



Solicitors (Scotland) Act 1980

1980 CHAPTER 46

PART III

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS

Practice rules

34 Rules as to professional practice, conduct and discipline

- (1) Subject to subsections (2) and (3), the Council may, if they think fit, make rules for regulating in respect of any matter the professional practice, conduct and discipline of solicitors.
- (2) The Council shall, before making any rules under this section or section 35—
 - (a) send to each member of the Society a draft of the rules; and
 - (b) thereafter submit the draft rules to a meeting of the Society; and
 - (c) take into consideration any resolution passed at that meeting relating to amendments to the draft rules.
- (3) Rules made under this section or section 35 shall not have effect unless the Lord President after considering any objections he thinks relevant has approved the rules so made.
- (4) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.

Accounts rules

35 Accounts rules

- (1) The Council shall, subject to section 34(2) and (3), make rules (in this Act referred to as "accounts rules")—

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- (a) as to the opening and keeping by solicitors of accounts and deposits at the banks specified in subsection (2) for moneys not belonging to them received by them in the course of their practice ;
 - (b) as to the opening and keeping by solicitors of—
 - (i) a deposit or share account with a building society designated under section 1 of the House Purchase and Housing Act 1959, or
 - (ii) an account showing sums on loan to a local authority,
 being in either case for a client whose name is specified in the title of the account;
 - (c) as to the keeping by solicitors of books and accounts containing particulars and information as to money not belonging to them received, held or paid by them in the course of their practice; and
 - (d) as to the action which the Council may take to enable them to ascertain whether or not the rules are being complied with.
- (2) The banks mentioned in paragraph (a) of subsection (1) are—
- (a) the Bank of England ;
 - (b) a Trustee Savings Bank within the meaning of section 95 of the Trustee Savings Bank Act 1969;
 - (c) the National Savings Bank;
 - (d) the Post Office, in the exercise of its powers to provide banking services;
 - (e) a recognised bank within the meaning of the Banking Act 1979; and
 - (f) any other company as to which immediately before the repeal of the Protection of Depositors Act 1963 the Secretary of State was satisfied that it ought to be treated as a banking company for the purposes of that Act,
- and the rules may specify the location of the banks' or companies' branches at which the accounts are to be kept.
- (3) If any solicitor fails to comply with any rule made under this section that failure may be treated as professional misconduct for the purposes of Part IV.
- (4) Rules made under this section shall not apply to a solicitor—
- (a) who is in employment as solicitor to a Minister of the Crown or a Government Department or as an assistant or officer appointed to act under the direction of such solicitor; or
 - (b) who is in employment to which Part II of the Legal Advice and Assistance Act 1972 applies; or
 - (c) who is in employment in an office connected with the administration of a local authority or a statutory undertaking or a designated body to which he has been appointed by the authority or the statutory undertakers or the persons responsible for the management of that body by reason of his being a solicitor,
- so far as regards monies' received, held or paid by him in the course of that employment. In this subsection—
- " local authority " means a local authority within the meaning of the Local Government (Scotland) Act 1973 ;
- "statutory undertakers" means any persons (including a local authority) authorised by any enactment or statutory order or any scheme made under or confirmed by an enactment to construct, work or carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation,

dock, harbour, pier or lighthouse undertaking or any undertaking for the supply of gas, electricity, hydraulic power or water ;

" designated body " means any body whether corporate or unincorporate for the time being designated by the Council for the purposes of this section.

36 Interest on client's money

- (1) Accounts rules shall make provision for requiring a solicitor, in such cases as may be prescribed by the rules, either—
 - (a) to keep in a separate deposit or savings account at a bank, or on a separate deposit receipt at a bank, for the benefit of the client money received for or on account of a client; or
 - (b) 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 kept as mentioned in paragraph (a).
- (2) The cases in which a solicitor may be required to act as mentioned in subsection (1) may be defined among other things by reference to the amount of any sum received or balance held or the period for which it is or is likely to be retained or held or both; and the rules may include provision for enabling a client (without prejudice to any other remedy) to require that any question arising under the rules in relation to the client's money be referred to and determined by the Society.
- (3) Except as provided by the rules, 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 monies lodged in an account, or on deposit receipt, at a bank, being monies received or held for or on account of his clients generally.
- (4) Nothing in this section or in the rules shall affect any arrangement in writing whenever made between a solicitor and his client as to the application of the client's money or interest on it.

