

B THE SOLICITORS ACTS OF 1941, 1957 AND 1965: THE EVOLUTION OF THE SCHEDULE 1 PROVISIONS

1 THE SOLICITORS ACT 1941

1) BACKGROUND TO ACT

Preamble

An Act to require accountants certificates as to compliance with the Solicitors' Accounts Rules, to establish a fund for relief in certain cases of losses due to dishonesty of solicitors, to make provision with respect to membership of the Law Society and with respect to the Council and Committees thereof, to amend the enactments relating to solicitors, and for purposes connected therewith.

[11th November 1941]

The Solicitors Bill was introduced in 1939 as an amendment to the 1932 Act at a time when the incidence of financial impropriety was increasing. The Bill was presented to Parliament three times before it was passed.

Various measures were introduced to widen and to fortify the Law Society's powers : there was greater discretion over the issuing of Practising Certificates; there was more control over Article Clerks ; a requirement for the submission of the Accountant's Report was introduced.

The most significant amendment, however, was the introduction of the Compensation Fund and the Intervention Procedure which went hand in hand with it.

2) THE PARLIAMENTARY DEBATES

a) THE DEBATES IN FULL

The history of the Bill's passage through Parliament and the full debate is in **Part 2A2**

b) THE DEBATES SPECIFICALLY RELATING TO INTERVENTION

30 APRIL 1939 SECOND PRESENTATION

10 Jun 1940 Lords Chamber. Committee Stage by House.

LORD WRIGHT

The object of the next Amendment is to provide for a more extensive examination of documents and accounts than those of which the Council can at present claim inspection and delivery.

Note 1 Here it is clear that the purpose of the delivery up of the Solicitor's Documents was to enable the Council to examine them, not to close down the Solicitor's practice

Amendment moved—

Page 25, line 18, after ("of all") insert ("deeds, wills, securities, papers").—(*Lord Wright.*)

On Question, Amendment agreed to.

LORD WRIGHT

The words in the next Amendment explain themselves. I beg to move.

Amendment moved—

Page 25, line 19, after ("documents") insert ("in the possession or control").—(*Lord Wright.*)

On Question, Amendment agreed to.

LORD WRIGHT

I beg to move.

Amendment moved—

Page 25, line 23, leave out sub-paragraph (2) and insert:

"(2) If any person having possession or control of any such deeds, wills, securities, papers, books of account, records, vouchers or documents, refuses or fails forthwith after being required by the Council so to do to produce or deliver the same, or cause the same to be produced or delivered, in manner aforesaid, such person shall upon summary conviction be liable to a fine not exceeding fifty pounds and the Council may apply to the High Court or a Judge thereof for an order and the Court or a Judge thereof may on such application make an order upon such person to produce or deliver the same or cause the same to be produced or delivered in manner aforesaid within such time as the Court or a Judge thereof may order."—(*Lord Wright.*)

On Question, Amendment agreed to.

LORD WRIGHT

The same words are here to be inserted for the same purpose. I beg to move.

Amendment moved—

Page 25, line 30, after ("any such") insert ("deeds, wills, securities, papers").—(*Lord Wright.*)

On Question, Amendment agreed to.

LORD WRIGHT

The next Amendment is to enable the Council, in the event of their having documents in their possession, to find out to whom they belong. I beg to move.

Amendment moved—

Page 26, line 6, at end insert—

"(6) If no application shall be made to a Judge of the High Court in accordance with the last preceding sub-paragraph or if the Judge to whom such an application is made shall direct that the deeds, wills, securities, papers, books of account, records, vouchers or other documents, shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person or persons to whom the same belong and may deal with the same in accordance with the directions of such person or persons."

"(7) In this paragraph the expression 'securities' means documents constituting or evidencing the title to any property."—(*Lord Wright.*)

On Question, Amendment agreed to.

LORD WRIGHT

moved to insert at the end of the Schedule:

"6. Every application to a Judge of the High Court in Chambers under sub-paragraph (5) of paragraph 4 of this Schedule and every application to the High Court or a Judge thereof under sub-paragraph (2) of paragraph 4 or under paragraph 5 of this Schedule shall be made in such form and heard in such manner as may be prescribed by regulations made

from time to time by the Master of the Rolls with the concurrence of the Lord Chancellor and the Lord Chief Justice or (in the case of difference) of one of them."

The noble and learned Lord said: This Amendment is intended to enable the Council to apply in certain cases to the High Court for an Order subject to Regulations to be made by the Master of the Rolls with the concurrence of the Lord Chancellor, the Lord Chief Justice or either of them. I beg to move.

Amendment moved—

Page 26, line 14, insert the said new paragraph.—(*Lord Wright.*)

On Question, Amendment agreed to.

c) COMMENTS (IF ANY) AS TO MEANING OF THE SCHEDULE 1 PROVISIONS

Lord Wright's observations make it plain that the purpose of obtaining the Solicitor's Documents, at least initially, was to examine them, not to retain them:

10 JUNE 1940

LORD WRIGHT

The object of the next Amendment is to provide for a more extensive examination of documents and accounts than those of which the Council can at present claim inspection and delivery.

3) GOVERNING PROVISIONS

The governing provisions were Section 2 of the 1941 Act and Schedule 1:

2.— Compensation Fund.

(1) A fund to be called "*the Compensation Fund*" shall be established, maintained and administered by the Society for enabling the Society to make grants there out in any cases which the Council think suitable for such treatment and in their absolute discretion decide so to treat, for the purpose of relieving or mitigating losses sustained by any person in consequence of dishonesty on the part of any solicitor or any clerk or servant of any solicitor in connection with any such solicitor's practice as a solicitor, or any trust of which such solicitor was a trustee, and whether or not he had a practising certificate in force when the act of dishonesty was committed and notwithstanding that subsequently 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 :

(7) The provisions set out in the First Schedule to this Act shall have effect with regard to the formation, administration and application of the Compensation Fund and matters connected therewith.

Schedule 1 PROVISIONS WITH REGARD TO THE FORMATION;
ADMINISTRATION AND APPLICATION OF THE COMPENSATION FUND
AND MATTERS CONNECTED THEREWITH.

Para 1

There shall be carried to the credit of the Compensation Fund—

- (a) all contributions paid to the Registrar in pursuance of the provisions of section two of this Act;
- (b) all interest, dividends and other income and accretions of capital arising from investment of the Compensation Fund or any part thereof;
- (c) the proceeds of the realisation of any investments of the Compensation Fund;
- (d) all moneys borrowed for the purposes of the Compensation Fund ;
- (e) all sums received by the Society under any insurance effected by the Society under section two of this Act;
- (f) all sums received by the Society under the provisions of subsection (8) of section two of this Act; and
- (g) any other moneys which may belong or accrue to the Compensation Fund or be received by the Society in respect thereof.

Para 2.

All moneys from time to time forming part of the Compensation Fund and all investments of the Compensation Fund shall be applicable as follows:—

- (a) for payment of all costs, charges and expenses of establishing, maintaining, administering and applying the Compensation Fund;
- (b) for payment of any premiums on insurances effected by the Society under section two of this Act;
- (c) for repayment of any moneys borrowed by the Society for the purposes of the Compensation Fund and payment of interest on any moneys so borrowed;
- (d) for payment of any grants which the Society may make in pursuance of the provisions of section two of this Act for any of the purposes mentioned in that section;
- (e) for payment of all costs, charges and expenses incurred by the Society under or in the exercise of the powers conferred by this Schedule; and
- (f) for payment of any other sums properly payable out of the Compensation Fund in pursuance of the provisions of section two of this Act, this Schedule or any rules made under section two of this Act.

