection (3)—

(a) to determine that the amount of the fees and outlays to which the practitioner is entitled for the services provided to the client and to which the complaint relates, is to be—

(i) nil; or

(ii) such amount as the Commission may specify in the determination,

and to direct the practitioner to comply or secure compliance with such of the requirements set out in subsection (5) as appear to the Commission to be necessary to give effect to the determination;

(b) to direct the practitioner to secure the rectification at the practitioner's own expense of any such error, omission or other deficiency arising in connection with the services as the Commission may specify;

(c) to direct the practitioner to take, at the practitioner's own expense, such other action in the interests of the complainer as the Commission may specify;

(d) where the Commission considers that the complainer has been directly affected by the inadequate professional services, to direct the practitioner to pay compensation of such amount, not exceeding £20,000, as the Commission may specify to the complainer for loss, inconvenience or distress resulting from the inadequate professional services;

(e) where the Commission considers that the practitioner may not have sufficient competence in relation to any aspect of the law or legal practice, to report the matter to the relevant professional organisation.

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(3) Where the practitioner was, at the time when the services were provided, an employee (referred to in this section as an "employee practitioner") of an employing practitioner—

(a) a direction under subsection (2)(a), (b) or (c) must be to the employing practitioner instead of the employee practitioner;

(b) a direction under subsection (2)(d)—

(i) may be to and direct either the employing practitioner or, if the Commission considers it appropriate, the employee practitioner to pay all of the compensation directed to be paid under that subsection in relation to the complaint concerned;

(ii) may be to and direct the employee practitioner to pay such part of the total amount of compensation directed to be paid under that subsection in relation to the complaint concerned as the Commission considers appropriate and if it does so, must be to and direct the employing practitioner to pay the remainder of the total amount;

(c) a copy of any report under subsection (2)(e) must be sent to the employing practitioner.

(4) The Commission must, in considering what steps to take under subsection (2), take into account any—

(a) prior direction by it under subsection (2)(d) that the employee practitioner concerned or, where subsection (3) applies, the employing practitioner, pay to the complainer an amount by way of compensation;

(b) award of damages by the court to the complainer;

(c) other compensation ordered (whether by determination, direction or otherwise) by a tribunal or other professional body to be paid to the complainer,

in relation to the subject matter of the complaint.

(5) The requirements referred to in subsection (2)(a) are to—

(a) refund, whether wholly or to any specified extent any amount already paid by or on behalf of the client in respect of fees and outlays of the practitioner in connection with the services;

(b) waive, whether wholly or to any specified extent, the right to recover the fees and outlays.

(6) Before making a determination in accordance with subsection (2)(a), the Commission may submit the practitioner's accounts for the fees and outlays to the Auditor of the Court of Session for taxation.

(7) The Scottish Ministers may by order, after consulting—

(a) the relevant professional organisations;

(b) such groups of persons representing consumer interests as they consider appropriate,

amend subsection (2)(d) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

11 Fair and reasonable: matters to be taken into account by Commission

In considering what is fair and reasonable in the circumstances, the Commission is to take into account the relevant law (including levels of damages awarded by

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courts in similar circumstances) and relevant codes of practice, professional rules, standards and guidance.

12 Services complaint: notice where not upheld or upheld

(1) The Commission must give notice in writing of a—
- (a) determination by it under section 9(1) not to uphold a services complaint;
- (b) determination by it under that section upholding any such complaint;
- (c) determination, direction or report by it under section 10(2),

to the complainer and every practitioner specified in it and, where section 10(3) applies, to the employing practitioner by sending to each of them a copy of the determination, the direction or, as the case may be, the report.

(2) Where the determination is made by a determination committee by virtue of paragraph 13(2)(d)(i) or, as the case may be, (ii) of schedule 1, notice under subsection (1) must specify the reasons for the determination.

13 Services complaint: reports

(1) The Commission may, if it considers it appropriate to do so in any particular case, publish a report of—
- (a) any mediation which has taken place by virtue of section 8(5) in relation to a services complaint, the outcome of which is accepted by both the complainer and the practitioner;
- (b) an investigation of a services complaint under section 9 and—
  - (i) any settlement proposed under subsection (2) of that section as respects the complaint, which is accepted as mentioned in subsection (4) of that section;
  - (ii) any determination of the complaint under subsection (1) of that section;
- (c) a determination, direction or report under section 10(2).

(2) A report under subsection (1) must not (unless the complainer consents)—
- (a) mention the name of the complainer;
- (b) include any particulars which, in the opinion of the Commission, are likely to identify the complainer.

(3) A report under subsection (1) may only—
- (a) mention the name of the practitioner complained of; or
- (b) include any particulars which, in the opinion of the Commission, are likely to identify the practitioner,

if the practitioner consents or the condition in subsection (4) is met.

(4) The condition is that—
- (a) the case is exceptional;
- (b) in the opinion of the Commission, it is in the public interest for the identity of the practitioner concerned to be included in the report; and
- (c) the Commission has given not less than 4 weeks notice in writing to the practitioner that it intends to identify the practitioner in the report, specifying the reasons for its decision.

