

SCHEDULES

SCHEDULE 8

LICENSED CONVEYANCERS

PART II

AMENDMENTS OF PROVISIONS RELATING TO POWERS OF COUNCIL ETC.

Delegation of powers etc.

- 12 (1) Subject to any provision to the contrary made by or under any enactment, the Council may arrange for any of its functions (other than those of making rules, schemes or standing orders under Part II of the Act of 1985) to be discharged—
- (a) by a committee of the Council; or
 - (b) by a member of the Council's staff.
- (2) The Council may make rules providing for functions conferred by Part II of the Act of 1985 on any committee established under that Part to be discharged by a committee established under this paragraph.
- (3) In exercising its powers under sub-paragraphs (1) or (2), the Council may impose restrictions or conditions on the committee by which the functions concerned are to be discharged.
- (4) The Council may make rules providing for any of its committees (including one established under Part II of the Act of 1985) to refer any matter of a kind specified in the rules, in such circumstances as may be so specified, to any other such committee, or to the Council.
- (5) Where any matter is referred under sub-paragraph (4) to a committee of the Council or to the Council, that committee or (as the case may be) the Council shall have the same power to deal with it as the committee referring it.
- (6) The number of members of a committee established under this paragraph, and the terms on which they are to hold and vacate office, shall be fixed by the Council.
- (7) A committee established under this paragraph may include persons who are not members of the Council (whether licensed conveyancers or not) but a majority of the members of any such committee (including the chairman) shall be members of the Council.
- (8) The validity of any proceedings of such a committee shall not be affected by any casual vacancy among its members.
- (9) Any rules made under this paragraph—
- (a) may make such incidental and supplemental provision as the Council considers appropriate; and

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- (b) may make different provision for different circumstances.

Council's intervention powers

- 13 (1) Subject to sub-paragraph (2), the powers conferred by Part II of Schedule 5 to the Act of 1985 (intervention in licensed conveyancer's practice) shall also be exercisable where—
- (a) the Council is satisfied that a sole licensed conveyancer has abandoned his practice; or
 - (b) the Council is satisfied that a licensed conveyancer has been practising in breach of any condition imposed on him in connection with any relevant licence of his.
- (2) The powers—
- (a) conferred by Part II of Schedule 5 to the Act of 1985; and
 - (b) exercisable by virtue of sub-paragraph (1)(b),
- shall only be exercised if the Council has given the licensed conveyancer notice in writing that it is satisfied as mentioned in sub-paragraph (1)(b) and also (at the same or any later time) notice in writing that the powers conferred by Part II of that Schedule are accordingly exercisable in his case.

Inadequate professional services

- 14 (1) The Council may take any of the steps mentioned in paragraph 15 (“the steps”) with respect to a licensed conveyancer where it appears to it that the professional services provided by him in connection with any matter in which he or his firm has been instructed by a client have, in any respect, not been of the quality which it is reasonable to expect of him as a licensed conveyancer.
- (2) The Council shall not take any of the steps unless it is satisfied that in all the circumstances of the case it is appropriate to do so.
- (3) In determining in any case whether it is appropriate to take any of the steps, the Council may—
- (a) have regard to the existence of any remedy which it is reasonable to expect to be available to the client in civil proceedings; and
 - (b) where proceedings seeking any such remedy have not been begun by him, have regard to whether it is reasonable to expect him to begin them.
- (4) The Council's powers under this paragraph are exercisable in relation to a person who was, at the material time, a licensed conveyancer even though he is no longer a licensed conveyancer and references to a licensed conveyancer in this paragraph and paragraphs 15 to 20, so far as they relate to the exercise of those powers, shall be construed accordingly.

Inadequate professional services: steps that may be taken

- 15 (1) The steps are—
- (a) determining that the costs to which the licensed conveyancer is entitled in respect of his services (“the costs”) are to be limited to such amount as may be specified in the determination and directing him to comply, or to secure compliance, with such one or more of the permitted requirements as

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appear to the Council to be necessary in order for effect to be given to its determination;

- (b) directing him to secure the rectification, at his expense or at that of his firm, of any such error, omission or other deficiency arising in connection with the matter in question as it may specify;
- (c) directing him to pay such compensation to the client as the Council sees fit to specify in the direction;
- (d) directing him to take, at his expense or at that of his firm, such other action in the interests of the client as it may specify.