Para 3

The Council or any committee appointed by the Council and authorised by them to exercise any of their functions under section two of this Act or to assist them in the exercise of such functions may, for the purposes of inquiry into any matters which may affect the making or refusal of a grant under section two of this Act, administer oaths.

Para 4

(1) If the Council have reasonable cause to believe that a solicitor or his clerk or servant has been guilty of any such dishonesty as is mentioned in section two of this Act, they may require the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council, and may take possession of all deeds, wills, securities, papers, books of account, records, vouchers and other documents in the possession or control of such solicitor or his firm, or relating to any trust of which he is a sole trustee or is co-trustee only with a partner, clerk or

Note 1 The grounds of 'reasonable cause to believe' in the 1941 Act are now 'reason to suspect'

servant of his or with more than one of such persons.

(2) If any person having possession or control of any such deeds, wills, securities, papers, books of account, records, vouchers or documents, refuses or fails forthwith after being required by the Council so to do to produce or deliver the same, or cause the same to be produced or delivered in manner aforesaid, such person shall upon summary conviction be liable to a fine not exceeding fifty pounds and the Council may apply to the High Court or a judge thereof for an order and the Court or a judge thereof may on such application make an order upon such person to produce or deliver the same or cause the same to be produced or delivered in manner aforesaid within such time as the Court or a judge thereof may order.

(3) Upon taking possession of any such deeds, wills, securities, papers, books of account, records, vouchers or documents which shall have been delivered to the Council, the Council shall serve upon such solicitor and every person from whom they shall have been received, a notice giving particulars and the date of taking possession thereof.

(4) Every requirement and notice to be made or given under this paragraph shall be made in writing under the hand of such person as may be appointed by the Council for the purpose. The Council may serve any such requirement or notice on any solicitor or other person as aforesaid personally or by forwarding it by registered letter addressed to his last known place of business or residence.

(5) Within fourteen days after a notice under sub-paragraph (3) of this paragraph has been served in accordance with the last preceding sub-paragraph, the solicitor or other person upon whom such notice has been served as aforesaid may apply to a judge of the High Court in Chambers for an order directing the Council to return such deeds, wills, securities, papers, books of account, records, vouchers or documents to the person or persons from whom the same were received by the Council or to such other person or persons as the applicant may require. On the hearing of such application the judge may make the order applied for or such other order with respect to the matter as he may think fit.

(6) If no application shall be made to a judge of the High Court in accordance with the last preceding sub-paragraph or if the judge to whom such an application is made shall direct that the deeds, wills, securities, papers, books of account, records, vouchers or documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person or persons to whom the same belong and may deal with the same in accordance with the directions of such person or persons.

(7) In this paragraph the expression "*securities*" means documents constituting or evidencing the title to any property.

Para 5.

Note 1 The Law Society's application for the Statutory Freezing Order could be made only if it was satisfied about his dishonesty

If the Council are satisfied that a solicitor has committed any such dishonesty as is mentioned in section two of this Act, they may apply to the High Court or a judge thereof for an order, and the Court or a judge thereof may on such application make an order, that no payment shall be made without the leave of the Court or a judge thereof by any banker named in the order out of any banking account in the name of such solicitor or his firm.

Para 6

Every application to a judge of the High Court in Chambers under sub-paragraph (5) of paragraph 4 of this Schedule and every application to the High Court or a judge thereof under sub-paragraph (2) of paragraph 4 or under paragraph 5 of this Schedule shall be made in such form and heard in such manner as may be prescribed by regulations made from time to time by the Master of the Rolls with the concurrence of the Lord Chancellor and the Lord Chief Justice or (in the case of difference) of one of them.

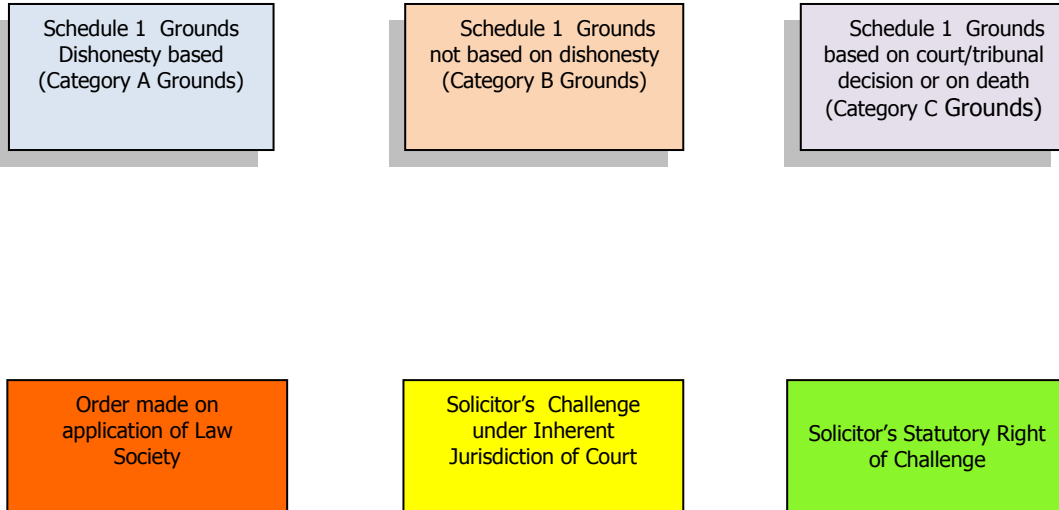
4) GROUNDS

SUMMARY OF THE 1941 ACT GROUNDS		
GROUNDS		SCHEDULE 1 PROCEDURE: QUALIFICATIONS, CONDITIONS AND EXCEPTIONS
Category A Grounds . Decision by the Law Society. Solicitor's Dishonesty		
Ground 1	Dishonesty by Solicitor or Ors Section 2	Para 5 of Schedule 1 (Statutory Freezing Order) applies subject to Satisfaction of Guilt Requirement

