

CHAPTER 15

COMPLAINTS AND DISCIPLINE

This Chapter is primarily concerned with the powers of the Law Society and applicable procedures in relation to allegations of misconduct. For this reason, it does not contain Principles and Commentaries.

THE LAW SOCIETY'S POWERS

1. Power of investigation

Article 18(d) of the Articles of Association of the Law Society empowers the Law Society to investigate any charge of misconduct against any solicitor (whether a member or not) or employee of a solicitor and to institute and (if the Council thinks fit) prosecute any disciplinary proceedings.

Under article 18(e) the Council of the Law Society ('Council') has the power to call for an explanation of conduct that appears to the Council to be dishonourable, improper or unprofessional.

Article 18(f) further provides that the Council may carry out such statutory functions and exercise such powers as may be delegated to it by the *Legal Practitioners Ordinance* (Cap. 159), Regulations, Order-in-Council or otherwise.

2. Delegation

Section 73C of the *Legal Practitioners Ordinance* (Cap. 159) provides that 'The Council may delegate to any person or to a committee of the Council any of the powers or duties granted or imposed on the Council or the Society under this Ordinance, other than the power to make rules under sections 73 and 73A.'

The process of investigation has been delegated to the Conduct Section of the Compliance Department, the adjudication of complaints to Investigation Committees and the review of Investigation Committee decisions and the institution of disciplinary proceedings to the Standing Committee on Compliance.

Details of the role of the Conduct Section, the composition and functions of an Investigation Committee and the Standing Committee on Compliance can be found in the *Notes to Parties to a Complaint* which can be downloaded from the Law Society's Web-site at www.hklawsoc.org.hk.

3. Members' undertaking

Members undertake when they apply to become members, to comply with the Articles of Association, the Practice Directions, rules and the regulations of the Law Society. Thus breach of the undertaking is automatically a matter for discipline.

4. Disciplinary proceedings against non-members

The Council has power to investigate solicitors who are not members of the Society and those solicitors may be the subject of discipline, while they are on the Roll of Solicitors (see section 2(1) of the *Legal Practitioners Ordinance* (Cap. 159)). Registered foreign lawyers are also subject to the disciplinary process by virtue of section 9A of the *Legal Practitioners Ordinance* (see Cap. 159), as are trainee solicitors and employees of a solicitor or foreign lawyer (see section 2(2) of the *Legal Practitioners Ordinance* (Cap. 159)).

INSPECTION

Inspection powers of the Council

The Council's statutory powers of inspection are set out in:-

- (a) Sections 8AA and 8AAA of the *Legal Practitioners Ordinance* (Cap. 159);
- (b) *Inspectors Powers Rules* (Cap. 159 sub. leg. T);
- (c) Rule 5B of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H);
- (d) Rule 10 of the *Foreign Lawyers Practice Rules* (Cap. 159 sub. leg. R);
and
- (e) Rule 11 of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F).

Section 8AA of the *Legal Practitioners Ordinance* (Cap. 159) provides for an inspector to be appointed by the Council to verify compliance by solicitors, foreign lawyers, trainee solicitors or employees of solicitors or foreign lawyers with the provisions of the *Legal Practitioners Ordinance*

(Cap. 159) or any Practice Direction issued by the Law Society, and to determine whether such conduct should be inquired into or investigated. The section stipulates the powers of an inspector in making such enquiries and investigations.

Section 8B provides that documents required by an inspector under section 8AA must be produced or delivered notwithstanding any claim of legal professional privilege. Documents that are subject to a legal professional privilege may only be used for the purposes of an inquiry or investigation under the *Legal Practitioners Ordinance* (Cap. 159) (See also *Citic Pacific Ltd. v. Secretary for Justice & Another* [2012] HKCU 685).

The Council may also appoint Monitoring Accountants to conduct visits to law firms under Rule 5B of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and Rule 11 of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F) to ensure compliance with the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F).

In addition, the Council may appoint an Inspector to conduct court inspections at courts (see Practice Direction C.3).

Failure by a solicitor to comply with a Notice of Inspection is a breach of section 8AA of the *Legal Practitioners Ordinance* (Cap. 159) which can result in disciplinary proceedings or other sanctions and is unjustifiable delay in complying with a Notice of Inspection.

