



ADVOCATES DISCIPLINARY TRIBUNAL

GUIDANCE NOTES 2017

These guidance notes which are not, and should not be treated as, a complete and authoritative statement of the law, have been produced to provide general guidance on how to make a complaint against an Advocate to the Advocates Disciplinary Tribunal. In these notes references to an "Advocate" also includes a "Registered Legal Practitioner".

A The Tribunal:

1. The Tribunal consists of five members-

a Chairman - (the Chairman must be legally qualified but not a practising lawyer);
two persons nominated by the Isle of Man Law Society; and
two persons nominated by the Isle of Man Office of Fair Trading.
2. The Tribunal can consider only complaints of professional misconduct. There is no fixed definition of professional misconduct in Manx law, and it is for the Tribunal to decide in each case whether the conduct of the Advocate is professional misconduct.
3. The Tribunal cannot deal with claims for breach of contract or compensation claims. It cannot generally consider allegations of negligence or disputes over an advocate's charges. In such circumstances you should take legal advice as to your rights.
4. The Complaint has to be against a named advocate and not against a company or firm.
5. Save in exceptional circumstances the Tribunal will not consider a Complaint made against an Advocate not representing the Complainant.
6. If the Complaint you wish to make relates to a matter which is currently before a Court, although you may submit your Complaint, the Tribunal will usually decide to hold over your Complaint until the court case has been determined. This is known as a "sub judice stay".
7. The Tribunal is established under the Advocates Act 1976 (as amended) and operates under the Advocates Disciplinary Rules 2017 ("the 2017 Rules"). A copy of the Advocates Act 1976 or indeed any other legislation can be viewed at: www.legislation.gov.im. The 2017 Rules are

available on the Tribunals' website at: www.courts.im/media/1642/advocates-disciplinary-rules-2017.pdf

B How to make a Complaint:

1. If you wish to make a Complaint against an Advocate you must do so in writing using **Form 1** (see Schedule to the 2017 Rules and also the website) and submit this together with the necessary copies (see 2. below) by **post or personal delivery** to:

The Clerk to the Advocates Disciplinary Tribunal
Isle of Man Courts of Justice
Deemster's Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

Submission of your complaint form via email is **only permissible in exceptional circumstances** (which you should set out in your accompanying email) to: tribunals@gov.im

2. When you make your Complaint you must:

- **set out, in writing, in Form 1, all the details of your complaint;**
- **sign the Form and send the original plus seven copies to the Clerk.**

You should think carefully what you want to say, and try to make sure you set your Complaint out in a manner which is easy to follow and makes clear exactly what you are complaining about. You are not permitted to introduce additional allegations at a later date without special permission.

The Clerk to the Tribunal is not, under any circumstance, permitted to advise or assist you during the course of submitting your Complaint.

3. You may be entitled to legal aid so that an advocate can assist you with the preparation of your case. For details of eligibility see www.gov.im/legalaid

C The procedure once your Complaint has been received:

1. A copy of your Complaint is forwarded, within seven days, to the Advocate and also to the Isle of Man Law Society.
2. The Tribunal will meet to consider your Complaint at its next available meeting.

The Tribunal will dismiss your Complaint if –

- (a) it does not clearly set out professional misconduct; or
- (b) it does not fall within its jurisdiction.

The Tribunal will give brief reasons for the dismissal and you will be notified accordingly. The Clerk will also send a copy of the dismissal reasons to the Advocate and to the Isle of Man Law Society. You have a right of appeal to His Honour the First Deemster and Clerk of the Rolls against the decision to dismiss your Complaint.

3. If the Tribunal thinks your Complaint may disclose professional misconduct, it will make such Directions for the management of the Complaint as it considers proper, which may include:

- a date by which you have to provide further particulars of anything you allege, or documentary evidence;
- a date by which the Advocate has to respond in writing to the Complaint (called “the Answer”);
- a date by which the Advocate has to file documentary evidence;
- a date by which you have to respond in writing to the Answer (called “the Reply”);
- a date for an interim hearing of any preliminary point;
- a date for the final hearing of the Complaint.

