

SCHEDULES

SCHEDULE 1

Article 10(2).

SCHEDULE TO BE INSERTED INTO SOLICITORS ORDER AS SCHEDULE 1A

“SCHEDULE 1A

Article 26A(7).

INCORPORATED PRACTICES: SUPPLEMENTARY PROVISIONS

Interpretation

1.—(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 Article 26A.

(2) References in this Schedule to a recognised body in relation to—

- (a) a complaint (other than such a complaint as is mentioned in paragraph 19(1)(a)); or
- (b) any such application as is mentioned in paragraph 18(2),

include references to a body corporate that was recognised under Article 26A at the time when the conduct to which the complaint or application relates took place.

(3) References in this Schedule to an officer of a recognised body include references to a director, manager or secretary of that body.

(4) In Article 3(2) the definitions of “client”, “contentious business” and “non-contentious business” shall apply for the purposes of—

- (a) this Schedule; and
- (b) any other provision of this Order in so far as it has effect in relation to a recognised body by virtue of this Schedule,

as if for any reference to a solicitor there were substituted a reference to a recognised body; and for those purposes “controlled trust”, in relation to a recognised body, means a trust of which it is sole trustee or co-trustee only with one or more of its officers or employees and “unqualified person” does not include a recognised body.

Appeal against refusal or revocation by Council of recognition

2.—(1) A body corporate aggrieved by a decision of the Council refusing an application for recognition under Article 26A may, within one month from the date on which notice of that decision is served on it, appeal to the Lord Chief Justice who may—

- (a) affirm the decision; or
- (b) direct the Council to grant recognition of the body in question under Article 26A;

and the Lord Chief Justice may make such order as to the payment of costs by the Council or by that body as he thinks proper.

(2) Regulations may make provision, as respects any application for recognition that is neither granted nor refused by the Council within such period as may be prescribed, for enabling an appeal

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to be brought under sub-paragraph (1) in relation to the application as if it had been refused by the Council.

(3) A body corporate aggrieved by a decision of the Council to revoke the recognition of that body under regulations made under Article 26A(2)(d) may, within one month from the date on which notice of that decision is served on it, appeal to the Lord Chief Justice who may affirm or revoke the decision and make such order as to the payment of costs by the Council or by that body as he thinks proper.

Power of registrar to inspect files relating to certain proceedings

3. Article 15(5) shall apply in relation to proceedings which have been brought with respect to a recognised body for any of the following purposes, namely—

- (a) for the winding-up of the body; or
- (b) for the appointment of a receiver or manager of property of the body,

as it applies in relation to proceedings in bankruptcy which have been taken against a solicitor.

Acting as agent for unqualified person

4.—(1) No recognised body shall wilfully and knowingly—

- (a) act as agent in any action, suit, matter or transaction for any unqualified person; or
- (b) permit its name to be in any way made use of in any action, suit, matter or transaction upon the account, or for the profit, of any unqualified person; or
- (c) send any process to an unqualified person; or
- (d) do any other act so as to enable an unqualified person to appear, act or practice in any respect as a solicitor in any action, suit, matter or transaction.

(2) Sub-paragraph (1) does not apply where the recognised body is acting by virtue of an appointment made pursuant to Article 32.

Sharing of profits or fees with unqualified persons

5.—(1) Subject to sub-paragraph (2), a recognised body which knowingly shares any of its profits or fees with an unqualified person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Sub-paragraph (1) shall not apply in any of the following cases, namely—

- (a) where a body corporate which has ceased its business as a recognised body receives from a recognised body a share of the profits or fees of that recognised body as a price or value of the body corporate's business; or
- (b) where an agreement for sharing fees is made between a recognised body in Northern Ireland and a body or person carrying on the business or profession of providing professional legal services in some other part of the United Kingdom or in any country outside the United Kingdom; or
- (c) where, for the purposes of making legal aid and advice more readily available to persons in need, the Council have directed in writing that sub-paragraph (1) shall not apply in relation to a non-profit making organisation.

(3) References in this paragraph to the profits and fees of a recognised body are to the profits and fees of the business of that body as a recognised body.

Employment of persons struck off roll or suspended

6. Article 29 (except paragraph (4)) shall apply to a recognised body and its business as such as it applies to a solicitor and his practice as such.

Failure to disclose fact of name having been struck off the roll, etc.

7. Article 30 shall apply in relation to employment by a recognised body in connection with its business as it applies in relation to employment by a solicitor in connection with his practice.

Employment of persons found guilty of offences or party to misconduct

8. In Article 31(1) to (4)—

- (a) any reference to a person who is or was an employee of a solicitor, but is not himself a solicitor shall be construed as including a reference to a person who is or was employed by a recognised body but is not himself a solicitor; and
- (b) any other reference to a solicitor or to his practice as a solicitor shall be construed as including a reference to a recognised body or to its business as such a body.

Winding-up practice of a deceased solicitor

9. In Article 32 the reference to a duly qualified solicitor shall be construed as including a reference to a recognised body.

Interest on clients' money

10.—(1) Where regulations made under Article 33 and containing any such provision as is referred to in Article 34(1)(a)(i) are applied to recognised bodies in accordance with Article 26A(2)(f), then, except as provided by the regulations and subject to sub-paragraph (2), a recognised body which in pursuance of the regulations 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 regulations or in sub-paragraph (1) shall—

- (a) affect any arrangement in writing between a recognised body and any of its clients as to the application of the client's money or interest on it; or
- (b) apply to money received by a recognised body being money subject to a trust of which the body is a trustee.

