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## STATUTORY INSTRUMENTS

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# 1976 No. 582

## Solicitors (Northern Ireland) Order 1976

### PART III

#### PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE

##### *General power to make regulations*

##### **General power to make regulations as to professional practice, conduct and discipline of solicitors**

**26.**—(1) Without prejudice to any other provision of this Part, the Society may make regulations as to the professional practice, conduct and discipline of solicitors.

(2) Without prejudice to the generality of paragraph (1), regulations may provide for restricting a solicitor from—

- (a) engaging in practice on his own account whether in partnership or otherwise for such period,<sup>F1</sup> . . . , as may be specified in the regulations;
- (b) acting in any transaction for more than one party.

(3) If a solicitor contravenes any regulation made under this Article, any person may make a complaint in respect of the contravention to the<sup>F1</sup> Tribunal].

**F1** 1989 NI 14

##### *<sup>F2</sup>Incorporated practices*

**F2** 1989 NI 14

##### **Incorporated practices**

**26A.**—(1) The Society may make regulations—

- (a) making provision as to the management and control by solicitors of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors;
- (b) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of any such services;
- (c) prescribing the conditions which (subject to any exceptions provided by the regulations) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised; and
- (d) regulating the conduct of the affairs of such bodies.

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- (2) Regulations made by the Society may also make provision—
- (a) for the manner and form in which applications for recognition under this Article are to be made, and for the payment of fees in connection with such applications;
  - (b) for regulating the names that may be used by recognised bodies;
  - (c) as to the period for which any recognition granted under this Article shall (subject to the provisions of this Part) remain in force;
  - (d) for the revocation of any such recognition on the grounds that it was granted as a result of any error or fraud;
  - (e) for the keeping by the registrar of a list containing the names and places of business of all bodies corporate which are for the time being recognised under this Article, and for the information contained in any such list to be available for inspection;
  - (f) for regulations made under any other provision of this Order to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Society to be necessary or expedient;
  - (g) for empowering the Council to take such steps as they consider necessary or expedient to ascertain whether or not any regulations applicable to recognised bodies by virtue of this Article are being complied with;
  - (h) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies under this Part.
- (3) Articles 19, 23(1) and 24(1) shall not apply to a recognised body.
- (4) Article 23(1) or, as the case may be, Article 24(1) shall not apply to any act done by an officer or employee of a recognised body if—
- (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
  - (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under Article 23 or, as the case may be, under Article 24.
- (5) References in Articles 25, 27 and 28 to an unqualified person shall not include references to a recognised body.
- (6) A certificate signed by an officer of the Society and stating that any body corporate is or is not, or was or was not at any time, a recognised body shall, unless the contrary is proved, be evidence of the facts stated in the certificate; and a certificate purporting to be so signed shall be taken to have been so signed unless the contrary is proved.
- (7) Schedule 1A (which makes provision with respect to the application of provisions of this Order to recognised bodies and with respect to other matters relating to such bodies) shall have effect.
- (8) Subject to the provisions of Schedule 1A, the Department of Finance and Personnel may by order, made subject to negative resolution, provide for any enactment or instrument passed or made before the coming into operation of Article 10(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989 and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to that Department to be necessary or expedient.
- (9) In this Article “recognised body” means a body corporate for the time being recognised under this Article<sup>F3</sup> and “officer”, in relation to a limited liability partnership, means a member of the limited liability partnership].

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**F3** SR 2004/307

## **Penalty for pretending to be a body recognised under Article 26A**

**26B.**—(1) A body corporate shall not describe itself or hold itself out as a body corporate for the time being recognised under Article 26A unless it is so recognised.

(2) Any body corporate which contravenes paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.]

### *Restrictions on conduct of practice*

#### **Acting as agent for unqualified person**

**27.**—<sup>F4</sup>(1) Where—

- (a) a complaint is made to the Lord Chief Justice that a solicitor has wilfully and knowingly—
  - (i) acted as agent in any action, suit, matter or transaction for any unqualified person; or
  - (ii) permitted his 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
  - (iii) sent any process to an unqualified person; or
  - (iv) done any other act so as to enable an unqualified person to appear, act or practise in any respect, as a solicitor in any action, suit, matter or transaction; and

(b) the matter of the complaint is proved to the satisfaction of the Lord Chief Justice; then the Lord Chief Justice may impose upon the solicitor a fine not exceeding<sup>F5</sup> £1,000] and, in addition to or instead of imposing a fine, may suspend the solicitor from practising as such during such time as to the Lord Chief Justice may seem fit, or may order the name of the solicitor to be struck off the roll.

(2) Upon complaint and proof being made under paragraph (1) the Lord Chief Justice may commit an unqualified person so appearing, acting or practising as aforesaid to prison, for any term not exceeding one year.

(3) This Article shall not apply where the solicitor is acting by virtue of an appointment made pursuant to Article 32.

**F4** SI 1978/1910

**F5** 1989 NI 14

#### **Sharing of profits or fees with unqualified persons**

**28.**—(1) Subject to paragraph (2), any solicitor who<sup>F6</sup> knowingly] shares any of his professional 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<sup>F7</sup> level 4 on the standard scale].

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

- (a) where a person who has ceased to practise as a solicitor receives from any solicitor a share of the profits or fees of the latter as a price or value of the practice which he has transferred to the latter, or receives a share of such profits as a voluntary or other allowance out of the profits or fees of a practice in which he has been a partner; or
- (b) where the widow, children or personal representatives of any deceased solicitor receive from any solicitor who has purchased or succeeded to the practice of the deceased solicitor, or from any firm of solicitors of which the deceased solicitor was a partner at his death, or from any solicitor acting by virtue of an appointment made pursuant to Article 32, any share of the profits of the practice of the deceased solicitor or such firm; or

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- (c) where professional profits or fees are received by a solicitor employed by a government department (including a department of the government of the United Kingdom), local authority, bank or trade union or statutory undertakers in respect of work done in the course of his duty, if the solicitor is in the whole time or exclusive employment of the government department, local authority, bank or trade union or statutory undertakers and does not engage in private practice as a solicitor; or
- (d) where an agreement for sharing fees is made between a solicitor in Northern Ireland and a person carrying on the practice or profession of the law in some other part of the United Kingdom or the Commonwealth or in the Republic of Ireland or in a foreign country; or
- (e) where, for the purposes of making legal aid and advice more readily available to persons in need, the Council have directed in writing that paragraph (1) shall not apply in relation to a non-profit making organisation specified in the direction.

**F6** 1989 NI 14

**F7** 1984 NI 3

#### **Employment by solicitor of persons whose names have been struck off the roll, etc.**

**29.**—(1) A solicitor shall not, in connection with his practice as a solicitor, without the written consent of the Council, which may be given for such period and subject to such terms and conditions (if any) as the Council think fit, employ or remunerate any person who to his knowledge is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll, or that he is suspended from practising as a solicitor or that he has been refused a practising certificate or that his practising certificate is suspended while he is an undischarged bankrupt.

