

Intervention in Advocate's Practice

Section 26 [P1974/47/Sch 1]

PART I

CIRCUMSTANCES IN WHICH SOCIETY MAY INTERVENE

1. (1) Subject to sub-paragraph (2) below, the powers conferred by Part II of this Schedule shall be exercisable where-

(a) the Council has reason to suspect dishonesty on the part of-

(i) an advocate; or

(ii) an employee of an advocate; or

(iii) the personal representatives of a deceased advocate,

in connection with that advocate's practice or in connection with any trust of which that advocate is or formerly was a trustee; or

(b) the Council considers that there has been undue delay on the part of the personal representatives of a deceased advocate, who immediately before his death was practising as a sole advocate, in connection with that advocate's practice or in connection with any controlled trust; or

(c) the Council is satisfied that an advocate has failed to comply with rules made by virtue of section 4 of this Act; or

(d) an advocate has been adjudged bankrupt or has made a composition or arrangement with his creditors; or

(e) an advocate has been committed to prison in any civil or criminal proceedings; or

(f) the powers conferred by section 74 (emergency powers) or 75 (appointment of receiver) of the Mental Health Act 1974 have been exercised in respect of an advocate; or

(g) an advocate has been suspended from practice or where an advocate's commission has been cancelled.

(2) The powers conferred by Part II of this Schedule shall only be exercisable under sub-paragraph (i)(c) above if the Society has given the advocate notice in writing that the Council is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable in his case.

2. On the death of a sole advocate, paragraphs 6 to 8 below shall apply to the client accounts of his practice.

3. The powers conferred by Part II of this Schedule shall also be exercisable, subject to paragraphs 5(4) and 10(3) below, where-

(a) a complaint is made to the Society that there has been undue delay on the part of an advocate in connection with any matter in which the advocate or his firm was instructed on behalf of a client or with any controlled trust;

(b) the Society by notice in writing invites the advocate to give an explanation within a period of not less than eight days specified in the notice;

(c) the advocate fails within that period to give an explanation which the Council regards as

satisfactory; and

- (d) the Society gives notice of the failure to the advocate and (at the same or any later time) notice that the powers conferred by Part II of this Schedule are accordingly exercisable.

4. (1) Where the powers conferred by Part II of this Schedule are exercisable in relation to an advocate, they shall continue to be exercisable after his death or after the advocate has been suspended from practice or has had his advocate's commission cancelled.

(2) The references to the advocate or his firm in paragraphs 5(1), 6(2) and (3), 8, 9(1) and (5) and 10(1) below include, in any case where the advocate has died, references to his personal representatives.

PART II

POWERS EXERCISABLE ON INTERVENTION

Money

5. (1) The High Court, on the application of the Society, may order that no payment shall be made without the leave of the High Court by any person (whether or not named in the order) of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the advocate or his firm.

(2) No order under this paragraph shall take effect in relation to any person to whom it applies unless the Society has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank, has indicated at which of its branches the Society believes that the money to which the order relates is held.

(3) A person shall not be treated as having disobeyed an order under this paragraph by making a payment of money if he satisfies the High Court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it.

(4) This paragraph does not apply where the powers conferred by this Part are exercisable by virtue of paragraph 3 above.

6. (1) Without prejudice to paragraph 5 above, if the Council passes a resolution to the effect that any sums of money to which this paragraph applies, and the right to recover or receive them, shall vest in the Society, all such sums shall vest accordingly (whether they were received by the person holding them before or after the Council's resolution) and shall be held by the Society on trust to exercise in relation to them the powers conferred by this and, subject thereto, upon trust for the persons beneficially entitled to them.

(2) This paragraph applies-

- (a) where the powers conferred by this paragraph are exercisable by virtue of paragraph 1 above, to all sums of money held by or on behalf of the advocate or his firm in connection with his practice or with any trust of which he is or formerly was a trustee;
 - (b) where they are exercisable by virtue of paragraph 2 above, to all sums of money in any client account.
 - (c) where they are exercisable by virtue of paragraph 3 above, to all sums of money held by or on behalf of the advocate or his firm in connection with the trust or other matter to which the complaint relates.
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(3) The Society shall serve on the advocate or his firm and on any other person having possession of sums of money to which this paragraph applies a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money.

(4) Within 14 days of the service of a notice under sub-paragraph (3) above, the person on whom it was served, on giving not less than 48 hours' notice in writing to the Society and (if the notice gives the name of the advocate instructed by the Society) to that advocate, may apply to the High Court for an order directing the Society to withdraw the notice.

(5) If the High Court makes such an order, it shall have power also to make such other order with respect to the matter as it may think fit.

(6) If any person on whom a notice has been served under sub-paragraph (3) above pays out sums of money at a time when such payment is prohibited by the notice, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

7. (1) If the Society takes possession of any sum of money to which paragraph 6 above applies, the Society shall pay it into a special account in the name of the Society or of a person nominated on behalf of the Society, and any such person shall hold that sum on trust to permit the Society to exercise in relation to it the powers conferred by this Part and, subject thereto, on trust for the persons beneficially entitled to it.

(2) A bank with which a special account is kept shall be under no obligation to ascertain whether it is being dealt with properly.

8. Without prejudice to paragraphs 5 to 7 above, if the High Court is satisfied, on an application by the Society, that there is reason to suspect that any person holds money on behalf of the advocate or his firm, the High Court may require that person to give the Society information as to any such money and the accounts in which it is held.

