

Scottish Solicitors' Discipline Tribunal Rules 2008

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The Scottish Solicitors' Discipline Tribunal, in exercise of the powers conferred upon it by section 52(2) of the Solicitors (Scotland) Act 1980¹ and with the concurrence of the Lord President of the Court of Session, hereby makes the following rules:-

Part 1: Introductory

Citation, commencement and application

- 1(1) These rules may be cited as the Scottish Solicitors' Discipline Tribunal Rules 2008.
- (2) These rules shall come into force on 1st October 2008.
- (3) These rules shall apply to any complaint, appeal or application to which Parts 2, 3 or 4 apply which is made to the Tribunal on or after 1st October 2008, except any such complaint or appeal to which the 2005 Rules continue to apply by virtue of rule 57(2).

Interpretation

2(1) In these rules -

“the 1980 Act” means the Solicitors (Scotland) Act 1980 (c 5) ;

“the 1990 Act” means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c 40) :

“the 2007 Act” means the Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5);

“the 2005 Rules” means the Scottish Solicitors' Discipline Tribunal Rules 2005;

“the 2008 Order” means the Legal Profession and Legal Aid (Scotland) Act 2007 (Transitional, Savings and Consequential Provisions) Order 2008²;

“appellant” means, in relation to any appeal to which Part 3 applies, the practitioner, complainer or legal practice making the appeal;

¹ Section 52 of the 1980 Act was amended by paragraph 27 of Schedule 1 to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, paragraph 15 of Schedule 1 to the Solicitors (Scotland) Act 1988, paragraph 1(18) of Schedule 5 to the 2007 Act. It is applied by section 10(2) and section 60A(4E) of the 1980 Act and by regulation 37(2) of and Schedule 2 to the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000/121) and regulations 11, 13 and 14 of the Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 (SSI 2004/383).

² SSI 2008/.

“applicant” means, in relation to any application to which Part 4 applies, the solicitor, registered European lawyer or registered foreign lawyer, who wishes to have his name restored to the roll or register, as the case may be;

“case” means a complaint, appeal or application under Part 2, 3, or 4, as the case may be, and “part of a case” includes, without prejudice to that generality, the holding of any procedural meeting or preliminary hearing or the determination of any procedural or substantive issue about the case;

“Chairman” includes any other person presiding at the proceedings of the Tribunal;

“Clerk” means the Clerk to the Tribunal and includes any depute clerk appointed by the Tribunal;

“the Commission” means the Scottish Legal Complaints Commission;

“complainer” means the person who makes the complaint and, where the complaint is made by the person on behalf of another person, includes that other person;

“complaint” includes any expression of dissatisfaction;

“conduct complaint” has the meaning given by section 2(1)(a) of the 2007 Act;

“convener”, in relation to a particular tribunal, shall be construed in accordance with rule 55(1);

“conveyancing practitioner” means a person registered under section 17 of the 1990 Act in the register of conveyancing practitioners;

“the Council” means the Council of the Law Society of Scotland;

“the court” means the Court of Session;

“decision” includes any decision, order, determination or direction;

“executry practitioner” means a person registered under section 18 of the 1990 Act in the register of executry practitioners;

“functions” includes powers and duties;

“legal practice” means -

- (a) a firm of solicitors, whether or not since the time when it is suggested the conduct complained of occurred 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 the firm has ceased to practise;

(b) an incorporated practice, whether or not since that time there has been any change in the persons exercising the management and control of the practice or the practice has ceased to be recognised by virtue of section 34(1A) of the 1980 Act or has been wound up;

(c) a multi-national practice, whether or not since the time when the conduct complained of took place there has been any change in the members of the partnership or body corporate or the practice has been wound up or otherwise ceased to practise;

“particular tribunal” shall be construed in accordance with rule 54(1);

“parties to a case” means

(a) in the case of a complaint, the principal complainer and the respondent or respondents;

(b) in the case of an appeal, the appellant and the respondent or respondents; and

(c) in the case of an application, the applicant and any objector or objectors;

“practising certificate” has the meaning given by section 4 of the 1980 Act;

“practitioner” means -

(a) a conveyancing practitioner, whether or not registered at the time when it is suggested the conduct complained of occurred and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(b) an executry practitioner, whether or not registered at that time and notwithstanding that subsequent to that time the practitioner has ceased to be so registered;

(c) a registered European lawyer whether or not the European lawyer was registered with the Law Society of Scotland at the time the conduct complained of took place and notwithstanding that subsequent to that time the registration has been withdrawn or suspended;

(d) a registered foreign lawyer, whether or not the foreign lawyer was registered under section 60A of the 1980 Act at the time the conduct complained of took place and notwithstanding that subsequent to that time the registration has been withdrawn or suspended; and

(e) a solicitor, whether or not the solicitor had a practising certificate in force at that time and notwithstanding that subsequent to that time the name of the

solicitor has been removed from or struck off the roll or the solicitor has ceased to practise or has been suspended from practice;

“preliminary hearing” shall be construed in accordance with rule 42;

“principal complainer” means the person who made the complaint but does not include any person on whose behalf the complaint is made;

“procedural hearing” shall be construed in accordance with rule 41;

“respondent” means -

(a) in relation to any complaint to which Part 2 applies, the practitioner who, or the legal practice which, is the subject of the complaint; and

(b) in relation to any appeal to which Part 3 applies which is made by a practitioner or legal practice, the Council and any complainer and, in relation to any such appeal which is made by a complainer, the Council, practitioner or legal practice and any other complainer;

“the roll” means the roll of solicitors kept by the Council by virtue of section 7(1) of the 1980 Act;

“secondary complainer” means any person on whose behalf a complaint is made;

“Tribunal” means the Scottish Solicitors’ Discipline Tribunal and includes, in relation to a particular case or part of a case, a particular tribunal; and

“unsatisfactory professional conduct” has the same meaning as it has in section 46(1) of the 2007 Act.

(2) Unless the context otherwise requires, any reference in these rules

(a) to a numbered rule or Part refers to the rule or Part bearing that number in these rules; or

(b) to the schedule refers to the schedule to these rules,

and any reference in a rule to a numbered paragraph refers to the paragraph bearing that number in that rule.

Part 2: Procedure regarding complaints made to the Tribunal

Complaints to which Part 2 applies

3(1) This Part applies to any complaint made to the Tribunal -

(a) under section 51(1) or (1A) of the 1980 Act by the Council (whether or not on behalf of any other person); and

(b) under section 51(2) of that Act³ by any person mentioned in subsection (3) of that section.

(2) Without prejudice to the generality of section 51(1) or (1A) of the 1980 Act, the complaints which may be made by the Council under that section (whether or not on behalf of any other person) include any complaint alleging

(a) that a practitioner may have been guilty of professional misconduct; or

(b) that a practitioner may have been convicted by any court of an act involving dishonesty or may have been sentenced to a term of imprisonment of not less than 2 years; or

(c) that a legal practice may have failed to comply with any provision of the 1980 Act or of rules made under that Act applicable to it; or

(d) that a legal practice, which is an incorporated practice, may have been convicted by any court of an offence which renders it unsuitable to continue to be recognised under section 34(1A) of the 1980 Act.

Notification of certain complaints made by the Council

4(1) Paragraph (2) shall apply in any case where

(a) a complaint is about to be made to the Tribunal by the Council (whether or not on behalf of any secondary complainer) that a practitioner may have been guilty of professional misconduct; and

(b) the Council considers that there may be any person, or, as the case may be, any other person, who may have been directly affected by that misconduct and who might be eligible to seek compensation for any loss, inconvenience or distress resulting from it.

³ Section 51(2) of the 1980 Act was amended by the Legal Services Act 2007, Schedule 20, paragraph 1(9)(a).

