



## Faculty of Advocates Disciplinary Rules 2015

1. (i) These rules are made by the Faculty having regard to its responsibilities in terms of:
  - a. The Legal Profession and Legal Aid (Scotland) Act 2007 (asp 5)
  - b. The Legal Services (Scotland) Act 2010 (asp 16) – “the 2010 Act”

and may be cited as the Faculty of Advocates Disciplinary Rules 2015.

- (ii) These rules have been subject to the approval of the Lord President in terms of Section 121(2)(a) of the 2010 Act

### Application of rules:

2. These rules apply to –
  - a. Conduct complaints remitted to the Faculty by the SLCC on or after 7 September 2015;
  - b. Any advocate, practising or non-practising, and notwithstanding that he or she may have been suspended from membership of the Faculty or ceased to be a member of Faculty since the time of the events giving rise to a conduct complaint against the advocate.

### Interpretation:

3. In these rules the following expressions shall, unless the context otherwise requires, have the following meanings
  - “**Clerk to the Tribunal**” means the Clerk of Faculty or such other counsel as the Dean may appoint
  - “**complaint**” means a conduct complaint remitted to the Faculty by the SLCC
  - “**conduct complaint**” means a complaint of Professional Misconduct and/or Unsatisfactory Professional Conduct
  - “**Complainer**” means the person making the complaint
  - “**Complaints Committee**” means a committee appointed in terms of paragraph 72\* of these rules
  - “**Dean**” means the Dean of the Faculty of Advocates

- “**Disciplinary Tribunal**” means the tribunal appointed in terms of paragraph 74 of these rules
- “**interim suspension**” means suspension from membership of the Faculty pending determination and final disposal of a complaint
- “**Member**” means the advocate against whom a complaint is made
- “**Faculty**” means the Faculty of Advocates
- “**Faculty office-bearer**” means the Dean of Faculty, the Vice-Dean of Faculty, the Treasurer of Faculty, the Clerk of Faculty, the Keeper of the Library, and the Chairman of Faculty Services Limited
- “**Inadequate Professional Services**” means professional services which are in any respect not of the quality which could reasonably be expected of a competent advocate.
- “**Investigating Committee**” means a committee in terms of paragraph 73 of these rules
- “**Professional misconduct**” means any conduct that is a departure from the standards of competent and responsible advocates and that would be regarded by such advocates as serious and reprehensible
- “**SLCC**” means the Scottish Legal Complaints Commission, established under and in terms of section 1 of the Legal Profession and Legal Aid (Scotland) Act 2007
- “**Unsatisfactory Professional Conduct**” means conduct that is not of the standard that could reasonably be expected of a competent and reputable advocate, that does not amount to professional misconduct, and that is not merely Inadequate Professional Services.
- “**Lay Member**” means an individual who (i) is resident in Scotland; (ii) is not a solicitor or advocate practising as such in Scotland; and (iii) does not hold and has not held any judicial office

General:

4. On behalf of the Faculty, the Dean may, if he or she thinks fit, direct another Faculty office-bearer to handle any complaint or complaints in his or her place. Where the Dean makes such a direction, that Faculty office-bearer may exercise all the powers of the Dean in relation to that complaint or those complaints
5. Where the Dean is the Complainer or the Member, he or she shall direct another Faculty office-bearer to handle that complaint. Where the Dean makes such a direction, the Faculty office-bearer so directed may exercise all the powers of the Dean in relation to that complaint.
6. The Dean may delegate the administration of a complaint, or complaints generally, to the Dean’s Secretariat or to another person or persons who may or may not be a member of Faculty.

7. At an appropriate stage in the administration of a complaint, the Dean shall refer the complaint to the Complaints Committee, for determination and disposal in accordance with these rules.
8. A complaint may be withdrawn by the Complainer, in writing, at any time before it is determined. Where a complaint is withdrawn by the Complainer, and unless the Dean directs otherwise, no further steps shall be taken in respect of the complaint.
9. A Complainer is presumed to have waived any right to confidentiality or privilege in respect of the Member, and the Member is entitled to rely upon and to disclose all or any information and documents that he or she considers to be necessary to answer the complaint.

