



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART IV

#### COMPLAINTS AND DISCIPLINARY PROCEEDINGS

##### *Lay Observer*

#### **49 Investigation by lay observer of Society's treatment of complaints**

- (1) The Secretary of State, if he thinks fit, may, after consultation with the Lord President, appoint a person (in this section referred to as " the lay observer "), not being an advocate or a solicitor, to examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.
- (2) Schedule 5 shall have effect in relation to the lay observer.

##### *The Scottish Solicitors' Discipline Tribunal*

#### **50 The Tribunal**

- (1) For the purposes of this Part of this Act there shall be a tribunal, which shall be known as the Scottish Solicitors' Discipline Tribunal and is in this Act referred to as "the Tribunal".
- (2) Part I of Schedule 4 shall have effect in relation to the constitution of the Tribunal.

#### **51 Complaints to Tribunal**

- (1) A complaint may be made to the Tribunal by the Council; and, for the purpose of investigating and prosecuting complaints, the Council may appoint a solicitor to act as fiscal.

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*Status: This is the original version (as it was originally enacted).*

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- (2) The persons mentioned in subsection (3) may report to the Tribunal any case where it appears that a solicitor may have been guilty of professional misconduct (including any case where it appears that a solicitor may have been seeking to make extraordinary and apparently unjustified claims against his client), and any such report shall be treated by the Tribunal as a complaint under subsection (1).
- (3) The persons referred to in subsection (2) are—
- (a) the Lord Advocate;
  - (b) any judge;
  - (c) the Auditor of the Court of Session;
  - (d) the Auditor of any sheriff court.

## **52 Procedure on complaints to Tribunal**

- (1) Part II of Schedule 4, shall have effect in relation to the procedure and powers of the Tribunal in relation to any complaint concerning a solicitor.
- (2) Subject to the other provisions of this Part, and of any rules of court made under this Act, the Tribunal, with the concurrence of the Lord President, may make rules—
- (a) for regulating the making, hearing and determining of complaints made to it under this Act; and
  - (b) generally as to the procedure of the Tribunal (including provision for hearings taking place in public or wholly or partly in private).

## **53 Powers of Tribunal**

- (1) Subject to the other provisions of this Part, the powers exercisable by the Tribunal under subsection (2) shall be exercisable if—
- (a) after holding an inquiry into a complaint against a solicitor the Tribunal is satisfied that he has been guilty of professional misconduct, or
  - (b) a solicitor has (whether before or after enrolment as a solicitor), been convicted by any court of an act involving dishonesty or has been sentenced to a term of imprisonment of not less than 2 years.
- (2) Subject to subsection (1), the Tribunal may—
- (a) order that the name of the solicitor be struck off the roll; or
  - (b) order that the solicitor be suspended from practice as a solicitor for such time as it may determine; or
  - (c) subject to subsection (3), impose on the solicitor a fine not exceeding £250; or
  - (d) censure the solicitor; or
  - (e) impose such fine and censure him.
- (3) The Tribunal shall not impose a fine under subsection (2)(c) in any of the circumstances mentioned in subsection (1)(b).
- (4) Any fine imposed by the Tribunal under subsection (2) shall be forfeit to Her Majesty.
- (5) Where the Tribunal have exercised the power conferred by subsection (2) to censure, or impose a fine on, a solicitor, or both to censure and impose a fine, the Tribunal may order that the solicitor's practising certificate shall be subject to such terms and conditions as the Tribunal may direct; and the Council shall give effect to any such order of the Tribunal.

- (6) Where the Tribunal order that the name of a solicitor be struck off the roll, or that the solicitor be suspended from practice as a solicitor, the Tribunal may direct that the order shall take effect on the date on which it is intimated to the solicitor; and if any such direction is given the order shall take effect accordingly.
- (7) Where in relation to any such order as is mentioned in subsection (6) the Tribunal give a direction under that subsection, and an appeal against the order is taken to the Court under section 54, the order shall continue to have effect pending the determination or abandonment of the appeal unless, on an application under subsection (2) of section 54, the Court otherwise directs.

#### **54 Appeals from decisions of Tribunal**

- (1) Any person aggrieved by a decision of the Tribunal relating to discipline under this Act may within 21 days of the date on which the decision of the Tribunal is intimated to him, appeal against the decision to the Court, and on any such appeal 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; and the order of the Court shall be final.
- (2) Where the Tribunal has exercised the power conferred by section 53(6) to direct that its decision shall take effect on the date on which it is intimated to the solicitor concerned, the solicitor may, within 21 days of that date, apply to the Court for an order varying or quashing the direction in so far as it relates to the date of taking effect; and on any such application the Court may make the order applied for or such other order with respect to the matter as it thinks fit.

#### *The Court*

#### **55 Powers of Court**

- (1) In the case of professional misconduct by any solicitor the Court may—
  - (a) cause the name of that solicitor to be struck off the roll; or
  - (b) suspend the solicitor from practice as a solicitor for such period as the Court may determine ; or
  - (c) fine the solicitor; or
  - (d) censure him; and in any of those events,
  - (e) find him liable in any expenses which may be involved in the proceedings before the Court.
- (2) Subject to subsection (3), a decision of the Court under this section shall be final.
- (3) A solicitor whose name has been struck off the roll in pursuance of an order made by the Court under subsection (1), may apply to the Court for an order directing his name to be restored to the roll and the Court may make such order.
- (4) An application under subsection (3) shall be by way of petition and intimation of any such petition shall be made to the Tribunal who shall be entitled to appear and to be heard in respect of the application.

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## **56 Saving for jurisdiction of courts**

Except as otherwise expressly provided, nothing in this Part shall affect the jurisdiction exercisable by the Court, or by any inferior court, over solicitors.