37 Accountants' certificates

- (1) This section shall have effect for the purpose of securing satisfactory evidence of compliance with the accounts rules.
- (2) Subject to the following provisions of this section, every solicitor to whom the accounts rules apply shall, in accordance with the rules made under subsection (3), deliver to the Council a certificate by an accountant (in this section referred to as an " accountant's certificate ").
- (3) The Council shall make rules (in this Act referred to as " accountant's certificate rules ") prescribing—
 - (a) the qualifications to be held by an accountant by whom an accountant's certificate may be given;
 - (b) the nature and extent of the examination to be made by an accountant of the books and accounts of a solicitor or his firm and of any other relative documents with a view to the signing of an accountant's certificate;
 - (c) the intervals at which an accountant's certificate shall be delivered to the Council, not being more frequent than once in each practice year;

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- (d) the accounting period for which an accountant's certificate shall be delivered or the different accounting periods for which in different circumstances an accountant's certificate shall be delivered ;
 - (e) the period within which an accountant's certificate shall be delivered; and
 - (f) the form and content of an accountant's certificate.
- (4) The accountant's certificate rules may include such other provisions as the Council consider necessary or proper for the purpose of giving effect to the foregoing provisions of this section and for regulating any incidental, consequential or supplementary matters.
- (5) The delivery of an accountant's certificate in pursuance of subsection (2) shall not be required in the case of —
- (a) a solicitor who, in agreement with the Council, furnishes to the Council and keeps in force a fidelity bond by an insurance office or other institution accepted by the Court as cautioners for a judicial factor appointed by the Court for such amount as the Council may determine, guaranteeing the intromissions of the solicitor or his firm with money held by him or them for or on behalf of clients; or
 - (b) a solicitor who satisfies the Council that during the accounting period to which the accountant's certificate would ordinarily relate he has not in the course of his practice held or received any money on behalf of clients.
- (6) If the Council are of opinion that satisfactory evidence of compliance with the accounts rules for the time being in force will be secured by some method other than by delivery of an accountant's certificate under subsection (2), they may make rules—
- (a) prescribing—
 - (i) that other method ;
 - (ii) the terms and conditions to be observed in connection therewith; and
 - (iii) the procedure to be followed by solicitors desiring to adopt that other method, and
 - (b) containing such incidental, consequential and supplementary provisions relative thereto as the Council may consider necessary or proper ;
- and a solicitor who satisfies the Council that he is complying with rules made under this subsection shall not be required to deliver an accountant's certificate in pursuance of subsection (2).
- (7) A certificate under the hand of the secretary of the Society certifying that a specified solicitor has or has not, as the case may be, delivered to the Council an accountant's certificate, or supplied any evidence required from him under this section or under the accountant's certificate rules or, as the case may be, under any rules made under subsection (6), shall, unless the contrary is proved, be evidence of the fact so certified.
- (8) Failure by a solicitor to comply with any provision of this section or of the accountant's certificate rules or of any rules made under subsection (6), so far as applicable to him, may be treated as professional misconduct for the purposes of Part IV.

Powers of Council to intervene

38 Powers where dishonesty alleged

- (1) If the Council have reasonable cause to believe that a solicitor or an employee of his has been guilty of any such dishonesty as is mentioned in section 43(2) they may—
 - (a) require the production or delivery to any person appointed by the Council at a time and place fixed by the Council of the documents to which this section applies;
 - (b) take possession of all such documents; and
 - (c) apply to the Court for an order that no payment be made by any banker, building society or other body named in the order out of any banking account or any sum deposited in the name of such solicitor or his firm without the leave of the Court and the Court may make such order.
- (2) This section applies to the following documents—
 - (a) all books, accounts, deeds, securities, papers and other documents in the possession or control of such solicitor or his firm;
 - (b) all books, accounts, deeds, securities, papers and other documents relating to any trust of which he is a sole trustee or is a co-trustee only with one or more of his partners or employees.
- (3) Part II of Schedule 3 shall have effect in relation to the powers of the Council under this section.