Accountants' reports

11.—(1) In Article 35—

- (a) paragraphs (1) and (2); and
- (b) subject to any regulations made under that Article and applied to recognised bodies in accordance with Article 26A(2)(f), paragraph (3),

shall apply to a recognised body as they apply to a solicitor.

(2) A certificate under the hand of the secretary of the Society shall, unless the contrary is proved, be evidence that a recognised body has or, as the case may be, has not delivered to the Society an accountant's report or supplied any evidence required under Article 35 or under any such regulations as are referred to in sub-paragraph (1)(b).

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Control of recognised body's property in certain cases

12.—(1) Where the Council have reasonable cause to believe and have passed a resolution stating that they have reasonable cause to believe, that—

- (a) an officer or employee of a recognised body has been guilty of dishonesty in connection with that body's business or in connection with any trust of which that body is a trustee; or
- (b) in consequence of the act on default of an officer or employee of a recognised body—
 - (i) there has been undue delay in connection with any matter in which the recognised body has been instructed on behalf of a client or any matter which relates to the administration of a controlled trust; or
 - (ii) any sum of money due from the recognised body to, or held by it on behalf of, its clients or subject to any controlled trust is in jeopardy while in the control or possession of that body,

the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice.

(2) Subject to sub-paragraph (3), where—

- (a) the Council are satisfied that a recognised body has failed to comply with any regulations applicable to it by virtue of Article 26A; or
- (b) a person has been appointed receiver or manager of property of a recognised body; or
- (c) a winding-up order 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),

the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice.

(3) Those powers shall only be exercisable by virtue of sub-paragraph (2)(a) if the Society have given the recognised body notice in writing that the Council are satisfied that the body has failed to comply with the regulations 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 (2)(a).

(4) Where the Council have passed a resolution to the effect that they are satisfied that a recognised body—

- (a) has failed to comply with—
 - (i) any provision respecting the keeping of accounts contained in regulations made under Article 33 and applied to recognised bodies in accordance with Article 26A(2)(f) or with any requirement made in pursuance of any such regulations so applied for the production of books of account or other documents; or
 - (ii) the provisions of Article 35 or of any regulations made thereunder and applied to recognised bodies in accordance with Article 26A(2)(f); and
- (b) has been informed that such failure will have the consequence that the provisions of Schedule 1 shall apply in relation to the body and its business,

the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice.

(5) Where a recognised body—

- (a) having more than one office or place of business at any one time (disregarding, where it has a Belfast agent, the office or place of business of such agent) has been invited by the Society to satisfy them that its officers and employees who are solicitors exercise adequate

personal supervision over each such office or place of business and, having failed so to satisfy the Society, has been notified in writing by the Society that it has so failed; or

- (b) having been invited by the Society to give an explanation in respect of any matter relating to the conduct of a director of the body and having failed to give the Society such an explanation as appears to them to be satisfactory, has been notified in writing by the Society that it has so failed,

the Council may direct that the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice.

(6) Where the Tribunal have made a recommendation to the Council under paragraph 24 in respect of any recognised body the Council may direct that the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice.

13.—(1) Where the recognition of a body corporate under Article 26A—

- (a) has been revoked under regulations made under Article 26A(2)(d) or by an order of the Tribunal under this Schedule; or

(b) has expired and no further recognition of that body has been granted under that Article, that body shall within three weeks from the material date satisfy the Council that it has made suitable arrangements for making available to its clients or to some other recognised body or solicitor instructed by his clients or, with the approval of the Council, instructed by itself—

- (i) all deeds, wills, documents constituting or evidencing title to any property, papers, books of accounts, records, vouchers or other documents in its possession or control, or relating to any controlled trust; and
- (ii) all sums of money due from it to, or held by it on behalf of, its clients or subject to any controlled trust,

and if it fails so to satisfy the Council, the provisions of Schedule 1 shall apply in relation to the body and its former business in like manner as they apply in relation to a solicitor and his practice.

(2) In sub-paragraph (1) “the material date” means whichever is the latest of the following dates, that is to say—

- (a) the date on which the recognition of the body corporate under Article 26A expires;
- (b) where an application for further recognition of the body corporate under Article 26A has been made before the date specified in head (a), the last date on which an appeal against the decision not to grant further recognition of the body corporate may be lodged;
- (c) the last date on which an appeal against the decision or order revoking the recognition may be lodged;
- (d) the date on which any appeal mentioned in head (b) or (c) is dismissed or abandoned.

(3) Where the powers conferred by Schedule 1 are exercisable in relation to a recognised body in accordance with paragraph 12 or 14 they shall continue to be so exercisable after that body’s recognition under Article 26A has been revoked or has otherwise ceased to be in force.

14. 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 has been instructed on behalf of a client or any matter which relates to the administration of a controlled trust or in complying with an order of the Tribunal under paragraph 21(2)(c), (d) or (e) or (3) or Article 51A; and
- (b) the Council have by notice invited the body to give an explanation in respect of the matter; and

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- (c) the body has, within a period of not less than fourteen days specified in the said notice or such longer period as the Council may determine failed to give an explanation in respect of that matter which the Council regard as sufficient and satisfactory; and
- (d) the body has been notified in writing by the Society that it has so failed,

the provisions of Schedule 1 shall apply in relation to the recognised body and its business in like manner as they apply in relation to a solicitor and his practice; but as regards the documents specified in paragraph 2 and the sums of money specified in paragraph 10 of Part I of that Schedule only in so far as they relate to the matter of the complaint.

