

**GUIDANCE FOR MAKING AN APPEAL UNDER**

**SECTION 42ZA(10)-(12)**

**FOR COMPLAINERS LODGING AN APPEAL ON OR AFTER 1 SEPTEMBER 2024**

You can appeal to the Scottish Solicitors’ Discipline Tribunal against a decision made by the Law Society of Scotland relating to unsatisfactory professional conduct.

You can appeal against:-

1. The failure of the Law Society to make a finding of unsatisfactory professional conduct against the solicitor – section 42ZA(10)

2. The failure of the Law Society to award you any compensation – section 42ZA(11)

3. The amount of compensation awarded – section 42ZA(12).

Your appeal can be based on one or more of these sections.

You must ensure:

* The appeal in is writing using Form D for Complainers. The Form is on page 4 of this guidance note – please insert the appropriate details wherever there is italic type.
* The appeal is received within 21 days of the date on which the Determination is sent to you by the Law Society.
* You provide separate forms for each solicitor concerned and attach the relevant Law Society Sub Committee minute to each one along with the letter from the Clerk to the Sub Committee intimating the decision to you.
* Your appeal is properly structured, containing sufficient relevant and specific detail to support your points. See note below on structuring your appeal and consider taking legal advice when drafting your appeal.

Structuring your appeal

* The Tribunal generally applies the principles contained at paragraph 17 of the [Hood, Petitioner](https://www.scotcourts.gov.uk/search-judgments/judgment?id=d25b2ca7-8980-69d2-b500-ff0000d74aa7) case.  To be successful, an appeal should be structured in a way that deals with these points.
* The Hood principles provide that the Tribunal should only interfere with a decision not to make a finding of unsatisfactory professional conduct if:
	+ The Sub Committee’s reasoning discloses an error of law, which may be an error of general law or an error in the application of the law to the facts;
	+ The Sub-committee made a finding for which there is no evidence or which is contradictory of the evidence;
	+ The Sub Committee made a fundamental error in its approach to the case, as by asking the wrong question or taking account of manifestly irrelevant considerations, or arriving at a decision that no reasonable Sub Committee could properly reach.
* Your appeal should deal with how you say it is that the Sub Committee went wrong, identifying each Hood principle which applies. It is not enough simply to say that you disagree with the decision. You must say how the Sub Committee’s decision-making was flawed and how it is that you say the solicitor concerned was guilty of unsatisfactory professional conduct. The appeal process is not another opportunity to have a complaint reconsidered of new.

Points to consider:

* The 21-day time limit is set in statute.
* The Rules relating to appeals are contained in Part 3 of the 2024 Rules. These can be accessed on the Rules page of the Tribunal’s website.
* Once an appeal is lodged, it cannot be withdrawn without consent of the Tribunal.
* If your appeal goes ahead, you will have to make your case before the Tribunal. You can do this personally or it might be advisable for you to consider obtaining legal representation.

Expenses/Costs:

* If the Tribunal decides not to accept the appeal, the matter is at an end. No costs are incurred up to this point.
* If the appeal proceeds, expenses usually follow success. Therefore, if you are unsuccessful, you might have to pay the expenses of the other parties and the Tribunal. Last-minute adjournments can result in an unnecessary increase in expense.
* In general, the Tribunal uses the party and party scale as its starting point and uses the unit rate contained in the Act of Sederunt (Taxation of Judicial Expenses) Rules 2019. However, expenses are a matter for the Tribunal's discretion. Further information is available in the Tribunal's Expenses Guidance.
* The final amount of expenses you might have to pay depends on the amount of time that the other parties have spent preparing the case, the documentation lodged, and the Tribunal time taken to deal with the appeal. Expenses can run to several thousand pounds. Accounts of expenses can be assessed or “taxed” by the Auditor of the Court of Session.

Legal Representation:

* You can represent yourself at the tribunal or you can ask a solicitor or someone else to represent you. Often it can be difficult to deal with matters of law which sometimes arise at a hearing without legal advice. Please note that if you want help from a solicitor, legal aid is not available for representation at the hearing.
* The Tribunal Office cannot give you legal advice. We can only advise you on the procedure of the Tribunal.

Handling complaints about the way the Law Society has dealt with a case should be made to the [Scottish Legal Complaints Commission](https://www.scottishlegalcomplaints.org.uk/). The handling complaints process is separate to any appeal before the Tribunal.

If you wish to proceed with lodging an Appeal, please fill in the following Form D and send it by email and post, together with a copy of the Law Society’s Letter and Determination, to:-

enquiries@ssdt.org.uk and

Scottish Solicitors Discipline Tribunal

Unit 3.5, The Granary Business Centre

Coal Road

Cupar, Fife

KY15 5YQ

 Rule 44

FORM D

**SCOTTISH SOLICITORS’ DISCIPLINE TRIBUNAL PROCEDURE RULES 2024**

**FORM OF APPEAL**

to the

**SCOTTISH SOLICITORS’ DISCIPLINE TRIBUNAL**

by

 [*insert* *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, [*insert name*], 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 set out in Appendix 1 to this Form.

The documents upon which I intend to rely are listed in Appendix 2 to this Form and are included with this appeal.

The respondents in this appeal are

(a) the Council;

(b) [*insert the name and address of the practitioner or legal practice and any other complainer*].

………………………………………………

Signature of Appellant

Date: …………………………………

**Appendix 1 to Form D**

**Grounds of Appeal**

\*Grounds of appeal should be set out clearly and concisely in numbered paragraphs using the table below. Additional rows should be added if necessary.

|  |
| --- |
| 1. |
| 2. |
| 3. |
| 4. |
| 5. |
| 6. |
| 7. |
| 8. |

**Appendix 2 to Form D**

**List of Documents accompanying the Grounds of Appeal**

Documents to be relied on as part of the appeal must be listed here and included with Form D and the Grounds of Appeal. Additional numbers should be added as required.

1. [*insert document name*]
2. [*insert document name*]
3. [*insert document name*]
4. [*insert document name*]