



Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

PART 2

CONDUCT AND SERVICES COMPLAINTS ETC.: OTHER MATTERS

57 **Review of and appeal against decisions on remitted conduct complaints: cases other than unsatisfactory professional conduct**

(1) In section 54 of the 1980 Act (appeals from decisions of Tribunal in cases other than unsatisfactory professional conduct)—

(a) after subsection (1), insert—

“(1A) A solicitor or an incorporated practice may, before the expiry of the period of 21 days beginning with the day on which any decision by the Tribunal mentioned in subsection (1B) is intimated to him or, as the case may be, it appeal to the Court against the decision.

(1B) The decision is—

- (a) where the Tribunal was satisfied as mentioned in section 53(1)(a), the finding that the solicitor has been guilty of professional misconduct;
- (b) where the Tribunal was satisfied as mentioned in section 53(1)(d), the finding that the incorporated practice has failed to comply with any provision of this Act or of any rule made under this Act applicable to the practice;
- (c) in any case falling within paragraph (a) or (b), or where the decision was made because of the circumstances mentioned in section 53(1)(b) or (c), any decision under section 53(2) or (5).

(1C) The Council may, before the expiry of the period of 21 days beginning with the day on which a decision by the Tribunal under section 53(2) or (5) is intimated to them, appeal to the Court against the decision; but the Council may not appeal to the Court against a decision of the Tribunal under section 53(2)(bb).

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- (1D) Where the Tribunal has found that a solicitor has been guilty of professional misconduct but has not directed him under section 53(2)(bb) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal’s finding is intimated to him, appeal to the Court against the decision of the Tribunal not to make a direction under that subsection.
- (1E) A complainer to whom the Tribunal has directed a solicitor under section 53(2)(bb) 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 Court against the amount of the compensation directed to be paid.
- (1F) On an appeal under any of subsections (1A) to (1E), 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.
- (1G) A decision of the Court under subsection (1A), (1B), (1C), (1D), (1E) or (1F) shall be final.”;
- (b) in subsection (2), after paragraph (b) insert “;
- (c) the Tribunal has exercised the power conferred by section 53(6B) to direct that its order shall take effect on the day on which it is intimated to the solicitor, firm of solicitors or incorporated practice concerned, the solicitor, firm of solicitors or incorporated practice may, before the expiry of the period of 21 days beginning with that day, apply to the court for an order varying or quashing the direction in so far as it relates to the day on which the order takes effect”;
- (c) after that subsection, insert—
- “(2A) In subsections (1D) and (1E), “complainer” has the same meaning as in section 42ZA.
- (2B) Subsection (1) does not apply to any element of a decision of the Tribunal to which subsections (1A) to (1G) and paragraph (c) of subsection (2) apply.
- (2C) Subsections (1A) to (1G), and paragraph (c) of subsection (2), apply to any element of a decision of the Tribunal which does not relate to the provision of advice, services or activities referred to in section 77(2) of the 2007 Act.”.
- (2) In section 20 of the 1990 Act (professional misconduct etc. by conveyancing or executry practitioners)—
- (a) after subsection (8), insert—
- “(8A) Where the Council are satisfied that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner, the practitioner may—
- (a) before the expiry of the period of 21 days beginning with the day on which the finding by the Council to that effect is

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- intimated to him, apply to the Council for a review by them of the finding;
- (b) before the expiry of the period of 21 days beginning with the day on which the outcome of the review is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash or confirm the decision.”;
- (b) after subsection (11), insert—
- “(11ZA) Where the Council find that a practitioner is guilty of professional misconduct or that the circumstances referred to in subsection (1)(d) apply as respects a practitioner but do not direct him under subsection (2)(ca) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Council’s finding is intimated to him, apply to the Council for a review by them of their decision not to direct the practitioner under subsection (2)(ca) to pay compensation.
- (11ZB) A complainer to whom the Council have directed a practitioner under subsection (2)(ca) 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, apply to the Council for a review by them of the direction.
- (11ZC) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of the review under subsection (11ZA) or (11ZB) is intimated to him, appeal to the Tribunal against the decision of the Council in the review; and the Tribunal may quash, confirm or vary the decision.”;
- (c) in subsection (11A)—
- (i) in paragraph (a), after “subsection” insert “(8A)(b) or”;
- (ii) after that paragraph, insert—
- “(aa) a finding by the Tribunal that a practitioner is guilty of professional misconduct or that the circumstances mentioned in subsection (1)(d) apply as respects the practitioner; or”;
- (iii) for the words “or, as the case may be,” substitute “the finding referred to in paragraph (aa) or, as the case may be, the decision”;
- (d) after that subsection, insert—
- “(11B) The complainer may, before the expiry of the period of 21 days beginning with the day on which the outcome of any appeal under subsection (11ZC) is intimated to him, appeal to the court against the Tribunal’s decision in the appeal.
- (11C) Where after holding an inquiry into a complaint against a practitioner, the Tribunal find that he has been guilty of professional misconduct or that the circumstances referred to in subsection (2A)(b) apply as respects him, but do not direct the practitioner under subsection (2B)(aa) to pay compensation, the complainer may, before the expiry of the period of 21 days beginning with the day on which the Tribunal’s finding is intimated to him, appeal to the court against the decision of the Tribunal not to make a direction under that subsection.

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- (11D) A complainer to whom the Tribunal have directed a practitioner under subsection (2B)(aa) 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 court against the amount of the compensation directed to be paid.
- (11E) In an appeal under subsection (11C) or (11D), the court may make such order in the matter as it thinks fit.”