39 Powers where delay alleged

- (1) If—
 - (a) a complaint is made to the Society that there has been undue delay on the part of a solicitor in dealing with any matter in which he or his firm is or has been concerned in a professional capacity, or any matter relating to a trust of which he is or was the sole trustee, or a co-trustee only with one or more of his partners or employees, and
 - (b) the Council are of opinion that the delay ought to be investigated,the Council may by notice in writing at any time, and from time to time, require the solicitor to give an explanation of the delay.
- (2) Any notice given by the Council under subsection (1) may specify a period, not being less than 21 days, within which they require an explanation to be furnished; and if within that period the solicitor does not reply or fails to furnish an explanation which the Council regard as sufficient and satisfactory, and he is so informed in writing, section 38 shall apply in relation to that solicitor and his firm in so far as it relates to documents or payments connected with the matter complained of (but not otherwise) and shall so apply notwithstanding that the Council may not have reasonable cause to believe that the solicitor has been guilty of any such dishonesty as is mentioned in section 43(2).

40 Powers where failure to comply with accounts rules etc.

- (1) Where the Council are satisfied, in the case of any solicitor, after enquiry and after giving the solicitor an opportunity of being heard, that the solicitor is failing to comply with any provisions of—

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- (a) section 35 or the accounts rules made under that section, or
- (b) section 37 or the accountant's certificate rules or other rules made under that section,

so far as applicable in his case (in this section referred to as " the applicable provisions "), the Council may, subject to the provisions of this section, withdraw the practising certificate held by the solicitor, and the certificate shall thereupon cease to have effect and the solicitor shall be suspended from practice as a solicitor.

- (2) On being satisfied by the solicitor that he is able and willing to comply with the applicable provisions, the Council, unless they are of opinion that the solicitor is liable to disciplinary proceedings under Part IV, shall terminate the suspension from practice of the solicitor and shall restore to him any practising certificate held by him for the practice year then current.
- (3) Within 21 days after receiving written notice of a decision of the Council under this section to withdraw his practising certificate, or to refuse to terminate his suspension from practice, the solicitor may appeal to the Court against the decision; and on any such appeal the Court may give such directions in the matter, including directions as to the expenses of the proceedings before the Court, as it may think fit; and the order of the Court shall be final.
- (4) Any withdrawal of a solicitor's practising certificate by the Council in exercise of the power conferred by subsection (1) shall be without prejudice to the operation of section 35(3) or or section 37(8).

41 Appointment of judicial factor

Where the Council, in exercise of any power conferred on them by the accounts rules, have caused an investigation to be made of the books, accounts and other documents of a solicitor, and, on consideration of the report of the investigation, the Council are satisfied—

- (a) that the solicitor has failed to a material extent to comply with the provisions of those rules, and
- (b) that, in connection with his practice as a solicitor, either—
 - (i) his liabilities exceed his assets in the business, or
 - (ii) his books, accounts and other documents are in such a condition that it is not reasonably practicable to ascertain definitely whether his liabilities exceed his assets, or
 - (iii) there is reasonable ground for apprehending that a claim on the Guarantee Fund may arise,

the Council may apply to the Court for the appointment of a judicial factor on the estate of the solicitor; and the Court, on consideration of the said report and after giving the solicitor an opportunity of being heard, may appoint a judicial factor on the solicitor's estate, or do otherwise as seems proper to it.

42 Distribution of sums in client bank account

- (1) Subject to the provisions of this section, where, in any of the events mentioned in subsection (2), the sum at the credit of any client account kept by a solicitor (or where several such accounts are kept by him the total of the sums at the credit of those accounts) is less than the total of the sums received by him 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 several such accounts are kept, the total of the sums at the credit of those accounts) shall be divisible proportionately among the clients of the solicitor according to the respective sums received by him in the course of his practice on their behalf and remaining due by him to them.

- (2) The events to which subsection (1) applies are in relation to any solicitor—
 - (a) the sequestration of his estate;
 - (b) the granting by him of a trust deed for behoof of creditors ;
 - (c) the appointment of a judicial factor on his estate.
- (3) Where a solicitor keeps an account at a bank in his own name for a specified client no regard shall be had for the purposes of this section to the sum at the credit of that account or to any sums received by the solicitor in the course of his practice on behalf of that client and remaining due by him to that client, so far as these are represented by the sum at the credit of that bank account.
- (4) For the purposes of this section any reference to an account at a bank includes a reference to a deposit receipt at a bank.