The Tribunal may make Directions on more than one occasion.

Please note that once you have submitted your Complaint, you cannot withdraw it without making a formal application to the Tribunal. You must also give reasons for the application for withdrawal.

D Applications:

1. At any time up until a date **four** weeks before the Hearing of the Complaint, you may make an application in **Form 2** (see the Schedule and website) asking for the Tribunal’s directions on any relevant matter. These may include (but are not restricted to):
 - amending your Complaint or Reply;
 - filing of further documents;
 - extensions of time limits set in directions; or
 - orders that another party files a document.
2. Every Application should be sent to the Clerk, together with seven copies.

E Hearing of a Complaint

1. You and the Advocate will both be invited to attend the hearing of the Complaint. You may come by yourself or you may come with an Advocate to present your case.
2. You should attend the venue for the hearing approximately 10 minutes before the hearing.
3. If you have a disability which makes attending the hearing or communicating difficult, please advise the Clerk in advance and arrangements will be made to help you.
4. At the hearing the Chairman will invite you to present your case, which will usually involve giving sworn evidence. You are entitled to call witnesses in support of your case – you should make arrangements for witnesses to attend on the hearing day. If a witness declines to attend you may apply to the Tribunal for a Witness Summons which you must then serve upon the witness.
5. The Advocate (or his representative) will then be given opportunity to question you and any witnesses you may call on the evidence you have submitted and to respond to your Complaint.
6. The Advocate may give sworn evidence and call witnesses – if a witness declines to attend the Advocate may apply to the Tribunal for a Witness Summons which he/she must then serve upon the witness.
7. You (or your representative) in turn will then be given the opportunity to question the Advocate, and any witnesses he/she may call, on their response.

8. In closing, you and the Advocate will be invited to submit any final comments you may wish to make.
9. The members of the Tribunal may at any stage during the hearing ask questions of either party for clarification.
10. At the end of the hearing, the Tribunal will consider everything it has heard and will issue its decision to you and the Advocate in writing. This will usually take a week or two after the hearing.

Please note that hearings are recorded.

F Action taken by the Tribunal following the Hearing

1. The Tribunal is allowed to find in your favour only if you have proved "beyond reasonable doubt" that the Advocate is guilty of professional misconduct. If it does uphold your Complaint, it may impose:
 - an absolute discharge; or
 - a conditional discharge; or
 - reprimand the Advocate; or
 - order him/her to pay to the Treasury a penalty not exceeding £5,000.

If the Tribunal considers that inadequate, it may

 - refer the sentencing to His Honour the First Deemster and Clerk of the Rolls who can impose more severe penalties, including striking the Advocate off.
2. If you are successful you may also seek all proper reasonable expenses and costs incurred by you. The Tribunal may award such sum - if any - as it thinks just in the circumstances. The Tribunal has no power to award compensation.

G Appeal against the decision

1. If either you or the Advocate are unhappy with the Tribunal's decision there is a right of appeal to His Excellency the Lieutenant Governor sitting in the presence of the Deemsters (in accordance with Part IV of the Advocates Act 1976).
2. In order to appeal you must within 21 days of the final decision write to the Clerk to the Advocates Disciplinary Tribunal, Isle of Man Courts of Justice, Deemster's Walk, Bucks Road, Douglas, IM1 3AR and ask for a re-hearing of the Complaint.
3. The Clerk will acknowledge your request and then forward all correspondence relating to the complaint on to the Courts Division of the General Registry.
4. The Tribunal and the Clerk will have no further involvement in the procedure.
5. No further action is required by you at this stage.
6. Instructions will be forwarded to you from the Courts Division of the General Registry.

If you are in any doubt concerning any of the above guidance you are advised to take legal advice.