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14 Determination under section 9(1) or taking of steps under section 10(2): effect in relation to proceedings

(1) Neither the making of a determination under section 9(1) upholding a complaint, nor the taking of any steps under section 10(2) may be founded upon in any proceedings.

(2) A direction under section 10(2)(d) to a practitioner to pay compensation to a complainer does not prejudice any right of the complainer to take proceedings against the practitioner for damages in respect of any loss which the complainer claims to have suffered; and any amount directed to be paid to the complainer under that section may be taken into account in the computation of any award of damages made to the complainer in any such proceedings.

15 Complaint appears during mediation or investigation to fall within different category

(1) Where a relevant professional organisation at any time during any mediation by it, or its investigation, of a conduct complaint remitted to it under section 6(a) considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a services complaint, it must—
- (a) suspend the mediation or, as the case may be, the investigation;
- (b) consult, co-operate and liaise with the Commission as respects the matter;
- (c) send the complaint and any material which relates to it and which is in the organisation's possession to the Commission;
- (d) give notice in writing to the complainer and the practitioner that it so considers and is so doing.

(2) Where the Commission at any time during its mediation by virtue of section 8(5) in relation to, or investigation by virtue of section 9(1) of, a services complaint considers that it is reasonably likely that the complaint (or any element of it) may instead constitute a conduct complaint, it must—
- (a) suspend the mediation or investigation;
- (b) send a copy of the complaint and any material which relates to it and which is in the Commission's possession to the relevant professional organisation;
- (c) consult, co-operate and liaise with the relevant professional organisation as respects the matter;
- (d) give notice in writing to the complainer, the practitioner and the relevant professional organisation that it so considers and is so doing.

(3) Where, in the circumstances referred to in subsection (1) or (2) the Commission, having regard to the views expressed by the relevant professional organisation as respects the matter, considers that—
- (a) its determination under section 5(1) as respects the complaint should be confirmed (to any extent), it must so determine; and the determination under this paragraph must specify the extent to which the determination under that section is confirmed;
- (b) a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute—
  - (i) a conduct complaint constitutes instead a services complaint;
  - (ii) a services complaint constitutes instead a conduct complaint,

  it must determine accordingly.

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(4) Where, or to the extent that, the Commission determines under subsection (3)(a) to confirm to any extent its determination under section 5(1)—
  (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  (b) any suspension under subsection (1)(a) or (2)(a) ceases.

(5) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a services complaint constitutes instead a conduct complaint, it must—
  (a) remit the conduct complaint to the relevant professional organisation to deal with (and give to the organisation any material referred to in section 6(a));
  (b) give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying—
    (i) the reasons for the determination;
    (ii) that the conduct complaint is being remitted under paragraph (a);
    (iii) the relevant professional organisation to which it is being remitted;
    (iv) that the relevant professional organisation is under a duty under this Act to deal with the conduct complaint.

(6) Where the Commission determines under subsection (3)(b) that a complaint (or any element of a complaint) which was determined by it under section 5(1) to constitute a conduct complaint constitutes instead a services complaint—
  (a) it must give notice in writing to the complainer, the practitioner and the relevant professional organisation by sending to each of them a copy of the determination and specifying the reasons for the determination;
  (b) sections 8 to 12 apply to the services complaint as they apply where a determination is made under section 5(1) that a complaint constitutes a services complaint.

16 Power to monitor compliance with directions under section 10(2)

(1) The Commission must, by notice in writing, require every practitioner specified in any direction under section 10(2) to give, before the end of such period being not less than 21 days as the notice specifies, an account and explanation of the steps which the practitioner has taken to comply with the direction.

(2) Where an appeal against any such direction is made under section 21(1), any notice under subsection (1) relating to the direction ceases to have effect pending the outcome of the appeal.

17 Power to examine documents and demand explanations in connection with conduct or services complaints

(1) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 5, 8, 9, 10, 15 or 16, it may give notice in writing in accordance with subsection (2) to the practitioner, the practitioner's firm or, as the case may be, the employing practitioner.

(2) Notice under subsection (1) may require—

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(a) the production or delivery to any person appointed by the Commission, at a time and place specified in the notice, of all documents mentioned in subsection (3) which are in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner and which relate to the matters to which the complaint relates (whether or not they relate also to other matters);

(b) an explanation, within such period being not less than 21 days as the notice specifies, from the practitioner, the firm or, as the case may be, the employing practitioner regarding the matters to which the complaint relates.

(3) The documents are—

(a) all books, accounts, deeds, securities, papers and other documents in the possession or control of the practitioner, the firm or, as the case may be, the employing practitioner;

(b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which the practitioner is the sole trustee or a co-trustee only with one or more of the practitioner's partners or employees or, as the case may be, where the practitioner is an incorporated practice of which the practice or one of its employees is a sole trustee or it is a co-trustee only with one or more of its employees.

(4) Where the Commission is satisfied that it is necessary for it to do so for the purposes of section 2, 4, 5, 8, 9, 10 or 15, it may give notice in writing in accordance with subsection (5) to the complainer.