Protection of clients

43 Guarantee Fund

- (1) There shall be a fund to be called " The Scottish Solicitors Guarantee Fund " (in this Act referred to as " the Guarantee Fund "), which shall be vested in the Society and shall be under the control and management of the Council.
- (2) Subject to the provisions of this section and of Schedule 3 the Guarantee Fund shall be held by the Society for the purpose of making grants in order to compensate persons who in the opinion of the Council suffer pecuniary loss by reason of dishonesty on the part of any solicitor in practice in the United Kingdom, or any employee of such a solicitor in connection with the practice of the solicitor, whether or not he had a practising certificate in force when the act of dishonesty was committed, and notwithstanding that subsequent to the commission of that act he may have died or had his name removed from or struck off the roll or may have ceased to practise or been suspended from practice.
- (3) No grant may be made under this section—
 - (a) in respect of a loss made good otherwise;
 - (b) in respect of a loss which in the opinion of the Council has arisen while the solicitor was suspended from practice;
 - (c) to a solicitor or his representatives in respect of a loss suffered by him or them in connection with his practice as a solicitor by reason of dishonesty on the part of a partner or employee of his; or
 - (d) unless an application for a grant is made to the Society in such manner, and within such period after the date on which the loss first came to the knowledge of the applicant, as may be prescribed by rules made under Schedule 3.
- (4) The decision of the Council with respect to any application for a grant shall be final.

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- (5) The Council may refuse to make a grant, or may make a grant only to a limited extent, if they are of opinion that there has been negligence on the part of the applicant or of any person for whom he is responsible which has contributed to the loss in question.
- (6) The Council or any committee appointed by them may administer oaths for the purpose of inquiry into any matters which affect the making or refusal of a grant from the Guarantee Fund.
- (7) Part I of Schedule 3 shall have effect with respect to the Guarantee Fund, including the making of contributions thereto by solicitors and the administration and management of the Fund by the Council; but nothing in that Schedule shall apply to or in the case of a solicitor—
 - (a) who is not in practice as a solicitor; or
 - (b) who is suspended from practice as a solicitor during suspension, or
 - (c) who is in any such employment as is specified in section 35(4);
 but where any solicitor in any such employment as is mentioned in paragraph (c) engages in private practice as a solicitor, the said Schedule and the other provisions of this Act relating to the Guarantee Fund shall apply to him and in his case so far as regards such private practice.

44 Professional indemnity

- (1) The Council may make rules with the concurrence of the Lord President concerning indemnity for solicitors and former solicitors against any class of professional liability, and the rules may for the purpose of providing such indemnity do all or any of the following things, namely—
 - (a) authorise or require the Society to establish and maintain a fund or funds;
 - (b) authorise or require the Society to take out and main-lain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business;
 - (c) require solicitors or any specified class of solicitors to take out and maintain insurance with any person permitted under the Insurance Companies Act 1974 to carry on liability insurance business or pecuniary loss insurance business.
- (2) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of the rules.
- (3) Without prejudice to the generality of subsections (1) and (2) rules made under this section—
 - (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;
 - (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (1)(a) and require solicitors or any class of solicitors to make payments to any such fund ;
 - (c) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (1)(b);
 - (d) may prescribe the conditions which an insurance policy must satisfy for the purpose of subsection (1)(c);

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- (e) may authorise the Society to determine the amount of any payments required by the rules subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
 - (f) may specify circumstances in which, where a solicitor for whom indemnity is provided has failed to comply with the rules, proceedings in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply may be taken against him by the Society or by insurers;
 - (g) may specify circumstances in which solicitors are exempt from the rules;
 - (h) may empower the Council to take such steps as they consider necessary or expedient to ascertain whether or not the rules are being complied with; and
 - (f) may contain incidental, procedural or supplementary provisions.
- (4) Failure to comply with rules made under this section may be treated as professional misconduct for the purposes of Part IV, and any person may make a complaint in respect of that failure to the Discipline Tribunal.
- (5) In this section "professional liability" means any civil liability incurred by a solicitor or former solicitor in connection with his practice or in connection with any trust of which he is or formerly was a trustee.