(2) The Council shall

(a) inform any person who it considers may be so affected that it is proposing to make such a complaint and give that person an opportunity of deciding whether to request the Council to make the complaint on behalf of that person; and

(b) include a statement in its complaint that it has done so.

Complaint made by the Council on behalf of others

5 Where a complaint is made by the Council on behalf of any secondary complainer,

(a) the Tribunal shall deal only with the Council except where it is otherwise expressly provided in these rules; and

(b) it shall be the duty of the Council -

(i) in the case where the complaint is that a practitioner may have been guilty of professional misconduct, to ascertain from every secondary complainer whether that secondary complainer claims to have been directly affected by that misconduct and wishes to seek compensation for any loss, inconvenience or distress resulting from it;

(ii) to keep the secondary complainer informed of any action taken by the Tribunal which may affect the interests of that complainer;

(iii) to take account, where relevant, of any comments made by the secondary complainer in any comments or representations made by the Council to the Tribunal;

(iv) where the Council receives notice of the hearing under rule 11, to send a copy of that notice, by first class recorded delivery post, to every secondary complainer;

(v) in a case where paragraph (b)(i) applies and the secondary complainer is claiming compensation, to include, along with the copy of the notice of the hearing, a notice that the secondary complainer is entitled to appear at the hearing, and to lead evidence, on the date, time and place appointed in that notice, and

(vi) to inform the Clerk in writing before the hearing that the duties mentioned in (i) to (v) have been carried out.

Manner in which complaints are to be made

- 6(1) Any complaint by the Council shall -
- (a) be in writing;
 - (b) be in Form No 1 set out in the schedule, or as near thereto as circumstances permit;
 - (c) contain the name and address of the Council;
 - (d) indicate whether or not the complaint is made on behalf of any other person and, if so, the name and address (or the address last known to the Council) of any such secondary complainer;
 - (e) contain the name and address (or the address last known to the Council) of the respondent and, where the respondent is a legal practice, the names of all the solicitors who are, or were at the time of the conduct complained of, members of that practice;
 - (f) contain, in concise numbered paragraphs, the statements mentioned in paragraph (2);
 - (g) be signed on behalf of the Council; and
 - (h) be lodged with the Clerk.
- (2) The statements which a complaint under paragraph (1) shall contain are -
- (a) a statement of the specific complaint which is being made;
 - (b) a statement of the facts upon which the complaint is based;
 - (c) a statement that the complaint is one to which these rules apply and is not one to which the 2005 Rules apply by virtue of rule 57(2);
 - (d) in the case where the complaint is that a practitioner may have been guilty of professional misconduct, a statement indicating whether or not the Council or any secondary complainer is claiming to have been directly affected by that misconduct and is seeking compensation for any loss, inconvenience or distress

resulting from it and, if so, a statement of the facts which are relied upon in support of that claim; and

(e) a statement indicating that the Council has complied with rule 4.

(3) Any complaint by any of the persons mentioned in section 51(3) of the 1980 Act shall be -

(a) in writing;

(b) contain the name and address of the principal complainer;

(c) contain the name and address (or the last address known to the principal complainer) of the incorporated practice which is the respondent;

(d) give a brief statement of the facts upon which the complaint is based;

(e) be signed by the principal complainer; and

(f) be lodged with the Clerk.

Complaint not properly made

7(1) Where the Tribunal considers that a complaint is not a complaint to which these rules apply but is one to which the 2005 Rules apply by virtue of rule 57(2), the Tribunal shall make an order dismissing the complaint, inform the Council accordingly and request the Council to submit the complaint under the 2005 Rules.

(2) Where the Tribunal considers that a complaint is not otherwise a complaint made in accordance with rule 6, the Tribunal may make an order dismissing the complaint and, where it does so, it shall inform the principal complainer accordingly and request the principal complainer to submit a new complaint which complies with that rule.

Whether complaint discloses *prima facie* case

8(1) Where the Tribunal does not dismiss the complaint under rule 7, the Tribunal shall consider whether the complaint discloses a *prima facie* case against the respondent.

(2) For this purpose, the Tribunal may require the principal complainer to supply such further information and documents in support of the complaint as it thinks fit.

(3) Paragraph (4) applies in any case where the Tribunal considers that the complaint, together with any further information and documents submitted in accordance with paragraph (2), does not disclose a *prima facie* case against the respondent.

(4) The Tribunal shall give notice to the principal complainer that the complaint does not disclose a *prima facie* case against the respondent and provide the principal complainer with an opportunity to make representations in writing within 21 days from the date of sending of such notice.

(5) If, after considering any representations submitted in accordance with paragraph (4), the Tribunal remains of the view that the complaint does not disclose a *prima facie* case against the respondent, the Tribunal shall make an order dismissing the complaint and inform the principal complainer accordingly.

Lodging of answers

9(1) Paragraph (2) applies in any case where the Tribunal considers that the complaint, together with any further information and documents submitted in accordance with rule 8(2) or any representations submitted in accordance with rule 8(3), discloses a *prima facie* case against the respondent.

(2) The Tribunal shall send a copy of the complaint and of any such further information, documents and representations to the respondent, together with a notice allowing answers to be lodged with the Clerk within 21 days from the date of sending of such notice.

(3) The notice shall be in Form No 2 set out in the schedule, or as near thereto as circumstances permit.

(4) Any documents and notice sent in accordance with paragraph (2) shall be sent by first class recorded delivery post or intimated by sheriff officer to the respondent at the address given in the complaint.

(5) If the respondent lodges answers with the Clerk in accordance with paragraph (2), the respondent may, at the same time, lodge with the Clerk any documents upon which the respondent proposes to rely.

(6) The respondent shall, at the same time as lodging any answers and any documents with the Clerk, send a copy of those answers and documents to the principal complainer and shall also inform the Clerk in writing that this has been done.

Dismissal without hearing

10(1) If answers are lodged in accordance with rule 9, the Tribunal shall consider the complaint and the answers and any other documents lodged with the Clerk.

(2) If the Tribunal is then of the opinion that no hearing into the complaint is necessary because the complaint is without merit, the Tribunal shall give notice to the principal complainer accordingly and provide the principal complainer with an opportunity to make representations in writing within 21 days from the date of sending of such notice.

(3) If, after considering any representations submitted in accordance with paragraph (2), the Tribunal remains of the view that no hearing into the complaint is necessary because the complaint is without merit, the Tribunal shall make an order dismissing the complaint and inform the principal complainer and respondent accordingly.

Notice of the hearing

11(1) After the expiry of the date for lodging answers and irrespective of whether or not answers have been lodged, the Tribunal shall, if it does not dismiss the complaint in accordance with rule 10, appoint a date, time and place for the hearing of the complaint.

(2) The Tribunal shall give the principal complainer and respondent notice of the date, time and place of the hearing which notice shall be -

(a) in Form No 3 set out in the schedule, or as near thereto as circumstances permit;

(b) given not less than 21 days before the date of the hearing, unless both the principal complainer and respondent agree to a shorter period of notice; and

(c) sent by first class recorded delivery post or intimated by the sheriff officer to the respondent and the principal complainer at their respective addresses given in the complaint.

(3) This rule is without prejudice to the powers of the Tribunal to hold a procedural hearing or a preliminary hearing under rule 41 or 42.

Production of lists of documents and witnesses and production of documents

12(1) The notice of the hearing given under rule 11 shall also require the principal complainer and the respondent

(a) to lodge with the Clerk

(i) a list of all the documents on which they propose to rely at the hearing, together with those documents (or copies of them), not less than 14 days before the date of the hearing, or such longer or shorter period as the Tribunal may specify in the notice; and

(ii) a list of witnesses on which they propose to rely at the hearing, not less than 7 days before the date of the hearing, or such longer or shorter period as the Tribunal may specify in the notice; and

(b) at the same time, to send to the other party a copy of the lists and a copy of the documents lodged with the Clerk and shall also inform the Clerk in writing that this has been done.