Interim suspension:

10. The Dean may, if he or she thinks fit, suspend the Member from membership of the Faculty pending the determination and final disposal of the complaint (“interim suspension”).
11. Before suspending a Member from membership of the Faculty pending a determination and final disposal of the complaint, the Dean may, in his or her discretion, and in appropriate circumstances invite the Member to make such written or oral representations on the matter of his or her possible interim suspension as he or she thinks fit.
12. Where the Member is suspended without having been given the opportunity to make representations as to his or her possible interim suspension, the Dean shall, as soon as is reasonably practicable, invite the Member to make written or oral representations on the matter of interim suspension and shall thereafter review the interim suspension of the Member.
13. A Member who has been suspended from membership of the Faculty pending determination and final disposal of a complaint may, at intervals of not less than six months, and in writing, apply to the Dean to have the interim suspension reviewed. The Dean shall notify the Member in writing of the result of any such review. Where the interim suspension is not lifted the Dean shall also inform the Member of the reasons for the decision.
14. The Member may appeal his or her interim suspension to the Disciplinary Tribunal within fourteen days of being notified of the result of any review by the Dean. Any such appeal shall be in writing and state the grounds upon which it is sought.
15. The Member, the Complainer, and the SLCC shall be notified of the interim suspension of a Member and of any review or appeal that results in a lifting of that interim suspension.

Intimation and Investigation of a complaint:

16. On receipt of a complaint, the Dean's Secretariat shall, as soon as reasonably practicable, inform the Member in writing as to the nature of the complaint, and shall afford to the Member the opportunity to provide a written response to it.
17. The Dean's Secretariat shall have power to make such further enquiry as may be appropriate with a view to –
  - a. identifying the issues to be addressed;
  - b. investigating the facts relevant to the complaint;
  - c. ascertaining whether or not any of those facts bearing on the complaint are substantially in dispute between the Complainer and the Member; and
  - d. obtaining any material identified by the Complainer or the Member that may assist the Complaints Committee in its determination and disposal of the complaint.

Action following investigation:

18. Once a complaint has been referred to the Complaints Committee in accordance with paragraph 7 of these rules, the Complaints Committee may do one or more of the following:
  - a. determine that no further action is appropriate;
  - b. make such further enquiries as it considers to be appropriate, including remitting the matter to an Investigating Committee (with or without directions) to investigate and report back to the Complaints Committee;
  - c. dismiss the complaint;
  - d. uphold the complaint in whole or in part as a complaint of Professional Misconduct or of Unsatisfactory Professional Conduct (as in their sole discretion they consider appropriate), and impose, if the Committee thinks fit, one or more of the penalties set out below;
  - e. sist the complaint for a specified period, subject to review by the Complaints Committee at intervals of no longer than three months.
  - f. (Where the complaint is one of Professional Misconduct) uphold the complaint in whole or in part and remit it to the Disciplinary Tribunal for the imposition of one or more of the penalties that may be imposed by the Disciplinary Tribunal in accordance with paragraph 63 of these rules; or remit the complaint to the Disciplinary Tribunal for determination and disposal;

Investigation by an Investigating Committee:

19. Where the Complaints Committee remits the matter to an Investigating Committee, the Complainer and the Member shall be notified in writing of
  - a. the fact that the matter has been remitted to an Investigating Committee;
  - b. the scope of that remit; and
  - c. the membership of the Investigating Committee;

and shall be provided with copies of such information in relation to the complaint as in the Faculty's possession.

20. Subject to any directions given by the Complaints Committee, the Investigating Committee shall –
  - a. invite the Complainer and the Member to make such written representations in relation to the complaint as they think fit;
  - b. make such other investigations as it thinks fit.
21. Without prejudice to the generality of paragraph 20 of these rules, the Investigating Committee may at its discretion interview or take statements from such witnesses (including the Complainer, the Member and any other person), and ingather such documents or other evidence, as it considers may bear upon the facts of the case.
22. On completion of their investigations the Investigating Committee shall report in writing on such evidence as it has obtained to the Complaints Committee. The Investigating Committee may, if it thinks fit, comment on the credibility and reliability of any such evidence, and shall set out the facts that they find admitted or proved.
23. A copy of the report of the Investigating Committee shall be provided to the Complainer and the Member. The Complainer and the Member shall be given the opportunity to make such written representations in relation to the report of the Investigating Committee as they think fit.
24. Having considered the report by the Investigating Committee and any comment thereon, the Complaints Committee may do any one or more of the things stated in paragraph 18 of these rules, other than remitting the matter to an Investigating Committee in terms of sub-paragraph 18 (b) of these rules.

