



# Solicitors (Scotland) Act 1988

## 1988 CHAPTER 42

### **1 Powers of Council of Law Society where inadequate professional services alleged.**

After section 42 of the <sup>M1</sup>Solicitors (Scotland) Act 1980 (in this Act referred to as “the 1980 Act”) there shall be inserted the following sections—

#### **“42A Powers where inadequate professional services alleged.**

- (1) Where—
- (a) the Council receive, from any person having an interest, a complaint that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
  - (b) the Council, after inquiry and after giving the solicitor an opportunity to make representations, uphold the complaint,
- they may take such of the steps mentioned in subsection (2) as they think fit.
- (2) The steps referred to in subsection (1) are—
- (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—
    - (i) nil; or
    - (ii) such amount as the Council may specify in the determination, and to direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to them to be necessary to give effect to the determination;
  - (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Council may specify;
  - (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Council may specify.
- (3) The requirements referred to in subsection (2)(a) are—

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- (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (4) Before making a determination in accordance with subsection (2)(a) the Council may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.
- (5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.
- (6) The Council shall intimate a determination or direction made under this section to every solicitor specified in it by sending a copy of the determination or direction to him.
- (7) A solicitor in respect of whom a determination or direction has been made under this section may, within 21 days of the date on which the determination or direction is intimated to him, appeal to the Tribunal against the determination or direction.
- (8) In the foregoing provisions of this section—
- “client”, in relation to any matter in which a solicitor has been instructed, includes any person on whose behalf the person who gave the instructions was acting;
  - “complaint” includes a complaint of provision of inadequate professional services remitted to the Council by the Tribunal under paragraph 8A of Schedule 4; and
  - “solicitor” includes—
    - (a) any solicitor, whether or not he had a practising certificate in force at the time of provision of the professional services which are alleged to be inadequate, and notwithstanding that subsequent to that time he has had his name removed from or struck off the roll, ceased to practise or been suspended from practice;
    - (b) a firm of solicitors, whether or not, since the provision of the professional services which are alleged to be inadequate—
      - (i) there has been any change in the firm by the addition of a new partner or the death or resignation of an existing partner; or
      - (ii) the firm has ceased to practise; and
    - (c) an incorporated practice, whether or not, since the provision of the professional services which are alleged to be inadequate—
      - (i) there has been any change in the persons exercising the management and control of the practice; or
      - (ii) the practice has ceased to be recognised by virtue of section 34(1A) or has been wound up.

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### **42B Inadequate professional services: Council's powers to monitor compliance with directions.**

- (1) The Council shall, by notice in writing, require every solicitor specified in—
  - (a) a direction made under section 42A; or
  - (b) such a direction as confirmed or varied on appeal by—
    - (i) the Tribunal; or
    - (ii) the Court,to give, within such period being not less than 21 days as the notice may specify, an explanation of the steps which he has taken to comply with the direction.
- (2) Where an appeal is made under subsection (7) of section 42A against a direction made under that section, any notice under subsection (1)(a) above relating to that direction shall cease to have effect.
- (3) Where an appeal is made by virtue of subsection (2) of section 53B against a decision of the Tribunal under subsection (1) of that section, any notice under subsection (1)(b)(i) above relating to the direction confirmed or varied by that decision shall cease to have effect.
- (4) In this section “solicitor” has the same meaning as in section 42A(8).”

#### **Marginal Citations**

**M1** 1980 c. 46.

## **2 Power of Council of Law Society to investigate complaints.**

After section 42B of the 1980 Act (inserted in that Act by the preceding section of this Act) there shall be inserted the following section—

### **“42C Powers to examine documents and demand explanations in connection with complaints.**

- (1) Where the Council are satisfied that it is necessary for them to do so for the purpose of investigating a complaint made to them or remitted to them by the Tribunal alleging—
  - (a) professional misconduct by a solicitor;
  - (b) the failure of an incorporated practice to comply with any provision of this Act or of rules made under this Act applicable to that practice; or
  - (c) the provision by a solicitor or an incorporated practice of inadequate professional services,the Council may give notice in writing in accordance with subsection (2) to the solicitor or his firm or to the incorporated practice or, where the solicitor is an employee of a firm or of an incorporated practice, to his employer.
- (2) A notice under subsection (1) may require—
  - (a) the production or delivery to any person appointed by the Council, at a time and place specified in the notice, of all documents to which this