(5) Notice under subsection (4) may require—

(a) the production or delivery to any person appointed by the Commission at a time and place specified in the notice, of all documents mentioned in subsection (6) which are in the possession or control of the complainer and which relate to the matters to which the complaint relates (whether or not they relate to other matters);

(b) an explanation, within such period being not less than 21 days as the notice specifies, from the complainer regarding the matters to which the complaint relates.

(6) The documents are all books, accounts, deeds, securities, papers and other documents in the possession or control of the complainer.

(7) Schedule 2 makes further provision about the powers of the Commission under this section.

18 Power of Commission to recover certain expenses

(1) The Commission is, subject to subsection (2), entitled to recover from a practitioner, the practitioner's firm or, as the case may be, the employing practitioner, in respect of whom it has taken any action by virtue of section 17, any expenditure reasonably incurred by it in so doing.

(2) Expenditure incurred in taking action by virtue of section 17 is recoverable under subsection (1) only where notice has been served under paragraph 2(a) of schedule 2 in connection with that action and either—

(a) no application has been made in consequence under paragraph 3 of that schedule; or

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(b) the court, on such an application, has made a direction under paragraph 4 of that schedule.

19 Documents and information from third parties

(1) Where the Commission has requested that documents or information in the possession or control of a person be produced for the purposes of an investigation by it under this Act and the person refuses or fails to produce the documents or information, the Commission may apply to the court for an order under subsection (2).

(2) An order by the court under this subsection may require a person to produce or deliver the documents or information or to cause them or it to be produced or delivered to the person appointed at the place fixed by the Commission within such time as the court may order.

(3) The court may make an order under subsection (2) only if—

(a) it appears—

(i) the documents sought are; or

(ii) the information sought is,

relevant to the investigation; and

(b) it is in the public interest for the documents or information to be produced.

(4) Where the Commission receives possession of any such documents or information which have been produced or delivered to it, it must without delay serve on the person from whom the documents or information were received, a notice giving particulars and the date on which it took possession.

(5) Before the expiry of the period of 14 days after service of a notice under subsection (4) the person on whom the notice has been served may apply to the court for an order directing return of the documents or information to the person from whom they were received by the Commission or to such other person as the applicant may request; and on the hearing of any such application the court may make the order applied for or such other order as it thinks fit.

(6) If no application is made to the court under subsection (5), or if the court on any such application directs that the documents or information in question remain in the custody or control of the Commission, the Commission may make enquiries to ascertain the person to whom they belong and may deal with the documents or information in accordance with the directions of that person.

(7) This section does not apply to documents or information in the possession or control of—

(a) the person who made the complaint from which the investigation arises;

(b) the practitioner concerned;

(c) a relevant professional organisation.

20 Enforcement of Commission direction under section 10(2)

A direction by the Commission under section 10(2) is enforceable in like manner as an extract registered decree arbitral in its favour bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

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Changes to legislation: *Legal Profession and Legal Aid (Scotland) Act 2007, Part 1 is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 01/10/2008

Appeals

21 Appeal against Commission decisions

(1) Any person mentioned in subsection (2) may, with the leave of the court, appeal against any decision of the Commission under the preceding sections of this Part as respects a complaint on any ground set out in subsection (4).

(2) Those persons are—
- (a) the complainer;
- (b) the practitioner to whom the complaint relates;
- (c) the practitioner's firm;
- (d) the employing practitioner;
- (e) the relevant professional organisation.

(3) An appeal under subsection (1) must be made before the expiry of the period of 28 days beginning with the day on which notice of the decision was given to the complainer and the practitioner; but the court may, on cause shown, consider an appeal made after the expiry of that period.

(4) The grounds referred to in subsection (1) are—
- (a) that the Commission's decision was based on an error of law;
- (b) that there has been a procedural impropriety in the conduct of any hearing by the Commission on the complaint;
- (c) that the Commission has acted irrationally in the exercise of its discretion;
- (d) that the Commission's decision was not supported by the facts found to be established by the Commission.

(5) The Commission is to be a party in any proceedings on an appeal under subsection (1).

(6) In this section and in section 22, “decision” includes any determination, direction or other decision and also includes the making of any report under section 10(2)(e).

22 Appeal: supplementary provision

(1) On any appeal under section 21(1), the court may make such order as it thinks fit (including an order substituting its own decision for the decision appealed against).

(2) Where such an order upholds a services complaint or confirms a decision of the Commission to uphold a services complaint, the court may direct that such of the steps mentioned in 10(2) as it considers fair and reasonable in the circumstances be taken.

(3) On any appeal under section 21(1) the court may make such ancillary order (including an order as to the expenses of the appeal) as it thinks fit.

(4) A decision of the court under this section is final.

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VALID FROM 01/10/2008

Handling by relevant professional organisations of conduct complaints

23 Handling by relevant professional organisations of conduct complaints: investigation by Commission

(1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of any complaint made to it by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person and remitted to a relevant professional organisation under section 6(a) or 15(5)(a) has been dealt with by the organisation (such a complaint being referred to in this Act as a "handling complaint").

(2) The Commission may decide—
- (a) not to investigate a handling complaint;
- (b) to discontinue the investigation of a handling complaint.