15. In connection with the application of Schedule 1 for the purposes of this Schedule, in Schedule 1 any reference to the solicitor or to his practice shall be construed as including a reference to the body corporate in relation to which the powers conferred by that Schedule are exercisable by virtue of paragraph 12, 13 or 14 of this Schedule or to its business (or former business) as a recognised body.

Powers of Council in respect of inadequate professional services

16.—(1) In Article 41A (except paragraphs (8) and (9))—

- (a) any reference to a solicitor shall be construed as including a reference to a recognised body; and
- (b) any reference to professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client shall be construed as including a reference to professional services provided by a recognised body in connection with any matter in which it had been instructed by a client.

(2) The powers conferred on the Council by Article 41A(1)(a) shall be exercisable in relation to a body corporate in accordance with this paragraph notwithstanding that it is no longer a recognised body.

(3) If a body corporate fails to comply with a direction given under Article 41A by virtue of this paragraph 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.

Examination of files

17.—(1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating—

- (a) any such complaint as is mentioned in head (b), (c) or (d) of paragraph 19(1); or
- (b) any complaint made to the Society and relating to the quality of any professional services provided by a recognised body,

the Society may give notice to the recognised body to which the complaint relates requiring the production or delivery to any person appointed by the Society, at a time and a place to be fixed by the Society, of all documents in the body's possession 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 sub-paragraph (1) as they apply in relation to the powers conferred by sub-paragraph (1) of paragraph 2 of that Schedule, and accordingly in those provisions—

- (a) any reference to the solicitor shall be construed as including a reference to the body with respect to which the powers are exercisable by virtue of sub-paragraph (1);

- (b) 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 sub-paragraph (1); and
- (c) 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 sub-paragraph (1).

Lay observers

18.—(1) Paragraph (1)(b) of Article 42 shall apply in relation to a complaint about a recognised body or an officer or employee of such a body as it applies in relation to a complaint about a solicitor or an employee of a solicitor.

(2) Where it appears to a lay observer, in examining any such allegation as is mentioned in paragraph (1)(b) of that Article—

- (a) that there arises out of the complaint in respect of which the allegation has been made both—
 - (i) a question as to the conduct of a recognised body, being conduct capable, in his view, of forming the subject-matter of any such complaint as is mentioned in head (b), (c) or (d) of paragraph 19(1); and
 - (ii) a question as to the quality of any professional services provided by the body as a recognised body; 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 in relation to the body any of the powers conferred on the Tribunal by paragraph 22,

the lay observer may make an application to the Tribunal with respect to the body.

Complaints to Tribunal with respect to recognised bodies

19.—(1) The Tribunal shall have jurisdiction to hear and determine any of the following complaints made to it under this paragraph with respect to a recognised body, namely—

- (a) a complaint that the body 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 Article 26A;
- (b) a complaint that the body has failed to comply with Article 35 or with any regulations applicable to it by virtue of Article 26A;
- (c) a complaint that the body has acted in contravention of paragraph 4 or Article 29 or of any terms and conditions subject to which a consent has been granted under Article 29; or
- (d) a complaint that the body has knowingly acted in contravention of an order under Article 31 or of any terms and conditions subject to which a consent has been granted under such an order.

(2) A complaint may be made to the Tribunal under this paragraph by any person.

Procedure on applications and complaints

20. In Article 46 any reference to a solicitor shall be construed as including a reference to a recognised body.

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Powers of Tribunal with respect to recognised bodies

21.—(1) Where on an inquiry into any complaint made to it under this Schedule the Tribunal are satisfied that a recognised body—

- (a) has been convicted as mentioned in head (a) of paragraph 19(1); or
- (b) has failed to comply with Article 35 or with any such regulations as are mentioned in head (b) of paragraph 19(1); or
- (c) has acted as mentioned in head (c) or (d) of that provision; or
- (d) has failed to comply with any direction given to it under Article 41A by virtue of paragraph 16,

the Tribunal may, if they think fit, make one or more of the orders referred to in sub-paragraph (2).

(2) Those orders are—

- (a) an order revoking the recognition under Article 26A of the body to which the complaint relates;
- (b) an order directing the payment by that body of a fine not exceeding £3,000, to be paid to and applied for the purposes of the Society;
- (c) the payment by any party to the inquiry of the costs of any other party to be measured by the Tribunal, or of a stated sum as a contribution towards such costs;
- (d) the payment by any party to the inquiry of a sum to be measured by the Tribunal for the costs incurred by the Tribunal, or of a stated sum as a contribution towards such costs;
- (e) the making by any party of such restitution or satisfaction to any aggrieved party as the Tribunal thinks fit.

(3) On an inquiry into a complaint under paragraph 16(3) relating to a direction given under Article 41A, the Tribunal may, without prejudice to their powers under sub-paragraphs (1) and (2) or paragraph 22, make an order providing for the direction to be treated for the purposes of this Order as if it were an order of the Tribunal.

