



Solicitors Act 1974

1974 CHAPTER 47

PART II

PROFESSIONAL PRACTICE, CONDUCT AND DISCIPLINE OF SOLICITORS AND CLERKS

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

35 Intervention in solicitor's practice.

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

Modifications etc. (not altering text)

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

[^{F1}36 Compensation grants.

- (1) The Society may make rules concerning the grant of compensation by the Society in respect of loss that a person has suffered, or is likely to suffer, as a result of—
 - (a) an act or omission of a solicitor or former solicitor;
 - (b) an act or omission of an employee or former employee of a solicitor or former solicitor;
 - (c) the exercise by the Society of any of its powers under Part 2 of Schedule 1.
- (2) The rules may (among other things) make provision—
 - (a) as to the circumstances in which such grants may and may not be made;
 - (b) as to the form and manner in which a compensation claim is to be made;
 - (c) as to the procedure for determining compensation claims;

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- (d) for the making of grants in respect of a compensation claim before it is finally determined;
 - (e) for a grant to be made by way of loan in such circumstances and on such terms as may be prescribed in, or determined in accordance with, the rules;
 - (f) for a grant to be made by way of making good a deficiency in monies held in trust by the Society under paragraph 6 or 6A of Schedule 1;
 - (g) as to the minimum and maximum grants payable in respect of a compensation claim (or a claim of a prescribed description);
 - (h) for the Society to be subrogated, to such extent as may be prescribed, to any rights and remedies of a person to whom a grant is made in relation to the loss in respect of which the grant is made.
- (3) The circumstances which may be prescribed by virtue of subsection (2)(a) include in particular—
- (a) the nature of the loss;
 - (b) in a case within subsection (1)(a) or (b), the nature of the act or omission.
- (4) For the purposes of subsection (2)(f), there is a deficiency if the monies mentioned in that subsection are insufficient to satisfy the claims of all persons with a beneficial interest in the monies.
- (5) The Society may prepare and publish guidance as to the criteria it will apply in deciding whether to make a grant in respect of a compensation claim, or any part of a compensation claim.
- (6) Where the Society decides—
- (a) not to make a grant in respect of a compensation claim or any part of a compensation claim, or
 - (b) to make a grant of less than the amount claimed,
- it must give reasons for its decision.
- (7) Rules under subsection (1) which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements for the purposes of that Act.
- (8) In this section—
- “compensation claim” means a claim for the Society to make a grant of the kind mentioned in subsection (1);
 - “prescribed” means prescribed in rules under subsection (1).]

Textual Amendments

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

Modifications etc. (not altering text)

C2 S. 36 modified (13.7.2011) by [Legal Services Act 2007 \(The Law Society and The Council for Licensed Conveyancers\) \(Modification of Functions\) Order 2011 \(S.I. 2011/1716\)](#), [art. 2\(1\)](#), [Sch. para. 3](#)

C3 S. 36 extended (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), [s. 89\(3\)\(a\)\(iv\) \(4\)](#); [S.I. 1991/1883](#), [art. 3](#), [Sch.](#)

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- S. 36 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 paras. 1(3), 8 (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(8)(a)(i)**)
- S. 36 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), Sch. 4 paras. 1(3), 8 (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(4)**)
- C4** S. 36 applied (with modifications) (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), s. 89, Sch. 14 para. 6; S.I. 1991/1883, art. 3, Sch. (as substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 132** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(iii)** (subject to art. 5))
- C5** S. 36 applied (with modifications) by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 6(1) (as substituted (31.3.2004) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 94** (with ss. 29, 192, 193); S.I. 2009/503, **art. 2(b)(ii)** (subject to art. 5))

[^{F2}36A Compensation funds

- (1) Compensation rules may require or authorise the Society to establish or maintain a fund or funds (“compensation funds”) for the purpose of making grants in respect of compensation claims.
- (2) Compensation rules may require solicitors, or solicitors of a description prescribed in the rules, to make contributions to compensation funds of such amounts, at such times and in such circumstances, as may be prescribed in or determined in accordance with the rules.
- (3) Any amount payable by virtue of such a requirement may be recovered as a debt due to the Society.
- (4) Subsection (2) does not apply to a solicitor who is a Crown Prosecutor.
- (5) The Society may invest any money which forms part of a compensation fund in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- (6) The Society may insure with authorised insurers, in relation to compensation funds, for such purposes and on such terms as it considers appropriate.
- (7) The Society may, in such circumstances and subject to such conditions as may be prescribed in or determined in accordance with compensation rules—
 - (a) borrow for the purposes of a compensation fund;
 - (b) charge investments which form part of a compensation fund as security for borrowing by the Society for the purposes of that fund.
- (8) A compensation fund may be applied by the Society for the purposes mentioned in subsection (9) (in addition to the making of grants in respect of compensation claims).
- (9) The purposes are—
 - (a) payment of premiums on insurance policies effected under subsection (6);
 - (b) repayment of money borrowed by the Society for the purposes of the fund and payment of interest on any money so borrowed;
 - (c) payment of any other costs, charges or expenses incurred by the Society in establishing, maintaining, protecting administering or applying the fund;
 - (d) payment of any costs, charges or expenses incurred by the Society in exercising its powers under Part 2 of Schedule 1;

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- (e) payment of any costs or damages incurred by the Society, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers.