COMPLAINTS

Complaints against solicitors are investigated by the Conduct Section but decisions are made by the Standing Committee on Compliance or by Investigation Committees. In exceptional circumstances the Council can of its own motion refer a complaint direct to the Convenor of the Solicitors Disciplinary Tribunal Panel. The Law Society may also continue any investigation despite the withdrawal of the original complaint.

The Standing Committee on Compliance consists of Council members and non-Council members. Investigation Committees are ad hoc committees of the Standing Committee on Compliance.

1. Investigation procedures

A written complaint (in a Complaint Form) usually initiates an investigation but the Standing Committee on Compliance can also investigate matters of its own motion.

Details of the investigation procedure can be found in the *Notes to Parties to a Complaint*. The Law Society may publish notes for guidance from time to time.

2. Privilege and Defamation

Complaints to the Law Society about the professional conduct of solicitors are protected by qualified privilege in the absence of malice. It may be improper for a solicitor to issue defamation proceedings in respect of material contained in a complaint made to the Law Society.

3. Sanctions

The sanctions that can be imposed are the issue of letters of regret or letters of disapproval to the solicitor concerned.

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If warranted, the Standing Committee can refer a matter to the Convenor or Deputy Convenor of the Solicitors Disciplinary Tribunal Panel.

4. Review

It is open to either party to seek a review of an Investigation Committee decision by the Standing Committee on Compliance.

Should one party seek a review of a decision, the other party may be informed of the application and invited to make representations.

The representations made on review should not generally include facts previously disclosed during the course of the investigation. Any solicitor seeking to do so may be asked to explain why a full explanation was not provided at the outset.

There is no time limit for seeking a review but excessive or unjustifiable delay in doing so will be taken into account at the review.

DISCIPLINE

The Solicitors Disciplinary Tribunal Panel is established under section 9 of the *Legal Practitioners Ordinance* (Cap. 159). The Panel consists of not more than 120 practising solicitors of at least 10 years standing, not more than 10 foreign lawyers and not more than 60 lay members. All the members of the Panel and its Convenor are appointed by the Chief Justice.

Tribunals are appointed from time to time by the Convenor to hear and determine complaints. Each Tribunal consists of 2 solicitors and 1 lay member drawn from the Panel. Complaints about the conduct of a foreign lawyer or an employee of a foreign lawyer are dealt with by a Tribunal consisting of 2 solicitors, 1 foreign lawyer and 1 lay person.

Where a complaint is made to the Council which is not submitted to the Tribunal Convenor within six months of receiving the complaint, the Chief Judge may submit the matter to the Tribunal Convenor, if he considers that the Council ought to have done so (see section 9A(2) of the *Legal Practitioners Ordinance* (Cap. 159)).

A Tribunal has jurisdiction to hear applications in respect of a solicitor, a foreign lawyer, a trainee solicitor, or an employee of a solicitor or foreign lawyer under section 9A(1) of the *Legal Practitioners Ordinance* (Cap. 159). A Tribunal's authority is defined by section 10 of the *Legal Practitioners Ordinance* (Cap. 159) which grants it power to make such order as it thinks fit including striking off, suspension from practice and payment of a penalty. It needs not make a finding of 'professional misconduct'. It is sufficient for there to have been a breach of statutory duty, this Guide or of Law Society Practice Directions for a solicitor to be sanctioned.

INTERVENTION

The Council has the power to intervene in a solicitor's or foreign lawyer's practice in the circumstances set out in sections 26A, 26B and 26C of the *Legal Practitioners Ordinance* (Cap. 159). The powers of the Council are set out in section 26D and Schedule 2 of the *Legal Practitioners Ordinance* (Cap. 159). Grounds for intervention include dishonesty, undue delay, bankruptcy, abandonment of practice, incapacity, not having a practising certificate and failure to comply with practising certificate conditions.

The Council does not take over the practice of an intervened firm. It will appoint an intervention agent to wind down the practice of the intervened firm. Functions of an intervention agent are mainly to

- (i) identify the current files to return them to clients or pass them to the clients' new solicitors; and
- (ii) distribute money held on client account. The intervention agent is not responsible for the handling of the firm's files, accounts or administration. The costs of the intervention shall be recoverable from the solicitor or foreign lawyer of the intervened firm or his personal representatives.