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- section applies which are in the possession or control of the solicitor, firm or incorporated practice and relate to the matters to which the complaint relates (whether or not they relate also to other matters); and
- (b) an explanation, within such period, not being less than 21 days, as the notice may specify, from the solicitor, firm or incorporated practice regarding the matters to which the complaint relates.

- (3) This section applies to the documents specified in section 38(2).
- (4) Part II of Schedule 3 shall have effect in relation to the powers conferred by subsection (1) to require the production or delivery of documents as it has effect in relation to the powers conferred by section 38, but with the following modifications—
- (a) for the references in that Part to section 38 there shall be substituted references to this section; and
- (b) for the reference in paragraph 5(1) in that Part to a person failing to produce or deliver documents immediately on being required by the Council to do so there shall be substituted a reference to a person failing to produce or deliver the documents within the time specified in the notice under subsection (1) of this section.”

### 3 Functions of Scottish Solicitors’ Discipline Tribunal.

After section 53 of the 1980 Act there shall be inserted the following sections—

**“53A Inadequate professional services: powers of Tribunal.**

- (1) Subject to the other provisions of this Part where—
- (a) a complaint is made to the Tribunal that professional services provided by a solicitor in connection with any matter in which he has been instructed by a client were inadequate; and
- (b) the Tribunal, after inquiry and after giving the solicitor an opportunity to make representations, upholds the complaint,
- it may take such of the steps mentioned in subsection (2) as it thinks fit.
- (2) The steps referred to in subsection (1) are—
- (a) to determine that the amount of the fees and outlays to which the solicitor shall be entitled for the services shall be—
- (i) nil; or
- (ii) such amount as the Tribunal may specify in the determination, and by order direct the solicitor to comply, or secure compliance, with such of the requirements set out in subsection (3) as appear to it to be necessary to give effect to the determination;
- (b) to direct the solicitor to secure the rectification at his own expense of any such error, omission or other deficiency arising in connection with the services as the Tribunal may specify;
- (c) to direct the solicitor to take, at his own expense, such other action in the interests of the client as the Tribunal may specify.
- (3) The requirements referred to in subsection (2)(a) are—

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- (a) to refund, whether wholly or to any specified extent, any amount already paid by or on behalf of the client in respect of the fees and outlays of the solicitor in connection with the services;
  - (b) to waive, whether wholly or to any specified extent, the right to recover those fees and outlays.
- (4) Before making a determination in accordance with subsection (2)(a) the Tribunal may submit the solicitor's account for the fees and outlays to the Auditor of the Court of Session for taxation.
  - (5) Where a solicitor in respect of whom a complaint of inadequate professional services is made was, at the time when the services were provided, an employee of another solicitor, a direction under this section shall specify and apply to that other solicitor as well as the solicitor in respect of whom the complaint is made.
  - (6) A direction of the Tribunal under this section 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.
  - (7) Section 54(1) shall apply to a direction of the Tribunal under this section (but not to a decision to submit an account for taxation under subsection (4)) as it applies to a decision of the Tribunal relating to discipline under this Act.
  - (8) In the foregoing provisions of this section "solicitor" and "client" have the same meanings as in section 42A(8).

**53B Inadequate professional services: appeal to Tribunal against Council determination or direction.**

- (1) On an appeal to the Tribunal under section 42A(7) the Tribunal may quash, confirm or vary the determination or direction being appealed against.
- (2) Section 54(1) shall apply to a decision of the Tribunal under subsection (1) as it applies to a decision of the Tribunal relating to discipline under this Act.