Imposition of penalties by the Complaints Committee:

25. Where the Complaints Committee upholds a complaint of Unsatisfactory Professional Conduct it may impose upon the Member one or more of the following penalties:
  - a. a written direction, with or without conditions;
  - b. a verbal admonition;
  - c. a formal written reprimand;
  - d. a severe written censure;
  - e. an order for cancellation or repayment in whole or in part of any fees charged or chargeable by the Member in respect of the work which has given rise to the complaint;
  - f. an order for compensation to be paid to the Complainer not exceeding £3,000;
  - g. a fine not exceeding £3,000.

26. Where the Complaints Committee upholds a complaint of Professional Misconduct it may impose upon the Member one or more of the following penalties:
- a. a written direction, with or without conditions;
  - b. a verbal admonition;
  - c. a formal written reprimand;
  - d. a severe written censure;
  - e. an order for cancellation or repayment in whole or in part of any fees charged or chargeable by the Member in respect of the work which has given rise to the complaint;
  - f. an order for compensation to be paid to the Complainer not exceeding £7500;
  - g. a fine not exceeding £7,500;
  - h. suspension from practice, with or without conditions for a specified period not exceeding one year.
27. Before it imposes any penalty, the Complaints Committee shall invite the Member to make such written or oral representations in relation to penalty as he or she thinks fit.
28. In deciding the appropriate penalty, the Complaints Committee may take into account any period of interim suspension that has already been imposed on the Member in relation to the complaint.

Decisions of the Complaints Committee:

29. Any decision of the Complaints Committee may be unanimous or by a majority.
30. Each member of the Complaints Committee shall have an equal vote in the making of any decision of the Complaints Committee. In the case of a tied vote, the Chairman of the Complaints Committee shall have the casting vote.
31. The Complaints Committee's decision to do any of the things stated in paragraph 18 of these rules (other than the things stated in sub-paragraph 18 (b)) and in relation to any penalty imposed upon the Member in terms of paragraphs 25 and 26 of these rules shall be in writing and with reasons.
32. The Complaints Committee's decision shall be intimated to the Complainer, the Member, and the Dean.

Right of Appeal from a decision of the Complaints Committee:

33. The Complainer may, with leave of the Complaints Committee, appeal to the Disciplinary Tribunal against the dismissal of the complaint.
34. The Member may, with leave of the Complaints Committee, appeal to the Disciplinary Tribunal against the final disposal of the complaint.

35. Any application to the Complaints Committee for leave to appeal to the Disciplinary Tribunal shall be made to the Dean's Secretariat within fourteen days of intimation (being the date following the date of posting) of the dismissal, or final disposal of the complaint as the case may be. The application for leave to appeal shall be in writing and state the grounds on which it is sought.
36. On receipt of an application for leave to appeal, the Dean's Secretariat shall intimate the application to the Complainer or Member as the case may be and that person shall be invited to make such written representations as to why leave should not be granted as he or she thinks fit.
37. Leave to appeal to the Disciplinary Tribunal shall only be granted on cause shown.
38. The decision of the Complaints Committee to grant an application for leave to appeal shall be final.
39. The decision of the Complaints Committee to refuse an application for leave to appeal shall be final, unless, within seven days of the intimation of the decision (being the date following the date of posting), the Member or Complainer intimates in writing to the Dean that he or she wishes to appeal that refusal to the Disciplinary Tribunal and to have the Disciplinary Tribunal consider the matter of leave to appeal by way of review.
40. A review hearing under paragraph 39 of these rules shall be heard by a committee of the Disciplinary Tribunal, comprising one senior and one junior counsel, and two lay persons appointed by the chairman of the Disciplinary Tribunal from the panel of lay persons maintained under sub-paragraph 77 (c) of these rules.
41. The Disciplinary Tribunal shall not allow an appeal against a decision of the Complaints Committee refusing leave to appeal unless it is satisfied that the decision of the Complaints Committee to refuse leave to appeal was not in accordance with the requirements of these rules or that the Complaints Committee proceeded on a basis of fact contrary to the weight of the evidence.
42. Where leave to appeal a decision of the Complaints Committee is granted the procedure to be followed thereafter shall be as set out below.

