

SCHEDULES

SCHEDULE 6

Section 32.

BODIES RECOGNISED UNDER S.32: SUPPLEMENTARY PROVISIONS

Construction of references to recognised bodies

- (1) Subject to sub-paragraph (2), references in this Schedule to a recognised body are references to a body corporate for the time being recognised under section 32.
- (2) In relation to any such allegation or complaint as is mentioned in paragraph 3(1)(o)(ii) or (b) of this Schedule references in this Schedule to a recognised body include references to a body corporate that was recognised under section 32 at the time when the conduct to which the allegation or complaint relates took place.

Disciplinary control of recognised bodies

- 2 In addition to the functions conferred on them by sections 24 and 25 the Investigating Committee and the Discipline and Appeals Committee shall have the functions conferred on them by the following provisions of this Schedule.
- 3 (1) The Investigating Committee shall carry out a preliminary investigation of any case in which—
 - (a) it is alleged that a recognised body—
 - (i) has (while a recognised body) been convicted by any court in the United Kingdom of a criminal offence which renders it unsuitable to be recognised under section 32; or
 - (ii) has failed to comply with any rules applicable to it by virtue of that section ; or
 - (b) a complaint is made to the Council by or on behalf of a member of the public about a recognised body,
with a view to determining whether the case ought to be referred by the Committee to the Discipline and Appeals Committee for hearing and determination by that Committee under paragraph 4.
- (2) For the purposes of sub-paragraph (1)(b) a complaint about a person who at the time when the conduct to which the complaint relates took place was an officer or employee of a recognised body shall be treated as a complaint about the body.
- 4 (1) Where on the hearing of any allegation the Discipline and Appeals Committee are satisfied that a recognised body—
 - (a) has been convicted as mentioned in sub-paragraph (i) of paragraph 3(1)(a); or
 - (b) has failed to comply with any such rules as are mentioned in sub-paragraph (ii) of that paragraph,the Committee may, if they think fit, make one or more of the orders referred to in sub-paragraph (2).

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- (2) Those orders are—
- (a) an order revoking the recognition under section 32 of the body to which the allegation relates ;
 - (b) an order directing the payment by that body of a penalty not exceeding £3,000, to be forfeited to Her Majesty ;
 - (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Committee or a contribution towards those costs, being a contribution of such amount as the Committee consider reasonable.
- (3) Where, on the hearing of any allegation or complaint, it appears to the Committee that the conveyancing services provided by a recognised body in connection with any matter in which it had been instructed by a client were in any respect not of the quality that could reasonably have been expected of it as a recognised body the Committee may, if they think fit—
- (a) determine that the fees to which the body shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination; and
 - (b) by order direct it to comply with such one or more of the following requirements as appear to them to be necessary in order to give effect to their determination, namely—
 - (i) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the body's fees in respect of those services;
 - (ii) a requirement to remit the whole or part of those fees;
 - (iii) a requirement to waive, whether wholly or to any specified extent, the right to recover those fees.
- (4) Subsections (5) and (6) of section 26 shall have effect in relation to the sum specified in sub-paragraph (2)(b) as they have effect in relation to the sum specified in subsection (2)(e) of that section.
- 5 (1) Where—
- (a) any order is made by the Discipline and Appeals Committee under section 26 in the case of a director of a recognised body ; or
 - (b) any such order is made in the case of a person employed by a recognised body and the act or omission constituting the ground on which the order was made was instigated or connived at by a director of the recognised body, or, if the act or omission was a continuing act or omission, a director of the body had or reasonably ought to have had knowledge of its continuance,
- the Discipline and Appeals Committee may, if they think fit, by order revoke the recognition of that body under section 32.
- (2) The Committee shall not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in sub-paragraph (1) being rendered inapplicable in that case, or while any such proceedings are pending.
- (3) The reference to a director of a recognised body in paragraph (a) or (b) of sub-paragraph (1) includes a reference to a person who was a director of the body at the time of the conduct leading to the making of the order referred to in that paragraph.