(4) In Article 51—

- (a) paragraph (5) shall apply to an order under sub-paragraph (2)(d) as it applies to an order under paragraph (1)(k) of that Article;
- (b) paragraphs (6) to (9) shall apply to an order under this paragraph as they apply to an order under that Article, but in paragraph (8) the reference to the solicitor shall be construed as a reference to the recognised body;
- (c) paragraphs (11) and (12) 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 paragraph (1)(b) of that Article.

Powers of Tribunal in respect of inadequate professional services

22.—(1) The powers conferred on the Tribunal by Article 51A shall be exercisable on an inquiry into—

- (a) any complaint made to the Tribunal under this Schedule by or on behalf of the Society with respect to a recognised body; or
- (b) any application made to the Tribunal under paragraph 18(2) by a lay observer with respect to a recognised body,

in like manner as they are exercisable on an inquiry into any complaint or application made as mentioned in Article 51A(1) with respect to a solicitor.

(2) Accordingly, in Article 51A as it applies in relation to any such complaint or application as is mentioned in sub-paragraph (1)(a) or (b)—

- (a) any reference to a solicitor shall be construed as including a reference to a recognised body; and
- (b) any reference to professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client shall be construed as including a reference to professional services provided by a recognised body in connection with any matter in which it had been instructed by a client.

Powers of Tribunal in relation to legal aid

23.—(1) Where the Tribunal makes any such order as is referred to in Article 51B(1)(a) in the case of a solicitor who is an officer or employee of a recognised body, the Tribunal may, if they think fit, order that any solicitor who is for the time being a director of that body shall be excluded (either permanently or for a specified period) from legal aid work.

(2) The reference in sub-paragraph (1) to a person being excluded from legal aid work shall be construed in accordance with Article 51B(6).

Power of Tribunal to make recommendation for application of Schedule 1 to recognised body

24.—(1) Where the Tribunal hold an inquiry into any application or complaint made under this Schedule with respect to a recognised body they may, whether or not they make any order on the inquiry, make a recommendation to the Council that the provisions of Schedule 1 should apply in relation to that recognised body.

(2) A recommendation made by the Tribunal under sub-paragraph (1) shall contain a statement of the findings on which the Tribunal based the recommendation.

Effect, notice and recording of orders of Tribunal

25.—(1) Where the Tribunal make an order—

- (a) under paragraph 21(2)(b), (c), (d) or (e) or (3); or
- (b) under Article 51A(2), by virtue of paragraph 22,

the registrar, if so required in writing by the Society or by any other party in whose favour the order was made, shall lodge a duly authenticated copy of the order with the Master (Queen’s Bench and Appeals) who shall forthwith cause such copy to be filed; and thereupon the order shall be of the like effect as a judgment of the High Court and enforceable accordingly.

(2) Where the Tribunal make an order revoking the recognition of a body corporate under Article 26A the registrar shall forthwith—

- (a) lodge a duly authenticated copy of the order with the Master (Queen’s Bench and Appeals); and
- (b) cause to be published in the Belfast Gazette and in such other manner as the Tribunal may direct, a notice stating the effect of the order.

(3) Article 52(4) shall not apply to orders made by the Tribunal under this Schedule but the registrar shall maintain separate files on which such orders shall be entered in the following manner—

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- (a) on a file to be termed File C, there shall be entered, in alphabetical order against the names of the bodies corporate concerned, each order revoking the recognition under Article 26A of a body corporate;
 - (b) on a file to be termed File D, there shall be entered, in chronological order, all other orders.
- (4) Article 52(6), (7) and (8) shall apply to File C as they apply to File A and to File D as they apply to File B.

Revocation of recognition by reason of default by director

26.—(1) Where—

- (a) an order is made by the Lord Chief Justice under Article 20(1) or 27(1) in the case of a director of a recognised body;
- (b) any order is made by the Tribunal under Article 51 in the case of a director of a recognised body; or
- (c) an order is made by the High Court or the Court of Appeal that the name of a director of a recognised body be struck off the roll or that such a director be suspended from practice as a solicitor; or
- (d) any such order as is mentioned in head (a), (b) or (c) 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 Tribunal may, on an application made with respect to the recognised body by or on behalf of the Society, by order revoke its recognition under Article 26A.

(2) The Tribunal 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) Any reference to a director of a recognised body in any of heads (a) to (d) 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.

Compensation Fund

27.—(1) On an application for recognition under Article 26A a body corporate shall pay to the Society with any fee required to be paid by virtue of paragraph (2)(a) of that Article a contribution to the Compensation Fund of such amount as the Council may from time to time determine; and Schedule 2 shall apply to an amount paid to the Society in pursuance of this sub-paragraph as if it were an annual contribution paid in pursuance of paragraph 2 of that Schedule.

(2) Where the Council, on an application for a grant being made to the Society, are satisfied—

- (a) that a person has suffered loss in consequence of dishonesty on the part of an officer or employee of a recognised body in connection with that body's business or purported business as a recognised body or in connection with any trust of which it is or was a trustee; or
- (b) that a person has suffered or is likely to suffer hardship in consequence of the failure on the part of a recognised body to account for money which has come into its possession in connection with that body's business or purported business as a recognised body or in connection with any trust of which it is or was a trustee;

then, subject to the provisions of sub-paragraph (3), the Society may, if the Council think fit, make to that person a grant out of the Compensation Fund for the purpose of making good or mitigating that loss or (as the case may be) relieving such hardship.