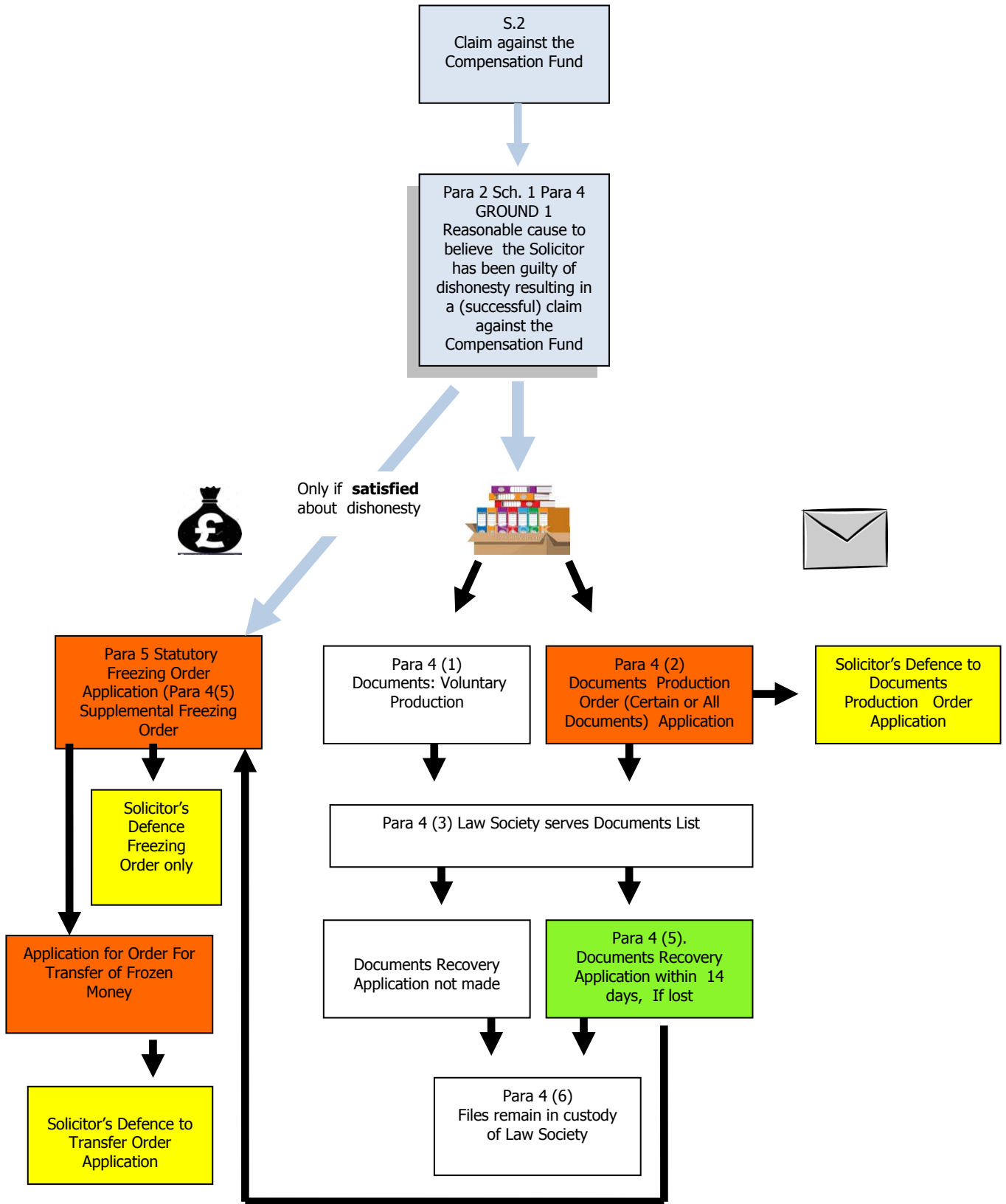
4) DIAGRAMS AND LEGEND

The 1941 Act Schedule 1 Provisions are illustrated in the Diagram below.

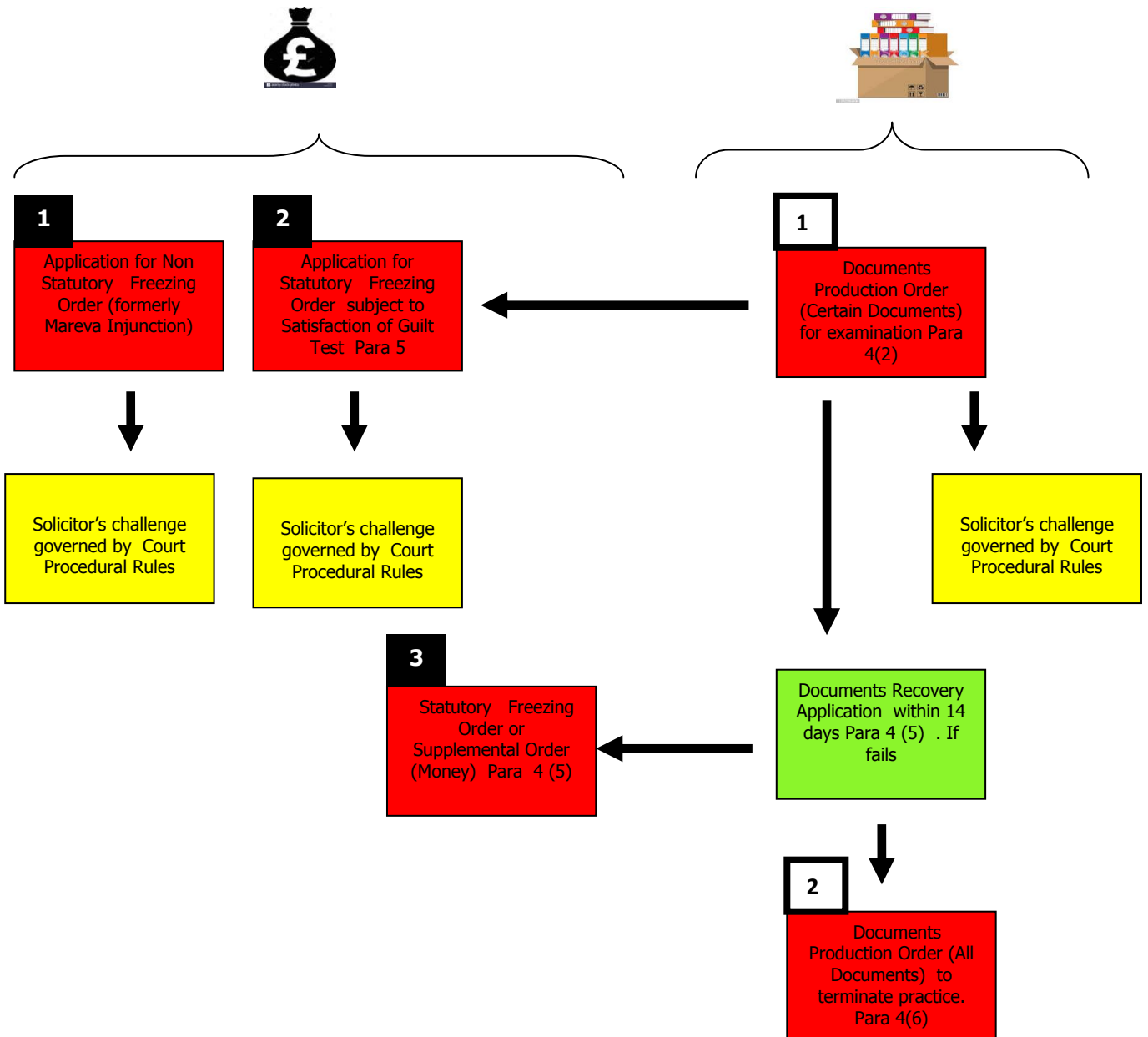
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THE SOLICITORS ACT 1941 INTERVENTION PROCEDURE



1941 ACT. THE FREEZING AND TRANSFER OF MONEY AND THE OBTAINING OF DOCUMENTS



5) THE SCHEDULE 1 PROVISIONS

a) DOCUMENTS

As the title shows, the Schedule 1 Provisions were concerned solely with dishonesty relating to claims against the Compensation Fund:

Schedule 1 PROVISIONS WITH REGARD TO THE FORMATION;
ADMINISTRATION AND APPLICATION OF THE COMPENSATION FUND
AND MATTERS CONNECTED THEREWITH.

The 1941 Act Documents Production Procedure, which has remained essentially unchanged provided as follows:

Solicitor required to produce the Documents for examination

- 1) If the Law Society had reasonable cause to believe that the Solicitor or Ors. had been guilty of dishonesty resulting in a successful claim against the Compensation Fund, it could require him to produce certain of the Solicitor's Documents Para 4 (1).

The purpose of obtain the Solicitor's Documents was not to possess them, but to examine them. Lord Wright's observations made on 10th June 1940 at the Committee Stage of the Whole House at which the amendments to the Documents Production Procedure were debate make that plain:

LORD WRIGHT

_The object of the next Amendment is to provide for a more extensive examination of documents and accounts than those of which the Council can at present claim inspection and delivery.

At the time the Law Society did not have the right to examine the Solicitor's Documents. The Documents Production Procedure was a precursor to the provisions of s. 44B which were introduced in 1991 by the Administration of Justice Act 1985.