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Appeals against orders of the Committee

- 6 (1) A body corporate in whose case an order is made by the Committee by virtue of paragraph 4(1) or 5 may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit.
- (2) The decision of the High Court on an appeal under this paragraph shall be final.

Revocation of recognition on grounds of fraud or error

- 7 (1) Where the Discipline and Appeals Committee are satisfied that the recognition of a body corporate under section 32 was granted as a result of any error, or as a result of fraud on the part of that body, the Committee may, if they think fit, by order revoke that body's recognition.
- (2) A body corporate may be granted recognition under that section notwithstanding that any recognition previously granted to it has been revoked under this paragraph ; but if any such recognition was so revoked on the ground of fraud that body shall not be granted recognition under that section except on an application made in that behalf to the Committee.

Appeal against decision of Council in relation to grant of recognition

- 8 (1) Where, in the case of any body corporate, the Council—
(a) refuses an application by that body for recognition under section 32; or
(b) decides to grant recognition of that body under that section subject to any restrictions,
that body may appeal to the Discipline and Appeals Committee against that refusal or decision within one month of being notified of it.
- (2) On an appeal under this paragraph the Discipline and Appeals Committee may—
(a) by order direct the Council to grant recognition of the body in question under section 32, either without restrictions or subject to such restrictions falling within subsection (3)(d) of that section as may be specified by the Committee in the direction ; or
(b) affirm the refusal or decision of the Council;
and the Committee may make such order as to the payment of costs by the Council or by that body as they think fit.
- (3) Rules made by the Council may make provision, as respects any application for recognition that is neither granted nor refused by the Council within such period as may be specified in the rules, for enabling an appeal to be brought under this paragraph in relation to the application as if it had been refused by the Council.

Rules of procedure, etc.

- 9 (1) Paragraphs 1(2), 2 and 3 of Schedule 4 shall have effect in relation to proceedings under paragraph 4 or 5 of this Schedule as they have effect in relation to proceedings under section 26.
- (2) Paragraph 4 of Schedule 4 applies to orders made by the Discipline and Appeals Committee under this Schedule.

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Intervention by Council

- 10 (1) Subject to sub-paragraph (2), where—
- (a) the Council is satisfied that a recognised body has failed to comply with any rules applicable to it by virtue of section 32 ; or
 - (b) a person has been appointed receiver or manager of property of a recognised body ; or
 - (c) a winding-up order, or an administration order under Part II of the Insolvency Act 1985, has been made with respect to a recognised body or a resolution for voluntary winding-up has been passed with respect to a recognised body (other than a resolution passed solely for the purposes of its reconstruction or of its amalgamation with another body corporate) ; or
 - (d) the Council has reason to suspect dishonesty on the part of any officer or employee of a recognised body in connection with that body's business,
- the powers conferred by Part II of Schedule 5 shall be exercisable in relation to the recognised body and its business in like manner as they are exercisable in relation to a licensed conveyancer and his practice.
- (2) Those powers shall only be exercisable by virtue of subparagraph (1)(a) if the Council has given the recognised body notice in writing that the Council is satisfied that the body has failed to comply with the rules specified in the notice and also (at the same or any later time) notice that those powers are accordingly exercisable in its case by virtue of sub-paragraph (1)(a).
- 11 The powers conferred by Part Ii of Schedule 5 shall also be exercisable as mentioned in paragraph 10(1) of this Schedule where
- (a) a complaint is made to the Council that there has been undue delay on the part of a recognised body in connection with any matter in which it was instructed on behalf of a client; and
 - (b) the Council by notice in writing invites the body to give an explanation within such period following the giving of the notice as may be specified in it, being a period of not less than eight days ; and
 - (c) the body fails within that period to give an explanation which the Council regards as satisfactory ; and
 - (d) the Council gives notice of the failure to the body and (at the same or any later time) notice that the powers conferred by Part II of Schedule 5 are accordingly exercisable in its case by virtue of this paragraph.
- 12 (1) Where the recognition of a body corporate under section 32—
- (a) has been revoked by an order of the Discipline and Appeals Committee under this Schedule ; or
 - (b) has expired and no further recognition of that body has been granted under that section,
- the powers conferred by Part II of Schedule 5 shall be exercisable in relation to the body corporate and its former business as a recognised body as they are exercisable in relation to a licensed conveyancer and his practice.
- (2) Where the powers conferred by Part II of Schedule 5 are exercisable in relation to a recognised body in accordance with paragraph 10 or 11 of this Schedule they shall continue to be exercisable after that body's recognition under section 32 has been revoked or has otherwise ceased to be in force.