(3) The following provisions shall have effect in relation to grants under sub-paragraph (2)—

(a) the Society shall not make a grant unless the Council are satisfied that the recognised body in respect of whose act or default or in respect of whose officer's or employee's act or default the application is made has been given sufficient notice of the substance of the application and had not given, either to the applicant or to the Society, such explanation as satisfies the Council that no grant should be made;

(b) the fact that the applicant is a solicitor, an employee of a solicitor, a recognised body or an officer or employee of such a body shall not disqualify the applicant from receiving a grant.

(4) Where the Council, on an application being made to the Society, are satisfied that a member of a recognised body has suffered or is likely to suffer loss or hardship by reason of his liability to any of that body's clients in consequence of some act or default of any officer or employee of that body, in circumstances where but for the liability of that member a grant might have been made out of the Compensation Fund to some other person, then, subject to the provisions of sub-paragraph (5), the Society may, if the Council think fit, make to that member a grant out of the Compensation Fund for the purpose of relieving that loss or hardship.

(5) The following provisions shall have effect in relation to grants under sub-paragraph (4)—

(a) the Society shall not make a grant to a member of a recognised body in respect of any act or default of another member of that body unless the Council are satisfied that the other member (unless he is dead or it is impracticable to give notice to him) has been given sufficient notice of the substance of the application and has not given, either to the applicant or to the Society, such explanation as satisfies the Council that no grant should be made;

(b) a grant may (if the Council think fit) take the form of a loan upon such terms and conditions (including conditions as to the time and manner of repayment, as to the payment of interest and as to security for repayment) as the Council may determine;

(c) in relation to a grant made by way of loan, the Society may, upon such terms or conditions (if any) as the Council may think fit, at any time or times waive or refrain from enforcing the repayment of the whole or any part of the loan or any instalment of the loan or the payment of any interest or any of the other terms or conditions upon which the loan was granted.

(6) Sub-paragraph (7) applies—

(a) to a grant made under sub-paragraph (2);

(b) to a grant made under sub-paragraph (4) otherwise than by way of loan; and

(c) where a grant has been made under sub-paragraph (4) by way of loan and thereafter—

(i) the repayment of any amount (being either the whole or some part of the loan) has been waived; or

(ii) the borrower fails to repay any amount (being either the whole or some part of the loan) the repayment of which has not been waived;

to such a grant to the extent of any such amount.

(7) Where this sub-paragraph applies to a grant—

(a) the Society shall, to the extent of the amount of the grant, be subrogated to any rights and remedies of the person to whom it is made in relation to the act or default in respect of which it is made and such person shall not be entitled, whether by way of winding-up, bankruptcy or other legal proceedings or otherwise, to receive any sum out of the assets of

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the recognised body or an officer or employee of that body in respect of that act or default until the Society have been reimbursed the full amount of the grant;

- (b) the fact that a person has received or may be likely to receive a grant from the Society shall not constitute any defence to an action brought by such person in respect of the act or default in relation to which such grant has been or may be made and the Society shall be entitled (whether before or after payment of the grant) upon giving to such person a sufficient indemnity against costs to require him to sue in his own name but on behalf of the Society for the purpose of giving effect to any rights conferred on the Society by head (a) and to permit the Society to have the conduct of the proceedings.
- (8) In sub-paragraphs (2) to (7)—
- (a) references to the person to whom a grant has been made or to any member, officer or employee of a recognised body in respect of whose act or default a grant has been made shall include, in the event of his death, bankruptcy or other disability, references to his personal representative or to any other person having authority to administer his estate;
 - (b) references to any recognised body in respect of whose act or default a grant has been made shall include, in the event of the winding up of that body, a reference to its liquidator.

Costs: general modification of provisions of Part V

- 28.**—(1) In the provisions to which this paragraph applies—
- (a) any reference to a solicitor or to a client of a solicitor shall be construed as including a reference to a recognised body or to a client of such a body; and
 - (b) any reference to a client’s solicitor shall be construed as including a reference to any recognised body acting for a client.
- (2) This paragraph applies to the following provisions (which relate to the remuneration of solicitors in respect of contentious and non-contentious business), namely—
- Article 64;
 - Article 65 (except paragraph (5));
 - Articles 66 and 67;
 - Article 69;
 - Article 71 (except paragraphs (1)(c) and (7));
 - Articles 71A and 71B;
 - Article 71D;
 - Article 71E(1); and
 - Articles 71F to 71H.

Effect of business agreements

29. A provision in a contentious or non-contentious business agreement made between a recognised body and a client that the body shall not be liable for the negligence of any of its officers or employees, or that it shall be relieved from any responsibility to which it would otherwise be subject in the course of carrying on its business as a recognised body, shall be void.

Effect on contentious business agreement of supervening incapacity of recognised body to act for client

30.—(1) If, after some business has been done under a contentious business agreement made between a recognised body and a client but before the body has wholly performed it, the body ceases to be capable of wholly performing it by reason of one of the following events, namely—

- (a) the body ceases (for any reason) to be a recognised body;
- (b) a winding-up order is made with respect to the body or a resolution for voluntary winding-up is passed with respect to the body (other than a resolution passed solely for the purposes of its reconstruction or of its amalgamation with another body corporate); or
- (c) the client terminates the retainer or employment of the body in favour of another recognised body or a solicitor (as, notwithstanding the agreement, he shall be entitled to do),

any party to, or the representative of any party to, the agreement may apply to the court, and the court shall have the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the recognised body were still capable of wholly performing it.