(10) In this section—

- “compensation claim” has the same meaning as in section 36;
“compensation fund” has the meaning given by subsection (1);
“compensation rules” means rules under section 36(1).]

Textual Amendments

- F2** Ss. 36, 36A substituted (31.3.2009) for s. 36 by Legal Services Act 2007 (c. 29), 177, 211, {Sch. 16 para. 37} (with ss. 29, 192, 193); S.I. 2009/503, art. 2(b)(i) (subject to arts. 4, 5)

Modifications etc. (not altering text)

- C6** S. 36A modified (13.7.2011) by Legal Services Act 2007 (The Law Society and The Council for Licensed Conveyancers) (Modification of Functions) Order 2011 (S.I. 2011/1716), art. 2(1), **Sch. para. 4**
- C7** S. 36A extended (1.7.2009) by S.I. 2000/1119, Sch. 4 para. 8(1) (as amended by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), art. 3(8)(a))
- C8** S. 36A(2)(3) applied by Administration of Justice Act 1985 (c. 61), Sch. 2 para. 6(2) (as substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 94** (with ss. 29, 192, 193)); S.I. 2009/503, art. 2(b)(ii) (subject to art. 5)
- S. 36A(2)(3) applied by Courts and Legal Services Act 1990 (c. 41), Sch. 14 para. 7 (as substituted (31.3.2009) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 133** (with ss. 29, 192, 193)); S.I. 2009/503, art. 2(b)(iii)

37 Professional indemnity.

- (1) The [^{F3}Society] may make rules (in this Act referred to as “indemnity rules”) concerning indemnity against loss arising from claims in respect of any description of civil liability incurred—
- (a) by a solicitor or former solicitor in connection with his practice or with any trust of which he is or formerly was a trustee;
 - (b) by an employee or former employee of a solicitor or former solicitor in connection with that solicitor's practice or with any trust of which that solicitor or the employee is or formerly was a trustee.
- (2) For the purpose of providing such indemnity, indemnity rules—
- (a) may authorise or require the Society to establish and maintain a fund or funds;
 - (b) may authorise or require the Society to take out and maintain insurance with authorised insurers;
 - (c) may require solicitors or any specified class of solicitors to take out and maintain insurance with authorised insurers.
- (3) Without prejudice to the generality of subsections (1) and (2), indemnity rules—
- (a) may specify the terms and conditions on which indemnity is to be available, and any circumstances in which the right to it is to be excluded or modified;

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- (b) may provide for the management, administration and protection of any fund maintained by virtue of subsection (2)(a) and require solicitors or any class of solicitors to make payments to any such fund;
 - (c) may require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Society by virtue of subsection (2)(b);
 - (d) may prescribe the conditions which an insurance policy must satisfy for the purposes of subsection (2)(c);
 - (e) may authorise the Society to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules;
 - (f) may specify circumstances in which, where a solicitor for whom indemnity is provided has failed to comply with the rules, the Society or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which he has failed to comply;
 - (g) may specify circumstances in which solicitors are exempt from the rules;
 - (h) may empower the [F4Society] to take such steps as [F5it considers] necessary or expedient to ascertain whether or not the rules are being [F6, or have been,] complied with; and
 - (i) may contain incidental, procedural or supplementary provisions.
- (4) If any solicitor fails to comply with indemnity rules, any person may make a complaint in respect of that failure to the Tribunal.
- (5) The Society shall have power, without prejudice to any of its other powers, to carry into effect any arrangements which it considers necessary or expedient for the purpose of indemnity under this section.

Textual Amendments

- F3** Words in s. 37(1) substituted (7.3.2008 in so far as the amending Act substitutes the word "Society" for the word "Council" and 1.10.2010 otherwise) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 38(a)** (with ss. 29, 192, 193); S.I. 2008/222, **art. 2(j)(i)**; S.I. 2009/3250, **art. 2(f)(ii)** (with art. 9)
- F4** Word in s. 37(3)(h) substituted (7.3.2008) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 38(b)(i)** (with ss. 29, 192, 193); S.I. 2008/222, **art. 2(j)(i)**
- F5** Words in s. 37(3)(h) substituted (7.3.2008) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 38(b)(ii)** (with ss. 29, 192, 193); S.I. 2008/222, **art. 2(j)(i)**
- F6** Words in s. 37(3)(h) inserted (30.6.2008) by Legal Services Act 2007 (c. 29), ss. 177, 211, **Sch. 16 para. 38(b)(iii)** (with ss. 29, 192, 193); S.I. 2008/1436, **art. 2(d)(i)**

Modifications etc. (not altering text)

- C9** S. 37 extended (14.10.1991) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 89(3)(a)(v)** (4); S.I. 1991/1883, **art. 3, Sch.**
S. 37 extended (22.5.2000) by S.I. 2000/1119, regs. 1, 37(3), **Sch. 4 para. 1(3)** (as amended (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), **art. 3(4)**)

Changes to legislation:

There are currently no known outstanding effects for the Solicitors Act 1974, Cross Heading: Intervention in solicitor's practice, Compensation Fund and professional indemnity.