

SOLICITORS DISCIPLINARY TRIBUNAL

GUIDANCE NOTE ON APPEALS
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A. INTRODUCTION

This Guidance Note on Appeals consists of the principles and legal framework in respect of appeals before the Solicitors Disciplinary Tribunal (“the Tribunal”) brought together in one document. Every case is fact-specific, and this Guidance Note consists of guidelines; it is not intended in any way to fetter the discretion of the Tribunal when deciding such appeals. The content of the Guidance is without prejudice to the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 (“the Appeals Rules”). In the event of conflict between the Guidance Note and the Appeals Rules, the Appeals Rules take precedence. The exercise of its powers is a matter solely for determination by the Tribunal. The purpose of this Guidance Note is to assist the parties, the public and the legal profession in understanding the Tribunal’s decision-making process.

The Tribunal is the statutory tribunal responsible for adjudicating upon applications and appeals made under the provisions of the Solicitors Act 1974 (as amended) (“the Act”).

It is the function of the Tribunal to protect the public from harm, and to maintain public confidence in the reputation of the legal profession (and those that provide legal services) for honesty, probity, trustworthiness, independence and integrity. The public must be able to expect to receive a high standard of service from a competent and capable solicitor.

The Tribunal deals with an infinite variety of cases. Prescriptive, detailed guidelines for applications in individual cases are neither practicable nor appropriate. The Tribunal adopts broad guidance.

The contents of this Guidance Note are reviewed at least annually.

A. TYPES OF APPEAL THAT THE TRIBUNAL CAN HEAR AND DETERMINE

Appeals from Decisions of the SRA (under powers delegated to the SRA by The Law Society)

1. The Tribunal has power to hear and determine appeals made to it under s.44E of the Act and paragraph 14C of Schedule 2 to the Administration of Justice Act 1985 (“AJA”) in relation to certain decisions made by the SRA under powers delegated to it by The Law Society.

Alternative Business Structures - Appeals in respect of Decisions of the SRA (under powers delegated to the SRA by The Law Society) under Part 5 of the Legal Services Act 2007

2. The Tribunal also has power to hear and determine appeals made to it under s.46 of the Act applied by Article 4(3) of the Legal Services Act 2007 (Appeals from Licensing Authority Decisions (No. 2) Order 2011) in respect of decisions made by the SRA under powers delegated to it by The Law Society under Part 5 of the Legal Services Act 2007 and licensing rules made by the SRA.

B. THE RELEVANT RULES

3. On 1 October 2011 The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 came into force. The Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 correction slip was published on 18 January 2013, making very minor corrections to typographical/formatting errors in the substantive Rules.
4. The Rules set out detailed information about appeals, including strict time limits, how appeals panels will be constituted, the procedure to be followed, rules of evidence, and other miscellaneous matters. The clerk to the case will draw any relevant provisions in the Rules to the Tribunal’s attention when considering an appeal.

5. On 23 December 2011 The Solicitors Disciplinary Tribunal (Appeals) (Amendment) Rules 2011 came into force, extending the SDT (Appeals and Amendment) Rules 2011 referred to above to Appeals in respect of decisions under Part 5 of the Legal Services Act 2007.

C. REVIEW NOT REHEARING

6. In considering any appeal it is essential to recognise that the Tribunal carries out a review of the case. It does not rehear the original case. The Tribunal will not embark on an exercise of finding the relevant facts afresh.

7. In Solicitors Regulation Authority v Solicitors Disciplinary Tribunal (Arslan (Interested Party) and The Law Society (Intervening Party)) [2016] EWHC 2862 (Admin) Leggatt J stated (at paragraph 40) that:

“More guidance on the proper approach to a review is given in the judgment of Clarke LJ in Assicurazioni Generali SpA v Arab Insurance Group [2003] 1 WLR 577. The passage at paras 14-17 of the judgment was approved by the House of Lords in Datec Electronics Holdings Ltd v UPS Ltd [2007] 1 WLR 1325 at para 46 (Lord Mance). In that passage the point is made that the approach to any particular case will depend upon the nature of the issues under review. Where a challenge is made to conclusions of primary fact, the weight to be attached to the findings of the original decision-maker will depend upon the extent to which that decision-maker had an advantage over the reviewing body; the greater that advantage, the more reluctant the reviewing body should be to interfere. Another important factor is the extent to which the original decision involved an evaluation of the facts on which there is room for reasonable disagreement. In such a case the reviewing body ought not generally to interfere unless it is satisfied that the conclusion reached lay outside the bounds within which reasonable disagreement is possible.”