The Documents Production Procedure was an adjunct to the establishment of the Compensation Fund . While the Society might have some idea about the circumstances which had led to a successful claim against the Compensation Fund, which would provide the reasonable cause to believe that the Solicitor was guilty of dishonest , it was obviously necessary to obtain the Solicitor's Documents to confirm or dispel its suspicions and to meet the Satisfaction of Guilt Requirement.

The power to examine the Solicitor's Documents was exercisable only where there was a prima facie case of dishonesty

LORD WRIGHT

4.18 p.m.

I may point out, however, that most stringent powers are given to the Council of the Law Society, in any instance where there is a *prima facie* case of dishonesty made against a solicitor, to call for the closest scrutiny and discovery of documents, papers, accounts and so on.

Documents Production Order (Certain Documents)

- 2) If the Solicitor failed to produce the Documents, he was liable on summary conviction to be fined £50.00 (£2,800.00 in 2022) and the Law Society could apply to the High Court for a Production Order (Certain Documents) requiring him to deliver them up Para 4 (2) .

The Solicitor would have had a right to defend the Law Society's application under the court's procedural rules.

Law Society's Documents List

- 3) Having taking possession of the Documents , the Law Society was obliged to compile and serve the Para 4 (3) Law Society's Documents List , giving particulars and the date of taking possession.

Documents Recovery Application

- 4) Within 14 days of receipt of the Para 4 (3) Law Society's Documents List, the Solicitor could make an application to the High Court for the return of the Documents or the delivery of them to another party.

The alternative applications reflected the choices available to Solicitor: if the Solicitor wished to challenge the intervention, he would apply for the return of the Documents; if he did not wish to challenge it , he could dispose of his practice by having the Documents together with his right to claim outstanding fees transferred to another firm. The latter reflected the position under the 1957 Act Schedule 1 Provisions when the Solicitor who had been struck off at the Disciplinary Committee was given 21 days to dispose of his practice.

Supplemental Order (Money) and Supplemental Order (Production of All Documents)

- 5) The Judge could make any order on the Documents Recovery Application . Para 4 (5). If the application were lost, the Judge might make a freezing order or any other order ('Supplemental (Money)') or require the Solicitor to deliver up all his Documents (Supplemental Order (Production of All Documents))
- 6) The documents which had previously been delivered up under the Documents Production Order (Certain Documents) would be retained by the Law Society under Para 4 (6).

a) MONEY

i) FREEZING THE SOLICITOR'S BANK ACCOUNTS

The Diagram at **Part 2B1(5)(b)** shows the three methods of freezing or controlling the Solicitor's Bank Accounts

Non Statutory Freezing Order

- 1) If the Law Society could show that the Solicitor's Bank Accounts were at risk of being dissipated, the accounts could be frozen under the Court's inherent jurisdiction by the Non Statutory Freezing Order (formerly known as Mareva Injunction).

Statutory Freezing Order Para 5

- 2) The Law Society could apply for a freezing order under Para 5, subject to the Satisfaction of Guilt Test.

In cases in which the facts spoke for themselves, there was no need to undertake an examination of the Solicitor's Documents before applying for the Statutory Freezing Order.

Where the Satisfaction of Guilt Test could not be reached, the Law Society would have to obtain a Documents Production Order (Certain Documents) in order to investigate the case.

Para 4 (5) Supplemental Order (Money)

- 3) The Solicitor's Bank Accounts could be frozen Para 4 (5) or any other order controlling the money could be made as a supplemental order made if the Solicitor's Documents Redelivery Application failed. Having now examined the Documents, the Law Society would be able to meet the satisfaction of dishonesty test

ii) TRANSFERRING THE SOLICITOR'S BANKED MONEY

The Law Society did not have a statutory right to have the Solicitor's Banked Money transferred whether to the Law Society account or elsewhere. The Law Society would have to apply for a Court order to deal with the Solicitor's Banked Money.

c) MAIL

There was no specific provision for the redirection of the Solicitor's mail in the 1941 Act, but an order could presumably have been made as a supplemental order on a failed Solicitor's Documents Recovery Application.

2 THE SOLICITORS ACT 1957

1) BACKGROUND TO ACT

The Preamble to the Act reads

An Act to consolidate the Solicitors Acts, 1932 to 1956, and certain other enactments relating to solicitors, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

[6th June 1957]

The Solicitors Bill was presented to Parliament four times.

On 8th March 1950, the Bill, presented by Lord Schuster, the Bill was introduced as

a Bill to enable proper financial provision to be made for the carrying out 'by the Law Society of the purposes of the Solicitors Acts

On 30 November 1950, presented by the Lord Chancellor, the Bill was introduced as

a little bill I am on a comparatively easy wicket this afternoon in introducing this little Bill. In some senses perhaps it could be described as a second innings upon that wicket because, save for a minor alteration as to the date, this is precisely the same. Bill which was introduced as a Private Member's Bill by Lord Schuster during the last Session.

On 19th December 1955, presented by Lord Cohen as the Bill was presented

to introduce a Bill to amend the enactments relating to solicitors; and for purposes connected therewith.

On 20 December 1956, presented by the Lord Chancellor, the Bill was introduced as

An Act to consolidate the Solicitors Acts, 1932 to 1956, and certain other enactments relating to solicitors, with corrections and improvements made under the Consolidation of Enactments (Procedure) Act, 1949.

Lord Schuster described it as 'a very simple little measure'

Lord Cohen considered the Bill to be 'uncontroversial'

2) THE PARLIAMENTARY DEBATES

a) THE DEBATE IN FULL

The history of the Bill's passage through Parliament and the full debate is in **Part 2A3**

b) THE DEBATES SPECIFICALLY RELATING TO INTERVENTION

31 Jan 1956. Lords Chambers. Second Reading

LORD COHEN

Clause 9 is of more importance. It gives the Law Society power, where a solicitor is removed from or struck off the roll or is suspended from practice, to make certain orders as to the property under the control of such solicitor. The object of this provision is, of course, the protection of the client. It has been found in practice that considerable inconvenience, if not actual hardship and pecuniary loss, has been occasioned to clients by reason of their inability promptly to obtain possession of papers and money held by a solicitor on their behalf, in cases not covered by the Act of 1941. The First Schedule to that Act conferred the necessary powers where the Council had reasonable grounds for believing that the solicitor had been guilty of such dishonesty as had been mentioned in Section 2 of that Act. This clause will enable the same powers to be exercised in other cases where in practice it is thought likely to be necessary.

c) COMMENTS (IF ANY) AS TO MEANING OF THE SCHEDULE 1 PROVISIONS

None.

3) GOVERNING PROVISIONS

The governing provisions were Section 31 of the Act and Schedule 1:

31.— Power of Council to deal with property of certain solicitors.

(1) If the Council have reasonable cause to believe that solicitor, or a clerk or servant of a solicitor, has been guilty of dishonesty in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, the provisions of the First Schedule to this Act, except Paragraph 7 thereof, and, if the Council are satisfied that the solicitor, clerk or servant has been guilty as aforesaid, the said paragraph 7, shall apply in relation to that solicitor.

(2) 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 twenty-one days 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 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 trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; 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 the said First Schedule shall apply in relation to him.

Schedule 1 CONTROL OF PROPERTY OF A SOLICITOR IN CERTAIN CASES

Para 1.

The Council may require the production or delivery to any person appointed by the Council at a time and place to be fixed by the Council, and may take possession of, all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents in the possession or control of the solicitor or his firm, or relating to any trust of which he is a sole trustee or is co-trustee only with one or more of his partners, clerks or servants.

