

SCHEDULES

SCHEDULE 8

Section 53.

LICENSED CONVEYANCERS

PART I

ADDITIONAL POWERS OF COUNCIL FOR LICENSED CONVEYANCERS IN CONNECTION WITH SECTIONS 27, 28, AND 53

General

1 In this Schedule—

“the Act of 1985” means the Administration of Justice Act 1985;

“advocacy licence” means a licence issued under section 53 and constituting the grant by the Council to the licensed conveyancer concerned of a right of audience;

“the Council” means the Council for Licensed Conveyancers;

“the Discipline and Appeals Committee” means the committee established under section 25 of the Act of 1985;

“litigation licence” means a licence issued under section 53 and constituting the grant by the Council to the licensed conveyancer concerned of a right to conduct litigation;

“probate licence” means a licence issued under section 53 and constituting the grant by the Council to the licensed conveyancer concerned of an exemption under section 55; and

“relevant licence” means a licence under Part II of the Act of 1985 or an advocacy, litigation or probate licence.

Qualification regulations and rules of conduct

- 2 (1) For the purpose of exercising the powers conferred by section 53 the Council may make such qualification regulations and rules of conduct as it considers appropriate in connection with the granting of the rights or exemption in question.
- (2) In making any such regulations or rules the Council may, in particular, do anything which it has power to do in making rules under section 13 of the Act of 1985 (training rules).

Applications for licences

- 3 (1) An application for an advocacy licence, litigation licence or probate licence shall be made to the Council in such manner, and shall be accompanied by such fee, as may be prescribed by rules made by the Council under this paragraph.

Status: This is the original version (as it was originally enacted).

- (2) Any such rules—
- (a) may prescribe the forms to be used in connection with applications for any such licence; and
 - (b) may provide for applications of any description specified in the rules to be exempt from any of the requirements of the rules.
- (3) Rules made under section 14 of the Act of 1985 and this paragraph may make provision with respect to applications for composite licences.

Issue of licences

- 4 (1) If, on an application for an advocacy, litigation or probate licence, the Council is satisfied that—
- (a) the applicant has complied with such qualification regulations, rules of conduct or other requirements as are applicable in his case in relation to the licence applied for;
 - (b) that he has made adequate arrangements for the purpose of complying with any provisions which are applicable in his case in relation to the licence applied for; and
 - (c) that he is a fit and proper person to provide the advocacy, litigation or probate services in question,
- the Council may issue the applicant either with a licence free of conditions or with a licence subject to such conditions as it sees fit to impose.
- (2) If the Council is for any reason not so satisfied, or for any other reason refuses the application, it shall notify the applicant of its refusal and of the grounds on which the application has been refused.
- (3) Subsections (3) to (6) of section 15 of the Act of 1985 (issue of licences under section 14 of that Act) shall apply, with the necessary modifications, with respect to any application under paragraph 3 and any licence in force under section 53 as they apply with respect to any application under section 14 of that Act and any licence under Part II of that Act.

Conditional licences

- 5 (1) This paragraph has effect in any case where a person applies for an advocacy, litigation or probate licence—
- (a) for the first time;
 - (b) when a licence of the kind applied for which has previously been held by him has been subject to conditions;
 - (c) when, on the first day of the period to which the licence applied for would (if granted) relate, a period of twelve months or more will have elapsed since he held a licence of that kind;
 - (d) after the Discipline and Appeals Committee have made any order in his case under section 26 of the Act of 1985.
- (2) This paragraph also has effect in any case where a person applies for such a licence and any of the circumstances mentioned in paragraphs (e) to (j) of section 16 of the Act of 1985 (conditional licences) apply in his case.

Status: This is the original version (as it was originally enacted).