D. STANDARD OF PROOF

8. The only question relating to the standard of proof for decision by the Tribunal when hearing any appeal is whether the original decision-maker (usually the SRA Adjudicator or similar) properly applied the civil standard of proof. There is no scope for the Tribunal to apply the criminal standard. **(See Arslan above).**

E. THE POWERS OF THE TRIBUNAL

Appeals Under Section 44E of the Solicitors Act 1974 (as amended)

9. Under s.44D of the Act The Law Society has the power (delegated to the SRA) where a solicitor or an employee of a solicitor has failed to comply with a requirement imposed by (or by virtue of the Act) or any rules made by the Society, or there has been professional misconduct by a solicitor to give the person a written rebuke (s.44D (2)(a)) and/or direct the person to pay a penalty not exceeding £2,000 (s.44D (2)(b)). The SRA may publish details of any action it has taken, if it considers it to be in the public interest to do so.

10. The appeal against such a decision lies to the Tribunal. S.44E of the Act provides that:

- (1) A person may appeal against—
- (a) a decision by the Society to rebuke that person under s.44D(2)(a) if a decision is also made to publish details of the rebuke;
 - (b) a decision by the Society to impose a penalty on that person under s.44D(2)(b) or the amount of that penalty;
 - (c) a decision by the Society to publish under s.44D(3) details of any action taken against that person under s.44D(2)(a) or (b).

11. On an appeal under this section, the Tribunal has power to make such order as it thinks fit, and such an order may in particular—
 - (a) affirm the decision of the Society;
 - (b) revoke the decision of the Society;
 - (c) in the case of a penalty imposed under s.44D(2)(b), vary the amount of the penalty;
 - (d) in the case of a solicitor, contain provision for any of the matters mentioned in paragraphs (a) to (d) of s.47(2).
 - (e) in the case of an employee of a solicitor, contain provision for any of the matters mentioned in s.47(2E).
 - (f) make such provision as the Tribunal thinks fit as to payment of costs.

12. Under s.47(2) of the Act the orders which the Tribunal may make against a solicitor are:
 - (a) the striking off the roll of the name of the solicitor to whom the application or complaint relates;
 - (b) the suspension of that solicitor from practice indefinitely or for a specified period;
 - (c) the payment by that solicitor or former solicitor of a penalty, which shall be forfeit to Her Majesty;

- (d) in the circumstances referred to in subsection (2A) of the Act, the exclusion of that solicitor from criminal legal aid work (either permanently or for a specified period).
13. Under s.47(2E) of the Act the orders which the Tribunal may make against an employee of a solicitor are:
- (a) an order directing the payment by the employee to whom the complaint relates of a penalty to be forfeited to Her Majesty;
 - (b) an order requiring the Society to consider taking such steps as the Tribunal may specify in relation to that employee;
 - (c) if that employee is not a solicitor, an order which states one or more of the matters mentioned in paragraphs (a) to (c) of section 43(2);
 - (d) an order requiring the Society to refer to an appropriate regulator any matter relating to the conduct of that employee.
14. The Tribunal does not have an express power to hear appeals against costs awarded under the SRA Costs of Investigations Regulations 2011. On appeals under the Act the Tribunal has the power to make such provision as the Tribunal thinks fit as to costs under s.44E(4)(f) of the Act, which includes the power to overturn a costs award made under the SRA Costs of Investigations Regulations 2011.

