

SCHEDULES

SCHEDULE 5

Section 31.

INTERVENTION IN LICENSED CONVEYANCER'S PRACTICE

PART I

CIRCUMSTANCES IN WHICH COUNCIL MAY INTERVENE

- 1 (1) Subject to sub-paragraph (2), the powers conferred by Part II of this Schedule shall be exercisable where—
- (a) the Council has reason to suspect dishonesty on the part of—
 - (i) a licensed conveyancer, or
 - (ii) an employee or associate of a licensed conveyancer, or
 - (iii) the personal representatives of a deceased licensed conveyancer,in connection with that licensed conveyancer's practice;
 - (b) following the death of a licensed conveyancer who, immediately before his death was practising as a sole practitioner, the Council considers that there has been undue delay on the part of the personal representatives of that person in connection with his practice;
 - (c) the Council is satisfied that a licensed conveyancer has failed to comply with any rules made by virtue of section 22 or 23;
 - (d) a licensed conveyancer has made a composition or arrangement with his creditors ;
 - (e) a licensed conveyancer has been committed to prison in any civil or criminal proceedings ;
 - (f) the Council is satisfied that a licensed conveyancer practising as a sole practitioner is incapacitated by illness or accident to such an extent as to be unable to attend to his practice ;
 - (g) the powers conferred by section 98 of the Mental Health Act 1983 (emergency powers) have been exercised in respect of a licensed conveyancer ; or
 - (h) the licence held by any person—
 - (i) has been suspended or has terminated in accordance with section 18 ;
or
 - (ii) has been revoked or suspended by an order of the Discipline and Appeals Committee under section 26 ; or
 - (iii) has expired and no further licence has been issued to him under this Part of this Act.
- (2) The powers conferred by Part II of this Schedule shall only be exercisable under sub-paragraph (1)(c) if the Council has given the licensed conveyancer notice in writing that the Council is satisfied that he has failed to comply with rules specified in the

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notice and also (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable in his case.

- (3) For the purposes of the following provisions of this Schedule any person in relation to whom the powers conferred by Part II are exercisable by virtue of sub-paragraph (1) (h) shall be deemed to be a licensed conveyancer.
- 2 On the death of a licensed conveyancer who immediately before his death was practising as a sole practitioner paragraphs 6 to 8 shall apply to the client accounts of his practice.
- 3 The powers conferred by Part II of this Schedule shall also be exercisable, subject to paragraphs 5(4) and 10(3), where—
- (a) a complaint is made to the Council that there has been undue delay on the part of a licensed conveyancer in connection with any matter in which he or his firm was instructed on behalf of a client; and
 - (b) the Council by notice in writing invites the conveyancer 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 conveyancer 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 conveyancer and (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable in his case.
- 4 (1) Where the powers conferred by Part II of this Schedule are exercisable in relation to a licensed conveyancer, they shall continue to be exercisable after his death or after his licence has been revoked or suspended or has otherwise ceased to be in force under this Part of this Act.
- (2) The references to the licensed conveyancer or his firm in paragraphs 5(1), 6(2) and (3), 8, 9(1) and (5) and 10(1) include, in any case where the licensed conveyancer has died, references to his personal representatives.

PART II

POWERS EXERCISABLE ON INTERVENTION

Money

- 5 (1) The High Court, on the application of the Council, may order that no payment shall be made without the leave of the court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the licensed conveyancer or his firm.
- (2) No order under this paragraph shall take effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held.
- (3) A person shall not be treated as having disobeyed an order under this paragraph by making a payment of money if he satisfies the court that he exercised due diligence

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to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.