- (3) Sub-paragraphs (1) and (2) are subject to subsection (4) of section 16 of the Act of 1985, as applied by sub-paragraph (7) of this paragraph.
- (4) In any case where this paragraph has effect the Council may, on issuing an advocacy, litigation or probate licence to the applicant, issue it subject to such conditions as the Council thinks fit.
- (5) The Council's decision in any such case to impose any particular conditions under this paragraph may be made by reference to such criteria of general application as may have been determined by the Council.
- (6) Without prejudice to the generality of sub-paragraph (4), conditions may be imposed under that sub-paragraph—
 - (a) for restricting the kinds of service that may be provided by the applicant by virtue of his having the advocacy, litigation or probate licence in question; or
 - (b) for requiring the applicant to take any specified steps that will, in the opinion of the Council, be conducive to his carrying on an efficient practice as a licensed conveyancer who provides the additional services authorised by that licence,and conditions may be imposed under that sub-paragraph (whether for the purposes mentioned in paragraph (b) or otherwise) as they may be under Part II of the Act of 1985.
- (7) Subsections (4) and (5) of section 16 of the Act of 1985 shall have effect, with the necessary modifications, with respect to an advocacy, litigation or probate licence as they have effect with respect to a licence issued under Part II of that Act.

Register of licensed conveyancers

- 6 (1) Where an advocacy, litigation or probate licence is in force with respect to a licensed conveyancer, the Council shall enter details of the licence in the appropriate place in the register of licensed conveyancers maintained by it under section 19 of the Act of 1985.
- (2) The Council shall accordingly cause the appropriate entries to be made on the issue of any advocacy, litigation or probate licence and deletions on any such licence ceasing to be in force.
- (3) Where any such licence is for the time being suspended, the Council shall cause that fact to be noted in the register against the name of the licensed conveyancer concerned.

Code of conduct

- 7 (1) The rules made by the Council under section 20 of the Act of 1985 (rules as to professional practice, conduct and discipline) shall also be made in pursuance of the Council's general duty under section 53(5).
- (2) Those rules may also provide for regulating the association of licensed conveyancers with respect to whom advocacy, litigation or probate licences are in force, with other persons in connection with the provision of advocacy, litigation or (as the case may be) probate services to members of the public.

Status: This is the original version (as it was originally enacted).

Effect of suspension or disqualification under Part II of the Act of 1985

- 8 Where a licence issued under Part II of the Act of 1985 ceases to be in force (whether because it is suspended or the licensed conveyancer concerned is disqualified from holding such a licence or for any other reason), any advocacy, litigation or probate licence in force with respect to that licensed conveyancer at the time shall cease to have effect to the same extent as the licence under Part II of the Act of 1985.

Removal of disqualification from holding a licence

- 9 (1) Where the Discipline and Appeals Committee have made any order directing that a licensed conveyancer shall be disqualified (either permanently or during a specified period) from holding an advocacy licence, a litigation licence or a probate licence, he shall not, while his disqualification continues in force, be issued with a licence of a kind to which the disqualification relates unless the Committee, on an application made to them in that behalf, direct otherwise.
- (2) An application under this paragraph shall not be made to the Committee—
- (a) within ten months of the date of the Committee's order relating to the kind of licence in question; or
 - (b) within ten months of a previous such application by the licensed conveyancer concerned with respect to that kind of licence.

Revocation on grounds of error or fraud

- 10 (1) Where the Discipline and Appeals Committee are satisfied that a relevant licence was issued to any person as a result of any error, or as a result of fraud on the part of that person, they may if they think fit by order revoke that licence and any other relevant licence issued to that person.
- (2) Where a person has had a relevant licence which was held by him revoked, he shall not be issued with any relevant licence except on the advice of the Committee given to the Council as the result of an application made by that person to the Committee.
- (3) On any such application the Committee may, if they think fit, direct that the applicant shall be disqualified from holding any relevant licence, or a relevant licence of a specified kind, until the expiry of such period as may be specified in the direction.
- (4) Paragraph 9 shall apply in relation to a direction under sub-paragraph (3) as it applies in relation to any direction of a kind mentioned in sub-paragraph (1) of that paragraph.

Recognised bodies

- 11 Section 32 of the Act of 1985 (provision of conveyancing services by recognised bodies) shall have effect as if the references to conveyancing services included references to advocacy, litigation or probate services.

PART II

AMENDMENTS OF PROVISIONS RELATING TO POWERS OF COUNCIL ETC.

Delegation of powers etc.

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

Council's intervention powers

- 13 (1) Subject to sub-paragraph (2), the powers conferred by Part II of Schedule 5 to the Act of 1985 (intervention in licensed conveyancer's practice) shall also be exercisable where—
- (a) the Council is satisfied that a sole licensed conveyancer has abandoned his practice; or

Status: This is the original version (as it was originally enacted).

