Solicitors Act 1974

1974 CHAPTER 47

PART II

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS AND CLERKS

Intervention in solicitor's practice, Compensation Fund and professional indemnity

35 Intervention in solicitor's practice.

The powers conferred by Part II of Schedule 1 shall be exercisable in the circumstances specified in Part I of that Schedule.

Modifications etc. (not altering text)

C1 S. 35 applied (with modifications) (22.5.2000) by S.I. 2000/1119, arts. 1, 37(3), Sch. 4 para. 9 (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(9)**)

36 Compensation Fund.

(1) The fund, known as the "Compensation Fund", shall be maintained and administered in accordance with the provisions of Schedule 2.

(2) Where the Council are satisfied—

(a) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of a solicitor, or of an employee of a solicitor, in connection with that solicitor's practice or purported practice or in connection with any trust of which that solicitor is or formerly was a trustee; or

(b) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a solicitor to account for money which has come to his hands in connection with his practice or purported practice or in connection with any trust of which he is or formerly was a trustee; or

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(c) that a solicitor has suffered or is likely to suffer loss or hardship by reason of his liability to any of his or his firm's clients in consequence of some act or default of any of his partners or employees in circumstances where but for the liability of that solicitor a grant might have been made out of the Compensation Fund to some other person;

the Society may make a grant out of the Compensation Fund for the purpose of relieving that loss or hardship.

(3) A grant under subsection (2)(c) may be made by way of a loan upon such terms and conditions (including terms and conditions as to the time and manner of repayment, the payment of interest and the giving of security for repayment) as the Council may determine, and the Society may at any time or times, upon such terms and conditions (if any) as the Council think fit, waive or refrain from enforcing the repayment of the whole or any part of the loan, the payment of any interest on the loan or any of its terms or conditions.

(4) Where—

(a) a grant is made otherwise than by way of loan, or

(b) a grant is made by way of loan and a condition specified in subsection (5) is satisfied in relation to it,

the Society shall be subrogated, to the extent specified in subsection (6), to any rights and remedies of the person to whom the grant is made in relation to the act or default in respect of which it is made, and shall be entitled, upon giving him a sufficient indemnity against costs, to require him whether before or after payment of the grant, to sue in his own name but on behalf of the Society for the purpose of giving effect to the Society's rights, and to permit the Society to have the conduct of the proceedings.

(5) The conditions mentioned in subsection (4) are—

(a) that repayment of the whole or part of the loan has been waived;

(b) that the borrower has failed to repay the whole or part of the loan in accordance with the terms and conditions of the loan.

(6) The extent to which the Society is subrogated under subsection (4) is—

(a) for a grant made by way of loan, the amount in relation to which a condition specified in subsection (5) is satisfied, and

(b) for any other grant, the amount of the grant.

(7) Where the Society refuses a grant, the Council shall state the reasons for the refusal.

(8) The Council may make rules about the Compensation Fund and the procedure for making grants from it.

Modifications etc. (not altering text)

C2 S. 36 applied (wuth modifications) (*prosp*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 89, 124(3), **Sch. 14 para. 6(2)**

C3 S. 36 extended (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **ss. 89(3)(a)(iv)(v)(4)**, 124(3)

C4 S. 36(3)–(7) extended (*prosp.*) by Administration of Justice Act 1985 (c. 61, SIF 34), ss. 9, 69(2), **Sch. 2 para. 6(3)**

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VALID FROM 31/03/2009

[F1 36A Compensation funds

(1) Compensation rules may require or authorise the Society to establish or maintain a fund or funds ("compensation funds") for the purpose of making grants in respect of compensation claims.

(2) Compensation rules may require solicitors, or solicitors of a description prescribed in the rules, to make contributions to compensation funds of such amounts, at such times and in such circumstances, as may be prescribed in or determined in accordance with the rules.

(3) Any amount payable by virtue of such a requirement may be recovered as a debt due to the Society.

(4) Subsection (2) does not apply to a solicitor who is a Crown Prosecutor.

(5) The Society may invest any money which forms part of a compensation fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).

(6) The Society may insure with authorised insurers, in relation to compensation funds, for such purposes and on such terms as it considers appropriate.

(7) The Society may, in such circumstances and subject to such conditions as may be prescribed in or determined in accordance with compensation rules—
   (a) borrow for the purposes of a compensation fund;
   (b) charge investments which form part of a compensation fund as security for borrowing by the Society for the purposes of that fund.

(8) A compensation fund may be applied by the Society for the purposes mentioned in subsection (9) (in addition to the making of grants in respect of compensation claims).

(9) The purposes are—
   (a) payment of premiums on insurance policies effected under subsection (6);
   (b) repayment of money borrowed by the Society for the purposes of the fund and payment of interest on any money so borrowed;
   (c) payment of any other costs, charges or expenses incurred by the Society in establishing, maintaining, protecting administering or applying the fund;
   (d) payment of any costs, charges or expenses incurred by the Society in exercising its powers under Part 2 of Schedule 1;
   (e) payment of any costs or damages incurred by the Society, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

(10) In this section—
   "compensation claim" has the same meaning as in section 36;
   "compensation fund" has the meaning given by subsection (1);
   "compensation rules" means rules under section 36(1).**]**

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Textual Amendments

F1 Ss. 36, 36A substituted (31.3.2009) for s. 36 by Legal Services Act 2007 (c. 29), 177, 211, {Sch. 16 para. 37} (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(i)** (subject to arts. 4, 5)

Modifications etc. (not altering text)

C5 S. 36A extended (1.7.2009) by S.I. 2000/1119, Sch. 4 para. 8(1) (as amended by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(8)(a)**)

C6 S. 36A(2)(3) applied by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 6(2) (as substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 94** (with ss. 29. 192, 193)); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 5)
S. 36A(2)(3) applied by Courts and Legal Services Act 1990 (c. 41), Sch. 14 para. 7 (as substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 133** (with ss. 29. 192, 193)); S.I. 2009/503, **art. 2(b)(iii)**

37 Professional indemnity.

(1) The Council, with the concurrence of the Master of the Rolls, may make rules (in this Act referred to as "indemnity rules") concerning indemnity against loss arising from claims in respect of any description of civil liability incurred—

(a) by a solicitor or former solicitor in connection with his practice or with any trust of which he is or formerly was a trustee;

(b) by an employee or former employee of a solicitor or former solicitor in connection with that solicitor's practice or with any trust of which that solicitor or the employee is or formerly was a trustee.

(2) For the purpose of providing such indemnity, indemnity rules—

(a) may authorise or require the Society to establish and maintain a fund or funds;

(b) may authorise or require the Society to take out and maintain insurance with authorised insurers;

(c) may require solicitors or any specified class of solicitors to take out and maintain insurance with authorised insurers.

(3) Without prejudice to the generality of subsections (1) and (2), indemnity rules—

(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 (2)(a) and require solicitors or any class of solicitors to make payments to any such fund;

(c) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (2)(b);

(d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(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 for whom indemnity is provided has failed to comply with the rules, the Society or insurers may

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take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;

(g) may specify circumstances in which solicitors 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) If any solicitor fails to comply with indemnity rules, any person may make a complaint in respect of that failure to the Tribunal.

(5) 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 indemnity under this section.

Modifications etc. (not altering text)

C7 S. 37 extended (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **ss. 89(3)(a)(iv)(v)(4)**, 124(3)

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