



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 2

CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

54 Unsatisfactory professional conduct: conveyancing or executry practitioners

- (1) The 1990 Act is amended as follows.
- (2) After section 20 (professional misconduct etc. by conveyancing or executry practitioners), insert—

“20ZA Remission of complaint by Tribunal to Council

- (1) Where, after holding an inquiry under section 20(2A) into a complaint of professional misconduct against a practitioner, the Tribunal—
 - (a) are not satisfied that he has been guilty of professional misconduct;
 - (b) consider that he may be guilty of unsatisfactory professional conduct, they must remit the complaint to the Council.
- (2) Where the Tribunal remit a complaint to the Council under subsection (1), they may make available to the Council any of their findings in fact in their inquiry into the complaint under section 20(2A).

20ZB Unsatisfactory professional conduct

- (1) Where a conduct complaint suggesting unsatisfactory professional conduct by a practitioner is remitted to the Council under section 6(a) or 15(5)(a) of the 2007 Act, the Council must having—
 - (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 practitioner an opportunity to make representations, determine the complaint.

- (2) Where a complaint is remitted to the Council under section 20ZA, the Council—
- (a) must—
 - (i) notify the practitioner 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 practitioner an opportunity to make representations, determine the complaint;
 - (b) may rely, in their investigation, on any findings in fact which the Tribunal make available to them under section 20ZA(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 practitioner;
 - (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 practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, to direct him to undertake such education or training as regards the law or legal practice concerned as the Council consider appropriate in that respect;
 - (b) subject to subsection (6) below, to direct the practitioner 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 practitioner 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 practitioner 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 practitioner to pay a fine under subsection (4) (b) above where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence 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.

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

- (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 practitioner by sending to each of them a copy of the determination, the censure or, as the case may be, the direction and by specifying the reasons for the determination.
- (9) A practitioner 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 practitioner 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 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 practitioner 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.

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20ZC Unsatisfactory professional conduct: Council’s powers to monitor compliance with direction under section 20ZB(4)

- (1) The Council shall, by notice in writing, require every practitioner who is specified in—
- (a) a direction made under section 20ZB(4); or
 - (b) such a direction as confirmed or varied on appeal by—
 - (i) the Tribunal; or
 - (ii) the court,
 to give, before the expiry of such period being not less than 21 days as the notice specifies, an explanation of the steps which he has taken to comply with the direction.
- (2) Where an appeal is made under section 20ZB(9) or (12) or 20D(1) or (2) against a direction made under section 20ZB(4), any notice under subsection (1) above relating to the direction shall cease to have effect pending the outcome of the appeal.”.
- (3) After section 20A (review by Council of certain of their decisions), insert—

“20B Unsatisfactory professional conduct: powers of Tribunal on appeal

- (1) On an appeal to the Tribunal under section 20ZB(9) the Tribunal—
- (a) may quash or confirm the determination being appealed against;
 - (b) if they quash the determination, shall quash the censure accompanying the determination;
 - (c) may quash, confirm or vary the direction being appealed against;
 - (d) may, where they consider that the practitioner does not have sufficient competence in relation to any aspect of conveyancing law or legal practice or, as the case may be, executry law or legal practice, direct him to undertake such education or training as regards the law or legal practice concerned as the Tribunal consider appropriate in that respect;
 - (e) may, subject to subsection (5), fine the practitioner an amount not exceeding £2000;
 - (f) may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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.
- (2) On an appeal to the Tribunal under section 20ZB(10) the Tribunal—
- (a) may quash the determination being appealed against and make a determination upholding the complaint;
 - (b) if they do so, may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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;

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- (c) may confirm the determination.
- (3) On an appeal to the Tribunal under section 20ZB(11) the Tribunal may, where they consider that the complainer has been directly affected by the conduct, direct the practitioner 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.
- (4) On an appeal under section 20ZB(12) the Tribunal may quash, confirm or vary the direction being appealed against.
- (5) The Tribunal shall not direct the practitioner to pay a fine under subsection (1) (e) where, in relation to the subject matter of the complaint, he has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.
- (6) Any fine directed to be paid under subsection (1)(e) 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.
- (7) A direction of the Tribunal under this section is enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (8) The Scottish Ministers may by order made by statutory instrument—
- (a) amend subsection (1)(e) 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 (1) (f) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (9) A statutory instrument containing an order under—
- (a) subsection (8)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (8)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

20C Unsatisfactory professional conduct: enforcement of Council direction

Where a practitioner fails to comply with a direction given by the Council under section 20ZB(4) (including such a direction as confirmed or varied on appeal by the Tribunal or, as the case may be, the court) before the expiry of the period specified in the notice relating to that direction given to the practitioner under section 20ZC(1), or such longer period as the Council may allow, the direction shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

20D Unsatisfactory professional conduct: appeal from decisions of Tribunal

- (1) A practitioner in respect of whom a decision has been made by the Tribunal under section 20B(1), (2), (3) or (4) may, before the expiry of the period of 21 days beginning with the day on which the decision is intimated to him, appeal to the court against the decision.
- (2) A complainer may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 20B to which this subsection applies is intimated to him, appeal to the court against the decision.
- (3) Subsection (2) applies to the following decisions of the Tribunal under section 20B—
 - (a) a decision under subsection (1)(a) quashing the Council's determination upholding the complaint;
 - (b) a decision under subsection (1)(c) quashing or varying a direction by the Council that the practitioner pay compensation;
 - (c) a decision under subsection (1)(f) directing the practitioner to pay compensation;
 - (d) a decision under subsection (2)(b) not to direct the practitioner to pay compensation;
 - (e) a decision under subsection (2)(c) confirming the Council's decision not to uphold the complaint;
 - (f) a decision under subsection (3) confirming the Council's decision not to direct the practitioner to pay compensation;
 - (g) a decision under subsection (4) quashing the Council's direction that the practitioner pay compensation or varying the amount of compensation directed to be paid.
- (4) On an appeal under subsection (1) or (2), the court may give such directions in the matter as it thinks fit, including directions as to the expenses of the proceedings before the court and as to any order by the Tribunal relating to expenses.
- (5) A decision of the court under subsection (4) shall be final.

20E Unsatisfactory professional conduct: powers of court on appeal

- (1) On an appeal under section 20D, the court may—
 - (a) fine the practitioner an amount not exceeding £2000;
 - (b) where it considers that the complainer has been directly affected by the conduct, direct the practitioner to pay compensation of such amount, not exceeding £5,000, as it may specify to the complainer for loss, inconvenience or distress resulting from the conduct;
 - (c) find the practitioner liable in any expenses which may be involved in the proceedings before it.
- (2) A decision of the court under subsection (1) shall be final.
- (3) The Scottish Ministers may by order made by statutory instrument—

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- (a) amend subsection (1)(a) 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 (1)(b) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.
- (4) A statutory instrument containing an order under—
- (a) subsection (3)(a) is subject to annulment in pursuance of a resolution of the Scottish Parliament;
 - (b) subsection (3)(b) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.