



# 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 [<sup>F2</sup>, registered foreign lawyer][<sup>F3</sup>or registered European lawyer] in practice in the United Kingdom, or any employee of such a solicitor [<sup>F2</sup>, registered foreign lawyer][<sup>F3</sup>or registered European lawyer] in connection with the practice of the solicitor [<sup>F2</sup>, registered foreign lawyer][<sup>F3</sup>or registered European lawyer], 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>F4</sup>; or
  - [<sup>F5</sup>(aa)] any conveyancing or executry practitioner or an employee of the practitioner in connection with the practitioner's practice as such, even if subsequent to the act concerned the practitioner has ceased to provide conveyancing or executry services;]
  - (b) any incorporated practice or any director [<sup>F6</sup>, member], manager, secretary or other employee of an incorporated practice, notwithstanding that subsequent

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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;
  - (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;
  - [<sup>F7</sup>(ca) to a conveyancing or executry practitioner in respect of a loss suffered by reason of dishonesty on the part of a partner or employee of the practitioner in connection with the practitioner's practice as such;]
  - [<sup>F8</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 [<sup>F9</sup>, member ], manager, secretary or other employee of the incorporated practice in connection with the practice; <sup>F10</sup> . . . ]
  - (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 [<sup>F11</sup>; <sup>F12</sup> . . . ]
  - (e) in respect of any default of a registered European lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered European lawyer's practice in Scotland.]]<sup>F13</sup>;
  - (f) in respect of any act or default of a registered foreign lawyer, or any of his employees or partners, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the registered foreign lawyer's practice, or any of his partners' practice, in Scotland; or
  - (g) in respect of any act or default of any member, director, manager, secretary or other employee of an incorporated practice which is a multi-national practice, where such act or default takes place outside Scotland, unless the Council is satisfied that the act or default is closely connected with the incorporated practice's practice in Scotland.]
- (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

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(c) who is in any such employment as is specified in section 35(4) [<sup>F14</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. 1 para. 21(a)**
- F2** Words in s. 43(2)(a) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(a)}
- F3** Words in s. 43(2) inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(a)**
- F4** “; 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. 1 para. 21(a)**
- F5** S. 43(2)(aa) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 128(2)(a)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F6** Word in s. 43(2)(b) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 128(1)(a)(ii)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F7** S. 43(3)(ca) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 128(2)(b)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F8** S. 43(3)(cc) inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(b)**
- F9** Word in s. 43(3)(cc) inserted (1.4.2011) by Legal Services (Scotland) Act 2010 (asp 16), **ss. 128(1)(b)(i)**, 150(2); S.S.I. 2011/180, art. 3, Sch.
- F10** Word in s. 43(3)(cc) repealed (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(b)(i)**
- F11** S. 43(3)(e) and the preceding word inserted (22.5.2000) by S.S.I. 2000/121, regs. 1(1), 37(1), **Sch. 1 para. 1(11)(b)(ii)**
- F12** Word in s. 43(3)(d) repealed (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(b)(i)}
- F13** S. 43(3)(f)(g) inserted (1.10.2004) by The Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations (S.S.I. 2004/383), {reg. 10(b)(ii)}
- F14** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 76:2), s. 56, **Sch. 1 Pt. 1 para. 21(c)**

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

- C1** S. 43 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}

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