



# Administration of Justice Act 1985

## 1985 CHAPTER 61

### PART I

#### SOLICITORS

##### *Solicitors' discipline*

#### **1 Imposition by Council of Law Society of disciplinary sanctions for inadequate professional services**

After section 44 of the Solicitors Act 1974 there shall be inserted—

*“Imposition by Council of disciplinary sanctions for inadequate professional services*

##### **44A Power of Council to impose sanctions for inadequate professional services.**

- (1) Where it appears to the Council that the professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to subsection (3)), the Council may, if they think fit, do one or more of the following things, namely—
  - (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within subsection (2) as appear to them to be necessary in order to give effect to their determination;
  - (b) direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;

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- (c) direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.
- (2) The requirements referred to in subsection (1)(a) are—
  - (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter ;
  - (b) a requirement to remit the whole or part of those costs;
  - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (3) The Council shall not exercise any of their powers under subsection (1) unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Council may have regard—
  - (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings ; and
  - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (4) Where the Council have given a direction under subsection (1)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—
  - (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Council's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Council's determination.
- (5) Where a bill covering those costs has been taxed in accordance with subsection (4)(a), the Council's direction under subsection (1)(a) shall, so far as relating to those costs, cease to have effect.
- (6) If a solicitor fails to comply with a direction given by the Council under this section, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever shall be brought in respect of it.
- (7) On the hearing of a complaint under subsection (6) relating to a direction given by the Council the Tribunal may, if it thinks fit (whether or not it makes any order on the hearing under section 47(2)), direct that the Council's direction shall be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court.
- (8) The powers conferred on the Council by subsection (1)(a) shall be exercisable in relation to a person notwithstanding that his name has been removed from or struck off the roll, and references to a solicitor—
  - (a) in the provisions of this section so far as they relate to the exercise of those powers ; and

(b) if a complaint is made to the Tribunal under subsection (6), in section 47(2), shall be construed accordingly.

(9) In subsection (1)(c) and (3)(a) " client", in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.”.

## **2 Examination of solicitors' files in connection with complaints**

After the section 44A inserted in the Solicitors Act 1974 by the preceding section there shall be inserted—

### *“Examination of files*

#### **44B Power of Society to examine files in connection with complaints.**

(1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—

- (a) alleging professional misconduct by a solicitor ; or
- (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).

(2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 1, together with paragraphs 12 to 16 of that Schedule, shall apply in relation to the powers conferred by subsection (1) as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—

- (a) any reference to a person appointed, or to a requirement, under that sub-paragraph shall be construed as including a reference to a person appointed, or to a requirement, under subsection (1); and
- (b) any reference to any such documents as are mentioned in that sub-paragraph shall be construed as including a reference to any such documents as are mentioned in subsection (1).”.

## **3 Powers of lay observers and Solicitors Disciplinary Tribunal in relation to inadequate professional services**

(1) After section 45(5) of the Solicitors Act 1974 (investigation by lay observers of Law Society's treatment of complaints) there shall be inserted—

“(5A) Where it appears to a lay observer, in examining any such allegation as is mentioned in subsection (1)—

- (a) that there arises out of the complaint in respect of which the allegation has been made both—
  - (i) a question as to the professional conduct of a solicitor, and

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- (ii) a question as to the quality of any professional services provided by him ; and
  - (b) that it would be appropriate for the latter question to be considered by the Tribunal with a view to determining whether to exercise any of its powers under section 47A in relation to the solicitor,
- the lay observer may make an application to the Tribunal with respect to the solicitor.”.
- (2) After section 47 of that Act there shall be inserted—

