



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 1

THE SCOTTISH LEGAL COMPLAINTS COMMISSION

Conduct or services complaints against practitioners

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;

Status: This is the original version (as it was originally enacted).

- (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.
- (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.