45 Safeguarding interests of clients of solicitors struck off or suspended

- (1) The following provisions of this section shall have effect in relation to the practice of a solicitor whose name is struck off the roll or who is suspended from practice as a solicitor under any provision of this Act.
- (2) The solicitor shall within 21 days of 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 by himself—
- (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is sole trustee or co-trustee only with one or more of his partners or employees, and
 - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid.
- (3) if the solicitor fails so to satisfy the Council the provisions of section 38 shall apply in relation to that solicitor, notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in section 43(2).
- (4) If the solicitor, immediately before the striking off or, as the case may be, the suspension, was a sole solicitor, the right to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm shall on the occurrence of that event vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person.
- (5) In this section—
- " material date " means whichever is the latest of—
 - (a) the date when the order of the Tribunal or Court by or in pursuance of which the solicitor is struck off the roll or suspended from practice is to take effect;
 - (b) the last date on which—

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- (i) an appeal against that order may be lodged or an application may be made to the Court under section 54(2), or
- (ii) an appeal against a decision of the Council under section 40 may be lodged ;
- (c) the date on which any such appeal is dismissed or abandoned; and
" sole solicitor " means a solicitor practising under his own name or as a single solicitor under a firm name.

46 Safeguarding interests of clients in other cases

- (1) Where the Council are satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to operate on, or otherwise deal with, any client account in the name of the solicitor or his firm, and that no other arrangements acceptable to the Council have been made, the right to operate on, or otherwise deal with, that account shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any other person so long, but only so long, as the Council are satisfied that such incapacity and absence of other acceptable arrangements continues.
- (2) Where a sole solicitor ceases to practise for any reason other than that his name has been struck off the roll or that he has been suspended from practice, and the Council are not satisfied that suitable arrangements have been made for making available to his clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
 - (a) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents in his or his firm's possession or control which are held on behalf of his clients or which relate to any trust of which he is the sole trustee, or a co-trustee only with one or more of his employees, and
 - (b) all sums of money due from him or his firm or held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,
the provisions of section 38 shall apply in relation to that solicitor, notwithstanding that the Council may not have reasonable cause to believe that he has been guilty of any such dishonesty as is mentioned in section 43(2).
- (3) Where a sole solicitor dies—
 - (a) the right to operate on or otherwise deal with any client account in the name of the solicitor or his firm shall vest in the Society (notwithstanding any enactment or rule of law to the contrary) to the exclusion of any personal representatives of the solicitor, and shall be exercisable as from the death of the solicitor ; and
 - (b) if the Council are not satisfied that suitable arrangements have been made for making available to the solicitor's clients or to some other solicitor or solicitors instructed by his clients or on their behalf—
 - (i) all deeds, wills, securities, papers, books of accounts, records, vouchers and other documents which were in his or his firm's possession or control which were held on behalf of his clients or which relate to any trust of which he was the sole trustee, or a co-trustee only with one or more of his employees, and
 - (ii) all sums of money which were due from him or his firm or were held by him or his firm on behalf of his clients or subject to any such trust as aforesaid,

the provisions of section 38 shall apply in relation to that solicitor notwithstanding that the Council may not have reasonable cause to believe that he had been guilty of any such dishonesty as is mentioned in section 43(2).

- (4) In a case where the Society have operated on or otherwise dealt with a client account by virtue of subsection (3) the Society shall be entitled to recover from the estate of the solicitor who has died such reasonable expenses as the Society have thereby incurred.
- (5) In this section " sole solicitor " has the same meaning as in section 45.

47 Restriction on employing solicitor struck off or suspended

- (1) Unless he has the written permission of the Council to do so, a solicitor shall not, in connection with his practice as a solicitor, 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 practice as a solicitor.
- (2) Any permission given by the Council for the purposes of subsection (1) may be given for such period and subject to such conditions as the Council think fit.
- (3) A solicitor aggrieved by the refusal of the Council to grant any such permission as aforesaid, or by any conditions attached by the Council to the grant thereof, may appeal to the Court; and on any such appeal the Court may give such directions in the matter as it thinks fit.
- (4) If any solicitor acts in contravention of this section or of any condition subject to which any permission has been given thereunder, his name shall be struck off the roll or he shall be suspended from practice as a solicitor for such period as the Tribunal, or, in the case of an appeal, the Court, may think fit.

48 Restriction on number of apprentices

- (1) The Council may make rules as to the number of apprentices who may be taken by a solicitor or by a firm of solicitors; but any rules so made shall not come into operation until they have been approved by the Lord President
- (2) A contravention by a solicitor of any rules made under this section may be treated as professional misconduct for the purposes of Part IV.