

Statutory Document No. 2022/0279

*Advocates Acts 1976 to 1995*

## ADVOCATES DISCIPLINARY RULES 2022

*Coming into Operation: 28<sup>th</sup> November 2022*

The Advocates Disciplinary Tribunal makes the following Rules under section 16(2) of the Advocates Act 1976, and of all other powers enabling it in that behalf.

### 1 Title

These Rules are the Advocates Disciplinary Rules 2022.

### 2 Interpretation

In these Rules —

“**the Act**” means the Advocates Act 1976 as amended;

“**Advocate**” means a person qualified under section 7 of the Act;

“**Bound to Fail**” is a high hurdle. Thus when factual issues are in play, unless there is something very unusual, e.g. the existence of a very clear contemporaneous paper trail that is wholly contrary to the facts alleged by the Complainant or other clear written evidence that is so persuasive as to render the Complaint wholly fanciful as opposed to real, the matter shall not be dismissed;

“**Chairman**” means the Chairman of the Tribunal;

“**Clerk**” means the clerk to the Tribunal;

“**Complainant**” means a person making a Complaint;

“**Complaint**” means a Complaint to the Tribunal under section 4, 6 or 17 of the Act in respect of an Advocate’s professional conduct;

“**Council**” means the Council of the Isle of Man Law Society;

“**Date of Commencement**” means the date on which these Rules are made;

“**Decision**” means the final decision of the Tribunal on a Complaint, including the reasons for making the decision;

“**McKenzie Friend**” means someone who, on application by any party not represented by an Advocate, is approved by the Tribunal to perform a non-fee charging role to provide moral support. They may also take notes,

help the Complainant with the case papers and give advice on the conduct of the case. They cannot however act as agent for that party in relation to the proceedings, manage their case for them outside the Tribunal Hearing, address the Tribunal, make oral submissions, or examine witnesses;

**“Meeting”** means a meeting or sitting of the Tribunal;

**“Registered Legal Practitioner”** means a person registered under the Legal Practitioners Registration Act 1986 (as amended or replaced by statute from time to time);

**“Rules”** means the Advocates Disciplinary Rules 2022;

**“Senior Member”** means the Member of the Tribunal, other than the Chairman, who has been a member of it for the longest continuous period to date; if two or more members have been in office for periods of equal length, it means the one of them whose surname comes first in alphabetical order;

**“Society”** means The Isle of Man Law Society;

**“Standard of Proof”** is the “Balance of Probabilities” which means the Tribunal is satisfied an event occurred if the Tribunal considers that, on the evidence, the occurrence of the event was more likely than not; and

**“Tribunal”** means the Advocates Disciplinary Tribunal established under section 15A of the Act.

### 3 Complaints

- (1) Any Complainant wishing to make a Complaint against an Advocate or a Registered Legal Practitioner shall make the Complaint in writing to the Tribunal using Form 1 in the Schedule hereto. Form 1 shall be signed by the Complainant (or by an officer of a Complainant which is not an individual) and sent to the Clerk together with seven copies.
- (2) Within seven days of receipt of a Complaint against an Advocate the Clerk shall in accordance with Section 17(2) of the Act send a copy of it to the Council. Within seven days of receipt of a Complaint against a Registered Legal Practitioner the Clerk shall in accordance with Regulation 2(2)(b) of the Legal Practitioners Registration (Application) Regulations 1992 as amended by the Legal Practitioners (Amendment) Regulations 1999 send a copy of it to the First Deemster.
- (3) Within seven days of receipt of a Complaint the Clerk shall send a copy of it to the Respondent.
- (4) The Tribunal will not consider a Complaint made against an Advocate not representing the Complainant save in exceptional circumstances (such exceptional circumstances to be determined in the absolute discretion of the Tribunal).
- (5) A Complaint may only be made against an Advocate and not a firm or partnership.

- (6) The Tribunal will not consider Complaints arising from events or circumstances arising more than 6 years before the date of the Complaint save in exceptional circumstances (such exceptional circumstances to be determined in the absolute discretion of the Tribunal).
- (7) All filings made by a party pursuant to these Rules shall be addressed and delivered to the Clerk and shall consist of an original and seven copies.