Documents

9. (1) The Society may give notice to the advocate 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-

- (a) where the powers conferred by this Schedule are exercisable by virtue of paragraph 1 above, of all documents in the possession of the advocate or his firm in connection with his practice or with any controlled trust; and
- (b) where they are exercisable by virtue of paragraph 3 above, of all documents in the possession of the advocate or his firm in connection with the trust or other matters to which the complaint relates (whether or not they relate also to other matters).

(2) The person appointed by the Society may take possession of any such documents on behalf of the Society.

(3) Except in a case where an application has been made to the High Court under sub-paragraph (4) below, if any person having possession of any such documents refuses, neglects or otherwise fails to comply with a requirement under sub-paragraph (1) above, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500.

(4) The High Court, on the application of the Society, may order a person required to produce or deliver documents under sub-paragraph (1) above to produce or deliver them to any person appointed by the Society at such time and place as may be specified in the order, and authorise him to take possession of them on behalf of the Society.

(5) If, on an application by the Society, the High Court is satisfied that there is reason to

suspect that documents in relation to which the powers conferred by sub-paragraph (1) above are exercisable have come into possession of some person other than the advocate or his firm, the High Court may order that person to produce or deliver the documents to any person appointed by the produce or deliver the documents to any person appointed by the Society at such time and place as may be specified in the order and authorise him to take possession of them on behalf of the Society.

(6) On making an order under this paragraph, or at any later time, the High Court, on the application of the Society to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates.

(7) Upon taking possession of any documents under this paragraph, the Society shall serve upon the advocate or personal representatives, and upon any other person from whom they were received on the Society's behalf or from whose premises they were taken, a notice that possession has been taken on the date specified in the notice.

(8) Subject to sub-paragraph (9) below, a person upon whom a notice under sub-paragraph (7) above is served, on giving not less than 48 hours' notice to the Society and (if the notice gives the name of the advocate instructed by the Society) to that advocate, may apply to the High Court for an order directing the Society to deliver the documents to such person as the applicant may require.

(9) A notice under sub-paragraph (8) above shall be given within eight days of the service of the Society's notice under sub-paragraph (7) above.

(10) Without prejudice to the foregoing provisions of this Schedule, the Society may apply to the High Court for an order as to the disposal or destruction of any documents in its possession by virtue of this paragraph or of paragraph 10 below.

(11) On an application under sub-paragraph (8) or (10) above, the Court may make such order as it thinks fit.

(12) Except so far as its right to do so may be restricted by an order on an application under sub-paragraph (8) or (10) above, the Society may take copies of, or extracts from, any documents in its possession by virtue of this paragraph or of paragraph 10 below and require any person to whom it is proposed that such documents shall be delivered, as a condition precedent to delivery, to give a reasonable undertaking to supply copies or extracts to the Society.

Mail

10. (1) The High Court, on the application of the Society, may from time to time order that, for such time not exceeding 18 months as the High Court thinks fit, postal packets (as defined by section 78(1) of the Isle of Man Post Office Authority (Postal Services, etc.) Act 1973) addressed to the advocate or his firm at any place or places mentioned in the order shall be directed to the Society or any person appointed by the Society at any other address mentioned in the order; and the Society, or that person on its behalf, may take possession of any such packets received at that address.

(2) Where such an order is made, the Society shall pay to the Isle of Man Post Office Authority the like charges (if any), as would have been payable for the re-direction of the packets by virtue of any regulations made under section 6 of the said Act of 1973, if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Authority to re-direct them to him at the address mentioned in the order.

(3) This paragraph does not apply where the powers conferred by this Schedule are exercisable by virtue of paragraph 3 above.

Trusts

11. (1) If the advocate or his personal representative is a trustee of a controlled trust, the Society may apply to the High Court for an order for the appointment of a new trustee in substitution for him.

(2) The Trustee Act 1961 shall have effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 41 of that Act.

General

12. The powers in relation to sums of money and documents conferred by this Schedule shall be exercisable notwithstanding any lien on them or right to their possession.

13. Subject to any order for the payment of costs that may be made on an application to the High Court under this Schedule, any costs incurred by the Society for the purposes of this Schedule, including, without prejudice to the generality of this paragraph, the costs of any person exercising powers under this Schedule on behalf of the Society, shall be paid by the advocate or his personal representatives and shall be recoverable from him or them as a debt owing to the Society.

14. Where an offence under this Schedule committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

15. Any application to the High Court under this Schedule may be disposed of in chambers.

16. The Society may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under this Schedule.

PART III

INTERPRETATION

17. In this Schedule, 'client account' means an account in the title of which the word 'client' is required by rules under section 4 of this Act.

Schedule 2

Amendment of Certain Enactments

Section 30 [Sch 2 amended by Legal Aid Act 1986 Sch 5, and amends to following Acts-

Advocates Act 1826 q.v.

Advocates Act 1874 q.v.]

Schedule 3

[Sch 3 repealed by Statute Law Revision Act 1983 Sch 2.]

PENDLEX

This Act has been amended by the Advocates Act 1995, the whole of which is not yet in operation. The new and amended provisions are reproduced below as they will read once the amending provisions have come into operation.

Sections 1 (2)

1 (2)

Section 2

Section 7(b)

(b) holds a licence issued under section 15(1)(b) of the Advocates Act 1995.

Section 29(1), definitions

'advocate' means a person who is qualified to act as such under section 7;

'advocate's commission', except in section 7 of this Act, includes a licence to act as such under section 15(1)(a) of the Advocates Act 1995;

Section 30

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Section 32(1)

(1) This Act may be cited as the Advocates Act 1976.

Schedule 2

[Repealed]