**“47A Power of Tribunal to impose sanctions for inadequate professional services.**

- (1) The powers conferred on the Tribunal by this section shall be exercisable on the hearing of—
  - (a) any application or complaint made to the Tribunal under this Act by or on behalf of the Society; or
  - (b) any application made to the Tribunal under section 45 (5A) by a lay observer.
- (2) Where, on the hearing of any such application or complaint with respect to a solicitor, it appears to the Tribunal that the professional services provided by the solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to subsection (4)), the Tribunal may, if it thinks fit, do one or more of the following things, namely—
  - (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in its determination and by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within subsection (3) as appear to it to be necessary in order to give effect to its determination;
  - (b) by order direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as it may specify;
  - (c) by order direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as it may specify.
- (3) The requirements referred to in subsection (2)(a) are-
  - (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter ;
  - (b) a requirement to remit the whole or part of those costs;
  - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (4) The Tribunal shall not exercise any of its powers under this section unless it is satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Tribunal may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings ; and
  - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (5) Where the Tribunal has given a direction under subsection (2) (a) in order to give effect to a determination by it under that provision as to the costs of a solicitor in respect of any services provided by him, then—
- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Tribunal's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Tribunal's determination.
- (6) Where a bill covering those costs has been taxed in accordance with subsection (5)(a), the Tribunal's direction under subsection (2) (a) shall, so far as relating to those costs, cease to have effect.
- (7) In subsections (2)(c) and (4) (a) " client", in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.”.

#### *Practising certificates*

#### **4 Issue of practising certificates subject to conditions**

- (1) Section 12 of the Solicitors Act 1974 (discretion of Law Society with respect to issue of practising certificates in special cases) shall be amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (e), for " affecting " there shall be substituted " relating to"; and
  - (b) after that paragraph there shall be inserted—
    - “(ee) when, having been required by section 34(1) to deliver an accountant's report to the Society, he has not delivered that report within the period allowed by section 34(2); or”.
- (3) In subsection (2)—
- (a) after " (e), " there shall be inserted " (ee)"; and
  - (b) after "subsection (1)" there shall be inserted " then, except in the case of any circumstances of whose existence the Society is unaware at the time the certificate is issued,".
- (4) After subsection (4) there shall be inserted—
- “(4A) Without prejudice to the generality of subsection (4)(b)—
    - (a) conditions may be imposed under that provision for requiring the applicant to take any specified steps that will, in the opinion of the Society, be conducive to his carrying on an efficient practice as a solicitor; and

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- (b) conditions may be so imposed (whether for the purpose mentioned in paragraph (a) or otherwise) notwithstanding that they may result in expenditure being incurred by the applicant.”.

## 5 Conditions imposed on current certificates

After section 13 of the Solicitors Act 1974 there shall be inserted—

### “13A Imposition of conditions while practising certificates are in force.

- (1) Subject to the provisions of this section, the Society may in the case of any solicitor direct that his practising certificate for the time being in force (his "current certificate") shall have effect subject to such conditions as the Society may think fit.
- (2) The power to give a direction under this section in the case of any solicitor shall be exercisable by the Society at any time during the period for which his current certificate is in force if—
  - (a) in the event of an application for a practising certificate being made by him at that time, section 12 would have effect in relation to him by reason of any such circumstances as are mentioned in paragraph (d), (e), (ee), (k) or (l) of subsection (1) of that section ; or
  - (b) a receiving order in bankruptcy is in force against him; or
  - (c) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors.
- (3) Subject to subsection (4), the conditions specified in a direction under this section shall have effect as from the time when the solicitor concerned is notified of the Society's decision to give the direction.
- (4) The Society may, if it thinks fit, provide in a direction under this section that the conditions specified in the direction shall not have effect pending the hearing and determination of any appeal under subsection (6).
- (5) Where there is pending against any judgment or order an appeal by a solicitor which, if successful, would result in subsection (2) no longer being applicable to him, the Society shall not give a direction under this section in his case so long as the appeal is pending, unless in the opinion of the Society the proceedings on that appeal have been unduly protracted by him or are unlikely to be successful.
- (6) A solicitor in whose case a direction is given under this section may appeal to the Master of the Rolls against the decision of the Society within one month of being notified of it.
- (7) On an appeal under subsection (6), the Master of the Rolls may—
  - (a) affirm the decision of the Society ; or
  - (b) direct that the appellant's current certificate shall have effect subject to such conditions as the Master of the Rolls thinks fit; or
  - (c) by order revoke the direction; or
  - (d) make such other order as he thinks fit.
- (8) Subsection (4A) of section 12 shall apply for the purposes of subsection (1) of this section as it applies for the purposes of subsection (4)(b) of that section.”.