(2) A solicitor aggrieved by a decision of the Council under paragraph (1) refusing to grant any such consent as aforesaid, or as to any terms and conditions attached by the Council to the consent may, within one month from the date on which notice of that decision is served on him, appeal to the Lord Chief Justice who may affirm the decision or may direct the Council to grant the consent for such period and subject to such terms and conditions (if any) as the Lord Chief Justice thinks fit.

(3) For the purposes of paragraph (2) a solicitor who has not received the Council's consent within three weeks after he applied for it, shall be deemed to have received notice at the expiration of that period that the consent has been refused.

(4) If a solicitor<sup>[F8]</sup> knowingly contravenes this Article or] any of the terms and conditions subject to which any consent has been given under this Article, any person may make a complaint in respect of the contravention to the<sup>[F8]</sup> Tribunal].

**F8** 1989 NI 14

#### **Failure to disclose fact of name having being struck off the roll, etc.**

**30.** Any person who, while he is disqualified from practising as a solicitor by reason of the fact that his name has been struck off the roll or that he is suspended from practising as a solicitor or that he has been refused a practising certificate or that his practising certificate is suspended while he is an undischarged bankrupt, seeks or accepts employment by a solicitor in connection with that solicitor's practice, without previously informing that solicitor that he is so disqualified as aforesaid, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>[F9]</sup> level 3 on the standard scale].

**F9** 1984 NI 3

## Provisions as to clerk or apprentice found guilty of offences or party to misconduct of solicitor

31.—(1) Where—

- (a) a person has been convicted of any offence under the Theft Act (Northern Ireland) 1969 or has been convicted, in Northern Ireland or elsewhere, of any offence involving dishonesty; or
- <sup>F10</sup>(b) it appears to the Society, in the course or as a result of any proceedings before the Tribunal, that a person who is or was an employee of a solicitor, but is not himself a solicitor, has been a party to any act or default of such solicitor which involved conduct on that person's part of such a nature that in the opinion of the Society it would be undesirable for him to be employed by a solicitor in connection with his practice; or
- (c) a person has had his name struck off a roll of solicitors in Great Britain or the Republic of Ireland or has been suspended from practice in Great Britain or the Republic of Ireland and his name remains so struck off or he remains so suspended,]

an application may be made by or on behalf of the Society to the<sup>F10</sup> Tribunal] that an order be made directing that, as from a date to be specified therein, no solicitor shall, in connection with his practice as a solicitor, take or retain the said person into or in his employment or remunerate the said person without the written consent of the Society, which may be given for such period and subject to such terms and conditions (if any) as the Society think fit.

(2) Such application shall be made to and heard by the<sup>F10</sup> Tribunal] in accordance with rules<sup>F10</sup> made under Article 43(8)] and, on the hearing of the application, the<sup>F10</sup> Tribunal] shall have power to make such an order as is mentioned in paragraph (1) and an order as to the payment of costs by any party.

(3) The provisions of Articles 48 to 54 shall have effect for the purposes of this Article, so however that, in the application of Article 52 for the purposes of this Article, references to an order directing that a solicitor is to be suspended from practice shall be construed as including references to an order made as mentioned in paragraph (1) with respect to any person.

(4) Any person who, while an order under this Article is in force in respect of him, seeks or accepts employment by or remuneration from a solicitor in connection with his practice as a solicitor without previously informing him of such order, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding<sup>F11</sup> level 3 on the standard scale].

(5) If a solicitor<sup>F10</sup> knowingly contravenes any order under this Article or] any of the terms and conditions subject to which any consent has been given under this Article, any person may make a complaint in respect of the contravention to the<sup>F10</sup> Tribunal].

*Para. (6) rep. by 1989 NI 14*

**F10** 1989 NI 14

**F11** 1984 NI 3

## Winding-up practice of a deceased solicitor

32. On the death of a solicitor his personal representatives may, notwithstanding anything to the contrary in any enactment, appoint a duly qualified solicitor to carry on the practice of the deceased solicitor for the purpose of the beneficial winding-up thereof for such reasonable period and on such terms<sup>F12</sup>, including terms as to remuneration, as may be fixed or approved by the Society].

**F12** 1989 NI 14

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*Accounts, etc.*

### **Regulations as to keeping of accounts by solicitors**

**33.**—(1) The Society shall as soon as practicable make regulations—

- (a) as to the opening and keeping by solicitors of accounts at banks<sup>F13</sup> or with building societies]
  - (i) for clients' money;
  - <sup>F13</sup>(ii) for money comprised in controlled trusts;]
- (b) as to the keeping by solicitors of accounts containing particulars and information as to money received, held or paid by them—
  - (i) for or on account of their clients;
  - (ii) for or on account of any such trust as is mentioned in sub-paragraph ( a);
- (c) as to the investment in trustee<sup>F14</sup> investments] of the money of any such trust as is mentioned in sub-paragraph ( a);
- (d) empowering the Society to take such action and collect such evidence as may be necessary to enable them to ascertain whether or not the regulations are being complied with.

(2) If a solicitor contravenes any regulation made under this Article any person may make a complaint in respect of that contravention to the<sup>F13</sup> Tribunal].

(3) Regulations made under paragraph (1)( a) to ( c) shall not apply to—

- (a) a solicitor acting in the course of his employment as a public officer; or
- (b) a solicitor who holds an office under any local authority or statutory undertakers and who does not engage in private practice as a solicitor;

and such regulations shall not apply to a solicitor who holds an office to which sub-paragraph ( b) applies and who is engaged in private practice as a solicitor, except so far as regards money received, held or paid by him in the course of that private practice.

**F13** 1989 NI 14

**F14** 2001 c. 14 (NI)

### **Interest on clients' money**

**34.**—(1) Regulations<sup>F15</sup> under Article 33] may make provision—

- (a) for requiring a solicitor, in such cases as the regulations may prescribe, either—
  - (i) to keep on deposit in a separate account at a bank<sup>F15</sup> or with a building society] for the benefit of the client money received for or on account of a client; or
  - (ii) to make good to the client out of the solicitor's own money a sum equivalent to the interest which would have accrued if the money so received had been so kept on deposit;
- (b) for defining the cases in which a solicitor may be required to act in accordance with the regulations by reference to the amount of any sum received or to the period for which it is or is likely to be retained or both; and
- (c) for enabling a client (without prejudice to any other remedy) to require that any question arising under the regulations in relation to the client's money shall be referred to and determined by the Society.

(2) Except as provided by regulations, a solicitor shall not be liable by virtue of the relation between solicitor and client to account to any client for interest received by the solicitor on money deposited at a bank<sup>F15</sup> or with a building society], being money received or held for or on account of his clients generally.

(3) Nothing in this Article or in regulations made thereunder shall—

- (a) affect any arrangement in writing, whenever made, between a solicitor and his client as to the application of the client's money or interest thereon; or
- (b) apply to money received by a solicitor being money subject to a trust of which the solicitor is a trustee.