Para 2.

If any person having possession or control of any such documents fails to comply forthwith with any such requirement—

(a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding fifty pounds; and

(b) the High Court or a judge thereof may on the application of the Council order that person to comply with the requirement within such time as may be specified in the order.

Para 3.

Upon taking possession of any such documents, the Council shall serve upon the solicitor and every person from whom those documents were received a notice giving particulars and the date of taking possession thereof.

Para 4.

Any requirement or notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Council for the purpose and may be served on any person either personally or by forwarding it by registered letter addressed to his last known place of business or residence.

Para 5.

Within fourteen days after the service of a notice under paragraph 3 of this Schedule, the solicitor or other person upon whom the notice was served may apply to a judge of the High Court in chambers for an order directing the Council to return those documents to the person from whom they were received by the Council or to such other person as the applicant may require, and on the hearing a any such application the judge may make such order with respect to the matter as he may think fit.

Para 6.

If no application is made under the last foregoing paragraph or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Council, the Council may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person.

Para 7.

The High Court or a judge thereof may, on the application of the Council, order that no payment shall be made without the leave of the High Court or a judge thereof by any banker named in the order out of any banking account in the name of the

solicitor or his firm.

Para 8.

Any application to a judge of the High Court in chambers under paragraph 5 of this Schedule or to the High Court or a judge thereof under paragraph 2 or 7 of this Schedule shall be made in such form and heard in such manner as may be prescribed by rules of court:

Provided that any regulations made under paragraph 6 of the First Schedule to the Solicitors Act, 1941, as originally enacted, being regulations in force immediately before the commencement of this Act, shall continue to have effect for the purposes of this Schedule until revoked by rules of court made by virtue of this paragraph as if they were such rules of court.

Para 9.

The Council may make rules with respect to the procedure to be followed in giving effect to the provisions of paragraphs 1, 3, 4 and 6 of this Schedule and with respect to any matters incidental, ancillary or supplemental to those provisions

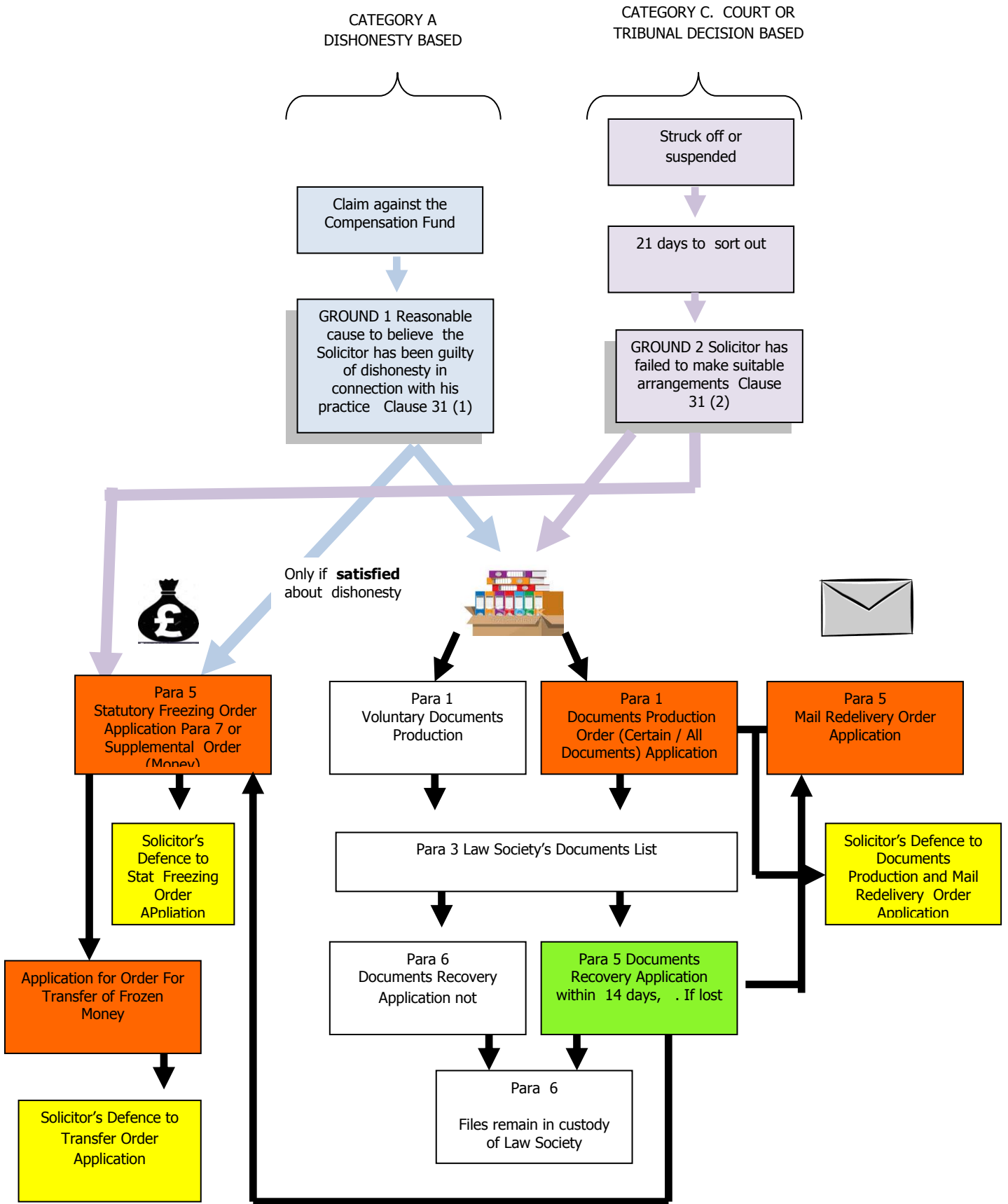
4) GROUNDS

There were two changes to Schedule 1 in the 1957 Act.