(3) If the Commission decides not to investigate, or to discontinue the investigation of, a handling complaint it must give notice in writing to—
- (a) the person who made the handling complaint;
- (b) the relevant professional organisation;
- (c) the practitioner concerned in the conduct complaint to which the handling complaint relates,

by sending to each of them a copy of the decision and specifying the reasons for the decision.

(4) The Commission must not investigate a handling complaint where either—
- (a) the relevant professional organisation has not completed its investigation of the conduct complaint to which the handling complaint relates; or
- (b) the handling complaint is made after the expiry of the period of 6 months after such date as the Scottish Ministers may specify by order,

but paragraph (a) does not apply in any of the circumstances mentioned in subsection (5).

(5) The circumstances are that—
- (a) the handling complaint is that the relevant professional organisation—
  - (i) has acted unreasonably in failing to start an investigation into the complaint; or
  - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
- (b) the Commission considers that, even though the complaint is being investigated by the organisation, an investigation by the Commission is justified.

(6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to—
- (a) the person who made the handling complaint;
- (b) the relevant professional organisation;

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(c) the practitioner concerned in the conduct complaint to which the handling complaint relates,

by sending to each of them a copy of the decision and specifying the reasons for the decision.

(7) An order under subsection (4)(b) may specify different dates for different purposes.

(8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to—

(a) the person who made the handling complaint;

(b) the relevant professional organisation;

(c) the practitioner concerned in the conduct complaint to which the handling complaint relates.

(9) The Scottish Ministers may by order amend the period of time referred to in subsection (4)(b).

24 Investigation under section 23: final report and recommendations

(1) Where the Commission has completed an investigation under section 23 it must—

(a) make a written report of its conclusions;

(b) send a copy of the report to—

(i) the person who made the handling complaint;

(ii) the relevant professional organisation;

(iii) the practitioner concerned in the conduct complaint to which the handling complaint relates.

(2) A report under this section may include one or more of the following recommendations—

(a) that the relevant professional organisation provide to the person making the handling complaint such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the Commission considers appropriate;

(b) that the conduct complaint be investigated further by the relevant professional organisation;

(c) that the conduct complaint be reconsidered by the relevant professional organisation;

(d) that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned;

(e) that the relevant professional organisation pay compensation of such amount, not exceeding £5000, as the Commission may specify to the person making the handling complaint for loss, inconvenience or distress resulting from the way in which the conduct complaint was handled by the organisation;

(f) that the relevant professional organisation pay to the person making the handling complaint an amount specified by the Commission by way of reimbursement of the cost, or part of the cost, of making the handling complaint.

(3) Where a report under this section includes any recommendation, the report must state the reasons for making the recommendation.

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(4) A relevant professional organisation to whom a report is sent by the Commission under this section must have regard to the conclusions and recommendations set out in the report so far as relating to the organisation.

(5) Where a report sent to a relevant professional organisation under this section includes a recommendation relating to it, the organisation must, before the end of the period of 3 months beginning with the date on which the report was sent, notify the Commission, the person who made the handling complaint and the practitioner concerned, in writing, of—

(a) the action which it has taken to comply with the recommendations or in consequence of further consideration of the matter by it;

(b) its decision not to comply wholly with a recommendation and any reason for that decision.

(6) Where the Commission is either—

(a) notified under subsection (5)(b) that the relevant professional organisation has decided not to comply wholly with a recommendation; or

(b) of the opinion that the relevant professional organisation has not complied wholly with a recommendation before the end of the period of 3 months beginning with the date on which the report was sent to the organisation under this section,

the Commission may direct the professional organisation to comply with that recommendation if the Commission thinks fit; and the organisation must comply with the direction.

(7) For the purposes of subsection (6), a "recommendation" means any recommendation referred to in paragraphs (a) to (c), (e) or (f) of subsection (2).

(8) The Scottish Ministers may by order, after consulting—

(a) the relevant professional organisations;

(b) such groups of persons representing consumer interests as they consider appropriate,

amend subsection (2)(e) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

25 Failure to comply with recommendation

(1) If the Commission considers that a relevant professional organisation has failed to comply with a direction under section 24(6), the Commission may apply by petition to the court for the organisation to be dealt with in accordance with subsection (2).

(2) Where such a petition is presented, the court may inquire into the matter and after hearing—

(a) any witnesses who may be produced against or on behalf of the professional organisation; and

(b) any statement that may be offered in defence,

may order the organisation to comply with the recommendation with which the direction under section 24(6) is concerned.

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26 Abolition of Scottish legal services ombudsman

(1) The office of the Scottish legal services ombudsman ("the ombudsman") is abolished on such date as the Scottish Ministers may by order specify.

(2) The Scottish Ministers may not make an order under subsection (1) unless the ombudsman has no exercisable functions.

(3) The functions of the ombudsman cease to be exercisable except in relation to the advice, services and activities mentioned in section 77(2).

Finance

27 Annual general levy

(1) Each—
- (a) advocate practising as such;
- (b) conveyancing practitioner or executry practitioner;
- (c) person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act;
- (d) solicitor who has in force a practising certificate,

must, subject to subsection (2) and section 29(2), pay to the Commission in respect of each financial year a contribution (referred to in this Part as "the annual general levy").