F15 1989 NI 14

### Accountants' reports

**35.**—(1) Every solicitor shall once in each period of twelve months ending on 5th January, unless he satisfies the Council that owing to the circumstances of his case it is unnecessary so to do, deliver to the Society a report signed by an accountant (in this Article referred to as “an accountant's report”) and containing such information as may be prescribed.

(2) An accountant's report shall be delivered to the Society not more than six months (or such other period as may be prescribed) after the end of the accounting period<sup>F16</sup> for the purposes of] that report.

(3) Subject to regulations, the accounting period for the purposes of an accountant's report shall—

- (a) begin at the expiry of the last preceding accounting period for which an accountant's report has been delivered;
- (b) cover not less than twelve months; and
- (c) where possible, consistently with sub-paragraphs ( a ) and ( b ), correspond to a period or consecutive periods for which the accounts of the solicitor or his firm are ordinarily made up.

(4) The Society shall make regulations to give effect to the provisions of this Article, and those regulations shall prescribe—

- (a) what qualification shall be held by an accountant by whom an accountant's report may be given;
- (b) the information to be contained in an accountant's report in accordance with paragraph (1);
- (c) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or his firm and of any other relevant documents with a view to the signing of a report to be delivered by the solicitor under this Article;
- (d) the form of the accountant's report; and
- (e) the evidence (if any) which shall satisfy the Council that the delivery of an accountant's report is unnecessary and the cases in which such evidence is or is not required.

(5) Regulations may include provision—

- (a) permitting in such special circumstances as may be defined in the regulations a different accounting period from that specified in paragraph (3); and
- (b) regulating any matters of procedure or matters incidental, ancillary or supplemental to the provisions of this Article.

<sup>F16</sup>(5A) Without prejudice to the generality of paragraph (5)(b), regulations under this Article may make provision requiring a solicitor in advance of delivering an accountant's report to notify



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the Society of the period which is to be the accounting period for the purposes of that report in accordance with the preceding provisions of this Article.]

(6) If any solicitor fails to comply with the provisions of this Article or of any regulations made thereunder, a complaint in respect of that failure may be made by or on behalf of the Society to the<sup>F16</sup> Tribunal].

(7) A certificate under the hand of the secretary shall, until the contrary is proved, be evidence that a solicitor has or, as the case may be, has not delivered to the Society an accountant's report or supplied any evidence required under this Article or regulations.

(8) This Article shall not apply to any solicitor to whom regulations under Article 33(1)( a) to ( c) do not apply by virtue of paragraph (3) of that Article; and in relation to a solicitor to whom those regulations apply by virtue of that paragraph only as regards money received, held or paid in the course of a private practice, this Article shall have effect only in relation to such money.

F16 1989 NI 14
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#### *Control of solicitors' property in certain cases*

#### **Powers of Council to deal with property in control of certain solicitors and other persons**

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

- (a) a solicitor,<sup>F17</sup> or an employee of his], has been guilty of dishonesty in connection with his practice as a solicitor or in connection with any trust of which the solicitor is a trustee; or
- <sup>F17</sup>(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,]

the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.

(2) The provisions of Schedule 1 shall apply to every solicitor who practises<sup>F17</sup> as a sole solicitor] and—

- (a) who is adjudicated bankrupt or has entered into any voluntary or other arrangement or composition with his creditors; or
- (b) who has had any order of committal or attachment, or judgment or decree of the kind mentioned in Article 13(1)(j) made against him which has not been discharged; or
- <sup>F18</sup>(c) in relation to whose property or affairs any power is being exercised under Part VIII of the Mental Health (Northern Ireland) Order 1986 or who is a patient for the time being detained in hospital for treatment or subject to guardianship under Part II of that Order; or]
- (d) who by reason of bodily illness, infirmity or weakness not amounting to mental disorder has become permanently or for a period of more than<sup>F17</sup> one month] incapable of carrying on practice as a solicitor and has not in the opinion of the Council made adequate arrangements for professional assistance in or supervision of his practice during such incapacity.



(3) Where the Council have passed a resolution to the effect that they are satisfied that a solicitor<sup>F17</sup> . . .

[<sup>F17</sup>(a) has failed to comply with—

(i) any provision respecting the keeping of accounts contained in regulations made under Article 33 or with any requirements made in pursuance of any such regulations for the production of books of account or other documents; or

(ii) the provisions of Article 35 or of any regulations made thereunder; and]

(b) has been informed that such failure will have the consequence that the provisions of Schedule 1 shall apply in relation to him and the other persons mentioned in that Schedule,

the provisions of Schedule 1 shall apply in relation to that solicitor or<sup>F17</sup> . . . and the other persons mentioned in that Schedule.

[<sup>F17</sup>(4) Where, at any time, the Council are satisfied that the circumstances mentioned in Article 13(1)(g) or (h) have effect in relation to any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.

(5) Where the Tribunal have made a recommendation to the Council under Article 51C in respect of any solicitor, the Council may direct that the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule.]

**F17** 1989 NI 14

**F18** 1986 NI 4

### **Power of Council to deal with property of solicitors removed from or struck off the roll**

**37.**—(1) Where the name of a solicitor is removed from or struck off the roll or a solicitor is suspended from practice, that solicitor shall within three weeks from the material date satisfy the Council that he has made suitable arrangements for making available to his clients or to some other solicitor or solicitors instructed by his clients or with the approval of the Council instructed by himself—

(a) all deeds, wills, documents constituting or evidencing title to any property, papers, books of account, records, vouchers and other documents in his or his firm's possession or control, or relating to any<sup>F19</sup> controlled trust; and]

(b) all sums of money due from him or his firm to, or held by him or his firm on behalf of, his clients or subject to any such trust as aforesaid,

and if he fails so to satisfy the Council, Schedule 1 shall apply in relation to him and the other persons mentioned in that Schedule.

(2) In this Article, the expression “the material date” means whichever is the latest of the following dates, that is to say—

(a) the date when the order<sup>F19</sup> . . . .<sup>F20</sup>, by or in pursuance of which the solicitor's name is removed from or struck off the roll, or the solicitor is suspended from practice, is to take effect;

(b) the last date on which an appeal against that order may be lodged;

(c) the date on which any such appeal is dismissed or abandoned.

**F19** 1989 NI 14

**F20** 1978 c.23

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### Solicitors guilty of undue delay in certain matters

38. Where—

(a) a complaint is made to the Council that there has been undue delay on the part of a solicitor in connection with any matter in which he or his firm has been instructed on behalf of a client<sup>F21</sup>. . . or any matter which relates to the administration of<sup>F21</sup> a controlled trust or in complying with an order of the Tribunal under Article 51(1)(j), (k) or (l) or (3) or Article 51A; and]

(b) the Council have by notice invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor 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 solicitor has been notified in writing by the Society that he has so failed;

the provisions of Schedule 1 shall apply in relation to that solicitor and the other persons mentioned in that Schedule, 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 in the complaint.