(2) The court, notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, may order the amount due in respect of business under the agreement to be ascertained by taxation, and in that case—

- (a) the taxing officer, in ascertaining that amount, shall have regard so far as may be to the terms of the agreement; and
- (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been wholly performed.

(3) If in such a case as is mentioned in sub-paragraph (1)(c) an order is made for the taxation of the amount due to the recognised body in respect of the business done under the agreement, the court shall direct the taxing officer to have regard to the circumstances under which the termination of the body’s retainer or employment has taken place, and the taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of any officer or employee of the body affording the client reasonable ground for terminating its re-tainer or employment, shall not allow to the body the full amount of the remuneration agreed to be paid to it.

(4) In this paragraph “the court” has the meaning assigned by Article 66(6) and in this paragraph and paragraph 31 “the taxing officer” has the meaning assigned by Article 66(7).

Taxations with respect to contentious business

31. Subject to the provisions of any rules of court or county court rules, on every taxation of costs in respect of any contentious business done by a recognised body, the taxing officer may—

- (a) allow interest at such rate and from such time as he thinks just on money disbursed by the body for the client, and on money of the client in the possession of, and improperly retained by, the body; and
- (b) in determining the remuneration of the body, have regard to the skill, labour and responsibility on the part of any solicitor, being an officer or employee of the body, which the business involved.

Status: This is the original version (as it was originally made).

Orders as to remuneration for non-contentious business

32. In relation to an order under Article 71 regulating (in accordance with paragraph 28) the remuneration of recognised bodies in respect of non-contentious business, paragraph (7) of that Article shall have effect as if—

- (a) in sub-paragraph (a), for “the solicitor” there were substituted “the recognised body”; and
- (b) in sub-paragraphs (d) and (g), for “the solicitor” there were substituted “any solicitor, being an officer or employee of the recognised body”.

Power of court to order delivery of bill of costs, etc.

33. Any jurisdiction—

- (a) of the High Court to make any such orders as are referred to in Article 71C(1) in relation to a solicitor (whether or not business has been done by him in the High Court); or
- (b) of the county court to make any such orders as are referred to in Article 71C(2) in relation to a solicitor,

shall be exercisable in like manner in relation to a recognised body.

Power of court to order recognised body to pay over clients' money

34. Any jurisdiction of the High Court to make, in the case of a solicitor who is acting or has acted as such for a client, an order requiring the payment or delivery up of, or otherwise relating to, money or securities which the solicitor has in his possession or control on behalf of the client shall be exercisable in like manner in the case of a recognised body which is acting or has acted as such for a client.

Actions to recover costs

35. Paragraph (2) of Article 71E shall have effect in relation to a bill of costs delivered by a recognised body as if—

- (a) for the words from “by the solicitor” to “the firm” there were substituted “on behalf of the recognised body by any officer or employee of the body authorised by it to do so”; and
- (b) for “the solicitor” (where last occurring) there were substituted “the recognised body”.

Lien on documents

36. Article 72A shall apply in relation to a recognised body as it applies in relation to a solicitor.

Bank and building society accounts

37. Article 77 shall apply in relation to a recognised body as it applies in relation to a solicitor.

Privilege from disclosure etc.

38.—(1) Any communication made to or by a recognised body in the course of its acting as such for a client shall in any legal proceedings be privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client.

(2) Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained shall, with

any necessary modifications, have effect in relation to a recognised body as it has effect in relation to a solicitor.

(3) In sections 745(3) and 778(3) of, and paragraph 14(5) of Schedule 15 to, the Income and Corporation Taxes Act 1988⁽¹⁾ any reference to a solicitor's client shall, in relation to a solicitor who is an officer or employee of a recognised body, be construed as a reference to a client of that body.

Modification of enactments relating to conveyancing etc.

39. In the following provisions, namely—

- (a) sections 56 and 66 of the Conveyancing Act 1881⁽²⁾;
- (b) section 85(1)(e) of the Land Registration Act (Northern Ireland) 1970⁽³⁾;
- (c) paragraph (3) of Schedule 1 to the Registration of Deeds Act (Northern Ireland) 1970⁽⁴⁾;
and
- (d) Article 8(2) of the Family Law (Miscellaneous Provisions) (Northern Ireland) Order 1984⁽⁵⁾,

any reference to a solicitor shall be construed as including a reference to a recognised body, and any reference to a person's solicitor shall be construed as including a reference to a recognised body acting for that person.”

SCHEDULE 2

Article 27(1).

AMENDMENTS TO THE SOLICITORS ORDER

In the following provisions for “Disciplinary Committee” or “Committee” wherever they occur substitute “Tribunal”—

- (a) Article 10(3);
- (b) Article 26(3);
- (c) Article 29(4);
- (d) Article 31(1), (2) and (5);
- (e) Article 33(2);
- (f) Article 35(6);
- (g) Article 48(1), (2) and (3);
- (h) Article 49(1), (2) and (3);
- (i) Article 50;
- (j) Article 52(3), (4), (5), (6) and (8);
- (k) Article 54(3);
- (l) Article 63(4).

In Article 3(2)—

- (a) the definitions of “the Disciplinary Committee” and “solicitor-trustee” shall cease to have effect;

(1) 1988 c. 1
(2) 1881 c. 41
(3) 1970 c. 18 (N.I.)
(4) 1970 c. 24 (N.I.)
(5) 1984 NI 14

Status: This is the original version (as it was originally made).

