

## Proposed Alternative Disciplinary Procedure

### Background

The Council's disciplinary powers under the Legal Practitioners Ordinance (Cap 159) are limited by s 9A to receiving and investigating complaints, and referring them, where appropriate, for hearing before a Solicitors Disciplinary Tribunal. The power to admonish or censure solicitors is vested in the Tribunal and the Council is therefore caught between issuing letters of regret or disapproval, or referring the complaint for full hearing by a Solicitors Disciplinary Tribunal. The latter is time-consuming, can be extremely costly and may not be appropriate in certain situations.

Following a proposal by the Council, the Chief Justice has now approved a new, alternative procedure as an adjunct to the disciplinary process, to fill the gap between the issue of letters of regret or disapproval and the referral of matters for hearing by a Tribunal. The new scheme will enable respondents to be penalised a predetermined amount for each breach, with costs imposed up to a fixed maximum sum, rather than proceeding to a full hearing by a Tribunal, provided that:

- (a) the breach involves a particular specified offence;
- (b) both the Council and the respondent agree to the particular breach being dealt with summarily in this manner; and
- (c) the respondent pleads guilty to the breach.

The Council is confident that the proposed new scheme will

substantially reduce the delays and high costs that are inherent in the existing disciplinary system, where the costs element can be far in excess of any penalty imposed by the Tribunal.

### Expanded Powers of the Tribunal Convenor

To give effect to the proposed new system, the Tribunal Convenor (and his Deputies) will be granted additional powers to enable them to:

- (a) deal summarily with the standard penalty breaches, subject to both parties' consent, without having to convene a Tribunal;
- (b) impose standard fines for those breaches in accordance with a published tariff (proposed to be \$10,000 for each offence);
- (c) order payment by the respondent of the costs of and incidental to the prior inquiry or investigation in relation to the matter (up to a maximum proposed to be \$15,000 per offence); and
- (d) have the order filed with the Secretary General and available for inspection by any person affected.

It is intended that the Tribunal Convenor and his Deputies, when acting, will be remunerated for this new statutory function.

### Standard Penalty Breaches

The subsidiary legislation will specify the 'standard penalty breaches' which may be dealt with under the proposed system. However, breach of any particular matter on the list will

not automatically mean that a respondent will only be subject to a standard penalty if he pleads guilty. The Council will have discretion in the first instance as to whether a breach falling within that category may be dealt with summarily, and the respondent must then also consent to that procedure.

The Council may, for example, consent to a standard penalty breach being dealt with under the proposed procedure if the breach could be regarded as oversight, rather than as a deliberate act or omission. However, where the Council regarded a breach as more serious and did not consent to the case being dealt with under this procedure, the matter would be prosecuted in the usual way before a Tribunal. Similarly, a respondent would be entitled to defend himself in a full hearing before a Tribunal if he so wished.

### Procedure to be Set Out in Rules

Under the system as proposed, the respondent will be served with a complaint sheet stating the particulars of the alleged offence and brief facts. During a specified period, the respondent will be able to discuss with the prosecutor the complaints brought against him, the facts and, if applicable, the penalty which will apply if he pleads guilty and if he agrees to the matter being dealt with on a fixed penalty basis.

It is intended that the fixed penalty procedure will only be applicable at this point and will not be available if the respondent pleads guilty at any later stage.