**F21** 1989 NI 14

### Control of deceased solicitor's practice in certain circumstances

39.—(1) Where—

(a) the Council have reasonable cause to believe and have passed a resolution stating that they have reasonable cause to believe that—

(i) a solicitor who has died, or his clerk, apprentice or servant, has been guilty of dishonesty or undue delay in connection with his practice as a solicitor or in connection with any trust of which the solicitor was a trustee; or

(ii) the personal representatives of a deceased solicitor who immediately before his death was practising as a<sup>F22</sup> sole solicitor], have been guilty of dishonesty or undue delay in administering the affairs of that solicitor's practice or in connection with any trust of which that solicitor was a trustee; or

(b) a solicitor dies and immediately before his death the provisions of Schedule 1 applied to him;

the provisions of Schedule 1 shall with necessary modifications apply or, in the case of a solicitor referred to in sub-paragraph ( b), continue to apply, to the personal representatives of that solicitor as they apply in relation to a solicitor in respect of whom the Council have passed a resolution under Article 36(1)( a).

[<sup>F22</sup>(1A) Where a solicitor dies and—

(a) immediately before his death—

(i) he was practising as a sole solicitor; and

(ii) the provisions of Schedule 1 did not apply to him; and

(b) no appointment is made under Article 32 within three months from the date of his death, the provisions of Schedule 1 shall, if the Council so resolve, apply with the necessary modifications to the personal representatives of that solicitor as they apply in relation to a solicitor in respect of whom the Council have passed a resolution under Article 36(1)(a).]

(2) Where no grant of representation has been issued in the estate of any solicitor to whom paragraph (1)(a)(i) or (b) applies the High Court shall, notwithstanding any enactment or rule of law to the contrary, have power to grant letters of administration (with or without will annexed) to the Society and, where such a grant is issued to them the Society may act accordingly as administrator and shall have the same rights and be subject to the same liabilities and be accountable in like manner as if the Society were the personal representatives of the deceased.

(3) On a grant being made to the Society under paragraph (2) in respect of the estate of a deceased solicitor a person shall not, without a grant being made to him, be or become entitled to administer any estate of which that deceased solicitor was an executor.

**F22** 1989 NI 14

### **On death of solicitor practising on his own account Society may deal with banking accounts of practice**

**40.**—(1) At any time after the death of a solicitor who immediately before his death was practising as a sole solicitor<sup>F23</sup> . . . the Council may, if they think fit, by notice inform the personal representatives of such solicitor and any bank<sup>[F23 or building society]</sup> with whom<sup>[F23 an]</sup> account in the name of the solicitor or his firm (being an account in the title of which the word “client” is required by regulations made under Article 33, to appear) is kept, that the provisions of this Article shall apply to such<sup>F23</sup> . . . account and on the date of the service of such notices (or if the notices are served on different dates, on the date of the service of the last notice) the right to operate on or otherwise deal with such<sup>F23</sup> . . . account shall, notwithstanding any enactment or rule of law to the contrary, vest in the Society to the exclusion of any personal representatives of such solicitor and shall be exercisable as from such date as aforesaid.

(2) For the purpose of this Article a certificate signed by the secretary and certifying that<sup>[F23 an]</sup> account is an account in the title of which the word “client” is required by such regulations as aforesaid to appear shall be evidence of the matter certified.

**F23** 1989 NI 14

PROSPECTIVE

### **[F24] Duty to advise client as to representation in court**

**40A.**—(1) Paragraph (2) applies where—

- (a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;
- (b) either—
  - (i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or
  - (ii) that solicitor is an authorised solicitor and is minded to provide that representation;
- (c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.

(2) The solicitor must advise the client in writing—

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- (a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and
  - (b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.
- (3) The Society shall make regulations with respect to the giving of advice under paragraph (2).
- (4) A solicitor shall—
- (a) in advising a client under paragraph (2), act in the best interest of the client; and
  - (b) give effect to any decision of the client referred to in paragraph (2)(b).
- (5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.
- (6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.
- (7) In this Article and Article 40B “authorised solicitor” means a solicitor who holds an authorisation under Article 9A.

**F24** Arts. 40A, 40B inserted (prosp.) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 89(2), 111(3) (with s. 106(4))

PROSPECTIVE

### **Duty to inform court as to compliance with Article 40A(2)**

**40B.**—(1) Where—

- (a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;
- (b) that client is to be represented in those proceedings by an authorised solicitor; and
- (c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978,

the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal.]

**F24** Arts. 40A, 40B inserted (prosp.) by Justice Act (Northern Ireland) 2011 (c. 24), ss. 89(2), 111(3) (with s. 106(4))

### **Extension of Bankruptcy Acts, etc.**

*Para. (1) rep. by 1980 NI 4*

*Para. (2) rep. by 1989 NI 19*

(3) Where—

- (a) a solicitor is adjudicated a bankrupt or enters<sup>F25</sup> . . . into a deed of arrangement for the benefit of his creditors or dies insolvent, and
- (b) the sum at the credit of the client account kept by the solicitor at a bank<sup>F26</sup> or building society] in accordance with regulations made under Article 33, or, where two or more such accounts are kept by the solicitor, the total of the sums at the credit of those accounts, is less than the total of the sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them,

then, notwithstanding any rule of law to the contrary, the sum at the credit of the client account, or where the solicitor has kept two or more client accounts the total of the sums at the credit of those accounts, shall be divisible proportionately amongst the clients of the solicitor according to the respective sums received by the solicitor in the course of his practice on behalf of his clients and remaining due by him to them.

(4) For the purposes of this Article no account shall be taken—

- (a) of any account at a bank<sup>F26</sup> or building society] kept by the solicitor in his own name for a specified client,
- (b) of sums received by the solicitor in the course of his practice on behalf of that client and remaining due by him to the client so far as represented by the sum in the<sup>F26</sup> . . . account in the name of the solicitor for the client,
- (c) of any account at a bank<sup>F26</sup> or building society] kept by the solicitor in his own name for money of any<sup>F26</sup> controlled trust, or]
- (d) of sums received by the solicitor in the course of his practice on behalf of that trust and remaining due by him to the trust so far as represented by the sum in the<sup>F26</sup> . . . account in the name of the solicitor for the trust.

*Para. (5) rep. by 1989 NI 19*

(6) For the purposes of this Article any reference to an account at a bank shall include a reference to a deposit receipt at a bank.