(2) In the case where

(a) the complaint is made by the Council on behalf of any secondary complainer that the practitioner may have been guilty of professional misconduct; and

(b) that secondary complainer claims to have been directly affected by that misconduct and is seeking compensation for any loss, inconvenience or distress resulting from it,

the list of witnesses lodged by the Council shall include, in a separate part, the name of any such secondary complainer and any other witnesses on which the Council proposes to rely in support of such a claim.

Production of other documents

13(1) The Tribunal may, on the application of either the principal complainer or the respondent, or on its own initiative, make an order requiring

(a) the respondent, or, as the case may be,

(b) the principal complainer, and

(c) in the case mentioned in rule 12(2), any secondary complainer,

to produce any document in their custody or under their control within such period as the Tribunal may determine, if it is of the opinion that it is necessary for the proper consideration of the complaint that the document should be made available.

(2) The parties are not obliged by such an order to produce any document which they would be entitled to refuse to produce in proceedings in any court in Scotland.

Presence of parties at the hearing

14(1) The persons mentioned in paragraph (2) are entitled to be present, whether or not they may also be represented, and to lead their evidence, on the date, time and place appointed for the hearing under rule 11.

(2) The persons mentioned are -

(a) the principal complainer;

(b) the practitioner, in the case where the respondent is a practitioner; and

(c) in the case mentioned in rule 12(2), any secondary complainer.

(3) Where the respondent is a legal practice, the legal practice is entitled to be represented and to lead its evidence, on the date, time and place appointed for the hearing under rule 11.

(4) If any person fails to appear or to be represented at the hearing, the Tribunal may, after being satisfied that notice of the hearing has been duly posted or intimated to that person in accordance with rule 11(2) or, as the case may be, rule 5(b)(v), proceed to hear and determine the complaint in the absence of that person.

(5) In any case where the respondent fails to appear or to be represented at the hearing and the Tribunal decides to proceed to hear and determine the complaint in the absence of that respondent under paragraph (4), the Tribunal -

(a) shall take into account all the documents lodged with the Clerk, whether by the principal or secondary complainer or by the respondent; and

(b) may, either as to the whole complaint or as to some or all of the facts alleged in the statements contained in the complaint, proceed and act upon evidence given by affidavit but this is without prejudice to its power to take evidence orally.

Decision of Tribunal

15(1) Every decision by the Tribunal shall -

- (a) set out the facts proved;
 - (b) have appended to it a note of the reasons for its decision;
 - (c) be signed by the Chairman; and
 - (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.
- (2) A copy of any such decision purporting to be signed by the Chairman shall be *prima facie* evidence of the due making thereof.
- (3) The Tribunal shall announce its decision as soon as reasonably practicable after the hearing has finished.
- (4) If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.
- (5) Irrespective of whether or not the decision is announced at a hearing, the Clerk shall forthwith send a copy of the decision certified by the Clerk to the principal complainer, any secondary complainer and the respondent, together with a notice intimating the right of appeal available from that decision to the Court of Session under the 1980 Act or the 1990 Act.
- (6) Where the decision of the Tribunal is announced outwith a hearing, the Tribunal shall arrange to hear parties on the matter of expenses.
- (7) This rule is without prejudice to paragraphs 13 to 15 of Schedule 4 to the 1980 Act and to those provisions as applied by section 21B of the 1990 Act.

Appointment of solicitor in certain complaints

16(1) Where a report is made to the Tribunal under section 51(2) of the 1980 Act by any of the persons mentioned in section 51(3) of that Act, the Tribunal may, if it thinks fit, appoint a solicitor to act as prosecutor in the complaint.

(2) The expenses of such a solicitor, so far as not recoverable from the respondent, shall be paid out of the funds of the Tribunal.

Duplication of complaints

17 Where two or more complaints have been lodged in respect of the same respondent, the Tribunal may, on the application of a party to the proceedings or on its own initiative, direct that the complaints be conjoined and heard together.

Remission of certain complaints after inquiry

18(1) Where, after holding an inquiry under section 53(1) of the 1980 Act or, as the case may be, section 20(2A) of the 1990 Act into a complaint of professional misconduct against a practitioner, the Tribunal

(a) is not satisfied that the practitioner has been guilty of professional misconduct; but

(b) considers that the practitioner may be guilty of unsatisfactory professional conduct,

the Tribunal must remit the complaint to the Council in accordance with section 53ZA of the 1980 Act⁴ or, as the case may be, section 20ZA of the 1990 Act⁵.

(2) Where the Tribunal remits a complaint to the Council under paragraph (1), the Tribunal may make available to the Council any of its findings in fact in its inquiry into the complaint.

Withdrawal of complaint

19(1) No complaint shall be withdrawn by the complainer after it has been received by the Clerk, except with the leave of the Tribunal.

(2) In granting leave to withdraw, the Tribunal may attach such terms as to expenses or otherwise as it thinks fit.

⁴ Section 53ZA of the 1980 Act was inserted by section 53(3) of the 2007 Act.

⁵ Section 20ZA of the 1990 Act was inserted by section 54 of the 2007 Act.

Part 3: Procedure regarding appeals made to the Tribunal

Appeals to which Part 3 applies

20(1) This Part applies to any appeal made to the Tribunal against a decision of the Council under the 1980 Act or the 1990 Act.

(2) Without prejudice to that generality, this Part applies to any appeal made to the Tribunal by -

(a) a practitioner under section 42ZA(9) of the 1980 Act⁶ against a determination of the Council upholding a conduct complaint under section 42ZA(1) or (2), or a direction under section 42ZA(4), of that Act;

(b) a complainer under section 42ZA(10)–(12) of the 1980 Act against a determination of the Council not upholding a conduct complaint under section 42ZA(1) or (2) or not making a direction under section 42ZA(4)(c) of that Act to pay compensation or against the amount of the compensation directed to be paid;

(c) a practitioner under section 42ZD(1) of the 1980 Act⁷ against a direction made by the Council under section 42ZC(1) of that Act (direction regarding education or training);

(d) a practitioner or legal practice under section 53D of the 1980 Act⁸ against a decision of the Council to suspend or withdraw an investment business certificate or impose conditions or restrictions on it;

(e) a practitioner under section 20ZB(9) of the 1990 Act⁹ against a determination of the Council upholding a conduct complaint under section 20ZB(1) or (2), or a direction under section 20ZB(4), of that Act;

(f) a complainer under section 20ZB(10)–(12) of the 1990 Act against a determination of the Council not upholding a conduct complaint under section 20ZB(1) or (2) or not making a direction under section 20ZB(4) of that Act to pay compensation or against the amount of the compensation directed to be paid;

(g) a practitioner under section 20ZE(1) of the 1990 Act¹⁰ against a direction made by the Council under section 20ZD(1) of that Act (direction regarding education or training);

⁶ Section 42ZA of the 1980 Act was inserted by section 53(2) of the 2007 Act.

⁷ Section 42ZD of the 1980 Act was inserted by section 55(1) of the 2007 Act.

⁸ Section 53D of the 1980 Act was inserted by paragraph 17 of Schedule 1 to the Solicitors (Scotland) Act 1988 (c.42).

⁹ Section 20ZB was inserted by section 54(2) of the 2007 Act.

¹⁰ Section 20ZE of the 1990 Act was inserted by section 55(2) of the 2007 Act.

Manner in which appeals are to be made

21 Any appeal shall -

- (a) be in writing;
- (b) be in Form No 4 set out in the schedule, or as near thereto as circumstances permit;
- (c) contain the name and address of the appellant and of every respondent;
- (d) be accompanied by a copy of the decision appealed against;
- (e) contain, in concise numbered paragraphs, a statement of the grounds upon which the appeal is made;
- (f) be signed by the appellant; and
- (g) be lodged with the Clerk within the time limit allowed by the statutory provision under which the appeal is made¹¹.

