



# Solicitors (Scotland) Act 1980

## 1980 CHAPTER 46

### PART III

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

##### *Protection of clients*

#### 43 Guarantee Fund

- (1) There shall be a fund to be called “The Scottish Solicitors Guarantee Fund” (in this Act referred to as “the Guarantee Fund”, which shall be vested in the Society and shall be under the control and management of the Council.
- (2) Subject to the provisions of this section and of Schedule 3 the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary loss by reason of dishonesty on the part of
  - [<sup>F1</sup>(a)] any solicitor in practice in the United Kingdom, or any employee of such a solicitor in connection with the practice of the solicitor, whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll or may have ceased to practise or been suspended from practice. [<sup>F2</sup>; or
  - (b) any incorporated practice or any director, manager, secretary or other employee of an incorporated practice, notwithstanding that subsequent to the commission of that act it may have ceased to be recognised under section 34(1A) or have been wound up].
- (3) No grant may be made under this section—
  - (a) in respect of a loss made good otherwise;
  - (b) in respect of a loss which in the opinion of the Council has arisen while the solicitor was suspended from practice;

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- (c) to a solicitor or his representatives in respect of a loss suffered by him or them in connection with his practice as a solicitor by reason of dishonesty on the part of a partner or employee of his; or
  - [<sup>F3</sup>(cc) to an incorporated practice or any director or member thereof in respect of a loss suffered by it or him by reason of dishonesty on the part of any director, manager, secretary or other employee of the incorporated practice in connection with the practice]
  - (d) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under Schedule 3.
- (4) The decision of the Council with respect to any application for a grant shall be final.
- (5) The Council may refuse to make a grant, or may make a grant only to a limited extent, if they are of opinion that there has been negligence on the part of the applicant or of any person for whom he is responsible which has contributed to the loss in question.
- (6) The Council or any committee appointed by them may administer oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Guarantee Fund.
- (7) Part I of Schedule 3 shall have effect with respect to the Guarantee Fund, including the making of contributions thereto by solicitors and the administration and management of the Fund by the Council; but nothing in that Schedule shall apply to or in the case of a solicitor—
- (a) who is not in practice as a solicitor; or
  - (b) who is suspended from practice as a solicitor during suspension; or
  - (c) who is in any such employment as is specified in section 35(4) [<sup>F4</sup>or in the employment of an incorporated practice];
- but where any solicitor in any such employment as is mentioned in paragraph (c) engages in private practice as a solicitor, the said Schedule and the other provisions of this Act relating to the Guarantee Fund shall apply to him and in his case so far as regards such private practice.

#### Textual Amendments

- F1** “(a)” inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 21\(a\)](#)
- F2** “; or” and s. 43(2)(b) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 21\(a\)](#)
- F3** S. 43(3)(cc) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 21\(b\)](#)
- F4** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\), s. 56, Sch. 1 Pt. I para. 21\(c\)](#)

#### 44 Professional indemnity.

- (1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors [<sup>F5</sup>and incorporated practices] against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—
- (a) authorise or require the Society to establish and maintain a fund or funds;

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- (b) authorise or require the Society to take out and maintain insurance with any person permitted under the <sup>M1</sup>Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business;
  - (c) require solicitors or any specified class of solicitors [<sup>F5</sup>and incorporated practices or any specified class thereof] to take out and maintain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business.
- (2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.
- (3) Without prejudice to the generality of subsections (1) and (2) rules made under this section—
  - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
  - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(a) and require solicitors or any class of solicitors [<sup>F6</sup>and incorporated practices or any class of incorporated practices] to make payments to any such fund;
  - (c) may require solicitors or any class of solicitors [<sup>F6</sup>and incorporated practices or any class of incorporated practices] to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1) (b);
  - (d) may prescribe the conditions which an insurance policy must satisfy for the purpose of subsection (1)(c);
  - (e) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
  - (f) may specify circumstances in which, where a solicitor [<sup>F6</sup>or incorporated practice] for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he [<sup>F6</sup>or, as the case may be, it] has failed to comply may be taken against him [<sup>F6</sup>or, as the case may be, it] by the Society or by insurers;
  - (g) may specify circumstances in which solicitors [<sup>F6</sup>and incorporated practices] are exempt from the rules;
  - (h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
  - (i) may contain incidental, procedural or supplementary provisions.
- (4) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of Part IV, and any person may make a complaint in respect of that failure to the Discipline Tribunal.
- (5) In this section “professional liability” means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee [<sup>F7</sup>and, as respects incorporated practices, means any liability incurred by it which if it had been incurred by a solicitor would constitute such civil liability]

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#### Textual Amendments

- F5** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 22\(a\)](#)
- F6** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 22\(b\)](#)
- F7** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. I para. 22\(c\)](#)

#### Marginal Citations

- M1** 1974 c. 79.

### 45 Safeguarding interests of clients of solicitor struck off or suspended.

- (1) The following provisions of this section shall have effect in relation to the practice of a solicitor whose name is struck off the roll or who is suspended from practice as a solicitor under any provision of this Act [<sup>F8</sup>and, in relation to any incorporated practice, the recognition under section 34(1A) of which is revoked].
- (2) [<sup>F9</sup>In the case of a solicitor,] The solicitor shall within 21 days of the material date satisfy the Council that he has made suitable arrangements for making available to his clients or to some other solicitor or solicitors [<sup>F9</sup>or incorporated practice] instructed by his clients or by himself—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is sole trustee or co-trustee only with one or more of his partners or employees, and
  - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid.
- [<sup>F10</sup>(2A) In the case of an incorporated practice, it shall within 21 days of the material date satisfy the Council that it has made suitable arrangements for making available to its clients or to some other solicitor or solicitors or incorporated practice instructed by its clients or itself—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in its possession or control which are held on behalf of its clients or which relate to any trust of which it is sole trustee or co-trustee only with one or more of its employees; and
  - (b) all sums of money due from it or held by it on behalf of its clients or subject to any trust as aforesaid.]