**F25** 1989 NI 19

**F26** 1989 NI 14

*<sup>F27</sup>Imposition by Council of disciplinary sanctions for inadequate professional services*

**F27** 1989 NI 14

### **Power of Council to impose sanctions for inadequate professional services**

**41A.**—(1) Where it appears to the Council that the professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to paragraph (3)), the Council may, if they think fit, do one or more of the following things, namely—

- (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (2) as appear to them to be necessary in order to give effect to their determination;

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- (b) direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
  - (c) direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;
  - (d) direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.
- (2) The requirements referred to in paragraph (1)(a) are—
- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter;
  - (b) a requirement to remit the whole or part of those costs;
  - (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.
- (3) The Council shall not exercise any of their powers under paragraph (1) unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Council may have regard—
- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings; and
  - (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.
- (4) Where the Council have given a direction under paragraph (1)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—
- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Council's determination; and
  - (b) where a bill covering those costs has not been taxed in accordance with sub#paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Council's determination.
- (5) Where a bill covering those costs has been taxed in accordance with paragraph (4)(a), the Council's direction under paragraph (1)(a) shall, so far as relating to those costs, cease to have effect.
- (6) A solicitor aggrieved by a determination or direction of the Council under paragraph (1) may, within one month from the date on which notice of that determination or direction is served on him, appeal to the Lord Chief Justice who may—
- (a) affirm or revoke the determination or direction; or
  - (b) make any other determination or direction which could have been made or given by the Council under paragraph (1).
- (7) A direction of the Council under paragraph (1) shall take effect—
- (a) where the solicitor does not appeal against the direction within the period mentioned in paragraph (6), on the expiration of that period; and
  - (b) where the solicitor appeals against the direction within that period, on the dismissal or withdrawal of the appeal;
- and a direction given on any such appeal by the Lord Chief Justice shall take effect immediately.

(8) If a solicitor fails to comply with a direction given under this Article 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.

(9) The powers conferred on the Council by paragraph (1)(a) shall be exercisable in relation to a person notwithstanding that his name has been removed from or struck off the roll, and references to a solicitor in—

- (a) the provisions of this Article so far as they relate to the exercise of those powers; and
- (b) if a complaint is made to the Tribunal under paragraph (8), in Articles 46 and 51,

shall be construed accordingly.

(10) In paragraphs (1)(d) and (3)(a) “client”, in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.]

### *[<sup>F28</sup>Examination of files*

**F28** 1989 NI 14

#### **Power of Society to examine files in connection with complaints**

**41B.**—(1) Where the Council are satisfied that it is necessary to do so for the purpose of investigating any complaint made to the Society—

- (a) alleging professional misconduct by a solicitor; or
- (b) relating to the quality of any professional services provided by a solicitor,

the Society may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Society, at a time and place to be fixed by the Society, of all documents in the possession of the solicitor or his firm 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 paragraph (1) as they apply in relation to the powers conferred by paragraph 2(1) of that Schedule, and accordingly in those provisions—

- (a) 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 paragraph (1); and
- (b) 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 paragraph (1).]

### *Lay observers*

#### **Lay observers**

**42.**—(1) The Head of the Department of Finance may, after consultation with the Lord Chief Justice, appoint one or more persons (in this Article referred to as “lay observers”)

- [<sup>F29</sup>(a)] to report to the Lord Chief Justice, the Head of that Department and the Council on the nature of complaints being made to the Society about the conduct of solicitors and the manner in which the complaints are being dealt with by the Society.[<sup>F29</sup> and]



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[<sup>F29</sup>(b) examine any written allegation made by or on behalf of a member of the public concerning the Society's treatment of a complaint about a solicitor or an employee of a solicitor made to the Society by that member of the public or on his behalf.]

(2) No solicitor or member of the Bar of Northern Ireland shall be appointed a lay observer.

(3) A lay observer shall hold and vacate office in accordance with the terms of his appointment.

(4) The Head of the Department of Finance may, after consultation with the Lord Chief Justice and the Council, give general directions to lay observers about the scope and discharge of their functions.

(5) The Council shall consider any report which they receive from a lay observer and shall notify him of any action which has been taken in consequence.

[<sup>F29</sup>(5A) Where it appears to a lay observer, in examining any such allegation as is mentioned in paragraph (1)(b)—

(a) that there arises out of the complaint in respect of which the allegation has been made both—

(i) a question as to the professional conduct of a solicitor, and

(ii) a question as to the quality of any professional services provided by him; 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 any of its powers under Article 51A in relation to the solicitor,

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

(6) The Department of Finance shall pay to lay observers such remuneration and other allowances (if any) as that Department may determine.

*Para.(7) amends sch.1 to 1975 c.25*

[<sup>F29</sup>(8) The Head of the Department of Finance and Personnel shall lay a copy of any report made by a lay observer before the Assembly.]

<b>F29</b> 1989 NI 14
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### *Disciplinary proceedings before the Disciplinary Committee*

#### [<sup>F30</sup>The Solicitors Disciplinary Tribunal

**43.**—(1) The Lord Chief Justice, after consultation with the Council, shall appoint a tribunal, to be known as the Solicitors Disciplinary Tribunal and consisting of—

(a) practising solicitors of not less than 10 years' standing (solicitor members); and

(b) persons who are neither solicitors nor members of the Bar of Northern Ireland (lay members).

(2) The members of the Tribunal shall elect one of the solicitor members to be the president of the Tribunal.

(3) The Department of Finance and Personnel shall pay to lay members such remuneration and other allowances (if any) as that Department may determine.

(4) The Lord Chief Justice, after consultation with the Council, may remove a member of, and may fill a vacancy in, the Tribunal.

(5) The Tribunal may, subject to paragraph (6), act notwithstanding one or more than one vacancy in their membership and any application or complaint made to, or other matter dealt with by or

before, the Tribunal may be dealt with or disposed of notwithstanding any change in the membership of the Tribunal.

(6) For the purpose of hearing and determining applications and complaints the Tribunal shall be properly constituted if—

- (a) at least 3 members are present; and
- (b) at least 1 lay member is present; and
- (c) the number of solicitor members present exceeds the number of lay members present; and
- (d) the president or another solicitor member presides.

(7) Subject to the provisions of this Order and of any rules made under paragraph (8), the Tribunal may regulate their procedure in such manner as they may think fit.

(8) The Tribunal may, with the concurrence of the Lord Chief Justice, make rules regulating applications and complaints to the Tribunal and the hearing, conduct and determination of such applications and complaints and of inquiries held by the Tribunal.

(9) Without prejudice to the powers of the Tribunal under Article 51(1)(j) and (k), rules under paragraph (8) may make provision for the payment by any party to an application or complaint made to the Tribunal of the costs, or a contribution towards the costs, incurred by any other party or by the Tribunal in connection with that application or complaint.

(10) The Tribunal may appoint a secretary, who shall be a member of the Society but shall not be a member of the Tribunal.

(11) Except as provided by paragraph (3), the Society shall defray the costs incurred by the Tribunal, which shall include the amount of any remuneration which the Society may agree to pay to the person appointed as secretary.