(2) Each relevant professional organisation—
- (a) must secure the collection by it, from all of the persons falling within the categories referred to in paragraphs (a) to (d) of subsection (1) as respects whom it is the relevant professional organisation, of the annual general levy due by them;
- (b) must pay to the Commission a sum representing the total amount which falls to be collected by it under paragraph (a) in respect of each financial year.

(3) Any—
- (a) sum due to the Commission under subsection (2)(b);
- (b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid,

may be recovered by it (as a debt) from the relevant professional organisation which is liable under that subsection to pay the sum.

(4) A relevant professional organisation may recover (as a debt), from any person falling within the categories referred to in paragraphs (a) to (d) of subsection (1) as respects whom it is the relevant professional organisation—
- (a) any sum due by the person to the Commission under that subsection;
- (b) any interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid.

(5) If any person who is liable under subsection (1) to pay the annual general levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.

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VALID FROM 01/10/2008

28 Complaints levy

(1) A practitioner against whom a services complaint is made must pay to the Commission, in the circumstances mentioned in subsection (2), a contribution in relation to the complaint (referred to in this Part as "the complaints levy").

(2) The circumstances are where—

(a) any of the following applies—

(i) mediation by virtue of section 8(5) takes place in relation to the complaint and the outcome of the mediation is accepted by both the complainer and the practitioner;

(ii) a settlement proposed as respects the complaint by the Commission under section 9(2) is accepted as mentioned in section 9(4);

(iii) the Commission makes a determination under section 9(1) upholding the complaint; and

(b) the amount of the levy has not been determined as nil and the Commission does not in accordance with rules made under section 32(1) waive the requirement to pay the levy.

(3) Any—

(a) sum due by a practitioner to the Commission under subsection (1);

(b) interest due on any such sum at such rate as may be specified by the Scottish Ministers by order from the date the sum is due under rules made under section 32(1) until it is paid,

may be recovered by it (as a debt) from the practitioner.

(4) If any person who is liable under subsection (1) to pay the complaints levy fails to pay any amount of the levy, or pays any such amount late, the failure or late payment may be treated as professional misconduct or unsatisfactory professional conduct.

29 Amount of levies and consultation

(1) The amount of the—

(a) annual general levy;

(b) complaints levy,

in respect of each financial year is such amount as may be determined by the Commission, having had regard to any views expressed in its consultation under subsection (4) in respect of the financial year in question.

(2) The amount of the annual general levy must be the same amount for each of the individuals who are liable under section 27(1) to pay it; but rules made under section 32(1) may provide for circumstances in which the Commission may waive a portion of the amount which would otherwise require to be paid.

(3) The Commission may determine different amounts (including an amount of nil) for the complaints levy in different circumstances.

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(4) The Commission must, in January each year, consult each relevant professional organisation and its members on the Commission's proposed budget for the next financial year.

(5) The proposed budget must—

(a) include—

(i) an estimate as respects resource requirements;

(ii) the proposed amount of the annual general levy and the complaints levy;

(b) be accompanied by information as to the Commission's projected work plan for the next financial year.

(6) Each relevant professional organisation must, for the purpose of informing the Commission in relation to—

(a) the inclusion in the Commission's proposed budget for each financial year of the proposed amount of the annual general levy;

(b) the Commission's determination under subsection (1) of the amount of the annual general levy in respect of each financial year,

provide the Commission with an estimate of the number of persons as respects whom it is the relevant professional organisation and who it anticipates should be liable under section 27(1) to pay the annual general levy for the financial year concerned.

(7) The Commission must secure so far as is reasonably practicable that, taking one financial year with another, the amount of the annual general levy and the complaints levy is reasonably sufficient to meet its expenditure.

(8) The Commission must, no later than 31 March in each year, publish the responses it has received in the consultation carried out by it under subsection (4) in the immediately preceding January.

(9) Subsection (1) does not apply to responses which are subject to an express request in writing for confidentiality.

(10) The Commission must lay a copy of the finalised budget before the Parliament no later than 30 April in each year.

30 Grants or loans by the Scottish Ministers

(1) The Scottish Ministers may make grants to the Commission of such amounts as they consider appropriate.

(2) Any grant under this section may be made on such terms and subject to such conditions (including conditions as to repayment) as the Scottish Ministers consider appropriate; and the Scottish Ministers may from time to time after the grant is made vary such terms and conditions.

(3) For the purpose of the exercise of any of its duties or powers under this Part—

(a) the Commission may, subject to such conditions as the Scottish Ministers think fit, borrow from them;

(b) the Scottish Ministers may lend to the Commission,

sums of such amounts as the Ministers may determine.

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(4) Any loan made in pursuance of subsection (3) is to be repaid to the Scottish Ministers at such times and by such methods, and interest on the loan is to be paid to them at such times and at such rates, as they may from time to time direct.

31 Guarantees

(1) The Scottish Ministers may guarantee, in such manner and on such conditions as they think fit, the discharge of any financial obligation in connection with any sums borrowed by the Commission.

(2) Immediately after any guarantee is given under this section, the Scottish Ministers must lay a statement of the guarantee before the Parliament.