Remit to the Disciplinary Tribunal:

43. Where the Complaints Committee remits the complaint to the Disciplinary Tribunal (either for the imposition of penalties or for determination and final disposal of the complaint) the Clerk to the Tribunal shall:
  - a. inform the Complainer and the Member of the scope of the remit;

- b. inform the Complainer and the Member of the membership of the Disciplinary Tribunal; and
  - c. provide the Complainer and the Member with copies of such information in relation to the complaint as is in the Faculty's possession.
44. The Complainer and/or the Member may, on cause shown and in terms of paragraphs 80 and 81 of these rules, object to any person selected to be a member of the Disciplinary Tribunal.

Remit to the Disciplinary Tribunal for the imposition of penalties:

45. Where a complaint is remitted to the Disciplinary Tribunal for the imposition of penalties the Dean shall instruct a solicitor to pursue the complaint, and the solicitor shall in turn instruct counsel from a panel of three counsel of at least ten years' standing approved by the Faculty for this purpose. The Dean shall provide the solicitor with such information in relation to the complaint as is in the Faculty's possession. The solicitor and counsel may arrange for such assistance to be engaged in relation to the complaint as they consider appropriate.
46. Subject to the other provisions of these rules, and in particular the terms of paragraphs 60 to 63 of these rules, the procedure to be followed once a complaint has been remitted to the Disciplinary Tribunal for the imposition of penalties, and the conduct of any hearing on the imposition of penalties shall be at the discretion of the chairman of the Disciplinary Tribunal.

Remit to the Disciplinary Tribunal for determination and disposal of the complaint:

47. Where a complaint is remitted to the Disciplinary Tribunal for determination and final disposal the Dean shall instruct a solicitor to pursue the complaint, and the solicitor shall in turn instruct counsel from a panel of six counsel of at least ten years' standing approved by the Faculty for this purpose. The Dean shall have power to nominate one or more members of Faculty to serve on the panel of prosecuting counsel on an *ad hoc* basis. The solicitor and counsel may engage such assistance in relation to the investigation and prosecution of the complaint as they consider appropriate.
48. The Dean shall provide the solicitor with such information in relation to the complaint as is in the Faculty's possession.
49. The solicitor shall instruct counsel to draft a formal charge. The formal charge shall set out the specific charges being made against the Member. The formal charge shall be intimated to the Member, and he or she shall be entitled to lodge answers to it within such period as the Disciplinary Tribunal in its discretion considers reasonable. The formal charge may, on



cause shown, be amended at any time prior to the determination of the complaint. Where the formal charge is amended the amendment shall be intimated to the Member and he or she shall be entitled to lodge amended answers to it within such period as the Disciplinary Tribunal in its discretion considers reasonable.