#### **4 Procedure**

- (1) At the next available Meeting of the Tribunal after receipt by the Clerk of a Complaint (and in any case not more than six weeks after such receipt) the Tribunal shall give Preliminary Consideration ("Preliminary Consideration") to the Complaint.
- (2) If on Preliminary Consideration the Tribunal is of the opinion that the Complaint shows no prima facie case it shall dismiss it. The Tribunal shall set down briefly in writing its reasons ("the Summary Dismissal Reasons") for so doing. The Clerk shall forthwith send a copy of the Summary Dismissal Reasons to the Complainant and the Council.
- (3) If on Preliminary Consideration the Tribunal is of the opinion that the Complaint is unclear or is not pleaded with sufficient precision for the Respondent reasonably to be able to understand and answer the matters complained of, the Tribunal shall order the Complainant to file an Amended Complaint ("the Amended Complaint") by a specified date. Upon receipt of the Amended Complaint it shall be dealt with in accordance with Rules 3(2), 3(3) and 4(1) as though it were a new Complaint and the original Complaint shall be deemed to have been dismissed. In the event that an Amended Complaint is not filed by the specified date the Tribunal may dismiss the Complaint.
- (4) If on Preliminary Consideration the Tribunal is of the opinion that the Complaint shows or parts of the Complaint show a prima facie case it shall order the Respondent to respond in writing (in the form of a pleading) to the Complaint or to part of the Complaint ("Answer").
- (5) If on the filing of the Answer the Tribunal is of the opinion that, taking into account the submissions made in the Answer, the Complaint is Bound to Fail, it shall have the power to dismiss the Complaint. The Tribunal shall set down briefly in writing its reasons ("the Dismissal Reasons") for so doing. The Clerk shall forthwith send a copy of the Dismissal Reasons to the Complainant, the Respondent and the Council.
- (6) The Tribunal shall in all cases have power to make such Directions ("Directions") for the management of the Complaint as the Tribunal shall consider proper, which may include the following —
  - (i) a date by which the Complainant shall provide further particulars of anything they allege or the documentary evidence on which they rely;

- (ii) a date by which the Respondent shall file documentary evidence;
  - (iii) a date by which the Complainant shall respond in writing (in the form of a pleading) to the Answer (“Reply”);
  - (iv) a date for an interlocutory hearing of a preliminary point or other interlocutory matter;
  - (v) a date by which each of the parties shall file witness statements setting out the evidence of the parties and any witness they propose to call to give evidence;
  - (vi) a date by which each of the parties shall file skeleton arguments and a paginated bundle of authorities in support of any legal submissions being made;
  - (vii) a date by which one of the parties shall prepare and file an agreed core bundle for the hearing of the Complaint; and
  - (viii) a date for the final hearing of the Complaint (“the Hearing”).
- (7) The Tribunal may make Directions on more than one occasion.
  - (8) The Tribunal may set aside or vary any Direction made and issue a new or amended Direction in place of an earlier Direction.
  - (9) All pleadings and documents filed in accordance with any Directions shall be accompanied by seven copies of each and shall be suitably paginated.
  - (10) Upon receipt of any pleading or document filed in accordance with any Directions the Clerk shall forthwith send a copy to the party who has not filed it.

## 5 Applications

- (1) Any party may at any time make an application (an “Application”) in Form 2 of the Schedule hereto seeking Directions from the Tribunal on any relevant matter, including (but not restricted to) —
  - (i) amendment of pleadings;
  - (ii) filing of further documents or pleadings;
  - (iii) extensions of time limits set in Directions;
  - (iv) a strike out of the Complaint; or
  - (v) an order that another party files a document or pleading.
- (2) Every Application shall be accompanied by seven copies of it.
- (3) Upon receipt of an Application the Clerk shall forthwith inform the Chairman (or in the absence of the Chairman the Senior Member) who shall direct either —
  - (i) that the Application be determined; or
  - (ii) that the Clerk send to the other parties a copy of the Application together with a notice in Form 3 of the Schedule hereto requiring

such other party to respond to or comment on it within such time limit ("the Time Limit") as shall be specified in Form 3 (such response or comments being referred to as the "Response to the Application"), and that the Application be heard after the expiry of the Time Limit.

- (4) The Tribunal shall then proceed to consider the Application and any Response to the Application, and may —
  - (i) without any hearing dismiss it;
  - (ii) without any hearing give Directions on it;
  - (iii) without any hearing grant the Application, subject to any conditions it thinks fit; or
  - (iv) set down an Interlocutory Hearing (an "Interlocutory Hearing") to hear the Application.
- (5) All parties shall be given such notice as the Tribunal shall direct of any Interlocutory Hearing.
- (6) At the conclusion of an Interlocutory Hearing the Tribunal shall either —
  - (i) dismiss the Application; or
  - (ii) grant the Application, subject to such conditions as the Tribunal thinks fit.
- (7) The Chairman (or in the absence of the Chairman the Senior Member) may acting alone extend the Time Limit provided in any Direction.

## **6 Sub Judice Stays**

If at any time the Tribunal is of the opinion that a Complaint cannot in the interests of justice be determined until the conclusion of proceedings before any court or tribunal (including the delivery of reasons for judgment), it may, after taking into account the representations (if any) of the parties, direct that the Complaint be stayed until the conclusion of such proceedings (a "Sub Judice Stay"). The Clerk shall forthwith send a copy of the Sub Judice Stay to the Council.