(3) Where any sum is paid out in fulfilment of a guarantee under this section, the Commission must make to the Scottish Ministers, at such times and in such manner as they may from time to time direct—
   (a) payments of such amount as they may so direct in or towards repayment of the sums so paid out;
   (b) payments of interest, at such rate as they may so direct, on the amount outstanding for the time being in respect of sums so paid out.

Rules as to Commission's practice and procedure

32 Duty of Commission to make rules as to practice and procedure

(1) The Commission must make rules as to its practice and procedure and, as soon as practicable after making or varying those rules, publish them and make them available to the public in a form which is readily accessible.

(2) Schedule 3 makes further provision as respects provision which—
   (a) must be included;
   (b) may in particular be included,
   in the rules.

(3) The rules may make different provision for different categories of complaint.

(4) The Commission must keep the rules under review and must vary the provisions of the rules whenever it considers it appropriate to do so.

(5) The Commission must, before making rules or varying the rules, consult with—
   (a) the Lord President of the Court of Session;
   (b) the Scottish Ministers;
   (c) the relevant professional organisations;
   (d) such groups of persons representing consumer interests as it considers appropriate,
   as to the proposed content of the rules to be made or varied.

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Forwarding complaints, advice, monitoring etc.

VALID FROM 01/10/2008

33 Duty of relevant professional organisations to forward complaints to Commission

Where a relevant professional organisation receives a complaint from a person other than the Commission about—

(a) the conduct of, or any services provided by, a practitioner;

(b) its handling of a conduct complaint remitted to it under section 6(a) or 15(5)(a),

it must without delay send the complaint and any material which accompanies it to the Commission.

34 Commission's duty to provide advice

(1) The Commission must, so far as is reasonably practicable, provide advice to any person who requests it as respects the process of making a services complaint or a handling complaint to it.

(2) Where the Commission receives a complaint suggesting what purports to be professional misconduct or unsatisfactory professional conduct by a practitioner who is a firm of solicitors or an incorporated practice—

(a) it must inform the person that a complaint to it suggesting such misconduct or such conduct may be made only against a named practitioner who is an individual;

(b) where the complaint received is not about a named practitioner who is an individual, it must so far as is reasonably practicable offer advice to the person with a view to assisting the person to reformulate the complaint so that it is about such a named practitioner.

(3) Where a person in requesting or being offered such advice expresses a preference for receiving it by a particular means (as, for example, in writing, by telephone, by means of a recording or an explanation in person), the Commission must, so far as is reasonably practicable, give effect to the preference.

VALID FROM 01/10/2008

35 Services complaints: monitoring, reports, protocols and information sharing

(1) The Commission must monitor practice and identify any trends in practice as respects the way in which practitioners have dealt with matters that result in services complaints being dealt with by the Commission under sections 8 to 12.

(2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.

(3) The Commission must—

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(a) enter into protocols with the relevant professional organisations as respects the sharing of information by it with them in relation to—
  (i) numbers of services complaints dealt with by it;
  (ii) such trends as it may identify in relation to such complaints;
  (iii) settlements proposed by it under section 9(2), which are accepted as mentioned in subsection (4) of that section;
  (iv) the substance of any services complaints which might be relevant to section 31(3) of the 1986 Act;
  (v) determinations by it under section 9(1) upholding services complaints;
  (vi) failure by practitioners to comply with directions by it under section 10(2), notice by it under section 16 or 17(1) or requirements by it under section 37(3);

(b) share information with the relevant professional organisations in accordance with the protocols.

(4) The relevant professional organisations must enter into protocols with the Commission for the purposes of subsection (3)(a).

VALID FROM 01/10/2008

36 Conduct complaints: monitoring, reports, guidance and recommendations

(1) The Commission must monitor practice and identify any trends in practice as respects the way in which—
  (a) practitioners have dealt with matters that result in conduct complaints being remitted to the relevant professional organisations under section 6(a) or 15(5)(a);
  (b) the relevant professional organisations have dealt with conduct complaints so remitted.

(2) The Commission must prepare and publish reports on any trends in practice which it identifies under subsection (1) at such intervals as it considers appropriate.

(3) The Commission may—
  (a) give guidance to the relevant professional organisations as to the timescales within which they should aim to complete their investigation of or, as the case may be, determine conduct complaints remitted to them under section 6(a) or 15(5)(a);
  (b) make recommendations to any relevant professional organisation about the organisation's procedures for, and methods of dealing with, conduct complaints so remitted to it.

(4) Each relevant professional organisation to which the Commission makes a recommendation under subsection (3)(b) must—
  (a) consider the recommendation;
  (b) notify the Commission in writing of—
    (i) the results of the consideration;
    (ii) any action the organisation has taken or proposes to take in consequence of the recommendation.

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(5) The Commission may carry out, for any of the purposes of this section, audits of the records held by the relevant professional organisations relating to conduct complaints remitted to them under section 6(a) or 15(5)(a).

VALID FROM 01/10/2008

37 Obtaining of information from relevant professional organisations

(1) The Commission may require any relevant professional organisation to—
  (a) provide it with such information, being information which is within the knowledge of the organisation, as the Commission considers relevant for any of the purposes of section 23, 24 or 36;
  (b) to produce to it such documents, being documents which are within the possession or control of the organisation, as the Commission considers relevant for any of those purposes.