- (b) at the end of the definition of “client” there shall be added the words “and, in relation to contentious business, includes any person who as a principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor’s costs”;
- (c) the following definitions shall be inserted at the appropriate places in alphabetical order—
 - ““building society” means a building society within the meaning of the Building Societies Act 1986; and a reference to an account with a building society is a reference to a deposit account;
 - “contentious business agreement” means an agreement made in pursuance of Article 64;
 - “controlled trust”, in relation to a solicitor, means a trust of which he is a sole trustee or co-trustee only with one or more of his partners or employees;
 - “employee” includes an apprentice or clerk;
 - “sole solicitor” means a solicitor who is the sole principal in a practice;
 - “the Tribunal” means the Solicitors Disciplinary Tribunal appointed under Article 43(1);”.

In Article 3(3) for “a clerk, employee or servant” (twice) substitute “an employee”, for “an apprentice” substitute “an employee” and for “the apprentice” substitute “the employee”.

In Article 3 after paragraph (3) insert—

“(3A) In this Order—

- (a) references to the removal of a solicitor’s name from the roll are references to its removal at his own request or in pursuance of regulations under Article 8(3);
- (b) references to striking a solicitor’s name off the roll are references to striking it off as a disciplinary sanction; and
- (c) references to removal or striking off include references to deleting an entry made by means of a computer by whatever means are appropriate.”.

Article 5(5)(b) and the word “or” immediately before it shall cease to have effect.

In Article 21 for “Article 16(3) or (4) or, if the suspension was terminated subject to terms and conditions” substitute “Article 16(4) or (7) or, if his practising certificate has effect subject to terms and conditions by virtue of a direction under Article 16(4)(c) or (7)”.

In Article 25(1) for “not qualified so to act” substitute “an unqualified person”.

In Article 27(1) for “£100” substitute “£1,000”.

In Article 28(1) after “who” insert “knowingly”.

In Article 29(4) for “contravenes” substitute “knowingly contravenes this Article or”.

In Article 31(2) for “made by them with the approval of the Lord Chief Justice under this Order” substitute “made under Article 43(8)”.

In Article 31(5) for “contravenes” substitute “knowingly contravenes any order under this Article or”.

In Article 33(1)(a) for head (ii) substitute—

“(ii) for money comprised in controlled trusts;”.

In Article 34(1) after “Regulations” insert “under Article 33”.

In Article 36(1)(a) for “or his clerk, apprentice or servant” substitute “or an employee of his”.

In Article 36(1) for sub-paragraph (b) substitute—

“(b) in consequence of the act or default of a solicitor or of any of his employees—

- (i) there has been undue delay in connection with any matter in which that solicitor or his firm has been instructed on behalf of a client or any matter which relates to the administration of a controlled trust; or
- (ii) any sum of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his clients or subject to a controlled trust is in jeopardy while in the control or possession of the solicitor or his firm.”.

In Article 36(2) for the words from “either in his own name” to “firm” substitute “as a sole solicitor”.

In Article 37(1)(a) for the words from “trust” to the end substitute “controlled trust; and”.

In Article 39(1)(a)(ii) for the words from “solicitor in his own name” to “firm name” substitute “sole solicitor”.

In Article 41(4)(c) for the words from “trust” to the end substitute “controlled trust, or”.

In Article 52(6) for “Article 53(4)” substitute “Article 53(5)”.

In Article 54(1) for the words from the beginning to “Disciplinary Committee” substitute

“A copy of every order made—

- (a) by the Lord Chief Justice under Article 20(1) or 27(1);
- (b) by the Tribunal;
- (c) on an appeal under Article 53;
- (d) in the exercise of the jurisdiction referred to in Article 81(a),.”

In Article 56 for “apprentice, or of a clerk or servant” substitute “employee”.

In Article 58(1)(a) for “apprentice's, clerk's or servant's” substitute “employee's”.

In Article 58(1)(b) for “apprentice or the clerk or servant” substitute “employee”.

In Article 58(1)(c) and (2) for “apprentice, clerk or servant” substitute “or employee”.

In Article 59 for “partner of that solicitor, or of any apprentice, or of any clerk or servant of that solicitor” substitute “of his partners or employees”.

In Article 62 for “apprentice's, clerk's or servant's” substitute “employee's”.

In Article 63(1)(b) for “apprentice, clerk or servant or former apprentice, clerk or servant” substitute “employee or former employee” and for “apprentice, clerk or servant” substitute “employee”.

In Schedule 1 at the end of paragraph 8(1) add “, but the Society may, before appointing any person under paragraph 2(1), require from that person such undertakings (including undertakings as to the payment of money) as will, in the opinion of the Society, ensure that a solicitor or other person who is deprived of any such lien or right in consequence of anything done under this Schedule does not suffer any financial loss as a result of being so deprived.”.

SCHEDULE 3

Article 27(2).

TRANSITIONAL PROVISIONS AND SAVINGS

Practising certificates

1. Article 5 applies to applications for practising certificates made after the date on which that Article comes into operation.

2. Article 14 of the Solicitors Order, as substituted by Article 6, applies in relation to applications for practising certificates made after the date on which Article 6 comes into operation.

Status: This is the original version (as it was originally made).

3. Article 15 of the Solicitors Order, as substituted by Article 6, applies in relation to practising certificates which are suspended after the date on which Article 6 comes into operation.

Restriction on preparation of contracts of sale etc.

