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STATUTORY INSTRUMENTS

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**1989 No. 1343**

**The Solicitors (Amendment)(Northern Ireland) Order 1989**

**Solicitors' discipline**

**16.**—(1) After Article 41 of the Solicitors Order there shall be inserted—

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

**Power of Council to impose sanctions for inadequate professional services**

**41A.**—(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 paragraph (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 paragraph (2) as appear to them to be necessary in order to give effect to their determination;
- (b) direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
- (c) 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;
- (d) 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 paragraph (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 paragraph (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 paragraph (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 subparagraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment 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 paragraph (4)(a), the Council's direction under paragraph (1)(a) shall, so far as relating to those costs, cease to have effect.

(6) A solicitor aggrieved by a determination or direction of the Council under paragraph (1) may, within one month from the date on which notice of that determination or direction is served on him, appeal to the Lord Chief Justice who may—

- (a) affirm or revoke the determination or direction; or
- (b) make any other determination or direction which could have been made or given by the Council under paragraph (1).

(7) A direction of the Council under paragraph (1) shall take effect—

- (a) where the solicitor does not appeal against the direction within the period mentioned in paragraph (6), on the expiration of that period; and
- (b) where the solicitor appeals against the direction within that period, on the dismissal or withdrawal of the appeal;

and a direction given on any such appeal by the Lord Chief Justice shall take effect immediately.

(8) If a solicitor fails to comply with a direction given under this Article which has taken effect, 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.

(9) The powers conferred on the Council by paragraph (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 in—

- (a) the provisions of this Article so far as they relate to the exercise of those powers; and
- (b) if a complaint is made to the Tribunal under paragraph (8), in Articles 46 and 51,

shall be construed accordingly.

(10) In paragraphs (1)(d) 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) After the Article 41A inserted in the Solicitors Order by paragraph (1) there shall be inserted—

*"Examination of files*

**Power of Society to examine files in connection with complaints**

**41B.**—(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) Paragraphs 2(2) to 8 and 17 to 21 of Schedule 1 shall apply in relation to the powers conferred by paragraph (1) as they apply in relation to the powers conferred by paragraph 2(1) of that Schedule, and accordingly in those provisions—

- (a) any reference to a person appointed, or to a requirement, under paragraph 2(1) of that Schedule shall be construed as including a reference to a person appointed, or to a requirement, under paragraph (1); and
- (b) any reference to any such documents as are mentioned in paragraph 2(1) of that Schedule shall be construed as including a reference to any such documents as are mentioned in paragraph (1).”.