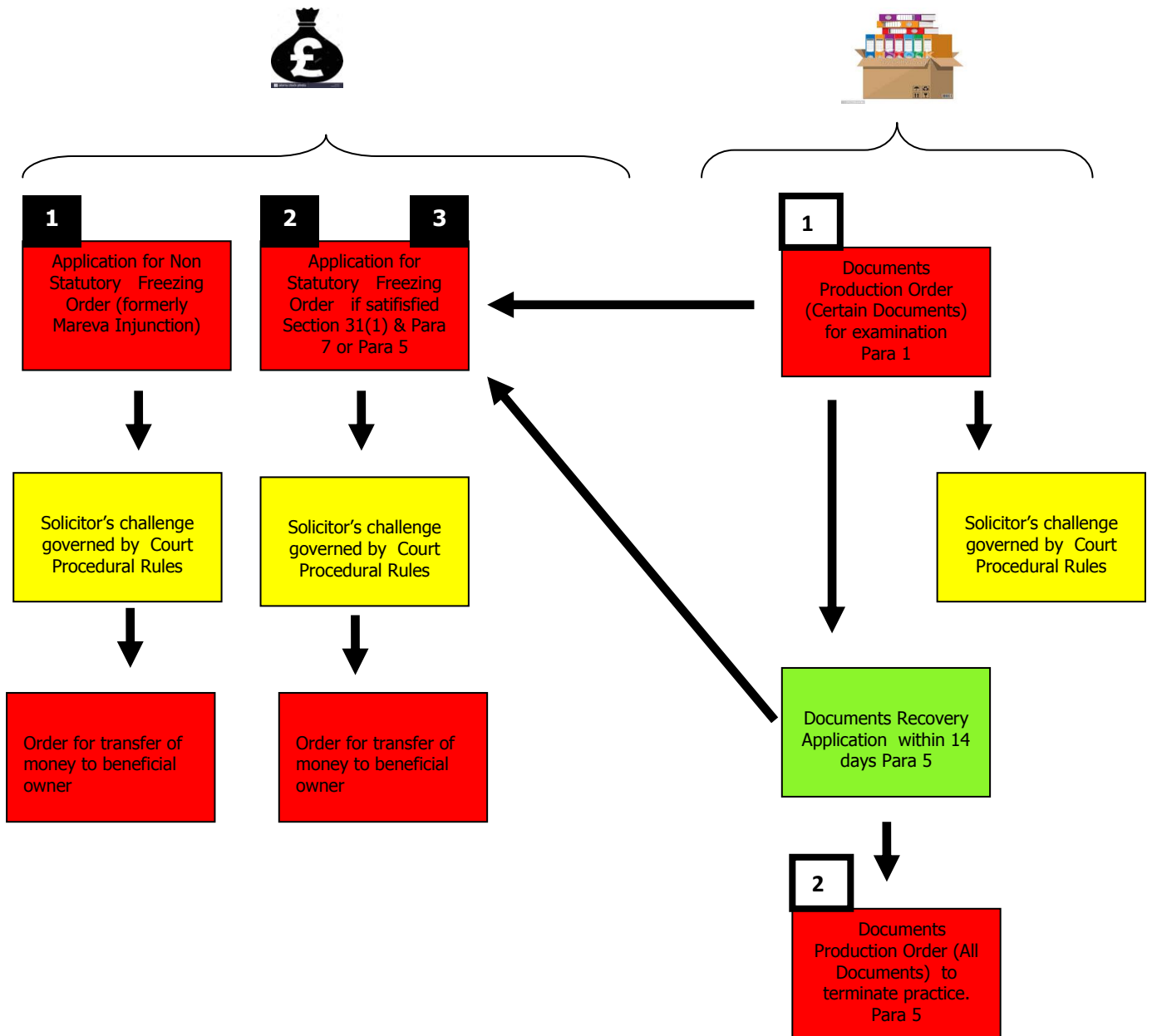
- 1) The number of Grounds had increased to two Grounds
- 2) The dishonesty concerned was not exclusively connected with the Compensation Fund: it was now dishonesty in relation to the Solicitor's practice. Obviously, the latter included the former.

SUMMARY OF THE 1957 ACT GROUNDS		
GROUNDS		SCHEDULE 1 PROCEDURE: QUALIFICATIONS, CONDITIONS AND EXCEPTIONS
Category A Grounds . Decision by the Law Society. Solicitor's Dishonesty		
Ground 1	Dishonesty by Solicitor or Ors Section 31 (1)	Para 7 of Schedule 1 (Statutory Freezing Order) applies subject to Satisfaction of Guilt
Category C Grounds . Decision based on Tribunal or Court's Decision		
Ground 2	Solicitor Struck Off With No Arrangements Section 31 (2) (a)	

THE SOLICITORS ACT 1957 INTERVENTION PROCEDURE



1957 ACT. FREEZING AND TRANSFER OF MONEY AND DOCUMENT PRODUCTION BY COURT ORDER



5) THE SCHEDULE 1 PROVISIONS

a) DOCUMENTS

The Documents Production Procedure was the same as in the 1941 Act.

The purpose of taking the documents was to examine them. It is also now clear that the Documents which the Law Society was entitled to take were not all documents, but only those documents relating to the complaint:

Sir B. Janner

I do not know exactly what documents can be taken but I assume that any document which the Law Society considers to be necessary for the purpose of investigating a complaint that has been made can be taken.

and

If one considers the substance of the matter one must look at the Schedule as a whole and not merely at subsection (4). As I read the procedure set out in the Schedule in its entirety, the first thing is that the Society requires the production of certain specified documents

Sir Eric Fletcher

I am talking about the clients of a solicitor alleged to have committed an offence and when the Law Society thinks it quite proper, in the interests of one or other client of that solicitor, to take certain documents and in the course of doing so quite properly takes documents belonging to some other client who would, presumably, be interested in having his affairs conducted by some other solicitor with despatch.

A solicitor might say that 16 documents were listed in the notice but that another four documents which were not named in the notice were also taken and that he wants the return of all 20

The question of ordering the return of the documents or some of them arises.

b) MONEY

The methods by which the Law Society could freeze the Solicitor's Bank Accounts were the same as under the 1941 Act, namely

- 1) Non Statutory Freezing Order
- 2) Statutory Freezing Order Para 7
- 3) Supplemental Order (Money) Para 5

c) MAIL

Again, there was no specific provision for the redirection of the Solicitor's mail in the 1941 Act but, as under the 1941 Act, a Mail Redirection Order could probably be made as a supplemental order if the Solicitor's Documents Recovery Application failed.

3 THE SOLICITORS ACT 1965

1) BACKGROUND TO ACT

Preamble

An Act to extend the powers of The Law Society in relation to property in the control or possession of certain solicitors and other persons, including the distribution of clients' money; to enable grants to be made out of the Compensation Fund established under the Solicitors Act 1957 in additional circumstances and to provide for an additional payment into that Fund by solicitors; to confer further powers upon The Law Society to make regulations with respect to the education and training of persons seeking admission as solicitors; to make provision with regard to interest on clients' money; to amend the provisions of the said Act of 1957 relating to the admission of overseas solicitors, the applying for and issue of practising certificates and the application of fees payable thereon, accountants' certificates, the employment by solicitors of certain persons, proceedings before the disciplinary committee and appeals therefrom, restoration to the roll, the authentication of documents and local law societies; to provide for the revision of certain fees payable to The Law Society and certain penalties and for the recovery of moneys in certain cases; and for purposes connected with the matters aforesaid.

[5th August 1965]

The Solicitors (Amendment) Bill which led to the enactment of the 1965 Act was presented twice

On 25th March 1959, presented by Viscount Brentford, it was introduced as

a Bill to make provision for an increase in the membership of the Disciplinary Committee constituted under Section forty-six of the Solicitors Act, 1957

On 22nd November 1964, presented by Lord Tangle, it was introduced as

a Bill to extend the powers of the Law Society in relation to property in the control or possession of certain solicitors and other persons, including the distribution of clients' money; to enable grants to be made out of the Compensation Fund established under the Solicitors Act, 1957, in additional circumstances and to provide for an additional payment into that Fund by solicitors; to confer further powers upon the Law Society to make regulations with respect to the education and training of persons seeking admission as solicitors; to amend the provisions of the said Act of 1957 relating to the admission of overseas solicitors, the applying for and issue of practising certificates and the application of fees payable thereon, accountants' certificates, the employment by solicitors of certain persons, proceedings before the disciplinary committee and appeals therefrom, restoration to the roll, the authentication of documents and local law societies; to provide for the revision of certain fees payable to the Law Society and certain penalties and for the recovery of moneys in certain cases; and for purposes connected with the matters aforesaid.

2) THE PARLIAMENTARY DEBATES

a) THE DEBATES IN FULL AND PROGRESS OF BILL

The history of the Bill's passage through Parliament and the full debate is in **Part 2A4**

b) THE DEBATE SPECIFIC TO THE SCHEDULE 1 PROVISIONS

02 Jul 1965 Lords Chamber. Amendments debated.

As amended (in the Standing Committee), considered.

Mr. Bell

This is an Amendment to the third paragraph of the First Schedule, which is a substitute for the First Schedule of the principal Act, the Solicitors Act, 1957. The Schedule makes certain Amendments, of which it would not be in order for me to comment at this point, in the Schedule in the principal Act.