4. In Article 7—

- (a) paragraph (c) applies to acts done before or after the date on which that Article comes into operation; but
- (b) paragraphs (b) and (d) do not apply to acts done before that date.

Restriction on preparation of papers for probate, etc.

5. Where a person has committed an offence under Article 24 of the Solicitors Order before the date on which Article 8 comes into operation, he shall not be liable after that date to be proceeded against in respect of that offence unless the act constituting that offence would have constituted an offence under Article 24 of the Solicitors Order, as amended by Article 8, if it had been in operation at the time when the act was done.

Orders modifying provisions so as to apply to incorporated practices

6. Any provision made by an order under paragraph (8) of Article 26A of the Solicitors Order after the date on which Article 10(1) comes into operation may be made with retrospective effect as from that date or any later date.

Imposition of disciplinary sanctions by Council of Law Society

7. Article 16(1) applies in relation to services provided by a solicitor whether they were provided before or after the date on which Article 16(1) comes into operation.

Examination of solicitors' files in connection with complaints

8. Article 16(2) applies in relation to a complaint whether it was made before or after the date on which Article 16(2) comes into operation.

Powers of lay observers and Tribunal in relation to inadequate professional services

9.—(1) Article 17(b) applies in relation to a complaint whether it was made before or after the date on which Article 17(b) comes into operation.

(2) Article 51A of the Solicitors Order, as substituted by Article 19(1), applies in relation to services provided by a solicitor whether they were provided before or after the date on which Article 19(1) comes into operation.

The Solicitors Disciplinary Tribunal

10. Any complaint or application made to the Disciplinary Committee under Article 44(1) of the Solicitors Order before the coming into operation of Articles 18 to 20 shall be heard and determined, and any appeal from an order of the Committee on holding an inquiry into any such complaint or application shall lie, as if those Articles had not come into operation.

Legal aid complaints

11. Article 51B of the Solicitors Order, as substituted by Article 19(1), applies in relation to conduct of a solicitor whether it occurred before or after the coming into operation of Article 19(1).

12.—(1) Article 26 does not affect—

- (a) the hearing and determination by any tribunal established under the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981⁽⁶⁾ of any complaint made, or referred, to the tribunal before the coming into operation of Article 26; or
- (b) any appeal against the decision of such a tribunal with respect to any such complaint.

(2) Subject to sub-paragraph (1)(b), a decision under Article 15(1) of that Order to exclude a person from acting for persons receiving legal aid, advice or assistance shall have effect as if it were an order of the Tribunal under Article 51B(1)(a) of the Solicitors Order.

Increase in penalty

13. The amendment of Article 27(1) of the Solicitors Order in Schedule 2 shall not affect the fine for an act done before the date on which that amendment comes into operation.

Saving

14. The provisions of this Schedule shall have effect without prejudice to section 29 of the Interpretation Act (Northern Ireland) 1954⁽⁷⁾.

SCHEDULE 4

Article 27(3).

REPEALS

Chapter or Number	Short Title	Extent of repeal
1849 c. 53.	The Solicitors (Ireland) Act 1849.	The whole Act.
1870 c. 28.	The Attorneys' and Solicitors' Act 1870.	The whole Act.
1976 NI 12.	The Solicitors (Northern Ireland) Order 1976.	In Article 3(2) the definitions of “the Disciplinary Committee” and “solicitor-trustee”. In Article 4 the words from “and for the purposes” to the end. In Article 5(5) sub-paragraph (b) and the word “or” immediately before it. In Article 10(2) the words from “and any person” onwards. Article 23(2)(e) (i). In Article 26(2)(a) the words from “not exceeding”

⁽⁶⁾ 1981 NI 8

⁽⁷⁾ 1954 c. 33 (N.I.)

Status: This is the original version (as it was originally made).

Chapter or Number	Short Title	Extent of repeal
1978 c. 23.	The Judicature (Northern Ireland) Act 1978.	<p>to “solicitor”. Article 31(6). In Article 36(3) the words “or solicitor—trustee” where they twice occur. In Article 37(2) the words from “of the Disciplinary Committee” to “Court of Appeal”. In Article 38(a) the words “or himself”. In Article 40(1) the words “whether in his own name or in a firm name” and the word “banking” in the last two places where it occurs. In Article 41(4)(b) and (d) the word “bank”. In Article 52(3)(b) the words from “which notice” to the end. Article 72. Article 82(2) and (4). In Schedule 1, in paragraph 1 the definition of “controlled trust”. In Schedule 1 in paragraphs 3(1)(b), 8(2), 9(1) (twice), 13(1)(b), 15(1), 16(1) and 19 the words “a judge of”. In Schedule 1, in paragraph 8(2) the words “or solicitor-trustee” and “or a solicitor-trustee”. In Schedule 1, in paragraph 9(1)(a) the word “banking”. In Schedule 1, paragraph 13(2) to (4). In Schedule 1, in paragraph 23(1) the word “banking” in the last two places where it occurs.</p> <p>In Part II of Schedule 5 the amendments to Articles 15(1), 37(2), 64(1)(a) and 64(2) of the Solicitors Order.</p>
1981 NI 8.	The Legal Aid, Advice and Assistance (Northern Ireland) Order 1981.	<p>In Article 15(1) the words “solicitor or” and subparagraph (b) and the word “or” immediately before it. In Article 15(2) the words “or solicitor”.</p>