F30 1989 NI 14

### **Applications and complaints to Tribunal**

[<sup>F30</sup>44.—(1) The following applications and complaints shall be made to and heard by the Tribunal—

- (a) an application by a solicitor who has been suspended from practice for an order terminating the suspension;
- (b) an application by a person whose name has been struck off the roll for an order for the replacement of his name on the roll;
- (c) an application by a solicitor who is restricted from practising on his own account, whether in partnership or otherwise, under an order made under Article 51(1)(c) or (4) for an order removing that restriction;
- (d) an application by a solicitor who is<sup>F31</sup> excluded from legal aid work by an order made under Article 51B for an order<sup>F31</sup> terminating his exclusion;
- (e) a complaint by the Society or any other person—
  - (i) that a solicitor has been guilty of professional misconduct or of other conduct tending to bring the solicitors' profession into disrepute; or
  - (ii) that a solicitor has contravened a provision of this Order or of any regulation or order made thereunder (including an order made by or on appeal from the Tribunal), or any term or condition subject to which any certificate has been issued, or any consent has been given, to him or his suspension has been terminated, by the Lord Chief

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Justice, the Council, the Society, the Tribunal or the High Court under any provision of this Order; or

(iii) that a solicitor has been convicted in Northern Ireland of a criminal offence tending to bring the solicitors' profession into disrepute, or has been convicted outside Northern Ireland of an offence of like character which if committed in Northern Ireland would be a criminal offence;

(f) a complaint requiring a solicitor to answer allegations contained in an affidavit;

(g) a complaint by the Society relating to the conduct of a solicitor in connection with—

<sup>F31</sup>(i) the giving of advice or assistance under Part II of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981; or

<sup>F31</sup>(ii) the provision of services for any person receiving legal aid under Part II or III of that Order (including the provision of any such services in the capacity of agent for that person's solicitor); or

(h) any other application or complaint which is authorised to be made to the Tribunal under any other provision of this Order or under any other enactment.

(2) An application or complaint under paragraph (1) shall be in writing, shall be signed by the person making it and shall be sent to the Tribunal together with—

(a) an affidavit by that person setting forth the facts giving rise to the application or complaint; and

(b) the documents relied on in support of the application or complaint, or duly authenticated copies of those documents;

and the Tribunal shall take into consideration every such application or complaint together with such affidavit and documents as aforesaid.

(3) Where a judge of the<sup>F32</sup> Supreme Court, a county court judge or a resident magistrate reports to the Society any case where it appears to him that a solicitor is prima facie guilty of professional misconduct, the Society shall make a complaint to the Tribunal under paragraph (1) with respect to the solicitor.]

**F30** 1989 NI 14

**F31** prosp. subst. by 2003 NI 10

**F32** prosp. subst. by 2005 c.4

#### **Procedure on application by solicitor or former solicitor**

45. Where an application is made under Article 44(1)(a), (b), (c) or (d), the Tribunal—

(a) shall inform the Society of the application; and

(b) shall hold an inquiry.

**F30** 1989 NI 14

#### **Procedure on application or complaint against solicitor**

46.—(1) Where an application or a complaint is made under Article 44(1)(e), (f) or (h) by a person other than the Society or a lay observer, the Tribunal—

(a) if they decide that a prima facie case has not been shown, shall so notify the applicant or complainant and the solicitor and take no further action; or

- (b) if they decide that a prima facie case has been shown shall serve on the solicitor—
  - (i) a copy of the application or complaint;
  - (ii) a copy of the affidavit;
  - (iii) copies or, at the discretion of the Tribunal, a list of the relevant documents; and
  - (iv) a notice requiring the solicitor to send to the Tribunal, within a specified period, an affidavit by him in answer to the application or complaint, together with any documents, or duly authenticated copies thereof, on which he may rely in support of his answer.

(2) Where an application or a complaint is made under Article 44(1)(e), (f), (g) or (h) by the Society or a lay observer, the Tribunal shall serve on the solicitor the documents mentioned in paragraph (1)(b)(i) to (iv).

(3) Where the notice mentioned in paragraph (1)(b)(iv) is served, any party to the application or complaint may inspect the documents furnished by any other party.

(4) After the expiration of the period specified in such notice, the Tribunal shall consider such (if any) affidavit and documents as have been furnished by the solicitor and—

- (a) if they decide that there is no cause for further inquiry shall so notify the applicant or complainant and the solicitor and shall take no further action; or
- (b) if they decide that there is cause for inquiry, shall hold an inquiry.

(5) Where an applicant or complainant or a solicitor against whom an application or complaint is made has been notified under paragraph (1)(a) or paragraph (4)(a), the Tribunal shall, if so required in writing by the complainant or the solicitor, make a formal order embodying their decision.]

**F30** 1989 NI 14

#### **Powers of<sup>F33</sup> Tribunal] on inquiry being held**

**48.**—(1) Subject to the provisions of paragraph (2) with respect to the exercise of certain of the powers conferred by this paragraph, the<sup>F33</sup> Tribunal] shall, on an inquiry being held by them, have the like powers, rights and privileges as are vested in the High Court in respect of—

- (a) the summoning of witnesses and their examination on oath;
- (b) the requiring of the production of documents; and
- (c) the issuing, subject to rules of court, of a commission or request to examine witnesses out of Northern Ireland;

and a summons signed by a member of the<sup>F33</sup> Tribunal] may be issued and served on any person for the purposes of securing his attendance as a witness at, or the production by him of any document necessary for the purposes of, any such inquiry.

- (2) Where any person—
  - (a) on being duly summoned as a witness before the<sup>F33</sup> Tribunal] makes default in attending;
  - (b) being in attendance as a witness before the<sup>F33</sup> Tribunal] refuses to take an oath lawfully required by the<sup>F33</sup> Tribunal] to be taken, or to produce any document in his power or control lawfully required by the<sup>F33</sup> Tribunal] to be produced by him, or to answer any question to which the<sup>F33</sup> Tribunal] may lawfully require an answer; or
  - (c) does any other act which, if the<sup>F33</sup> Tribunal] were a court of law having power to commit for contempt, would be contempt of court;

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the<sup>F33</sup> Tribunal] may, by certificate signed by any two members thereof, certify such default, refusal or act (as the case may be) to the High Court, and the High Court may thereupon inquire into the matter so certified and, after hearing any witness who may be produced against or on behalf of the person aforesaid and any statement that may be offered in his defence, may punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the High Court.

(3) A witness at an inquiry held by the<sup>F33</sup> Tribunal] shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

**F33** 1989 NI 14

### Representation before<sup>F34</sup> Tribunal]

49.—(1) A party to any proceedings before the<sup>F34</sup> Tribunal] shall be entitled to appear and be heard by that<sup>F34</sup> Tribunal] either in person or by counsel or solicitor.

(2) The Society may appear and be heard upon any application or complaint made to the<sup>F34</sup> Tribunal].

(3) Any counsel or solicitor appearing in proceedings before the<sup>F34</sup> Tribunal] shall have the same rights, privileges, immunities and duties as if he were appearing in an action in the High Court.

**F34** 1989 NI 14

### Application of Bankers' Books Evidence Act 1879

50. An application to or an inquiry or other proceeding before the<sup>F35</sup> Tribunal] shall be a legal proceeding within the meaning of section 10 of the Bankers' Books Evidence Act 1879 .