## **7 Appearances**

- (1) Any party shall be entitled to appear and be heard at a Hearing or an Interlocutory Hearing either in person or by an Advocate.
- (2) Where not represented by an Advocate, any party may also make application to the Tribunal to appoint a McKenzie Friend.
- (3) If any party fails to appear at a Hearing or Interlocutory Hearing, the Tribunal may, upon being satisfied that such party had due notice, proceed with the Hearing or Interlocutory Hearing in their absence though not represented.

**8 Witnesses**

- (1) Witnesses, including any party offering themselves as a witness, shall at a Hearing or Interlocutory Hearing be sworn and subject to examination, cross-examination and re-examination as if they were witnesses in a civil action.
- (2) No party shall be at liberty to adduce or call expert evidence without the prior leave of the Tribunal, leave for which shall be made in an Application.

**9 Hearing**

- (1) All parties shall be given such notice as the Tribunal shall direct of the Hearing, such notice being of not less than 21 days save in exceptional circumstances.
- (2) In the event of the Complainant not appearing or being represented at the Hearing, the Tribunal may dismiss the Complaint.
- (3) In the event of the Respondent not appearing or being represented at the Hearing, the Tribunal may proceed to hear the Complaint in the absence of the Respondent.
- (4) After the Complainant has made and closed his case to the Tribunal, the Respondent shall be entitled to make a submission of no case to answer and the Tribunal may, if it considers that the Complainant has failed to prove the Complaint, dismiss the Complaint at that stage.

**10 Decisions**

- (1) The Tribunal shall determine each Complaint to a civil standard of proof namely on the Balance of Probabilities.
- (2) All Decisions made by the Tribunal shall be signed by the Chairman and filed in the Probate and Tribunals Office of the General Registry.
- (3) A copy of each Decision shall be sent by the Clerk to each party to the Complaint.

**11 Summaries**

- (1) If the Complaint is proved and there is no reference for a re-hearing under section 19 of the Act, then pursuant to section 18(3A) of the Act, the Tribunal shall prepare a summary of the facts and the punishment imposed ("the Summary"). The Summary shall not identify the Complainant.
- (2) The Clerk shall send a copy of the Summary to the Society.

- (3) The Clerk shall cause the Summary to be put up on the Tribunal's website and shall send copies to the Isle of Man Office of Fair Trading and to such media outlets as the Tribunal shall direct.
- (4) A copy of every Summary shall be open to public inspection. No pleadings or other records of the Tribunal shall be open to public inspection without the written leave of the Tribunal.

## **12 Meetings**

- (1) The Tribunal shall meet from time to time on dates fixed by the Chairman after consultation with the other Members of the Tribunal. A Meeting shall be in accordance with the quorum provisions of section 15A(4) of the Act. The Tribunal may meet with one or more Members of the Tribunal appearing by telephone by means of telephonic, video conferencing, computer conferencing (e.g. Teams) or similar communications whereby all persons participating in the Meeting can hear each other. Participation in a Meeting of this manner shall be deemed to constitute presence in person at such Meeting. The location of such Meeting shall be deemed to be the place at which the Chairman of the Meeting was located at the time of that Meeting.
- (2) The Tribunal may adjourn any Meeting as it thinks fit.
- (3) Meetings and Interlocutory Hearings shall be open only to such persons, in addition to the parties, as the Tribunal may direct.

## **13 Costs Complaints**

- (1) In the event of a referral ("the Referral") being made to the Tribunal pursuant to Rule 11.38 of the Rules of the High Court of Justice 2009 ("the High Court Rules"), the Tribunal –
  - (i) will consider the Referral to be a complaint ("a Costs Complaint") in accordance with section 17 of the Act;
  - (ii) will consider the Referral to be factually correct in the event of there having been no appeal by either party to the assessment ("Assessment") made pursuant to Rule 11.39 of the High Court Rules;
  - (iii) will deem that for the purposes of a Costs Complaint the Advocate who submitted the Assessment shall be the Respondent; and
  - (iv) will determine whether or not the Assessment having allowed less than half of the total amount of the Respondent's professional fees claimed is firstly capable of amounting to professional misconduct on the part of the Respondent and secondly does or does not actually amount to professional misconduct on the part of the Respondent.
- (2) The Tribunal shall then give directions in accordance with Rule 4.

- (3) In all other respects the provisions of these Rules shall apply to a Costs Complaint.

#### **14 Saving**

Save in so far as the same is provided by the Act, the Tribunal may dispense with any requirement of the Rules respecting notices, documents, service, or time, in any case where it appears to the Tribunal to be just so to do.