Appeal not properly made

22(1) Where the Tribunal considers that an appeal is not made timeously, the Tribunal shall dismiss the appeal and inform the appellant accordingly.

(2) Where the Tribunal considers that an appeal is not one to which these Rules apply but is one to which the 2005 Rules apply by virtue of rule 57(2), the Tribunal shall dismiss the appeal, inform the appellant accordingly and request the appellant to submit an appeal under the 2005 Rules.

(3) Where the Tribunal considers that an appeal is not made in accordance with rule 21, the Tribunal may dismiss the appeal but, if it does so, it shall inform the appellant accordingly and request the appellant to submit a new appeal which complies with that rule.

¹¹ This is usually 21 days beginning with the day on which the decision appealed against was intimated to the appellant.

Whether appeal is manifestly unfounded

23(1) Where the Tribunal does not dismiss the appeal under rule 22, the Tribunal shall consider whether the appeal is manifestly unfounded.

(2) The Tribunal may require the appellant to supply such further information and documents in support of the appeal as it thinks fit.

(3) If the Tribunal considers that the appeal, together with any further information and documents submitted in accordance with paragraph (2), is manifestly unfounded, the Tribunal shall give notice to the appellant accordingly and provide the appellant with an opportunity to make representations in writing within 21 days from the date of sending of such notice.

(4) If, after considering any representations submitted in accordance with paragraph (3), the Tribunal remains of the view that the appeal is manifestly unfounded, the Tribunal shall make an order dismissing the appeal and inform the appellant accordingly.

Lodging of answers

24(1) Paragraph (2) applies in any case where the Tribunal considers that the appeal, together with any further information and documents submitted in accordance with rule 23(2) or any representations submitted in accordance with rule 23(3), does not fall to be dismissed under rule 23.

(2) The Tribunal shall send, by first class recorded delivery post, a copy of the appeal and of any such further information, documents and representations to every respondent named in the appeal, together with a notice allowing answers to be lodged with the Clerk before such date, not being less than 21 days from the date of sending of such notice, as the Tribunal shall specify in the notice.

(3) The notice shall be in Form No 5 set out in the schedule, or as near thereto as circumstances permit.

(4) If any respondent lodges answers with the Clerk in accordance with paragraph (2), the respondent may, at the same time, lodge with the Clerk any documents upon which the respondent proposes to rely.

(5) Any respondent shall, at the same time as lodging any answers and any documents with the Clerk, send a copy of those answers and documents to the appellant and to any other respondent and shall also inform the Clerk in writing that this has been done.

Dismissal without hearing

25(1) Paragraph (2) shall apply in any case after the expiry of the date appointed for lodging answers irrespective of whether or not answers have been lodged.

(2) The Tribunal shall consider the appeal and the other documents lodged and, if it is of the opinion that no hearing into the appeal is necessary because the appeal is without merit, the Tribunal shall give notice to the appellant accordingly and provide the appellant with an opportunity to make representations in writing within 21 days from the date of sending of such notice.

(3) If, after considering any representations submitted in accordance with paragraph (2), the Tribunal remains of the view that no hearing into the appeal is necessary because the appeal is without merit, the Tribunal shall make an order dismissing the appeal and inform the appellant and the respondents accordingly.

Notice of the hearing

26(1) After the expiry of the date for lodging answers and irrespective of whether or not answers have been lodged, the Tribunal shall, if it does not dismiss the appeal in accordance with rule 25, appoint a date, time and place for the hearing of the appeal.

(2) The Tribunal shall give the appellant and each respondent notice of the date, time and place of the hearing which notice shall be -

(a) in Form No 6 set out in the schedule, or as near thereto as circumstances permit;

(b) given not less than 21 days before the date of the hearing, unless the appellant and every respondent agree to a shorter period of notice; and

(c) sent by first class recorded delivery post or intimated by sheriff officer to the appellant and every respondent at their respective addresses given in the appeal.

(3) This rule is without prejudice to the powers of the Tribunal to hold a procedural hearing or a preliminary hearing under rule 41 or 42.

Production of lists of documents and witnesses and production of documents

27 The notice of the hearing given under rule 26 shall also require the appellant and every respondent -

(a) to lodge with the Clerk

(i) a list of all the documents on which they propose to rely at the hearing, together with those documents (or copies of them), not less than 14 days

before the date of the hearing, or such longer or shorter period as the Tribunal may specify in the notice; and

(ii) a list of witnesses on which they propose to rely at the hearing, not less than 7 days before the date of the hearing, or such longer or shorter period as the Tribunal may specify in the notice; and

(b) at the same time, to send to the other parties a copy of the lists and a copy of the documents lodged with the Clerk and shall also inform the Clerk in writing that this has been done.

Production of other documents

28(1) The Tribunal may, on the application of either the appellant or any respondent or on its own initiative require any party to produce any document in their custody or under their control within such period as the Tribunal may determine if it is of the opinion that it is necessary for the proper consideration of the complaint that the document should be made available.

(2) Parties are not obliged by such an order to produce any document which they would be entitled to refuse to produce in proceedings in any court in Scotland.

Presence of parties at the hearing

29 (1) Subject to paragraphs (2) and (3), the appellant and every respondent are entitled to be present, whether or not they may also be represented, and to lead evidence, on the date, time and place appointed for the hearing under rule 26.

(2) The Council and, in the case where the appellant or respondent is a legal practice, the legal practice, are entitled to be represented, and to lead evidence, on the date, time and place appointed for the hearing.

(3) If any of the respondents do not wish to appear or be represented at the hearing, they shall notify the Clerk accordingly before the date appointed for the hearing.

(4) If any party fails to appear or to be represented at the hearing, the Tribunal may, after being satisfied that notice of the hearing had been duly posted or intimated to that person in accordance with rule 26(2), proceed to hear and determine the appeal in the absence of that person.

Decision of Tribunal

30(1) Every decision by the Tribunal shall -

- (a) set out the facts proved;
- (b) have appended to it a note of the reasons for its decision;
- (c) be signed by the chairman; and
- (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.

(2) A copy of any such decision purporting to be signed by the Chairman shall be *prima facie* evidence of the due making thereof.

(3) The Tribunal shall announce its decision as soon as reasonably practicable after the hearing has finished.

(4) If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.

(5) Irrespective of whether or not the decision is announced at a hearing, the Clerk shall forthwith send a copy of the decision certified by the Clerk to the appellant and every respondent, together with a notice intimating the right of appeal available from that decision to the Court of Session under the 1980 Act or the 1990 Act.

(6) Where the decision of the Tribunal is announced outwith a hearing, the Tribunal shall arrange to hear parties on the matter of expenses.

(7) This rule is without prejudice to paragraphs 13 to 15 of Schedule 4 to the 1980 Act and to those provisions as applied by section 21B of the 1990 Act.

Withdrawal of appeal

31(1) No appeal shall be withdrawn by the appellant after it has been received by the Clerk, except with the leave of the Tribunal.

(2) In granting leave to withdraw, the Tribunal may attach such terms as to expenses or otherwise as it thinks fit.

Part 4: Procedure relating to applications to the Tribunal

Applications to which Part 4 applies

- 32 This Part applies to any application made to the Tribunal
- (a) under section 10(1) of the 1980 Act by a solicitor, whose name has been struck off the roll (other than by order of the court), to have his or her name restored on the roll;
 - (b) under section 12D(1) of the 1980 Act¹² by a registered European lawyer, whose name has been removed from the register, to have his or her name restored to the register; and
 - (c) under section 60A(4D) of the 1980 Act¹³ by a foreign lawyer, whose name has been removed (other than by the Council under section 60A(4B) of that Act) from the register of foreign lawyers, to have his or her name restored to the register.