**F35** 1989 NI 14

### <sup>F30</sup>Orders of Tribunal on inquiry

51.—(1) Where the Tribunal hold an inquiry, they may make an order providing for one or more than one of the following—

- (a) the dismissal of the application or complaint;
- (b) the admonishing of the solicitor and, if they think fit, the imposing on him of a fine not exceeding £3,000 to be paid to and applied for the purposes of the Society;
- (c) the restricting of the solicitor from practising on his own account, whether in partnership or otherwise;
- (d) the removal of a restriction on the solicitor from practising on his own account, whether in partnership or otherwise;
- (e) the suspension of the solicitor from practice;
- (f) the termination of the solicitor's suspension from practice;
- (g) the striking off the roll of the name of the solicitor;
- (h) the replacement on the roll of the name of a former solicitor whose name has been struck off the roll;
- <sup>F36</sup>(i) the termination of the solicitor's exclusion from legal aid work;

- (j) 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;
  - (k) 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;
  - (l) the making by any party of such restitution or satisfaction to any aggrieved party as the Tribunal think fit.
- (2) Paragraph (1) does not apply where the Tribunal hold an inquiry into an application under Article 42(5A).
- (3) Where the Tribunal hold an inquiry into a complaint under Article 41A(8) relating to a direction given under Article 41A, they may, without prejudice to their powers under paragraph (1) or Article 51A, make an order providing for the direction to be treated for the purposes of this Order as if it were contained in an order of the Tribunal.
- (4) An order made by the Tribunal under paragraph (1)(f) or (h) may impose the restriction that the solicitor shall not practise on his own account, whether in partnership or otherwise.
- (5) An order made by the Tribunal under paragraph (1)(k) for the payment by any party of the costs of the Tribunal or of a sum towards those costs shall direct such payment to be made by that party to the Society; and any money so paid shall be appropriated by the Society towards the defrayal of the costs referred to in Article 43(11).
- (6) The Tribunal may postpone the making of an order under this Article, Article 51A or Article 51B.
- (7) Where the making of an order is postponed under paragraph (6), the Tribunal may, on request made to them in that behalf when the matter is considered after such postponement, allow the application or complaint to be withdrawn without any order being made.
- (8) The Tribunal may, on the application of the solicitor to whom an order under this Article, Article 51A or Article 51B relates, or of any other party, suspend in whole or in part the operation of the order pending an appeal under Article 53.
- (9) Where an order is suspended under paragraph (8)—
- (a) nothing in Article 52(1), (2) or (3) shall apply to the filing, enforcement or lodgment of copies of, or to the publication of, that order while it remains suspended; and
  - (b) neither Article 15(1) nor Article 54(1) shall have effect in relation to that order while it remains suspended.
- (10) Any person who practises as a solicitor on his own account, whether in partnership or otherwise, in contravention of—
- (a) any regulation for the time being in force under Article 26(2)(a); or
  - (b) any order made by the Tribunal under paragraph (1)(c) or (4), or by the Lord Chief Justice or the High Court on an appeal under Article 53,
- shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (11) If it appears to the Department of Finance and Personnel that there has been a change in the value of money since the relevant date, that Department may by order, subject to negative resolution, substitute for the sum for the time being specified in paragraph (1)(b) such other sum as appears to that Department to be justified by the change.
- (12) In paragraph (11) “the relevant date” means—
- (a) in relation to the first order made under that paragraph, the date of the coming into operation of Article 19(1) of the Solicitors (Amendment) (Northern Ireland) Order 1989; and

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- (b) in relation to each subsequent order, the last occasion on which the sum specified in paragraph (1)(b) was altered.

**F30** 1989 NI 14

**F36** prosp. subst. by 2003 NI 10

### **Power of Tribunal to impose sanctions for inadequate professional services**

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

- (a) any application or complaint made to the Tribunal under this Order by or on behalf of the Society; or
- (b) any application made to the Tribunal under Article 42(5A) by a lay observer,

and, in the case mentioned in sub#paragraph (a), shall be exercisable whether or not they make any other order on the inquiry.

(2) Where, on an inquiry into any such application or complaint with respect to a solicitor, it appears to the Tribunal that the professional services provided by the solicitor in connection with any matter in which he or his firm had been instructed by a client were in any respect not of the quality that could reasonably have been expected of him as a solicitor, then (subject to paragraph (4)), the Tribunal may, if they think fit, do one or more of the following things, namely—

- (a) determine that the costs to which the solicitor shall be entitled in respect of those services shall be limited to such amount as may be specified in their determination and by order direct the solicitor to comply, or to secure compliance, with such one or more requirements falling within paragraph (3) as appear to them to be necessary in order to give effect to their determination;
- (b) by order direct the solicitor to take such steps for the completion of the said matter within such reasonable time as they may specify;
- (c) by order direct the solicitor to secure the rectification, at the expense of the solicitor or his firm, of any such error, omission or other deficiency arising in connection with the said matter as they may specify;
- (d) by order direct the solicitor to take, at the expense of the solicitor or his firm, such other action in the interests of the client as they may specify.

(3) The requirements referred to in paragraph (2)(a) are—

- (a) a requirement to refund the whole or part of any amount already paid by or on behalf of the client in respect of the solicitor's costs in respect of his services in connection with the said matter;
- (b) a requirement to remit the whole or part of those costs;
- (c) a requirement to waive, whether wholly or to any specified extent, the right to recover those costs.

(4) The Tribunal shall not exercise any of their powers under this Article unless they are satisfied that it would in all the circumstances be appropriate to do so; and in determining whether in any case it would be appropriate to exercise any of those powers the Tribunal may have regard—

- (a) to the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings;
- (b) where proceedings seeking any such remedy have not been commenced by him, to whether it would be reasonable to expect him to commence such proceedings.



(5) Where the Tribunal have given a direction under paragraph (2)(a) in order to give effect to a determination by them under that provision as to the costs of a solicitor in respect of any services provided by him, then—

- (a) for the purposes of any taxation of a bill covering those costs the amount charged by the bill in respect of those costs shall be deemed to be limited to the amount specified in the Tribunal's determination; and
- (b) where a bill covering those costs has not been taxed in accordance with sub#paragraph (a), the client shall, for the purposes of the recovery of those costs (by whatever means) and notwithstanding any enactment or agreement, be deemed to be liable to pay in respect of those costs only the amount specified in the Tribunal's determination.

(6) Where a bill covering those costs has been taxed in accordance with paragraph (5)(a), the Tribunal's direction under paragraph (2)(a) shall, so far as relating to those costs, cease to have effect.

(7) In paragraphs (2)(d) and (4)(a) “client”, in relation to any matter in which a solicitor or his firm has been instructed, includes any person on whose behalf the person who gave the instructions was acting.

**F30** 1989 NI 14

#### **Power of Tribunal in relation to legal aid**

**51B.**—(1) On an inquiry into a complaint made to the Tribunal under Article 44(1) against a solicitor the Tribunal may, whether or not they make any other order on the inquiry,—

<sup>F37</sup>(a) make an order providing for the exclusion (either permanently or for a specified period) of the solicitor from legal aid work;

<sup>F37</sup>(b) order that any costs—

- (i) otherwise payable under or in accordance with Part II or III of the Order of 1981; or
- (ii) otherwise chargeable as mentioned in Article 8(1) of that Order,

in connection with services provided by the solicitor shall be reduced or cancelled<sup>F38</sup>.