(2) The information required to be provided or the documents required to be produced under subsection (1) may include information or, as the case may be, documents obtained by the relevant professional organisation from a practitioner while investigating a conduct complaint against the practitioner remitted to it under section 6(a) or 15(5)(a); and the organisation must comply with such a requirement.

(3) Where any information required by the Commission under subsection (1) is not within the knowledge of the relevant professional organisation, or any documents required to be produced under that subsection are not within the possession or control of the organisation, the Commission may require the practitioner concerned—
  (a) to provide it with that information in so far as it is within the knowledge of the practitioner;
  (b) to produce to it those documents if they are within the practitioner's possession or control.

(4) Schedule 2 makes further provision about the powers of the Commission under this section.

VALID FROM 01/10/2008

38 Efficient and effective working

(1) In relation to any investigation or report undertaken by it under this Act, the Commission must liaise with the relevant professional organisation with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the relevant professional organisation.

(2) In relation to any investigation or report undertaken by it under this Act, each relevant professional organisation must liaise with the Commission with a view to minimising any unnecessary duplication in relation to any investigation or report undertaken, or to be undertaken, by the Commission.

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39 Monitoring effectiveness of guarantee funds etc.

(1) The Commission may monitor the effectiveness of—

(a) the Scottish Solicitors Guarantee Fund vested in the Society and controlled and managed by the Council under section 43(1) of the 1980 Act ("the Guarantee Fund");

(b) arrangements carried into effect by the Society under section 44(2) of that Act ("the professional indemnity arrangements");

(c) any funds or arrangements maintained by any relevant professional organisation which are for purposes analogous to those of the Guarantee Fund or the professional indemnity arrangements as respects its members.

(2) The Commission may make recommendations to the relevant professional organisation concerned about the effectiveness (including improvement) of the Guarantee Fund, the professional indemnity arrangements or any such funds or arrangements as are referred to in subsection (1)(c).

(3) The Commission may request from the relevant professional organisation such information as the Commission considers relevant to its functions under subsections (1) and (2).

(4) Where a relevant professional organisation fails to provide information requested under subsection (3), it must give reasons to the Commission in respect of that failure.

VALID FROM 01/10/2008

40 How practitioners deal with complaints: best practice notes

The Commission may issue guidance to the relevant professional organisations or to practitioners as respects how practitioners deal with complaints made to them about—

(a) their professional conduct or the professional services provided by them;

(b) the professional conduct of, or professional services provided by, any of their employees who are practitioners,

and any such guidance may recommend or include recommendations as respects standards for systems by practitioners for dealing with such complaints.

Miscellaneous

41 Power by regulations to amend duties and powers of Commission

(1) The Scottish Ministers may, after consulting—

(a) the Commission;

(b) the relevant professional organisations;

(c) such other persons or groups of persons as they consider appropriate,

by regulations modify the provisions of this Part for the purposes of adjusting the duties imposed, or the powers conferred, by it on the Commission (including imposing new duties or conferring new powers).

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(2) Regulations under subsection (1) may contain such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient for the purposes of that subsection (including modification of any enactment, instrument or document).

VALID FROM 01/10/2008

42 Reports: privilege

For the purposes of the law of defamation, the publication of any report under section 13(1), 23(8), 24, 35(2), 36(2) or paragraph 16 of schedule 1 is privileged unless the publication is proved to be made with malice.

VALID FROM 01/10/2008

43 Restriction upon disclosure of information: Commission

(1) Except as permitted by subsection (3), no information mentioned in subsection (2) may be disclosed.

(2) The information is information—
- (a) contained in a conduct complaint, services complaint or handling complaint;
- (b) which is given to or obtained by the Commission or any person acting on its behalf in the course of, or for the purposes of—
  - (i) any consideration of such a complaint;
  - (ii) an investigation (including any report of such an investigation) into a services complaint or a handling complaint.

(3) Such information may be disclosed—
- (a) for the purpose of enabling or assisting the Commission to exercise any of its functions;
- (b) where the disclosure is required by or by virtue of any provision made by or under this Act or by any other enactment or other rule of law.

(4) Any person who, in contravention of subsection (1), knowingly discloses any information obtained when employed by, or acting on behalf of, the Commission is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

44 Exemption from liability in damages

(1) Neither the Commission nor any person who is, or is acting as, a member of the Commission or an employee of the Commission is to be liable in damages for anything done or omitted in the discharge, or purported discharge, of the Commission's functions.

(2) Subsection (1) does not apply—
- (a) if the act or omission is shown to have been in bad faith;

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(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).

VALID FROM 01/10/2008

45 Giving of notices etc. under Part 1

(1) Any notice which is required under this Part to be given in writing is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(2) Any notice which is required under this Part to be given to any person—

(a) is duly given—

(i) where the person is not an incorporated practice, if it is left at, or delivered or sent by post to, the person's last known place of business or residence;

(ii) where the person is an incorporated practice, if it is left at or delivered or sent by post to the practice's registered office;

(iii) where the person is a practitioner who is a firm of solicitors or an incorporated practice, if it is sent to the person by electronic means but only if the practitioner agrees to that means of sending;

(iv) where the person is an individual, if it is sent to the person by electronic means but only if the individual agrees to that means of sending;

(v) to any person, if it is given in such other manner as may be prescribed by regulations by the Scottish Ministers;

(b) if permitted by paragraph (a) to be sent, and sent, by electronic means is, unless the contrary is proved, deemed to be delivered on the next working day which follows the day on which the notice is sent.