- (4) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.
- 6 (1) Without prejudice to paragraph 5, if the Council passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Council, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Council on trust to exercise in relation to them the powers conferred by this Part of this Schedule and subject thereto upon trust for the persons beneficially entitled to them.
- (2) This paragraph applies—
- (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with his practice,
 - (b) where they are exercisable by virtue of paragraph 2, to all sums of money in any client account; and
 - (c) where they are exercisable by virtue of paragraph 3, to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with the matter to which the complaint relates.
- (3) The Council shall serve on the licensed conveyancer or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.
- (4) Within eight days of the service of a notice under sub-paragraph (3), the person on whom it was served, on giving not less than 48 hours' notice in writing to the Council and (if the notice gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High Court for an order directing the Council to withdraw the notice.
- (5) If the court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.
- (6) If any person on whom a notice has been served under subparagraph (3) pays out sums of money at a time when such payment is prohibited by the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- 7 (1) If the Council takes possession of any sum of money to which paragraph 6 applies, the Council shall pay it into a special account in the name of the Council or of a person nominated on behalf of the Council; and any such person shall hold that sum on trust to permit the Council to exercise in relation to it the powers conferred by this Part of this Schedule and, subject thereto, on trust for the persons beneficially entitled to it.
- (2) A bank or other financial institution at which a special account is kept shall be under no obligation to ascertain whether it is being dealt with properly.
- 8 Without prejudice to paragraphs 5 to 7, if the High Court is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the licensed conveyancer or his firm, the court may require that

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person to give the Council information as to any such money and the accounts in which it is held.

Documents

- 9 (1) The Council may give notice to the licensed conveyancer or his firm requiring the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council—
- (a) where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1, of all documents in the possession of the licensed conveyancer or his firm in connection with his practice; and
 - (b) where they are exercisable by virtue of paragraph 3, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).
- (2) The person appointed by the Council may take possession of any such documents on behalf of the Council.
- (3) Except in a case where an application has been made to the High Court under sub-paragraph (4), if any person having possession of any such documents refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the third level on the standard scale.
- (4) The High Court, on the application of the Council, may order a person required to produce or deliver documents under sub-paragraph (1) to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Council.
- (5) If on an application by the Council the High Court is satisfied that there is reason to suspect that documents in relation to which the powers conferred by sub-paragraph (1) are exercisable have come into the possession of some person other than the licensed conveyancer or his firm, the court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Council.
- (6) On making an order under this paragraph, or at any later time, the court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.
- (7) The Council, on taking possession of any documents under this paragraph, shall serve upon the licensed conveyancer or personal representatives and upon any other person from whom they were received on the Council's behalf or from whose premises they were taken a notice that possession has been taken on the date specified in the notice.
- (8) Subject to sub-paragraph (9) a person upon whom a notice under sub-paragraph (7) is served, on giving not less than 48 hours' notice to the Council and (if the notice gives the name of the solicitor instructed by the Council) to that solicitor, may apply to the High Court for an order directing the Council to deliver the documents to such person as the applicant may require.

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- (9) A notice under sub-paragraph (8) must be given within eight days of the service of the Council's notice under sub-paragraph (7).
- (10) Without prejudice to the foregoing provisions of this Schedule, the Council may apply to the High Court for an order as to the disposal or destruction of any documents in its possession by virtue of this paragraph or paragraph 10.
- (11) On an application under sub-paragraph (8) or (10), the court may make such order as it thinks fit.
- (12) Except so far as its right to do so may be restricted by an order on an application under sub-paragraph (8) or (10), the Council may take copies of or extracts from any documents in its possession by virtue of this paragraph or paragraph 10 and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Council.

Mail

- 10 (1) The High Court, on the application of the Council, may from time to time order that, for such time not exceeding 18 months as the court thinks fit, postal packets (as defined by section 87(1) of the Post Office Act 1953) addressed to the licensed conveyancer or his firm at any place or places mentioned in the order shall be re-directed to the Council or any person appointed by the Council at any other address there mentioned ; and the Council, or that person on its behalf, may take possession of any such packets received at that address.
- (2) Where such an order is made the Council shall pay to the Post Office the like charges (if any) as would have been payable for the re-direction of the packets by virtue of any scheme made under section 28 of the Post Office Act 1969 if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office to re-direct them to him at the address mentioned in the order.
- (3) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 3.

General

- 11 The powers in relation to sums of money and documents conferred by this Part of this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.
- 12 Subject to any order for the payment of costs that may be made on an application to the court under this Schedule, any costs incurred by the Council for the purposes of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Part of this Schedule on behalf of the Council, shall be paid by the licensed conveyancer or his personal representatives and shall be recoverable from him or them as a debt owing to the Council.