50. The Clerk to the Disciplinary Tribunal shall give the Complainer and the Member at least fourteen days' notice in writing of the date, time and place of any hearing before the Disciplinary Tribunal (including any preliminary hearing or hearings) and of the membership of the Disciplinary Tribunal.
51. Subject to the other provisions of these rules, the procedure to be followed once a complaint has been remitted to the Disciplinary Tribunal, and the conduct of any hearing shall be at the discretion of the chairman of the Disciplinary Tribunal.
52. Where a complaint has been remitted to the Disciplinary Tribunal, the chairman of the Disciplinary Tribunal may hold such preliminary hearing or hearings as he or she thinks fit in order to address any procedural or other issues that may arise in advance of the full hearing. For the purposes of any such preliminary hearing, the Chairman may, at his or her discretion, sit alone or with some, or all, of the other members of the Disciplinary Tribunal.
53. In advance of any hearing before the Disciplinary Tribunal at which evidence is to be led or considered, the Complainer and the Member shall, when ordered to do so –
  - a. Exchange lists of witnesses;
  - b. Exchange witness statements; and
  - c. Lodge productions with the Clerk to the Tribunal.
54. At any hearing before the Disciplinary Tribunal, the case against the Member shall be conducted by counsel referred to in paragraph 47 of these rules. The Member may conduct his own case or be represented by counsel, a solicitor-advocate, or a solicitor.
55. Any hearing before the Disciplinary Tribunal shall be held in public unless on its own motion, or on the application of the Complainer, the Member, or the Dean the Tribunal considers that it would be appropriate for it to be held in private.
56. At any hearing, witnesses may be required to give evidence on oath or under affirmation.
57. Any incidental question of law arising in the course of any proceedings before the Disciplinary Tribunal shall be decided by the chairman of the Disciplinary Tribunal.
58. The Disciplinary Tribunal shall determine the complaint either by dismissing the charges in the formal charge, or by finding some or all of them proved.
59. The decision of the Disciplinary Tribunal determining the complaint may be unanimous or by a majority.

60. Subject to paragraphs 52 and 57 of these rules, each member of the Disciplinary Tribunal shall have an equal vote. In the case of a tied vote, the chairman of the Disciplinary Tribunal shall have the casting vote.
61. The Disciplinary Tribunal's decision determining the complaint shall be in writing and with reasons.
62. The Disciplinary Tribunal's decision determining the complaint shall be intimated to the Complainer, the Member, and the Dean.

Imposition of penalties by Disciplinary Tribunal:

63. Where the complaint has been remitted by the Complaints Committee to the Disciplinary Tribunal –
  - a. for the imposition of penalties;
  - b. or for determination and final disposal, and the Disciplinary Tribunal has upheld the complaint in whole or in part

then, subject to paragraph 65 and 66 of these rules, the Disciplinary Tribunal may impose upon the Member, one or more of the following penalties –

- a. A written direction, with or without conditions;
  - b. A verbal admonition;
  - c. A formal written reprimand;
  - d. A severe written censure;
  - e. An order for cancellation or repayment in whole or in part of any fees charged or chargeable by the Member in respect of the work which has given rise to the complaint;
  - f. An order for compensation to be paid to the Complainer not exceeding £15,000;
  - g. A fine not exceeding £15,000;
  - h. Suspension from practice, with or without conditions for a specified period not exceeding five years;
  - i. Suspension from membership of Faculty, with or without conditions, for a period not exceeding five years;
  - j. Expulsion for membership of the Faculty
64. Before it imposes any penalty, the Disciplinary Tribunal shall invite the Member to make such written or oral representations in relation to penalty as he or she thinks fit.
  65. In deciding the appropriate penalty to impose, the Disciplinary Tribunal may take into account any period of interim suspension that has already been imposed on the Member in relation to the complaint.

66. Where the Disciplinary Tribunal imposes either of the penalties of suspension from membership of Faculty, or expulsion from membership of Faculty, it shall not be competent for the Disciplinary Tribunal also to impose upon the Member the penalty of a fine.
67. The Disciplinary Tribunal's decision on penalties shall be in writing and with reasons.
68. The Disciplinary Tribunal's decision on penalties shall be intimated to the Complainer, the Member, and the Dean.

The standard of proof and representation:

69. In the determination of any complaint under these rules the Member shall be given the benefit of any reasonable doubt.
70. Where, in response to an invitation under these rules, the Member chooses to make oral representations, he or she shall be entitled to be accompanied or represented for that purpose by counsel, a solicitor advocate, or a solicitor.

Publication of decisions:

71. Where a complaint is upheld (in whole or in part) by the Complaints Committee or by the Disciplinary Tribunal, details of the determination and of any penalty or penalties imposed, shall be published in a register kept by the Faculty for that purpose and available for inspection.
72. Where a complaint is dismissed by the Complaints Committee or by the Disciplinary Tribunal, details of the determination shall not be published in the register referred to in paragraph 66\* unless the Member so requests.
73. The Complaints Committee, or the Disciplinary Tribunal as the case may be, may in its discretion order any additional publicity if it considers that the circumstances of the complaint justify additional publicity.