*Restrictions applying to unqualified persons*

**6 Preparation of conveyancing documents by unqualified persons**

- (1) Section 22 of the Solicitors Act 1974 (restriction on person preparing certain instruments when not qualified to act as a solicitor) shall be amended as follows.
- (2) In subsection (1), for " subsection (2)" there shall be substituted " subsections (2) and (2A)".
- (3) After subsection (2) there shall be inserted—
  - “(2A) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—
    - (a) that other person was at the time his employer, a partner of his employer or a fellow employee ; and
    - (b) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this section.”.
- (4) In subsection (3)—
  - (a) after " instrument" there shall be inserted " includes a contract for the sale or other disposition of land (except a contract to grant such a lease as is referred to in section 54(2) of the Law of Property Act 1925 (short leases)), but"; and
  - (b) at the end of paragraph (b) there shall be inserted " other than a contract that is included by virtue of the preceding provisions of this subsection ; " .
- (5) After that subsection there shall be inserted—
  - “(4) A local weights and measures authority may institute proceedings for an offence under this section.”.

**7 Preparation of papers for probate etc., by unqualified persons**

For section 23 of the Solicitors Act 1974 there shall be substituted—

**“23 Unqualified person not to prepare papers for probate etc.**

- (1) Subject to subsections (2) and (3), any unqualified person who, directly or indirectly, draws or prepares any papers on which to found or oppose—
  - (a) a grant of probate, or
  - (b) a grant of letters of administration,shall, unless he proves that the act was not done for or in expectation of any fee, gain or reward, be guilty of an offence and liable on summary conviction to a fine not exceeding the first level on the standard scale.
- (2) Subsection (1) does not apply to a barrister or duly certificated notary public.
- (3) Subsection (1) also does not apply to any act done by a person at the direction and under the supervision of another person if—
  - (a) that other person was at the time his employer, a partner of his employer or a fellow employee; and

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- (b) the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this section.”.

*Other amendments*

**8 Other amendments of Solicitors Act 1974**

The Solicitors Act 1974 shall have effect subject to the further amendments specified in Schedule 1.

*Incorporated practices*

**9 Incorporated practices**

- (1) The Council may make rules—
  - (a) making provision as to the management and control by solicitors of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors ;
  - (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of any such services ;
  - (c) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised ; and
  - (d) regulating the conduct of the affairs of such bodies.
- (2) Rules made by the Council may also make provision—
  - (a) for the manner and form in which applications for recognition under this section are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this section shall (subject to the provisions of this Part) remain in force;
  - (d) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud ;
  - (e) for the keeping by the Society of a list containing the names and places of business of all bodies corporate which are for the time being recognised under this section, and for the information contained in any such list to be available for inspection ;
  - (f) for rules made under any provision of the 1974 Act to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient;
  - (g) for empowering the Council to take such steps as they consider necessary or expedient to ascertain whether or not any rules applicable to recognised bodies by virtue of this section are being complied with;
  - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under or by virtue of this Part.



- (3) Notwithstanding section 24(2) of the 1974 Act (application of penal provisions to bodies corporate), sections 20, 22(1) and 23(1) of that Act (prohibition on unqualified person acting as solicitor etc.) shall not apply to a recognised body ; and nothing in section 24(1) of that Act shall apply in relation to such a body.
- (4) Section 22(1), or (as the case may be) section 23(1), of that Act shall not apply to any act done by an officer or employee of a recognised body if—
- (a) it was done by him at the direction and under the super vision of another person who was at the time an officer or employee of the body ; and
  - (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under the said section 22 or (as the case may be) under the said section 23.
- (5) A certificate signed by an officer of the Society and stating that any body corporate is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (6) Schedule 2 (which makes provision with respect to the application of provisions of the 1974 Act to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (7) Subject to the provisions of that Schedule, the Lord Chancellor may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for any enactment or instrument passed or made before the commencement of this section and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Lord Chancellor to be necessary or expedient.
- (8) In this section—
- " the 1974 Act " means the Solicitors Act 1974 ;
  - " the Council " and " the Society • " have the meaning given by section 87(1) of the 1974 Act; and
  - " recognised body " means a body corporate for the time being recognised under this section.
- (9) Any rules made by the Council under this section shall be made with the concurrence of the Master of the Rolls.

## **10 Penalty for pretending to be a body recognised under s. 9**

- (1) A body corporate shall not describe itself or hold itself out as a body corporate for the time being recognised under section 9 unless it is so recognised.
- (2) Any body corporate which contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fourth level on the standard scale.
- (3) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

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- (4) In this section " the standard scale " has the meaning given by section 37 of the Criminal Justice Act 1982.