Manner in which applications are to be made

- 33 Any application shall -
- (a) be in writing;
 - (b) be in Form No 7 set out in the schedule, or as near thereto as circumstances permit;
 - (c) contain the name and address of the applicant;
 - (d) set out the occupation or occupations of the applicant since being struck off the roll or removed from the register;
 - (e) be supported by letters from two solicitors who at the date of the application are in practice and who declare that they know the applicant;
 - (f) be signed by the applicant;
 - (g) be sworn before a notary public or justice of the peace; and
 - (h) be lodged with the Clerk.

¹² Inserted by regulation 37(1) of and paragraph 1(2) of Schedule 1 to the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (SSI 2000/121).

¹³ Inserted by regulation 11 of the Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 (SSI 2004/383).

Notice of the hearing

34(1) The Tribunal shall appoint a date, time and place for the hearing of the application.

(2) The Tribunal shall give the applicant notice of the date, time and place of the hearing which notice shall be -

(a) in Form No 8 set out in the schedule, or as near thereto as circumstances permit;

(b) given not less than 21 days before the date of the hearing; and

(c) sent by first class recorded delivery post or intimated by sheriff officer to the applicant at the address given in the application.

(3) This rule is without prejudice to the powers of the Tribunal to hold a procedural hearing or a preliminary hearing under rule 41 or 42.

Notice of the application

35 The Tribunal may, if it thinks fit, require the applicant to give notice to the Council and by advertisement or otherwise as it may direct informing them

(a) that the applicant has made such an application to the Tribunal;

(b) of the date, time and place which the Tribunal has appointed for the hearing of the application under rule 34; and

(c) that, if any person desires to object to the application, the objector shall give notice in writing to the applicant and to the Clerk in Form No 9 set out in the schedule, or as near thereto as circumstances permit at least 10 days before the date appointed for the hearing specifying the grounds of the objection.

Procedure at hearing

36(1) At the hearing, the Tribunal shall afford the applicant an opportunity of being heard by the Tribunal and adducing evidence.

(2) The Tribunal may require such evidence as it thinks necessary concerning the identity and character of the applicant, the applicant's conduct since his or her name was struck off the roll or the register as the case may be and the applicant's suitability for

restoration to the roll or the register and, for this purpose, may receive written or oral evidence.

(3) If any objector appears on the day appointed for the hearing and if the Tribunal is of the opinion, after considering the notice of objection and after hearing the applicant (if it thinks fit to do so), that the notice discloses a *prima facie* case for inquiry, the Tribunal shall afford the objector an opportunity of being heard by the Tribunal and adducing evidence.

Decision of Tribunal

37(1) Every decision by the Tribunal shall -

- (a) set out the facts proved;
- (b) have appended to it a note of the reasons for its decision;
- (c) be signed by the Chairman or other person presiding; and
- (d) subject to paragraph 14A of Schedule 4 to the 1980 Act, be published in full.

(2) A copy of any such decision purporting to be signed by the Chairman or other person presiding shall be *prima facie* evidence of the due making thereof.

(3) The Tribunal shall announce its decision as soon as reasonably practicable after the hearing has finished.

(4) If the decision of the Tribunal is not announced on the day of the hearing or any adjourned hearing, it shall not be necessary to hold a hearing for the purpose of announcing its decision.

(5) Irrespective of whether or not the decision is announced at a hearing, the Clerk shall, in accordance with paragraph 15 of Schedule 4 to the 1980 Act, forthwith send a copy of the decision certified by the Clerk to the applicant and any objector, together with a notice intimating any right of appeal available from that decision to the Court of Session under the 1980 Act.

(6) Where the decision of the Tribunal is announced outwith a hearing, the Tribunal shall arrange to hear parties on the matter of expenses.

(7) Where the Tribunal orders that the name of the applicant should be restored to the roll or the register, as the case may be, the Clerk shall send a copy of the decision to the appropriate registrar who shall forthwith give effect thereto.

(8) This rule is without prejudice to paragraphs 13 to 15 of Schedule 4 to the 1980 Act.

Fee in respect of restoration

38 As a condition of having the name of the applicant restored to the roll or the register, as the case may be, the applicant shall pay to the registrar a fee of £750 in respect of that restoration.

Part 5: General

Appointment of Chairman and Vice Chairmen

39 Without prejudice to paragraph 4 of Schedule 4 to the 1980 Act, the Tribunal may appoint from among its members persons to be the Chairman and Vice Chairmen of the Tribunal.

General procedure

40(1) Subject to the provisions of the 1980 Act and the 1990 Act and of these rules, the procedure for dealing with a case, including the procedure at any hearing, shall be such as the Tribunal may determine.

(2) The Tribunal may issue directions to the parties or to any of them as to how the case is to be dealt with.

Procedural hearing

41(1) The Tribunal may hold a procedural hearing to decide what should be the timetable and procedure applicable to that case.

(2) The Tribunal shall give the parties to the case an opportunity to attend the procedural hearing by giving them notice of the date, time and place of the hearing.

(3) The notice under paragraph (2) shall be -

(a) given not less than 21 days before the date of the meeting, unless all the parties agree to a shorter period of notice; and

(b) sent by first class recorded delivery post or intimated by sheriff officer to the parties at their respective addresses given in the complaint, appeal or application, as the case may be.

(4) Subject to paragraph (5), the decision of the Tribunal relating to any procedural issue may be given orally at the end of the meeting but must be recorded by the Clerk as soon as possible.

(5) Any decision of the Tribunal at a procedural hearing which substantially disposes of the whole case must comply with rule 15, 30 or 37, as the case may be.

Preliminary hearing

42(1) The Tribunal may direct that any question of fact or law which appears to be in issue may be decided at a preliminary hearing.

(2) The Tribunal shall give the parties to the case an opportunity to attend the preliminary hearing by giving them notice of the date, time and place of the hearing.

(3) The notice under paragraph (2) shall be

(a) given not less than 21 days before the date of the hearing, unless all the parties agree to a shorter period of notice; and

(b) sent by first class recorded delivery post or intimated by sheriff officer to the parties at their respective addresses given in the complaint, appeal or application, as the case may be.

(4) If, in the opinion of the Tribunal, a decision on the question mentioned in paragraph (1) substantially disposes of the whole case, the Tribunal may treat the preliminary hearing as a hearing of the case and may give such direction as it thinks fit to dispose of the case.

(5) Subject to paragraph (4), the decision of the Tribunal relating to any preliminary issue may be given orally at the end of the hearing or reserved and, in any event, must be recorded as soon as possible in a document which is signed by the Chairman and sent to the parties of the case.

(6) Any decision of the Tribunal relating to any preliminary issue which substantially disposes of the whole case must comply with rule 15, 30 or 37, as the case may be.

Proceedings in public and private

43(1) Subject to paragraphs (2) and (3), the Tribunal shall hold the hearing, or any part of it, and pronounce its decision, in public.

(2) Where any party wishes the hearing or part of it to be heard in private, that party shall

(a) submit a motion to the Clerk in writing, not less than 21 days prior to the date of the hearing; and

(b) send a copy of that motion to the other parties in the case and inform them that if they want to object to the motion they should inform the Clerk not less than 14 days prior to the hearing.

(3) If any party objects to that motion, the Tribunal may, if it thinks fit, invite the parties to a procedural hearing to determine whether or not to grant the motion but any such procedural hearing shall be held not less than 7 days prior to the date of the hearing.

Postponement or adjournment of hearing or sisting of a case

44 The Tribunal may, on its own initiative or on the application of any of the parties, at any time and from time to time, postpone or adjourn a hearing, or sist a case, upon such terms as to expenses or otherwise as, to the Tribunal, shall appear just.