Appeals Under Paragraph 14C of Schedule 2 to the Administration of Justice Act 1985

15. Under Paragraph 14B of Schedule 2 to the AJA The Law Society has the power (delegated to the SRA) where the Society is satisfied that a recognised body, or a manager or employee of a recognised body, or a sole solicitor, or any employee, in a recognised sole solicitor's practice, has failed to comply with a requirement imposed

by (or by virtue of the AJA) or any rules applicable to that person by virtue of s.9 of the AJA to give the person a written rebuke (14B(2)(a)) and/or direct the person to pay a penalty not exceeding £2,000 (14B(2)(b)) . The SRA may publish details of any action it has taken under sub-paragraph (2)(a) or (b), if it considers it to be in the public interest to do so.

16. A person may appeal against—

- (a) a decision by the Society to rebuke that person under paragraph 14B(2)(a) if a decision is also made to publish details of the rebuke;
- (b) a decision by the Society to impose a penalty on that person under paragraph 14B(2)(b) or the amount of that penalty;
- (c) a decision by the Society to publish under paragraph 14B(3) details of any action taken against that person under paragraph 14B(2)(a) or (b).

17. On an appeal under this paragraph, the Tribunal has power to make an order which—

- (a) affirms the decision of the Society;
- (b) revokes the decision of the Society;
- (c) in the case of a penalty imposed under paragraph 14B(2)(b), varies the amount of the penalty;
- (d) in the case of a recognised body, contains provision for any of the matters mentioned in paragraph 18(2);

- (e) in the case of a manager or employee of a recognised body, [or in the case of a sole solicitor, or an employee, in a recognised sole solicitor's practice,] contains provision for any of the matters mentioned in paragraph 18A(2);
 - (f) makes such provision as the Tribunal thinks fit as to payment of costs.
18. Under Schedule 2 paragraph 18(2) of the AJA the orders which the Tribunal may make against a recognised body are:
- (a) an order revoking the recognition under s.9 of the AJA of the body to which the complaint relates;
 - (b) an order directing the payment by that body of a penalty, to be forfeited to Her Majesty;
 - (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Tribunal or a contribution towards those costs, being a contribution of such amount as the Tribunal considers reasonable.
19. Under Schedule 2 paragraph 18A(2) and (3) of the AJA the orders which the Tribunal may make against a manager or employee of a recognised body are:
- (2)(a) an order directing the payment by the relevant person of a penalty to be forfeited to Her Majesty;
 - (b) an order requiring the SRA to consider taking such steps as the Tribunal may specify in relation to the relevant person;
 - (c) if the person is not a solicitor, an order which states one or more of the matters mentioned in sub-paragraph (3);

(d) an order requiring the SRA to refer to an appropriate regulator any matter relating to the conduct of the relevant person.

(3) The matters referred to in sub-paragraph (2)(c) are-

(a) that as from the specified date-

(i) no solicitor or employee of a solicitor shall employ or remunerate, in connection with the practice carried out by that solicitor, the person with respect to whom the order is made, and

(ii) no recognised body, or manager or employee of such a body, shall employ or remunerate that person, in connection with the business of the recognised body

except in accordance with SRA permission;

(b) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with SRA permission, permit the person with respect to whom the order is made to be a manager of the body;

(c) that as from the specified date no recognised body or manager or employee of such a body shall, except in accordance with SRA permission, permit the person with respect to whom the order is made to have an interest in the body.

20. The Tribunal's powers on appeals under the AJA are the same as the sanctions which the Tribunal can impose on recognised bodies in first instance proceedings. It should be noted that there is no general power for the Tribunal to impose 'such order as it thinks fit' in respect of recognised bodies, their employees or managers.

21. Again the Tribunal does not have an express power to hear appeals against costs in respect of appeals under the AJA. However, in respect of appeals under the AJA, the Tribunal has the power to make such provision as the Tribunal thinks fit as to costs under Schedule 2 paragraph 14C(4)(f).