(3) Regulations under subsection (2)(a)(v) may—

(a) in particular provide that notice required to be given to a person who is not an individual may be given by addressing or sending it to such person appointed by the person for that purpose or to such person falling within such other categories prescribed in the regulations as appear to the Scottish Ministers to be appropriate;

(b) make different provision for different purposes.

(4) In subsection (2)(b), "working day" means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

46 Interpretation of Part 1

(1) In this Part, unless the context otherwise requires—

"advocate" means a member of the Faculty of Advocates;

"annual general levy" has the meaning given by section 27(1);

"client"—

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(a) (in relation to any matter in which the practitioner has been instructed) includes any person on whose behalf the person who gave the instructions was acting;

(b) where the practitioner is an employee of a person who is not a practitioner, includes (in relation to any matter in which the practitioner has been instructed by the employer) the employer;

"complainer" means the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person;

"complaint" includes any expression of dissatisfaction;

"complaints levy" has the meaning given by section 28(1);

"the Commission" means the Scottish Legal Complaints Commission;

"conduct complaint" has the meaning given by section 2(1)(a);

"conveyancing practitioner" means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;

"the Council" means the Council of the Law Society of Scotland;

"the court" means the Court of Session;

"employing practitioner" has the meaning given by section 4(4)(a);

"executry practitioner" means a person registered under section 18 of the 1990 Act in the register of executry practitioners;

"handling complaint" has the meaning given by section 23(1);

"inadequate professional services"—

(a) means, as respects a practitioner who is—

(i) an advocate, professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate;

(ii) a conveyancing practitioner or an executry practitioner, professional services which are in any respect not of the quality which could reasonably be expected of a competent conveyancing practitioner or, as the case may be, a competent executry practitioner;

(iii) a firm of solicitors or an incorporated practice, professional services which are in any respect not of the quality which could reasonably be expected of a competent firm of solicitors or, as the case may be, a competent incorporated practice;

(iv) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, professional services which are in any respect not of the quality which could reasonably be expected of a competent person exercising such a right;

(v) a solicitor, professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor;

(b) includes any element of negligence in respect of or in connection with the services,

and cognate expressions are to be construed accordingly;

"incorporated practice" has the meaning given by section 34(1A)(c) of the 1980 Act;

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"practising certificate" has the meaning given by section 4 of the 1980 Act;

"practitioner" means—

(a) an advocate and includes any advocate whether or not a member of the Faculty of Advocates at the time when it is suggested the conduct complained of occurred or the services complained of were provided and notwithstanding that subsequent to that time the advocate has ceased to be such a member;

(b) a conveyancing practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(c) an executry practitioner and includes any such practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(d) a firm of solicitors, whether or not since that time there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner or the firm has ceased to practise;

(e) an incorporated practice, whether or not since that time there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up;

(f) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act and includes any such person, whether or not the person had acquired the right at that time and notwithstanding that subsequent to that time the person no longer has the right;

(g) a solicitor, whether or not the solicitor had a practising certificate in force at that time and notwithstanding that subsequent to that time the name of the solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

"relevant professional organisation" means, in relation to a complaint as respects a practitioner who is—

(a) an advocate, the Faculty of Advocates;

(b) a conveyancing practitioner, an executry practitioner, a firm of solicitors or an incorporated practice, the Council;

(c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of the 1990 Act, the body which made a successful application under section 25 of that Act and of which the person is a member;

(d) a solicitor, the Council;

"the roll" means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

"services complaint" has the meaning given by section 2(1)(b);

"the Society" means the Law Society of Scotland;

"solicitor" means any person enrolled or deemed to have been enrolled as a solicitor in pursuance of the 1980 Act;

"unsatisfactory professional conduct" means, as respects a practitioner who is—

(a) an advocate, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable advocate;

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(b) a conveyancing practitioner or an executry practitioner, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable conveyancing practitioner or, as the case may be, a competent and reputable executry practitioner;

(c) a person exercising a right to conduct litigation or a right of audience acquired by virtue of section 27 of this Act, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable person exercising such a right;

(d) a solicitor, professional conduct which is not of the standard which could reasonably be expected of a competent and reputable solicitor,

but which does not amount to professional misconduct and which does not comprise merely inadequate professional services; and cognate expressions are to be construed accordingly.

(2) For the avoidance of doubt, anything done by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not done in relation to any matter in which the Crown Counsel or procurator fiscal has been instructed by a client.

(3) For the avoidance of doubt, the exercise of discretion by any Crown Counsel or procurator fiscal in relation to the prosecution of crime or investigation of deaths is not in itself capable of constituting professional misconduct or unsatisfactory professional conduct.

(4) In subsections (2) and (3), “procurator fiscal” has the same meaning as in section 307 of the Criminal Procedure (Scotland) Act 1995 (c. 46).

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