Amendment of complaint or appeal

45(1) If it appears to the Tribunal that any allegation contained in a complaint to which Part 2 applies should be amended,

(a) the Tribunal may make or permit such amendment or

(b) if the Tribunal considers that any such amendment is not within the scope of the original complaint, it may require it to be embodied in a new complaint.

(2) In any appeal to which Part 3 applies, the Tribunal may permit an appellant to amend his statement of appeal or a respondent to amend or withdraw his answers.

(3) If, in consequence of such amendment or withdrawal mentioned in paragraph (1) or (2), any party applies for an adjournment of the hearing, the Tribunal may grant such an adjournment under rule 44.

Record of proceedings

46(1) Shorthand notes of proceedings before the Tribunal may be taken by a shorthand writer appointed by the Tribunal or, if no shorthand writer be available for any date appointed for a hearing, the proceedings may be recorded electronically.

(2) The shorthand notes or the electronic recording may be transcribed if the Tribunal thinks fit, and, if transcribed, any party to the proceedings shall be entitled to inspect the transcript thereof.

(3) The shorthand writer or transcriber of the recorded proceedings shall, if required, supply to the Tribunal and to any person entitled to be heard upon an appeal against a decision of the Tribunal, but to no other person, a copy of the transcript if made, on payment of the charges of the shorthand writer or transcriber.

Waiver or variation of certain rules

47(1) The Tribunal may from time to time dispense with any requirements of these rules respecting notices, documents, service or time, where it appears to the Tribunal to be just to do so.

(2) The Tribunal may extend, or, with consent of parties, may reduce, the time for doing anything under these rules.

Documents

48(1) Any complaint, appeal or application under Part 2, 3, or 4 lodged with the Clerk shall be kept by the Clerk.

(2) Unless the Tribunal otherwise determines, any documents or other exhibits produced or used at the hearing before it shall be retained by the Clerk until the time for appealing has expired, or, if notice of appeal is given, until the appeal is heard or otherwise disposed of.

Clerical errors in decisions

49(1) The Chairman may correct any clerical error contained in the decision (“the original decision”) even though a copy of that decision has been sent to the parties, provided that this is done before the expiration of the days of appeal and before any appeal is lodged against that decision.

(2) Where any clerical error contained in the decision is corrected in accordance with paragraph (1), the Clerk shall send a copy of the amended decision to the parties together with a notice informing them that they may appeal against that amended decision to the Court of Session.

(3) The notice referred to in paragraph (2) shall be in similar terms to the notice which was sent, or would have been sent, to the parties under rule 15(5), 30(5) or 37(5), as the case may be, except that the time limit for appealing shall run from the date on which the amended decision is intimated to that party.

(4) This rule is without prejudice to paragraphs 14 and 14A of Schedule 4 to the 1980 Act and those provisions as applied by section 21B of the 1990 Act.

Sanction for non-compliance with direction etc

50(1) If any direction, order or other requirement given by the Tribunal to a party under these rules is not complied with by that party, the Tribunal may before or at the hearing

(a) dismiss or strike out the whole or part of the complaint, appeal or application or other submission made by that party, and, where appropriate,

(b) direct that such party shall be barred from proceeding with, or contesting, the complaint, appeal or application altogether.

(2) Before taking any action under paragraph (1)(b) or (c), the Tribunal shall send a notice to the party who has not complied with that direction, order or other requirement, giving that party an opportunity

(a) to comply within the period specified in the notice, which period shall not be less than 21 days from the date of sending of such notice; or

(b) to send representations in writing to the Tribunal within that period as to why the Tribunal should not take any action under that paragraph.

(3) This rule is without prejudice to any other power which the Tribunal may have to deal with the fact that a party may not have complied with any direction, order or other requirement given by the Tribunal, including the power

(a) to proceed in the absence of a party under rule 14(4) or 29(4); or

(b) to exclude a party from the hearing under rule 52; or

(c) to take account of that fact when making any order as to expenses under paragraph 19 of Schedule 4 to the 1980 Act.

Absence of member of the Tribunal

51 Without prejudice to paragraph 1B of Schedule 4 to the 1980 Act¹⁴, if a member of the Tribunal is, after the commencement of the hearing, absent, the proceedings may be heard by the remaining members of the Tribunal who are present, provided that the Tribunal is still properly constituted as provided in paragraph 5 of Schedule 4 to the 1980 Act¹⁵.

¹⁴ Inserted by section 58(2) of the 2007 Act.

¹⁵ As amended by section 58(5) of the 2007 Act.

Exclusion of persons from the hearing

52(1) Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person (including a party to the proceedings or the party's representative) whose conduct has, in the opinion of the Tribunal, disrupted the hearing or whose conduct has otherwise interfered with the administration of justice.

(2) If the Tribunal decides to exclude a party from the hearing or part of it, it must allow the party's representative sufficient time to consult with the party.

Absence of party

53 If the Chairman is satisfied

(a) that any party is unable, through physical or mental sickness or impairment, to attend a hearing of the Tribunal; and

(b) that the party's inability is likely to continue for over a month,

the Chairman may make such arrangements as may appear best suited, in all the circumstances of the case, for disposing fairly of the complaint, appeal or application under Part 2, 3 or 4, as the case may be.

Exercise of functions of the Tribunal by a particular tribunal

54(1) The functions conferred by these rules upon the Tribunal may be exercised on behalf of the Tribunal, in relation to a particular case or part of a case, by any particular tribunal constituted in accordance with paragraph 5 of Schedule 4 to the 1980 Act¹⁶ to deal with that case or part.

(2) Where paragraph (1) applies, any reference in these rules to the Tribunal or the Chairman shall be construed as a reference to the particular tribunal and the convener or other person presiding at the proceedings of that particular tribunal.

(3) Subject to paragraph (4), the particular tribunal constituted to deal with any part of a case is not required to deal with all the proceedings relating to that case and, accordingly, different particular tribunals may be constituted to deal with different parts of that case.

(4) The particular Tribunal constituted to deal with any part of a case must complete that part by coming to a decision upon it before another particular tribunal is constituted to deal with any subsequent part of the case.

¹⁶ As amended by section 58(5) of the 2007 Act.

Appointment of convener to a particular tribunal

55(1) The members of a particular tribunal shall appoint one of their own number to preside as the convener of that tribunal but

(a) where the Chairman of the Tribunal is a member of a particular tribunal, he or she shall be appointed as the convener of that particular tribunal; and

(b) where (a) does not apply but any person appointed as a Vice Chairman of the Tribunal is a member of a particular tribunal, he or she shall be appointed as the convener of that particular tribunal.

(2) Where any person appointed to be the convener of a particular tribunal is unable, for any reason, to be present at any part of the proceedings of that tribunal, the members of that tribunal may appoint one of their own number to be the convener but only for the purpose of those proceedings.

(3) In the event of a particular tribunal being unable to reach a majority decision, the convener shall have a casting vote.

Exercise of functions of the Tribunal by the Chairman or Vice Chairmen

56(1) The functions conferred by these rules upon the Tribunal prior to any hearing of any case may be exercised, on behalf of the Tribunal, by the Chairman or any of the Vice Chairmen of the Tribunal.

(2) Paragraph (1) applies irrespective of whether or not

(a) the Chairman or the Vice Chairman is the convener or member of the particular tribunal constituted to exercise those functions; or

(b) a particular tribunal has been constituted to exercise those functions.

(3) In this rule, any reference to the Chairman shall not include a reference to the convener of a particular tribunal.

Revocation of the 2005 Rules with savings

57(1) Subject to paragraph (2), the 2005 Rules are hereby revoked.