Appeals Under Section 46 of the Solicitors Act 1974 (as amended) as applied by Article 4(3) of the Legal Services Act 2007 (Appeals from Licensing Authority Decisions (No. 2) Order 2011) in respect of decisions of the SRA (under powers delegated to the SRA by The Law Society) under Part 5 of the Legal Services Act 2007 and licensing rules made by the SRA (“ABS Appeals”)

22. The Tribunal may hear and determine appeals from licensing decisions. The Tribunal has power to make such order as it thinks fit, and such an order may in particular affirm or revoke the decision of the SRA. On determining such appeals, the Tribunal may make such order as it thinks fit as to the payment by any party of costs.
23. Appeals under these provisions are appeals against a licensing decision made by the SRA. A licensing decision is defined as any decision made by the SRA which is appealable under either the Legal Services Act 2007 Part 5 or the SRA’s licensing rules (which include the SRA Authorisation Rules 2011 and the SRA Disciplinary Procedure Rules 2011). Those wishing to appeal decisions under the Legal Services Act 2007 and the SRA Disciplinary Procedure Rules 2011 may use the SRA’s internal appeals procedure before appealing to the Tribunal. However those wishing to appeal decisions under the SRA Authorisation Rules 2011 must use the SRA’s internal appeals procedure before appealing to the Tribunal.
24. Decisions appealable under the Legal Services Act 2007 are: the imposition of financial penalties; decisions not to approve a person as an owner; conditional approval of ownership; withdrawal of approval of a person as an owner or acquisition of notifiable interests in licensed bodies; and a decision to notify the Legal Services Board of a breach of a share or voting limit.

25. Decisions appealable to the Tribunal under the SRA Authorisation Rules 2011 relate only to licensed bodies (and not recognised bodies). The appealable decisions are:
- (a) refusal of authorisation as a licensed body;
 - (b) imposition of conditions on authorisations as licensed body;
 - (c) revocation or suspension of authorisation as a licensed body;
 - (d) refusal to approve a step which, under a condition on authorisation, requires prior approval;
 - (e) modification or refusal to modify terms and conditions of authorisation as a licensed body;
 - (f) failure to make a decision on authorisation as a licensed body within the decision period;
 - (g) refusal to approve a person as manager or compliance officer;
 - (h) conditional approval of a person as a manager or compliance officer; and
 - (i) withdrawal of approval of a person as a manager or compliance officer.
26. Under the SRA Disciplinary Procedure Rules 2011 the following can be appealed to the Tribunal:
- (a) a decision to disqualify a person as head of legal practice or head of finance and administration, manager or employee of a licensed body;
 - (b) a refusal to bring such a disqualification to an end;

- (c) a decision to publish a written rebuke issued against a licensed body or the manager or employee of the licensed body.
- 27. The licensing rules do not contain any express provision for costs decisions to be appealed.
- 28. On determining an appeal under these provisions the Tribunal may:
 - (a) affirm the SRA's decision in whole or in part;
 - (b) quash the SRA's decision in whole or in part;
 - (c) substitute for all or part of the SRA's decision another decision of a kind that the SRA could have taken;
 - (d) remit a matter to the SRA (generally, or for determination in accordance with a finding made or direction given by the Tribunal).

F. REVIEW OF ORDERS MADE UNDER SECTION 43 OF THE SOLICITORS ACT 1974 (AS AMENDED)

- 29. Guidance on the review of orders imposed by the SRA on non-solicitor employees under s.43 of the Act is contained in the Guidance Note on Other Powers of the Tribunal.

G. COSTS

- 30. Generally, the Tribunal has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable (s.47 of the Act). Such costs are those arising from or ancillary to proceedings before the Tribunal.

31. The Tribunal may make an order for the payment of a fixed amount of costs. This will be the usual order of the Tribunal where the parties are in agreement as to the liability for, and the amount of, those costs. Otherwise, the Tribunal will determine liability for costs, and either summarily assess those costs itself or refer the case for detailed assessment by a Costs Judge.

H. FURTHER APPEALS

32. Any appeal against the decision of the Tribunal must be made to the High Court. Appeals from decisions under the Act and the AJA are as of right. Appeals from decisions under the Legal Services Act 2007 may be made on a point of law arising from the decision of the Tribunal and require the permission of the High Court.