- (b) the Council is satisfied that a licensed conveyancer has been practising in breach of any condition imposed on him in connection with any relevant licence of his.

(2) The powers—

- (a) conferred by Part II of Schedule 5 to the Act of 1985; and
- (b) exercisable by virtue of sub-paragraph (1)(b),

shall only be exercised if the Council has given the licensed conveyancer notice in writing that it is satisfied as mentioned in sub-paragraph (1)(b) and also (at the same or any later time) notice in writing that the powers conferred by Part II of that Schedule are accordingly exercisable in his case.

Inadequate professional services

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

Inadequate professional services: steps that may be taken

- 15 (1) The steps are—
- (a) determining that the costs to which the licensed conveyancer is entitled in respect of his services (“the costs”) are to be limited to such amount as may be specified in the determination and directing him to comply, or to secure compliance, with such one or more of the permitted requirements as appear to the Council to be necessary in order for effect to be given to its determination;
 - (b) directing him to secure the rectification, at his expense or at that of his firm, of any such error, omission or other deficiency arising in connection with the matter in question as it may specify;
 - (c) directing him to pay such compensation to the client as the Council sees fit to specify in the direction;
 - (d) directing him to take, at his expense or at that of his firm, such other action in the interests of the client as it may specify.

Status: This is the original version (as it was originally enacted).

- (2) The “permitted requirements” are—
- (a) that the whole or part of any amount already paid by or on behalf of the client in respect of the costs be refunded;
 - (b) that the whole or part of the costs be remitted;
 - (c) that the right to recover the costs be waived, whether wholly or to any specified extent.
- (3) The power of the Council to take any such steps is not confined to cases where the client may have a cause of action against the licensed conveyancer for negligence.

Inadequate professional services: compensation

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

Inadequate professional services: failure to comply with direction

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

Inadequate professional services: fees

- 18 (1) The Council may, by regulations made with the concurrence of the Lord Chancellor, make provision for the payment, by any client with respect to whom the Council is asked to consider whether to take any of the steps, of such fee as may be prescribed.
- (2) The regulations may provide for the exemption of such classes of client as may be prescribed.
- (3) Where a client pays the prescribed fee it shall be repaid to him if the Council takes any of the steps in the matter with respect to which the fee was paid.
- (4) In this paragraph “prescribed” means prescribed by the regulations.

Inadequate professional services: costs

- 19 Where the Council takes any of the steps with respect to a licensed conveyancer it may also direct him to pay to the Council—

Status: This is the original version (as it was originally enacted).

- (a) the amount of the fee repayable by the Council to the client under paragraph 18(3); and
- (b) an amount which is calculated by the Council as the cost to it of dealing with the complaint, or which in its opinion represents a reasonable contribution towards that cost.

Duty of Discipline and Appeals Committee

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

Power to examine files

- 21 (1) Where the Council is satisfied that it is necessary to do so for the purpose of investigating any complaint made to it—
- (a) alleging professional misconduct by a licensed conveyancer; or
 - (b) relating to the quality of any professional services provided by a licensed conveyancer,
- the Council may give notice to the licensed conveyancer or his firm requiring the production or delivery to any person appointed by the Council, at a time and place to be fixed by the Council, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the complaint relates (whether or not they relate also to other matters).
- (2) The provisions of paragraphs 9(2) to (12), 11 and 12 of Schedule 5 to the Act of 1985 shall apply in relation to the powers conferred by sub-paragraph (1) as they apply in relation to the powers conferred by paragraph 9(1) of that Schedule.

Interest on clients' money

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

Full and limited licences

- 23 In section 15 of the Act of 1985 (issue of licences by Council), the following subsections shall be added at the end—
- “(7) A licence issued under this Part may be endorsed by the Council as—
- (a) a full licence, if the Council is satisfied that the person to whom it is issued has complied, or will comply, with the requirements

Status: This is the original version (as it was originally enacted).

made under this Part with respect to professional indemnity and compensation; or

(b) as a limited licence, if the Council is not so satisfied.

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

Cases in which conditions may be attached to licences

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

“(i) after having been committed to prison in civil proceedings;

(ia) after having been convicted of an offence involving dishonesty or deception or a serious arrestable offence (as defined by section 116 of the Police and Criminal Evidence Act 1984); or”.