



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 2

CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

56 Powers to fine and award compensation for professional misconduct etc.

- (1) In section 53 of the 1980 Act (powers of Tribunal)—
- (a) in subsection (2), after paragraph (ba) insert—
 - “(bb) where the solicitor has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, direct the solicitor to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct.”;
 - (b) after subsection (7B) (as inserted by paragraph 1(19)(b) of schedule 5 to this Act), insert—
 - “(7C) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bb) of subsection (2) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate.
 - (7D) A statutory instrument containing an order under subsection (7C) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”;
 - (c) after subsection (8), insert—
 - “(9) In subsection (2)(bb), “complainer” has the same meaning as in section 42ZA.”.
- (2) In section 55 of the 1980 Act (powers of Court)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (1)—
 - (i) after paragraph (bb), insert—
 - “(bc) where the Court considers that the complainer has been directly affected by the misconduct, direct the solicitor 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 misconduct; or”;
 - (ii) in paragraph (c), after “solicitor” insert “an amount not exceeding £10,000”;
- (b) after subsection (4) insert—
 - “(5) The Scottish Ministers may by order made by statutory instrument—
 - (a) after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend paragraph (bc) of subsection (1) by substituting for the amount for the time being specified in that paragraph such other amount as they consider appropriate;
 - (b) amend paragraph (c) of subsection (1) 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.
 - (6) A statutory instrument containing an order under—
 - (a) subsection (5)(a) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament;
 - (b) subsection (5)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament.
 - (7) In this section, “complainer” has the same meaning as in section 42ZA.”.
- (3) In section 20 of the 1990 Act (professional misconduct, etc.)—
 - (a) in subsection (2), after paragraph (c) insert—
 - “(ca) where the Council consider that the complainer has been directly affected by the professional misconduct or, as the case may be, the matter referred to in paragraph (d) of subsection (1), to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Council may specify to the complainer for loss, inconvenience or distress resulting from the misconduct or, as the case may be, the matter;
 - (cb) subject to subsection (2ZA) below, to impose on the practitioner a fine not exceeding £2,000;”;
 - (b) after that subsection, insert—
 - “(2ZA) The Council shall not impose a fine under subsection (2)(cb) above where, in relation to the subject matter of the complaint, the practitioner has been convicted by any court of an offence involving dishonesty and sentenced to a term of imprisonment of not less than 2 years.

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

- (2ZB) Any fine imposed under subsection (2)(cb) 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.”;
- (c) in subsection (2B), after paragraph (a) insert—
- “(aa) where the practitioner has been guilty of professional misconduct, and where the Tribunal consider that the complainer has been directly affected by the misconduct, to direct the practitioner to pay compensation of such amount, not exceeding £5,000, as the Tribunal may specify to the complainer for loss, inconvenience or distress resulting from the misconduct;”;
- (d) after subsection (11F) (as inserted by paragraph 3(4)(k) of schedule 5 to this Act), insert—
- “(11G) The Scottish Ministers may by order made by statutory instrument, after consulting the Council and such groups of persons representing consumer interests as they consider appropriate, amend subsection (2) (ca) or (2B)(aa) by substituting for the amount for the time being specified in that provision such other amount as they consider appropriate.
- (11H) A statutory instrument containing an order under subsection (11G) is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.”.