The two Amendments relate to paragraph 3, which is not really a change in the principal Act. My Amendments should therefore be regarded as an attempt to improve the wording and operation of paragraph 3, not necessarily in relation to the fact that it is now a paragraph in a new Schedule, but possibly doing something that might have been done in 1957. When one is tightening up the disciplinary procedures, the enforcement procedures, under the Solicitors Act—and that is one of the purposes of this Bill—then it becomes even more important than it was before that there should be accurate wording, and wording which is fair to the solicitor against whom these disciplinary procedures are being evoked.

Paragraph 3 is the enforcement paragraph following on paragraphs 1 and 2. The general effect of paragraphs 1 and 2 is this. The Law Society may serve on a solicitor who has done something which attracts the provisions of the Schedule a notice requiring him to produce certain documents to officers of the Society or persons nominated by the Society. I will not go through the list of documents mentioned of which the Society is authorised to take possession. If he does not comply, paragraph 2 says:

"(a) he shall be guilty of an offence";

and (b) that the Law Society may apply to the High Court which may order the person to comply with the requirement within a time limit and may attach to the order a penalty clause if he does not comply within the time limit. The penalty clause is that the Society may enter the premises of the solicitor concerned and seize and take away the documents and deeds, and so on, which they may find.

Paragraph 3 of the Schedule says:

"Upon taking possession of any such documents, the Society shall serve upon the solicitor and every person from whom those documents were received or from whose premises they were taken by virtue of an order made"

under paragraph 2.

"a notice giving particulars and the date of taking possession thereof."

The defect which I see in that paragraph is that the Society, which, after all, will have just taken the very drastic action—admittedly on the authority of the court, but, nevertheless, it is very drastic action—of entering by force the solicitor's premises and impounding documents.

Mr Bell refers to the other amendments to Schedule 1 but says it is not in order for him to comment at this point. They are not commented upon at any point in the debate or even mentioned.

The only aspect of Schedule 1 which is debated, or even, mentioned in any of the debates are the amendments to Para 3

Comment 1
Court order needed for removal of documents

Under paragraph 3 as it stands, the Society is under no obligation within any particular time to serve on the solicitor or firm a notice of what it has taken from the premises or from the solicitor. The words used are "Upon taking possession".

That could mean at the time that the officers of the Society enter the office of the solicitor and take possession of the documents.

I suppose that on a strict interpretation of that wording one might say that at that moment they must leave the notice saying what documents they have taken. That plainly cannot be the intention of the wording. It would never happen in that way. In practice they would take a large number of documents which they thought were clients' documents back to the Law Society's office, mull through- them and list them and eventually serve a notice on the solicitor showing what they had taken.

11.15 a.m.

This could be a somewhat oppressive procedure. I am not casting the slightest reflection on the Law Society in saying that. Indeed, I think that everyone is grateful to the Society for, I believe, drafting the Bill and putting it forward for Parliament's consideration through the hon. Member for Leicester, North-West (Sir B. Janner), because it deals with many things which need dealing with and it is in the general public interest that the Bill should be passed. Therefore, I do not make this point in any hostile attitude to the Society. I am sure that it would not behave oppressively; that is the last thing that it would want to do. But when proposing these very potent enforcement procedures we must look at the procedures to see that they are scrupulously fair to both sides.

The first Amendment proposes to insert the words "At the time of". That is the strict interpretation of "upon". Paragraph 3 would then read:

"At the time of taking possession of any such documents, the Society shall serve"

a notice. However, because that would in isolation be too harsh, I propose by the second Amendment to add after the word "documents" the words

"or within three days thereafter".

I speak as an outsider on the procedure of this branch of the legal profession. I hope that I speak with humility. I do not think that lawyers are necessarily characterised by humility—politicians are said very rarely to be so characterised—but I am conscious of my inadequacies on the finer points. I hope that my proposal to make provision for a period of three days makes sense. It will mean a certain amount of pressure of listing and preparing the notice and serving it. I accept that. On the other hand, a quite drastic procedure is proposed. Solicitor's premises may quite possibly be forcibly entered and documents taken away. He is entitled to know reasonably quickly what has been taken away. After all, these are documents of his practice—clients' documents and documents of such title such as those listed in paragraph 1 of the First Schedule.

I hope that the hon. Member for Leicester, North-West will not regard this modest Amendment as a wrecking Amendment. I do not think that he will. I shall not shed inconsolable tears if it is not accepted, but I think that its acceptance would improve the wording of the paragraph. I think that it is fair and would make the position of the solicitor concerned clear to him and would allow him to decide what course of action he should pursue. I do not want to look forward to other Amendments which I have tabled, but the hon. Member for Leicester, North-West will, I am sure, bear in mind that on receiving the notice the solicitor or firm in question have certain rights of appeal and that until the notice has been received they cannot avail themselves of those rights. I think that that could, in certain circumstances, impose great hardship on the solicitor.

I hope that I have moved, not merely the Amendment, but also the hon. Member for Leicester, North-West.

Sir Barnett Janner

Comment 2

They had to 'eventually serve a notice' . He does not say 'all' the documents. Service 'eventually of the Documents List means the Solicitor's Para 5 application could not have been substantive . Mull through also suggest they were taken for examination

Comment 3

Comment 16

Not a Solicitor

(Leicestershire, North-West)

I entirely appreciate that the hon. Member for Buckingham, South (Mr. Ronald Bell) is trying to assist and that his Amendments are in no sense wrecking Amendments. On the other hand, the hon. Member was perfectly frank when he said, if I may put it this way, that he was talking without knowledge of the actual steps which are taken in these matters by the Law Society. Indeed, the hon. Member could not be expected to know those practical steps nor could anyone other than those who actually exercise the duty of carrying the Solicitors Acts into effect.

Comment 15
No knowledge
of actual steps

What we have tried to do is to make the position as clear as possible. Consequently, instead of merely making ordinary Amendments so that a considerable amount of reference to other Acts would be necessary, the Law Society—with the support of the Master of the Rolls, the Lord Chancellor and others—has endeavoured to produce a Bill which repeats what was contained in the 1957 Act and has repealed that Measure, so that the position and the intention shall be as clear as possible without having to refer both to the 1957 Act and to the Bill.

That is, perhaps, one of the reasons why the hon. Member may not have known that these provisions have existed since the time of the Solicitors Act, 1941, and that no complaint has ever been raised about the procedure which is referred to in Schedule I. The hon. Member, therefore, need have no fear that anybody, at least since 1941, has felt aggrieved at the practical steps which it is proposed to continue.

Mr. Ronald Bell

I mentioned at the outset of my speech that I knew that this was not an amending provision in the Bill. Would not the hon. Member agree, however, that a solicitor who finds himself in this position—that is to say, who is being subjected to these harsh enforcement procedures—is really not the kind of person from whom one would expect to get complaints about these points of procedure? He would by that time be in such a vulnerable position that he would hardly be thinking of suggesting Amendments to the 1957 Act.

Comment 4
Already
condemned not
being
investigated

Sir B. Janner

That is not quite the full way of putting it. It may well be that the solicitor who has suffered in consequence, perhaps, of his own misdeeds—or perhaps not—might not have raised the complaint. Certainly, if he was suffering not in consequence of his misdeeds, he would have raised it. I have not the slightest doubt that during the past 20 or more years somebody would have raised the point in the council of the Law Society or during any debates or discussions relating to the matter.