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- 13 In connection with the application of Part II of Schedule 5 for the purposes of this Schedule, in that Part of that Schedule—
- (a) any reference to the licensed conveyancer or to his practice shall be construed as including a reference to the body corporate in relation to which the powers conferred by that Part of that Schedule are exercisable by virtue of paragraph 10, 11 or 12(1) of this Schedule or to its business (or former business) as a recognised body ;
 - (b) any reference to paragraph 1 of that Schedule shall be construed as including a reference to paragraph 10 or 12(1) of this Schedule ; and
 - (c) any reference to paragraph 3 of that Schedule shall be construed as including a reference to paragraph 11 of this Schedule.

Examination of files

- 14 (1) Where the Investigating Committee are satisfied that it is necessary to do so for the purpose of investigating any such allegation or complaint as is mentioned in paragraph (a)(ii) or (b) of paragraph 3(1), the Committee may give notice to the recognised body to which the allegation or complaint relates requiring the production or delivery to any person appointed by the Committee, at a time and a place to be fixed by the Committee, of all documents in the body's possession in connection with the matters to which the allegation or complaint relates (whether or not they relate also to other matters).
- (2) Sub-paragraphs (2) to (12) of paragraph 9 of Schedule 5, together with paragraphs 11 and 12 of that Schedule, shall apply in relation to the powers conferred on the Investigating Committee by sub-paragraph (1) of this paragraph as they apply in relation to the powers conferred on the Council by sub-paragraph (1) of paragraph 9, and accordingly in those provisions—
- (a) any reference to the Council shall be construed as including a reference to the Committee ;
 - (b) any reference to the licensed conveyancer shall be construed as including a reference to the body with respect to which the powers are exercisable by virtue of subparagraph (1) of this paragraph ;
 - (c) any reference to a person appointed, or to a requirement, under paragraph 9(1) shall be construed as including a reference to a person appointed, or to a requirement, under sub-paragraph (1) of this paragraph ; and
 - (d) any reference to any such documents as are mentioned in paragraph 9(1) shall be construed as including a reference to any such documents as are mentioned in sub-paragraph (1) of this paragraph.

Application of rules relating to accounts and interest on client's money

- 15 (1) Where rules made under section 22(3)(a) are applied to recognised bodies in accordance with section 32(3), an accountant shall, subject to sub-paragraph (2), be qualified to give any report required to be delivered under the rules if he is a member of a relevant body of accountants or is for the time being authorised by the Secretary of State under section 389(1)(b) of the Companies Act 1985.
- (2) An accountant shall not be qualified to give any such report in relation to a recognised body if he is not qualified to act as auditor of that body.
- 16 (1) Where rules made under section 22(2) and containing any such provision as is referred to in section 23(1) are applied to recognised bodies in accordance with

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section 32(3), then, except as provided by the rules and subject to sub-paragraph (2), a recognised body which in pursuance of the rules maintains an account in which it keeps money received or held for or on account of its clients generally shall not be liable to account to any person for interest received by it on money in that account.

- (2) Nothing in any such rules or in sub-paragraph (1) shall affect any arrangement in writing between a recognised body and any of its clients as to the application of the client's money or the payment of interest on it.