(2) The 2005 Rules shall continue to apply on and after 1st October 2008 as if they had not been revoked to

- (a) any complaint, appeal or application made to the Tribunal before that date;
- (b) any complaint made on or after 1st October 2008 by the Council to the Tribunal under section 51(1) or (1A) of the 1980 Act as part of the complaint process when dealing with a relevant complaint;
- (c) any complaint made on or after 1st October 2008 by the Council to the Tribunal under section 53C of the 1980 Act¹⁷ (complaint that a solicitor has failed to comply with a direction given by the Council under section 42A etc in the case of inadequate professional services) as part of the complaint process when dealing with a relevant complaint;
- (d) any appeal made to the Tribunal on or after 1st October 2008 where
- (i) the appeal is made under section 42A(7) of the 1980 Act or section 20(11) of the 1990 Act¹⁸ (against a determination or direction of the Council under that section where the Council upholds a complaint of inadequate professional services); or
 - (ii) the appeal is made under section 53D of the 1980 Act¹⁹ (against a decision of the Council to suspend or withdraw an investment business certificate or impose conditions or restrictions on it); and, in either case,
 - (iii) the appeal is part of the complaint process when dealing with a relevant complaint.
- (3) In this rule, “a relevant complaint” means a complaint made to the Council (whether before, on or after 1st October 2008) by a person with an interest which is a complaint to which, despite its repeal, section 33 of the 1990 Act continues to

¹⁷ Section 53C of the 1980 Act will be repealed on 1st October 2008 by paragraph 1(12) of Schedule 22 and Schedule 23 to the Legal Services Act 2007 (c.29). Those provisions are due to commence on 1st October 2008 by virtue of Article 3 of the Legal Services Act 2007 (Commencement No. 2 and Transitory Provisions) Order 2008 (SI 2008/1436). However, despite its repeal, it will continue to have effect by virtue of Article 4(1) and (2) of the 2008 Order – see note on section 33 of the 1990 Act below.

¹⁸ Section 42A(7) of the 1980 Act and section 20(11) of the 1990 Act will be repealed on 1st October 2008 by paragraph 1(7) of Schedule 22 and Schedule 23 to the Legal Services Act 2007 (c.29). Those provisions are due to commence on 1st October 2008 by virtue of Article 3 of the Legal Services Act 2007 (Commencement No. 2 and Transitory Provisions) Order 2008 (SI 2008/1436). However, despite its repeal, it will continue to have effect by virtue of Article 4(1) and (2) of the 2008 Order – see note on section 33 of the 1990 Act below.

¹⁹ Section 53D of the 1980 Act was inserted by paragraph 17 of Schedule 1 to the Solicitors (Scotland) Act 1988 (c.42).

apply by virtue of Article 2 of the 2008 Order and to which Article 4(1) or (2) or both Articles 4(1) and (2) of the 2008 Order applies²⁰.

²⁰ Section 33 of the 1990 Act is repealed on 1st October 2008 by sections 195(5) and 210 of, and paragraph 2 of Schedule 20 and Schedule 23 to, the Legal Services Act 2007. Those provisions are due to commence on 1st October 2008 by virtue of Article 3 of the Legal Services Act 2007 (Commencement No. 2 and Transitory Provisions) Order 2008 (SI 2008/1436). However, Article 2 of the 2008 Order provides that, despite its repeal, section 33 continues to apply to certain complaints which are made before 1st October 2010. Article 4(1) of the 2008 Order provides in effect that the 1980 and 1990 Acts continue to apply to such complaints as they have effect immediately before 1st October 2008 “so far as is necessary to give full effect to the complaint processes (including appeals and disciplinary proceedings) provided for under those Acts”. There is a similar provision in Article 4(2) in relation to complaints made before 1st October 2008.

SCHEDULE

Rule 6

FORM 1

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF COMPLAINT

to the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

by

THE COUNCIL of the LAW SOCIETY of SCOTLAND, 26 Drumsheugh Gardens,
Edinburgh ("the Council")

[on behalf of

C.D. [name and address of any person on whose behalf the complaint is made]

Secondary Complainer(s)]

[Delete if inapplicable]

against

E.F. [name and address (or last known address) of the person against whom the complaint
is made]

Respondent

[Under the 2008 Rules, the person against whom a complaint may be made may be a practitioner or a legal practice. A practitioner is defined as a person who is or was a solicitor, a registered European lawyer, a registered foreign lawyer, and a conveyancing or executry practitioner. A legal practice is defined as a firm of solicitors, an incorporated practice or a multi-national practice. In the case of a complaint against a legal practice, please give the names and addresses of all the partners or members of the practice at the relevant time.]

To the Clerk to the Tribunal

1 The Council hereby submits a complaint to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") that E.F. [specify complaint which is being made, such as]

[is a practitioner who may have been guilty of professional misconduct.]

[is a practitioner who may have been convicted by any court of [specify offence] being an act involving dishonesty or may have been sentenced to a term of imprisonment of not less than 2 years.]

[is a legal practice which may have failed to comply with [specify provision] which is a provision of the 1980 Act or of rules made under that Act applicable to it .]

[is a legal practice which may have been convicted by any court of [specify offence] being an offence which renders it unsuitable to continue to be recognised under section 34(1A) of the 1980 Act or otherwise unsuitable to continue to practise.]

[Delete whichever is inapplicable]

2 *[Please indicate whether or not the complaint is made on behalf of any other person (the secondary complainer) and, if so, give the name and address of any such secondary complainer.]*

3 The statement of facts upon which this complaint is based is as follows:

[Please give in short numbered paragraphs the facts upon which the complaint is based and which the complainer is willing to prove.]

4 The complaint is not one to which the Scottish Solicitors' Discipline Tribunal Rules 2005 apply by virtue of rule 57(2) of the Scottish Solicitors' Discipline Tribunal Rules 2008.

5 If the complaint is against a practitioner who may have been guilty of professional misconduct,

[Please indicate whether or not the Council or any secondary complainer claims to have been directly affected by that misconduct and is seeking compensation for any loss, inconvenience or distress resulting from it and, if so give a statement of facts in support of that claim]

6 The following is a list of the documents which accompany this complaint:

[Please list any documents which accompany the complaint and which support the facts mentioned in paragraph 2 and, if relevant, paragraph 3.]

.....
Signed on behalf of the Council

Date

FORM 2

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF NOTICE OF COMPLAINT

to the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

relating to the

COMPLAINT

by

A.B. [name and address of the person making the complaint]

Principal Complainer

[on behalf of

C.D. [name and address of any person on whose behalf the complaint is made]

Secondary Complainer(s)]

[Delete if inapplicable]

against

E.F. [name and address (or last known address) of the person against whom the complaint is made]

Respondent

To E.F.

I attach a copy of a complaint which has made to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") against you by A.B.

I also attach a copy of any further information, documents and representations which have been submitted by A.B. in accordance with the Scottish Solicitors' Discipline Tribunal Rules 2008.

If you wish to answer the complaint, you are required to do so by lodging answers in writing with the Clerk to the Tribunal within 21 days of the date of this notice. You may also lodge at the same time any documents you wish the Tribunal to take into account.

You should also send at the same time a copy of your answers and any documents to A.B. and inform the Clerk in writing that you have done so.

.....
Clerk to the Tribunal

Date

Note: Relevant statutory references relating to the Tribunal and its powers are contained in sections 50–54 of the Solicitors (Scotland) Act 1980, as amended, Part 11 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, as amended and the Scottish Solicitors' Discipline Tribunal Rules 2008. A copy of the 2008 Rules is enclosed for your information and guidance.