**53C Inadequate professional services: enforcement by Tribunal of Council direction.**

- (1) Where a solicitor fails to comply with a direction given by the Council under section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under section 42B(1), or such longer period as the Council may allow, the Council shall make a complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.
- (2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, 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.
- (3) Paragraph 9 of Schedule 4 shall not apply to a complaint made under subsection (1)."

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#### 4 Powers of Council of Law Society where excessive fees etc charged.

After section 39 of the 1980 Act there shall be inserted the following section—

##### **“39A Powers where excessive fees etc charged.**

- (1) This section applies where the Council are satisfied, in the case of any solicitor or incorporated practice, after inquiry and after giving the solicitor or incorporated practice an opportunity of being heard, that the solicitor or incorporated practice has issued an account for professional fees and outlays of an amount which is grossly excessive (whether or not the account has been paid by or on behalf of the client or debited by the solicitor or incorporated practice to the account of any sums held on behalf of the client).
- (2) Where this section applies the Council may—
  - (a) in the case of a solicitor, withdraw his practising certificate; or
  - (b) in the case of an incorporated practice, withdraw the practising certificates of all or any of the solicitors who are directors of the incorporated practice;
 and a certificate so withdrawn shall cease to have effect and the solicitor shall be suspended from practice as a solicitor.
- (3) On being satisfied by the solicitor or, as the case may be, incorporated practice that he or it has complied with the requirements of subsection (4) the Council, unless they are of the opinion that the solicitor or incorporated practice is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor or solicitors concerned and shall restore to him or them any practising certificates held by him or them for the practice year then current.
- (4) The requirements referred to in subsection (3) are—
  - (a) to submit the account to the Auditor of the Court of Session for taxation together with all documents in the possession or control of the solicitor or incorporated practice which relate to the matters in respect of which the account was issued; and
  - (b) to refund to the client a sum not less than the relevant amount.
- (5) The Council shall be entitled to be represented at a diet for taxation by virtue of subsection (4)(a) and to make representations to the Auditor of Court.
- (6) Where, on taxation of an account by virtue of subsection (4)(a), the amount due in respect of the account as taxed is the amount specified in the account as issued, the fee of the Auditor of Court shall be paid by the Council; but in any other case the fee shall be paid by the solicitor or, as the case may be, the incorporated practice.
- (7) In subsection (4)(b) “the relevant amount” is the amount (if any) by which the sum received by the solicitor or incorporated practice in respect of the account exceeds the amount due in respect of the account as taxed.
- (8) A solicitor may, within 21 days of receiving written notice of a decision of the Council under subsection (2) to withdraw his practising certificate, appeal to the Court against that decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the

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proceedings before the Court, as it may think fit; and the order of the Court shall be final.

- (9) The withdrawal of a solicitor's practising certificate under subsection (2) shall be without prejudice to the operation of section 35(3) or section 37(8)."

## 5 Interpretation.

- (1) In section 65(1) of the 1980 Act (interpretation), after the definition of "functions" there shall be inserted the following definition—

““inadequate professional services” means professional services which are in any respect not of the quality which could reasonably be expected of a competent solicitor, and cognate expressions shall be construed accordingly; and references to the provision of inadequate professional services shall be construed as including references to not providing professional services which such a solicitor ought to have provided.”.

- (2) In this Act “the 1980 Act” means the <sup>M2</sup>Solicitors (Scotland) Act 1980.

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### Marginal Citations

M2 1980 c. 46.

## 6 Minor and consequential amendments, repeals and transitional provisions.

- (1) The 1980 Act shall have effect subject to the amendments specified in Schedule 1 to this Act, being minor amendments and amendments consequential on the provisions of this Act.
- (2) The enactments mentioned in the second column of Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Sections 1 and 3 of, and paragraph 14(a) of Schedule 1 to, this Act do not apply to services provided by a solicitor before the date of commencement of this Act unless the provision of those services in connection with a particular matter continues after that date.

## 7 Citation, commencement and extent.

- (1) This Act may be cited as the Solicitors (Scotland) Act 1988.
- (2) This Act shall come into force at the end of the period of six months beginning with the day on which it is passed.
- (3) This Act extends to Scotland only.

**Changes to legislation:**

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