(2) The Tribunal shall not make an order under paragraph (1) unless they determine that there is good reason for doing so arising out of—

<sup>F37</sup>(a) the conduct of the solicitor in connection with the giving of advice or assistance under Part II of the Order of 1981;

<sup>F37</sup>(b) the conduct of the solicitor in connection with the provision of services for any person receiving legal aid under Part II or III of the Order of 1981 (including the provision of any such services in the capacity of agent for that person's solicitor); or

(c) the professional conduct generally of the solicitor.

(3) Where the Tribunal make an order under paragraph (1)(a) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if they think fit, order that any other person who is for the time being a member of the firm<sup>F37</sup> shall be excluded (either permanently or for a specified period) from legal aid work.

(4) The Tribunal shall not make an order under paragraph (3)<sup>F37</sup> excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(5) In so far as<sup>F37</sup> any of Articles 7, 8, 13(1) and 36(1) of the Order of 1981 has effect in relation to any costs reduced or cancelled by an order under paragraph (1)(b), it shall so have effect subject to the provisions of that order.

<sup>F39</sup>(6) In this Article—

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- (a) “the Order of 1981” means the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981;
- (b) references to a person being excluded from legal aid work are references to his being excluded from both of the following classes of persons, namely—
  - (i) those who may be selected under Article 15(3) of the Order of 1981; and
  - (ii) those who may be assigned to give legal aid under Part III of that Order.

**F30** 1989 NI 14

**F37** prosp. subst. by 2003 NI 10

**F38** prosp. insertion by 2003 NI 10

**F39** prosp. rep. by 2003 NI 10

### **Power of Tribunal to make recommendation for application of Schedule 1 to solicitor**

**51C.**—(1) Where the Tribunal hold an inquiry into any application or complaint made under this Order with respect to a solicitor, 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 solicitor and the other persons mentioned in that Schedule.

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

**F30** 1989 NI 14

### **Effect, notice and recording of orders of Disciplinary Committee**

**52.**—(1) [<sup>F40</sup>An order made by the Tribunal on an inquiry] shall contain a statement of their findings and shall be signed by at least two of their members and filed with the registrar but the Committee may in any case in which it appears to them to be desirable so to do, make an order not prefaced by a statement of the findings relative to the facts of the case, and in such case a statement of their findings shall be signed by the chairman or secretary of the Committee and shall, if the order is one required to be lodged with the Registrar of the<sup>F41</sup> Supreme Court under paragraph (2) or paragraph (3) be lodged with such Registrar together with the order.

(2) [<sup>F40</sup>Where the Tribunal make an order—

- (a) under Article 51(1)(b) imposing a fine on a solicitor;
- (b) under Article 51(1)(j), (k) or (l);
- (c) under Article 51(3); or
- (d) under Article 51A(2),]

, the registrar, if so required in writing by the Society or by any other party in whose favour the order was so made, shall lodge a duly authenticated copy of the order with the Registrar of the<sup>F41</sup> Supreme Court, 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.

(3) Where the [<sup>F40</sup>Tribunal] make an order suspending a solicitor from practice or removing from or striking off the roll the name of a solicitor, the registrar shall forthwith—

- (a) lodge a duly authenticated copy of the order with the Registrar of the<sup>F41</sup> Supreme Court; and

- (b) cause to be published in the Belfast Gazette, and in such other manner as the<sup>F40</sup> Tribunal] may direct, a notice stating the effect of the order,<sup>F40</sup> . . . .
- (4) The registrar shall maintain separate files on which all orders made by the<sup>F40</sup> Tribunal] shall be entered in the following manner—
- (a) on a file to be termed File A, there shall be entered, in alphabetical order against the names of the solicitors concerned, each order directing that the name of a solicitor is to be removed from or struck off the roll, or that a solicitor is to be suspended from practice;
- (b) on a file to be termed File B, there shall be entered, in chronological order, all other orders.
- (5) Where an order of the<sup>F40</sup> Tribunal] includes provision for any of the matters mentioned in<sup>F40</sup> Article 51(1)(c) or (e) or (4)], the registrar shall enter a note of the effect of that order on the roll against the name of the solicitor with respect to whom the application or complaint was made.
- (6) On receipt under<sup>F40</sup> Article 53(5)] of a copy of an order the registrar shall enter the order as if it were an order of the<sup>F40</sup> Tribunal].
- (7) The registrar shall, on payment of such fee (if any) as may be prescribed, furnish a copy of an entry on File A or File B to a person who applies in writing for such a copy.
- (8) Notwithstanding the provisions contained in paragraph (7), where—
- (a) application is made for a copy of an entry on File B, being an entry under a date which is earlier than two years before the date of such application; or
- (b) application is made for a copy of an entry on File A or File B as respects which the<sup>F40</sup> Tribunal] have directed the insertion of a note that the furnishing of a copy thereof might cause injustice;
- a copy of the entry shall be furnished only—
- (i) by permission in writing of the Society; or
- (ii) in compliance with an order of a court.

**F40** 1989 NI 14

**F41** prosp. subst. by 2005 c.4

## <sup>F42</sup> Appeals against orders of the Tribunal

- 53.**—(1) A person aggrieved by—
- (a) an order of the Tribunal dismissing an application made by him under Article 44(1)(a), (b) or (c); or
- (b) an order of the Tribunal under Article 51(4) restricting him from practising on his own account, whether in partnership or otherwise,
- may appeal to the Lord Chief Justice who may—
- (i) affirm the order of the Tribunal; or
- (ii) make any order which could have been made by the Tribunal on its inquiry.
- (2) An appeal against any other order made by the Tribunal (except an order under Article 51(3)) shall lie to the High Court—
- (a) at the instance of the solicitor or the Society or any person directed by the order to make any restitution or satisfaction;
- (b) by leave of the High Court, at the instance of any other person appearing to the High Court to be affected by the order.

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(3) An appeal shall also lie to the High Court against the refusal of the Tribunal to suspend the operation of an order under Article 51(8).

(4) The Society shall be entitled to appear and to be heard on the hearing of an appeal under this Article.

(5) A copy of every order made on an appeal under paragraph (2) or (3) shall be sent to the registrar by the Master (Queen's Bench and Appeals).

(6) An appeal under this Article shall be brought within 21 days from the date of the making of the order or refusal appealed against.]

F42 1989 NI 14

### **Publication, etc., of orders**

54.—(1) [<sup>F43</sup>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),]

shall be filed with the secretary of the Society, and the Society shall be entitled to publish any such order wholly or partly, or a synopsis thereof, in any publication of the Society and by sending a copy of any such order or any part or synopsis thereof to every solicitor in Northern Ireland, or otherwise to publish the order in any other manner approved of by the Society.

(2) The making of any order or the publishing under this Article of any order (whether wholly or partly) or of any synopsis thereof shall be deemed to be absolutely privileged.

(3) Any document purporting to be certified by the registrar as a copy of an order made by the [<sup>F43</sup>Tribunal] or of an entry made pursuant to Article 52 shall in any proceedings be received as evidence of the existence and content of that order or entry as the case may be.

F43 1989 NI 14

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