FORM 3

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF NOTICE OF HEARING

by the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

of the

COMPLAINT

by

A.B. [name and address of the person making the complaint]

Principal Complainer

[on behalf of

C.D. [name and address of any person on whose behalf the complaint is made]

Secondary Complainer(s)]

[Delete if inapplicable]

against

E.F. [name and address of the person against whom the complaint is made]

Respondent

[This notice should be given not less than 21 days before the date appointed for the hearing unless both A.B. and E.F. agree a shorter period.]

To A.B. and E.F.

The Scottish Solicitors' Discipline Tribunal ("the Tribunal") has appointed the hearing of the above complaint to take place on *[specify date]* at *[specify time]* at *[specify place]*.

You are entitled to be present at the hearing, irrespective of whether or not you are also represented, and you should be prepared to lead your evidence then. If you fail to appear at the hearing, the Tribunal may proceed to hear and determine the complaint in your absence.

You are required to lodge with the Clerk to the Tribunal

(a) a list of all the documents on which you propose to rely at the hearing, together with those documents (or a copy of them), not less than 14 days before the date of the hearing; and

(b) a list of witnesses on which you propose to rely at the hearing, not less than 7 days before the date of the hearing.

Note: The Tribunal may specify a longer or shorter period. Where A.B. is the principal complainer and there are secondary complainers who are claiming compensation, the list of witnesses should include any such secondary complainer.

You are also required to send to the other party at the same time a copy of the lists and of the documents lodged with the Clerk and to inform the Clerk in writing that you have done so.

If you want the other party to produce any document which is in the possession of the other party but which is not included in that other party's list, you may apply to the Tribunal for an order requiring that other party to produce that document. The Tribunal may make such an order if it is of the opinion that it is necessary for the proper consideration of the complaint that the document should be made available.

.....
Clerk to the Tribunal

Date

FORM 4

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF APPEAL

to the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

by

A.B. [name and address of the person making the appeal]

Appellant

against

the decision of the Council of the Law Society of Scotland dated *[specify date]*

To the Clerk to the Tribunal

I, A.B., hereby appeal to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") against the decision of the Council of the Law Society of Scotland ("the Council") dated *[specify date]* and intimated to me on *[specify date]*, a copy of which is attached.

The grounds upon which the appeal is made are as follows:

[Please give in short numbered paragraphs the grounds upon which the appeal is made.]

The respondents in this appeal are

(a) the Council;

[(b) where the appeal is being made by a practitioner or a legal practice, the name and address of the person who made the original complaint to the Council ("the principal complainer") and any person on whose behalf that complaint was made ("the secondary complainer").]

[(b) where the appeal is being made by a complainer, the name and address of the practitioner or legal practice and of any other complainer.]

[Delete whichever is inapplicable]

.....
Signature

Date

FORM 5

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF NOTICE OF APPEAL

to the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

by

A.B. [name and address of the person making the appeal]

Appellant

against

the decision of the Council of the Law Society of Scotland dated *[specify date]*

To every respondent

I attach a copy of an appeal which was made by A.B. to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") against the decision of the Council of the Law Society of Scotland ("the Council") dated *[specify date]*.

I also attach a copy of any further information, documents and representations which have been submitted by A.B. in accordance with the Scottish Solicitors' Discipline Tribunal Rules 2008.

If you wish to lodge answers to the appeal, you are required to do so by lodging answers in writing with the Clerk to the Tribunal within 21 days of the date of this notice. You may also lodge at the same time any documents you wish the Tribunal to take into account.

You should also send at the same time a copy of your answers and any documents to A.B. and any other respondent and inform the Clerk in writing that you have done so.

.....
Clerk to the Tribunal

Date

FORM 6

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF NOTICE OF HEARING

by the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

of the

APPEAL

by

A.B. [name and address of the person making the appeal]

Appellant

against

the decision of the Council of the Law Society of Scotland dated *[specify date]*

To A.B. and every respondent

The Scottish Solicitors' Discipline Tribunal ("the Tribunal") has appointed the hearing of the above appeal to take place on *[specify date]* at *[specify time]* at *[specify place]*.

You are entitled to be present at the hearing, irrespective of whether or not you are also represented, and to lead your evidence then. If you fail to appear at the hearing, the Tribunal may proceed to hear and determine the appeal in your absence.

You are required to lodge with the Clerk to the Tribunal

(a) a list of all the documents on which you propose to rely at the hearing, together with those documents, not less than 14 days before the date of the hearing; and

(b) a list of witnesses on which you propose to rely at the hearing, not less than 7 days before the date of the hearing.

[The Tribunal may specify a longer or shorter period.]

You are also required to send to the other parties to the appeal at the same time a copy of the lists and of the documents lodged with the Clerk and to inform the Clerk in writing that you have done so.

If you want any other party to produce any document which is not included in that other party's list, you may apply to the Tribunal for an order requiring that other party to produce that document. The Tribunal may make such an order if it is of the opinion that it is necessary for the proper consideration of the appeal that the document should be made available.

.....
Clerk to the Tribunal

Date

FORM 7

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF APPLICATION

to the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

by

A.B. [name and address of the applicant]

To the Clerk to the Tribunal

1 I hereby apply to the Scottish Solicitors' Discipline Tribunal ("the Tribunal")

[under section 10(1) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the roll of solicitors.]

[under section 12D(1) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the register of European lawyers.]

[under section 60A(4D) of the Solicitors (Scotland) Act 1980 for an order of the Tribunal to have my name restored to the register of foreign lawyers.]

[Delete whichever is inapplicable]

2 I was [admitted as a solicitor] [registered as a European lawyer] [registered as a foreign lawyer] on *[specify date]*.

3 My name was [struck off the roll] [removed from the register] by order of the Tribunal on *[specify date]*.

4 Since then, my occupation (s) have been as follows:

[Here specify in the case of each employment the name and address of the employer, the nature of the work on which the applicant was employed and the period of employment.]

5 I am not aware and do not know of any cause of complaint or proceedings which might have arisen out of my conduct since my name was [struck off the roll] [removed from the register].

6 My application is supported by letters from the following two solicitors who are currently in practice and who declare that they know me:

[Here state the name and address of the two solicitors and attach a copy of their letters].

At the day ofin presence of.....,[notary public] [one of Her Majesty's Justices of the Peace for.....], compeared A.B. who being solemnly sworn and interrogated, depones that the statements made in the above application are true as the deponent shall answer to God.

.....
Signature

Date

FORM 8

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF NOTICE OF HEARING

by the

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL

of the

APPLICATION

by

A.B. [name and address of the applicant]

To A.B.

The Scottish Solicitors' Discipline Tribunal ("the Tribunal") has appointed the hearing of the above application to take place on *[specify date]* at *[specify time]* at *[specify place]*.

You are required to give notice to the Council of the Law Society of Scotland and by advertisement in the Journal of the Law Society of Scotland and in *[specify any other newspapers or journal]* informing them

- (a) of the application which you have made to the Tribunal;
- (b) of the date, time and place which the Tribunal has appointed for the hearing of the application; and
- (c) that, if any person desires to object to the application, the objector is to give you and the Clerk to the Tribunal notice in writing in Form No. 9 set out in the Schedule to the Scottish Solicitors' Discipline Tribunal Rules 2008 (or as near thereto as circumstances permit) at least 10 days before the date appointed for the hearing specifying the grounds of the objection.

.....
Clerk to the Tribunal

Date

FORM 9

SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL PROCEDURE RULES 2008

FORM OF OBJECTION

to the

APPLICATION

by

A.B. [name and address of the applicant]

To the Clerk to the Tribunal and A.B.

I, C.D. [*specify designation and address*] hereby give notice that I object to the application made by A.B. to the Scottish Solicitors' Discipline Tribunal ("the Tribunal") for an order to have his or her name restored to the [roll of solicitors] [register of European/foreign lawyers] on the following grounds, namely:

[Specify the grounds of objection in articulate numbered paragraphs.]

.....
Signature

Date