#### **15 Signing**

Any order, notice or document required to be given or signed on behalf of the Tribunal (except a Decision, Summary Dismissal Reasons or Dismissal Reasons) may be signed by the Clerk.

#### **16 Forms**

The forms in the Schedule to these Rules shall be used in all cases as far as practicable, but a deviation from those forms shall not, by reason only of such deviation, render any Complaint or other document or proceedings invalid.

#### **17 Withdrawal**

When a Complaint has once been lodged it shall not be withdrawn before a final determination has been made except by the leave of the Tribunal. Once a final determination has been made the Complaint may not be withdrawn except by direction of the Governor of the Isle of Man.

#### **18 Custody of Documents**

The originals of all documents and electronic recordings in proceedings under these Rules shall be filed in the Probate and Tribunals Office of the General Registry.

#### **19 Tribunal's Discretion**

The Tribunal shall deal with any matters not provided for in these Rules in such manner as the Tribunal considers most appropriate to the circumstances of the case.

#### **20 Transitional Provisions**

- (1) These Rules shall apply from the Date of Commencement and shall apply to any Complaint received by the Tribunal after the Date of Commencement. Any Complaint received by the Tribunal prior to the Date of Commencement shall be dealt with under the provisions of the Advocates Disciplinary Rules 2017 (Statutory Document No. 2017/0240).



- (2) The Advocates Disciplinary Rules 2017 (Statutory Document No. 2017/0240) shall continue to apply to any Complaint made prior to the Date of Commencement.

Made at a meeting of the Tribunal this 28<sup>th</sup> day of November 2022.



Chairman

Price £2.75 + VAT

Price Band B

Tribunal Reference Number

(for Tribunal use only)

**ADVOCATES DISCIPLINARY TRIBUNAL**

FORM 1

**COMPLAINT**

Please complete electronically and print off or print off and complete in block capitals.

<b>Name of Complainant:</b>	
<b>Address of Complainant:</b>	
<b>Email address:</b>	

<b>Name of Advocate about whom you wish to complain</b> NB: Your complaint has to be against an individual and cannot be against a firm or company.	
<b>Address of Advocate:</b>	

<b>Details of Complaint:</b> Complaints can be made to the Advocates Disciplinary Tribunal only 'in respect of an advocate's professional conduct' (Advocates Act 1976, section 17(1)). Please summarise what professional conduct by the Advocate you wish to complain about:
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**Please summarise why you consider that conduct to be wrong or unprofessional:**

**Were (or are) you a client of the Advocate? If so, for what period?**

**On a separate sheet of paper, please set out your complaint. You should number each page at the top right, and also number each paragraph.**

**Please state how many pages you are attaching?**

**If you wish to rely on any documents at the hearing, you should attach them too, in a file with the pages numbered at the bottom.**

**Please state how many pages you are attaching?**

**Signed:**

**Date:**

**Please send the original signed copy and 7 (seven) copies thereof to:**

**The Clerk to the Advocates Disciplinary Tribunal  
Isle of Man Courts of Justice  
Deemsters Walk  
Bucks Road  
Douglas  
Isle of Man IM1 3AR**

**Tribunal Reference Number**   
(for Tribunal use only)

## **ADVOCATES DISCIPLINARY TRIBUNAL**

FORM 2

### **APPLICATION**

Please complete electronically and print off or print off and complete in block capitals.

<b>Name of Complainant:</b>	
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<b>Name of Advocate:</b>	
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<b>What application do you wish to make?</b>

<b>Please summarise the reasons for the application:</b>

Please continue on a separate sheet of paper if necessary, numbering each page at the top right and also numbering each paragraph.

**How many pages are you attaching?**

If you wish to rely on any documents at the hearing of this application (not the main hearing), you should attach them too, in a file with the pages numbered at the bottom.

**How many pages are you attaching?**

**Signed:**

**Date:**

**Please send the original signed copy and 7 (seven) copies thereof to:**

**The Clerk to the Advocates Disciplinary Tribunal  
Isle of Man Courts of Justice  
Deemsters Walk  
Bucks Road  
Douglas  
Isle of Man  
IM1 3AR**

Tribunal Reference Number 

(for Tribunal use only)

**ADVOCATES DISCIPLINARY TRIBUNAL**

FORM 3

**NOTICE OF APPLICATION**

Please complete electronically and print off or print off and complete in block capitals.

<b>Name of Complainant:</b>	
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<b>Name of Advocate:</b>	
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<b>Application for:</b>
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<b>Response to this Application to be responded to or commented on by:</b>
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<b>(Date):</b>
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<p><b>Please send the original "Response to the Application" and 7 (seven) copies thereof to:</b></p> <p><b>The Clerk to the Advocates Disciplinary Tribunal Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas Isle of Man IM1 3AR</b></p>
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