(2) The “permitted requirements” are—

- (a) that the whole or part of any amount already paid by or on behalf of the client in respect of the costs be refunded;
- (b) that the whole or part of the costs be remitted;
- (c) that the right to recover the costs be waived, whether wholly or to any specified extent.

(3) The power of the Council to take any such steps is not confined to cases where the client may have a cause of action against the licensed conveyancer for negligence.

Inadequate professional services: compensation

- 16 (1) The amount specified in a direction by virtue of paragraph 15(1)(c) shall not exceed £1,000.
- (2) The Lord Chancellor may by order made by statutory instrument amend subparagraph (1) by substituting for the sum of £1,000 such other sum as he considers appropriate.
- (3) Before making any such order the Lord Chancellor shall consult the Council.
- (4) Any statutory instrument made under this paragraph shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Inadequate professional services: failure to comply with direction

- 17 (1) If a licensed conveyancer fails to comply with a direction given under this Part of this Schedule, any person may make a complaint in respect of that failure to the Discipline and Appeals Committee; but no other proceedings whatever shall be brought in respect of it.
- (2) On the hearing of such a complaint the Discipline and Appeals Committee may, if it thinks fit (and whether or not it makes any order under section 26(2) of the Act of 1985), direct that the direction be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court.

Inadequate professional services: fees

- 18 (1) The Council may, by regulations made with the concurrence of the Lord Chancellor, make provision for the payment, by any client with respect to whom the Council is asked to consider whether to take any of the steps, of such fee as may be prescribed.
- (2) The regulations may provide for the exemption of such classes of client as may be prescribed.

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- (3) Where a client pays the prescribed fee it shall be repaid to him if the Council takes any of the steps in the matter with respect to which the fee was paid.
- (4) In this paragraph “prescribed” means prescribed by the regulations.

Inadequate professional services: costs

- 19 Where the Council takes any of the steps with respect to a licensed conveyancer it may also direct him to pay to the Council—
- (a) the amount of the fee repayable by the Council to the client under paragraph 18(3); and
 - (b) an amount which is calculated by the Council as the cost to it of dealing with the complaint, or which in its opinion represents a reasonable contribution towards that cost.

Duty of Discipline and Appeals Committee

- 20 Where the Discipline and Appeals Committee—
- (a) is considering, or has considered, an application or complaint with respect to a licensed conveyancer; and
 - (b) is of the opinion that the Council should consider whether to take any of the steps with respect to that licensed conveyancer,
- it shall inform the Council.

Power to examine files

- 21 (1) Where the Council is satisfied that it is necessary to do so for the purpose of investigating any complaint made to it—
- (a) alleging professional misconduct by a licensed conveyancer; or
 - (b) relating to the quality of any professional services provided by a licensed conveyancer,
- 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, 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 provisions of paragraphs 9(2) to (12), 11 and 12 of Schedule 5 to the Act of 1985 shall apply in relation to the powers conferred by sub-paragraph (1) as they apply in relation to the powers conferred by paragraph 9(1) of that Schedule.

Interest on clients' money

- 22 Where a licensed conveyancer—
- (a) is required by rules made under section 23 of the Act of 1985 to place any sum of money in a separate deposit account; but
 - (b) fails to do so as soon as is reasonably practicable,
- the Council may give a direction requiring him to account to the client in question for any interest which has not been earned but which would have been earned if that sum had been placed in a separate deposit account as soon as was reasonably practicable.

Full and limited licences

23 In section 15 of the Act of 1985 (issue of licences by Council), the following subsections shall be added at the end—

“(7) A licence issued under this Part may be endorsed by the Council as—

- (a) a full licence, if the Council is satisfied that the person to whom it is issued has complied, or will comply, with the requirements made under this Part with respect to professional indemnity and compensation; or
- (b) as a limited licence, if the Council is not so satisfied.

(8) Rules made under section 21 may make provision for the making, or removal, of endorsements while a licence is in force and for the recording of any such endorsement, or of its removal, in the register maintained under section 19.”

Cases in which conditions may be attached to licences

24 In section 16(1) of the Act of 1985 (cases in which conditions may be attached to licences), the following shall be substituted for paragraph (i)—

- “(i) after having been committed to prison in civil proceedings;
- (ia) after having been convicted of an offence involving dishonesty or deception or a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984); or”.