

## Reconsideration and Setting Aside of Adjudication Decisions

Board of the Legal Complaints Service

Last updated: 13 May 2009

For the purposes of this policy statement:

A “reconsideration” is a revisiting of an adjudication on the grounds that the decision appears to be fundamentally wrong (as explained further below). A “reconsideration” is initiated by the Society in its absolute discretion. References to “reconsideration” in this statement do not include cases referred back to the Society by the Legal Services Ombudsman pursuant to the Courts and Legal Services Act 1990 for a complaint to be reconsidered.

An “appeal” is a second formal adjudication separate from the first and carried out at a different level of decision maker.

A “practitioner” includes a solicitor, registered foreign lawyer, registered European lawyer, a solicitors’ partnership, a multi-national practice, and all forms of incorporated practice.

An “adjudication” is any decision by an adjudicator.

This policy statement applies to all decisions or adjudications made on or after 30 June 2009.

Neither complainant nor practitioner has a right of appeal against the decision on the substantive matter, nor against an adjudication that a practitioner shall pay the costs of the Society’s investigation, nor is there any such right of appeal against the amount which the practitioner is ordered to pay.

There is no right of appeal against any decision or adjudication in the course of dealing with complaints by the Legal Complaints Service. For the sake of clarity, examples of decisions that do not carry any right of appeal include:

1. Directions pursuant to section 44B of the Solicitors Act 1974;
2. Directions pursuant to paragraph 3 of Schedule 1 to the Solicitors Act 1974;
3. Decisions to commence, pursue or conclude litigation;
4. Extensions of time or refusal of requests for extensions of time to deal with any matter or correspondence.

### Reconsiderations

The Society may, in its absolute discretion, decide to set aside and reconsider any decision or adjudication which appears to be fundamentally wrong, whether or not

the decision or adjudication has been disclosed to any person and whether or not it has been taken at first instance or on appeal.

Examples of circumstances in which an adjudication may be fundamentally wrong include when:

- Material evidence has been made available to the Society (whether before or after the adjudication which may be subject to reconsideration) that was not provided to the decision maker;
- The decision maker has failed to take into account material facts or evidence;
- The decision maker has taken into account immaterial facts or evidence;
- The decision maker has made a material error of law;
- The decision is ultra vires;
- The decision is otherwise irrational;
- There has been material procedural unfairness.

Any of the following, acting alone or with others, may in their absolute discretion (and without any right of appeal) direct that an adjudication shall be set aside and referred to the original decision-maker, or to a different decision-maker, to be reconsidered:

1. any member of the Legal Complaints Board or any Board or other body that takes over its regulatory functions;
2. the Head of Adjudication;
3. the Head of Technical and Policy Support
4. the Director of Customer Service and any Head of Operations
5. any Casework Adviser

When a decision or adjudication is subject to a direction that it be reconsidered, the Society may in its absolute discretion carry out further investigation before referring the matter back for another decision. This might be necessary, for example, because whilst material new evidence has been provided to the Society, it is desirable also to verify that evidence, seek further supporting evidence or seek the practitioner's comments or explanations upon it.

**Board of the Legal Complaints Service**  
**13 May 2009**