

*These notes relate to the Legal Profession and Legal Aid
(Scotland) Act (asp 5) which received Royal Assent on 19 January
2007 (asp 5) which received Royal Assent on 19 January 2007*

LEGAL PROFESSION AND LEGAL AID (SCOTLAND) ACT (ASP 5) WHICH RECEIVED ROYAL ASSENT ON 19 JANUARY 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Conduct Complaints: Other Matters

Section 54: Unsatisfactory professional conduct: conveyancing or executry practitioners etc.

Section 20B of the 1990 Act

133. New section 20B and new section 53ZB of the 1980 Act (inserted by section 53) provide powers for the Scottish Solicitors' Discipline Tribunal in relation to appeals made to it by conveyancing or executry practitioners or complainers against Council determinations or directions made in unsatisfactory conduct cases.
134. Where a conveyancing or executry practitioner appeals a Council determination upholding a complaint or appeals a consequent direction requiring remedial education or training or the payment of a fine or compensation, the Tribunal is given powers (a) to quash or confirm the determination being appealed against (and if it quashes the determination it must also quash the censure which accompanied it); (b) to quash, confirm or vary the direction being appealed against; (c) to direct the practitioner to undertake such education as regards the law or legal practice as the Tribunal considers appropriate; (d) to fine the practitioner a sum of up to £2,000; or (e) where the Tribunal considers the complainer to have been directly affected by the conduct, to direct the practitioner to pay compensation of up to £5,000 in respect of resulting loss, inconvenience or distress. The maximum amounts of the fine and compensation mentioned above may be varied by Scottish Ministers by order.
135. Where a complainer appeals a Council determination not to uphold a conduct complaint, the Tribunal may quash the Council determination and uphold the complaint; may direct the practitioner to pay compensation of up to £5,000 for loss, inconvenience or distress, where the Tribunal considers the complainer to have been directly affected by the conduct; or may confirm the determination.
136. Where the Council upholds a conduct complaint but does not direct the solicitor to pay compensation, a complainer may appeal to the Tribunal against the Council's decision not to direct payment of compensation. The Tribunal may, where it considers the complainer to have been directly affected by the conduct, direct the solicitor to pay compensation of up to £5,000 for loss, inconvenience or distress.

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137. Where a complainer appeals to the Tribunal against the amount of compensation which the Council has directed a practitioner to pay, the Tribunal may quash, confirm or vary the direction being appealed against.
138. The Tribunal may not direct the solicitor to pay a fine where in relation to the subject matter of the complaint the solicitor has been convicted of an act involving dishonesty and sentenced to a term of imprisonment of at least two years. This is akin to the double jeopardy rule. Any fine imposed by the Tribunal is to be payable to and recoverable by the Treasury.