(3) If the solicitor [<sup>F11</sup>or, as the case may be, incorporated practice] fails so to satisfy the Council the provisions of Section 38 shall apply in relation to that solicitor [<sup>F11</sup>or, as the case may be, incorporated practice], notwithstanding that the Council may not have reasonable cause to believe that he [<sup>F11</sup>or, as the case may be, any director, manager, secretary or other employee of the incorporated practice] has been guilty of any such dishonesty as is mentioned in section 43(2).

(4) If the solicitor, immediately before the striking off or, as the case may be, the suspension, was a sole solicitor, the right to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm shall on the occurrence of that

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event vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person.

(5) In this section—

“material date” means whichever is the latest of—

- (a) the date when the order of the Tribunal or Court by or in pursuance of which the solicitor is struck off the roll or suspended from practice [<sup>F12</sup>or, as the case may be, the recognition under section 34(1A) is revoked.] is to take effect;
- (b) the last date on which—
  - (i) an appeal against that order may be lodged or an application may be made to the Court under section 54(2), or
  - (ii) an appeal against a decision of the Council under section 40 may be lodged;
- (c) the date on which any such appeal is dismissed or abandoned; and

“sole solicitor” means a solicitor practising under his own name or as a single solicitor under a firm name.

#### Textual Amendments

- F8** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 23\(a\)](#)
- F9** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 23\(b\)](#)
- F10** [S. 45\(2A\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 23\(c\)](#)
- F11** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 23\(d\)](#)
- F12** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, [Sch. 1 Pt. 1 para. 23\(e\)](#)

#### Modifications etc. (not altering text)

- C1** [S. 45](#) applied in part (with modifications) (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 13}

## 46 Safeguarding interests of clients in certain other cases.

- (1) Where the Council are satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to operate on, or otherwise deal with, any client account in the name of the solicitor, or his firm, and that no other arrangements acceptable to the Council have been made, the right to operate on, or otherwise deal with, that account shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person so long, but only so long, as the Council are satisfied that such incapacity and absence of other acceptable arrangements continues.
- (2) Where a sole solicitor ceases to practise for any reason other than that his name has been struck off the roll or that he has been suspended from practice, and the Council are not satisfied that suitable arrangements have been made for making available to his clients or to some other solicitor or solicitors instructed by his clients or on their behalf—

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- (a) all deed, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is the sole trustee, or a co-trustee only with one or more of his employees, and
- (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,

the provision of section 38 shall apply in relation to that solicitor, notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in section 43(2).

(3) Where the sole solicitor dies—

- (a) the right to operate on or otherwise deal with any client account in the name of the solicitor or his firm shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any personal representatives of the solicitor, and shall be exercisable as from the death of the solicitor; and
- (b) if the Council are not satisfied that suitable arrangements have been made for making available to the solicitor's clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
  - (i) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents which were in his or his firm's possession or control which were held on behalf of his clients or which relate to any trust of which he was the sole trustee, or a co-trustee only with one or more of his employees, and
  - (ii) all sums of money which were due from him or his firm or were held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,

the provisions of section 38 shall apply in relation to that solicitor notwithstanding that the Council may not have reasonable cause to believe that he had been guilty of any such dishonesty as is mentioned in section 43(2).

- (4) In a case where the Society have operated on or otherwise dealt with a client account by virtue of subsection (3) the Society shall be entitled to recover from the estate of the solicitor who has died such reasonable expenses as the Society have thereby incurred.
- (5) In this section "sole solicitor" has the same meaning as in section 45.

#### **47 Restriction on employing solicitor struck off or suspended.**

- (1) Unless he has the written permission of the Council to do so, a solicitor shall not, in connection with his [<sup>F13</sup>or, as the case may be, its] practice as a solicitor, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor [<sup>F13</sup>and, unless it has such permission, an incorporated practice shall not] by reason of the fact that his name has been struck off the roll or that he is suspended from practice as a solicitor.
- (2) Any permission given by the Council for the purposes of subsection (1) may be given for such period and subject to such conditions as the Council think fit.
- (3) A solicitor [<sup>F14</sup>or, as the case may be, incorporated practice] aggrieved by the refusal of the Council to grant any such permission as aforesaid, or by any conditions attached by the Council to the grant thereof, may appeal to the Court; and on any such appeal the Court may give such directions in the matter as it thinks fit.

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- (4) If any solicitor acts in contravention of this section or of any condition subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice as a solicitor for such period as the Tribunal, or, in the case of an appeal, the Court, may think fit <sup>F15</sup>and if any incorporated practice so acts its recognition under section 34(1A) shall be revoked.]

**Textual Amendments**

- F13** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 24(a)**
- F14** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 24(b)**
- F15** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. I para. 24(c)**

**Modifications etc. (not altering text)**

- C2** [S. 47](#) applied (with modifications) (1.10.2004) by [The Solicitors \(Scotland\) Act 1980 \(Foreign Lawyers and Multi-national Practices\) Regulations \(S.S.I. 2004/383\)](#), {reg. 13}

48 ..... <sup>F16</sup>

**Textual Amendments**

- F16** [S. 48](#) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 76:2\)](#), s. 56, **Sch. 1 Pt. II para. 5**

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