Petition for removal:

74. Where a Member is suspended from membership of the Faculty in terms of paragraph 10\* above ("interim suspension"), or is suspended or expelled from membership of Faculty, the Dean shall, on behalf of the Faculty, petition the Court of Session to remove the Member from the public office of advocate.

Constitution of committees and the Disciplinary Tribunal:

75. Complaints Committee –

- a. The Complaints Committee in a particular case shall consist of four persons selected by the Dean's Secretariat as follows:
  - (i) two persons drawn from the Dean; the Vice-Dean; eight other senior members of Faculty nominated by the Dean; and
  - (ii) two persons drawn from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.
- b. The tenure for appointment of lay persons in terms of paragraph a above shall be 5 years; subject to renewal as appropriate.
- c. The Dean shall have power to nominate a senior member of Faculty to serve on a Complaints Committee on an *ad hoc* basis.
- d. The chairman of the Complaints Committee shall be the member of the committee who is most senior as counsel.

#### 76. Investigating Committee –

- a. The Investigating Committee in a particular case shall consist of one senior and two junior counsel (selected by the chairman of the Complaints Committee from a panel of ten senior and twenty junior counsel approved by the Faculty for the purpose) and one lay member from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.
- b. The chairman of the Investigating Committee shall be the member of the committee who is most senior as counsel,
- c. The Clerk to the Investigating Committee shall be the member of the committee who is most junior as counsel.
- d. Where the Complainer or the Member as the case may be, on cause shown, objects within a reasonable time to any person of selected by the chairman of the Complaints Committee to be a member of an Investigating Committee, or where any person selected to be a member of an Investigating Committee declines to serve on it, the chairman of the Complaints Committee shall select another member of the panel to serve in place of that person. Any objection shall be made in writing and state the grounds of objection.
- e. In the event that one member of an Investigating Committee becomes unable, for whatever reason, to continue to serve on that committee, the other two members of the Investigating Committee may act to complete the investigation into a complaint and to report.

Disciplinary Tribunal:

77. Subject to paragraph (e) below, the Disciplinary Tribunal in a particular case shall consist of a Chairman and five other persons appointed by the Dean as follows –
- a. The Chairman, who shall be one of a panel of three each of whom shall be a retired member of the Judicial Committee of the House of Lords or Justice of the UK Supreme Court, or a retired Senator of the College of Justice or other appropriate person, and shall be appointed by the Lord President of the Court of Session for a period of three years and, in relation to a complaint remitted to the Disciplinary Tribunal within that period, for such further period as may be necessary to achieve a final disposal in terms of these rules.
  - b. Two counsel (including at least one senior counsel) shall be selected by the Chairman from a panel of ten counsel (including at least six senior counsel) approved by the Faculty for the purpose;
  - c. Three lay persons shall be selected by the Chairman from the panel of lay persons nominated by the Scottish Ministers for the purposes of these procedures.
78. The Clerk to the Tribunal shall be the Clerk of Faculty or such other counsel as the Dean may appoint.
79. Where, in any particular case, the chairman of the Disciplinary Tribunal considers it appropriate that a solicitor should serve on the Tribunal, he or she shall select one solicitor from a panel of three solicitors of at least 10 years' standing nominated by the President of the Law Society of Scotland for that purpose. Where a solicitor is so appointed he or she shall be appointed in substitution for one of the two counsel referred to in sub-paragraph 77 (b) above.
80. Where the Complainer or the Member as the case may be, on cause shown, objects within a reasonable time to the appointment of any person (other than the chairman) appointed to the Disciplinary Tribunal, or any person (other than the chairman) appointed to the Disciplinary Tribunal declines that appointment, the chairman of the Disciplinary Tribunal shall appoint another person from the same panel to serve in place of that person. Any objection shall be in writing and state the grounds of objection.
81. Where the Complainer or the Member as the case may be, on cause shown, objects within a reasonable time to the appointment of the chairman appointed to the Disciplinary Tribunal, or the chairman declines his or her appointment, the Lord President of the Court of Session may appoint another chairman from the panel of chairmen in his or her place. Any objection shall be made in writing and state the grounds of objection.