I think that the hon. Member will be satisfied when he hears what the procedure is and how the steps are taken by the Law Society. The Society's agent, on taking possession of the documents under paragraph 1 of the Schedule, writes to the Society to that effect. The Society serves the notice upon the solicitor under paragraph 3. Although the Society usually serves the notice within three days of the date when the agent takes possession of the documents, it does not wish to be bound to a time limit in case, for good reason, the notice cannot be served within the specified time.

It should be remembered that the Society is acting in the interests of the client of the solicitor who is alleged to be offending and will act reasonably and take all necessary action as early as circumstances allow. I have already pointed out that that has been the practice for many years. To bind the Society in the way that the hon. Member suggests might create difficulties which it would be impossible to overcome should they be contained within the Bill.

I assure the hon. Member that the matter has been carefully considered by those in the Law Society's set-up who are dealing with the Bill. They fully appreciate the point which the hon. Member has raised but, unfortunately for him, they do not agree with him concerning the Amendment.

The position as I see it is sufficient to cover the interests of the solicitor concerned. If it were not, there would be a considerable row in certain sections of the profession, which hitherto has not occurred. In the course of the proceedings both in another place and in this House the question has not been raised before. I have pointed out that the position

commends itself not only to the solicitors, but to the members of the highest rank of the hon. Member's profession. In these circumstances, I hope that he will accept my explanation and not press his Amendment.

Sir John Hobson

(Warwick and Leamington)

Can the hon. Member say in how many cases this procedure of enforcement and seizing documents has been used during the past 20 years? Secondly, does it matter what is in the rules? Is there any sanction against the Law Society if it does not follow the rules?

Sir B. Janner

There would not be at present, because the Law Society would have time to follow the rule, which enables it to continue the practice of taking more time in respect of the notice. I am certain that the right hon. and learned Gentleman will excuse me if I do not have the number of cases readily available, but perhaps I can get the information for him fairly rapidly.

Mr. Ronald Bell

Within three days?

Sir B. Janner

Forthwith.

Mr. Bell

I must admit that I am disappointed by the answer given by the hon. Member for Leicester, North-West (Sir B. Janner).

Sir B. Janner

May I interrupt the hon. Member to say that although the exact number is not known, the number of cases has been very few.

Mr. Bell

I am obliged. The hon. Member will understand from this little incident that occasionally one needs a little time to find things out or to take action.

I realised my difficulty in proposing an Amendment of this kind aft this stage of the Bill. That is always a difficulty. As I said earlier, I did not know whether three days was the right period to specify. In view of what the hon. Member has said, I recognise that three days might be a little short and that five days might be preferable, but I cannot alter the Amendment now.

I remain unhappy with the position. I do not like so much time being given that the Law Society will take action when it can and will. I do not suggest that the Law Society is being oppressive. I merely suggest that in dealing with quite severe enforcement procedures, this is not quite good enough. Normally my instinct on an occasion like this would be to take the matter to a Division, but I have it very much in mind that this is a Bill which we all want to see go through and that one could not be quite sure how many would vote in the Division, and that, if there were not enough, serious consequences would flow, and for that reason, and for that reason only, I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

11.30 a.m.

Mr. Bell

I beg to move, in page 18, line 33, after "particulars" to insert:

"of the documents so received or taken".

This again is in paragraph 3 of the Schedule and it relates to the same notice. I would say at once that I have checked this wording against the wording in the former Schedule, and this phrase is repeated, so I am not complaining here again about something which is a novelty in this Bill; I think this is borrowed from the Schedule to the principal Act. That, of course, does not answer my objection. First of all, it may be that the 1957 Act could have been better done. Secondly, this is a Bill tightening up enforcement procedures, and when they are being tightened up it is right that those aspects of them which safeguard the interests of what I may call the defendant should be tightened up also.

At present it is merely said that the notice shall give the particulars, but it does not say what the particulars are to be of, and I am proposing that they shall be

"of the documents so received or taken".

At the moment, I imagine, the Law Society would comply with the requirement to serve on the solicitor, in these circumstances, a notice specifying the officer of the Society or the person appointed by the Society entering the premises, the date and time he entered the premises, and the documents which he took away. It need not, as I see it, necessarily, on the wording of paragraph 3.

I have no doubt, again, that the hon. Member in charge of the Bill will get up and assure me that the Law Society always acts with the greatest responsibility in this matter, that it tries to give a list of the documents, but that it does not want to be tied to give a full list of the documents in case, following the hon. Member's phrase in the debate on the last Amendment, for good reason it finds it difficult to do so.

With respect, that is not good enough. The offending or allegedly offending solicitor is tied down with tin tacks all the way through. It may be quite right that he should be. This is all being done by the Law Society, which itself is a society of solicitors, against one of its own members, and in the interests of clients; and it is being fierce in the interests of the public, and that is very commendable, but it is, perhaps, right that we who are outsiders in the matter should attempt to temper the rigour of its system in favour of the accused, and I see no reason why we should not put in paragraph 3 of the Schedule what we think—undoubtedly, I am sure, on both sides of the House, because it is not a matter of party—ought to be the meaning of the Schedule.

I have very little doubt that the Law Society regards this as its rule and practice in the matter. I shall be surprised if the hon. Gentleman the Member for Leicester, North-West (Sir B. Janner) gets up and tells me that of course the Law Society would not want to do all this, it just wants to say it has the documents relating to the client, Mr. Snooks, in a case for personal injuries, and that this should be a sufficient indication. I do not think he is going to say that. I think he will tell me it does not want to be tied down by the Schedule to have to list them all—

Mr. C. S. Silkin

(Dulwich)

I am trying to follow the argument of the hon. Gentleman. I am not quite clear what his suggestion is, or how "particulars", as contained in the Schedule in its present draft differ from what he is suggesting.

Mr. Bell

I said a moment ago that I find no fault at that, because I quite understand that the hon. Member for Leicester, North-West has been having urgent consultations, and it may be that some of my precious words went astray.

What I am suggesting as being the kind of meaning which could be legally, properly attached to the present phrase is that the Law Society could serve a notice giving the name of the officer of the Society or of the person appointed by the Society under provisions in the Bill who makes the seizure, the place where he made it, the date and time at which it was made, and the classes of documents which were taken away, either by classification of documents or by listing the clients, and perhaps a client's claim—such as documents relating to the claim of Mr. Brown for personal injuries arising at such and such a date.

That is what I thought and still think could be the present legal effect.

Mr. S. C. Silkin

I take it that it follows from that that the hon. Member is suggesting that the interpretation of the Schedule as it stands does not relate "thereof", at the end of the paragraph to "particulars"?

Mr. Bell

Yes, I think "thereof" relates to "particulars". Let me put it this way: I think "thereof" will undoubtedly apply to the date; it might apply also to particulars. No, looking at it again, I do not think that is so. I think "thereof" applies to the date and probably not to the particulars. It must refer to documents, and the date of taking possession. "Thereof"—that is, the documents: it refers right back to the documents, and I think it jumps over "particulars".

That would be my view. If the hon. Gentleman does not agree with me, we have not a great deal of time on Report to differ. This is much easier in Committee upstairs. I was not a member of the Committee. If there is any room for doubt or disagreement about it the hon. and learned Gentleman will probably agree with me that it would be better that it should be clear that the particulars are the main particulars of the documents.

Mr. Leslie Hale

(Oldham, West)

I quite agree with the hon. Member that the word "particulars" is not a very happy choice, but if one gets the dictionary meaning, surely it does mean rather more than it does in normal speech. It does mean details. I am wondering whether the hon. Gentleman would wonder for a moment whether on the whole this House would be justified in asking for this Measure to go back for further consideration to the Lords Spiritual and the Lords Temporal—and the Lords "Temporary", ennobled in blood but not by semen—for them to consider this simple point, whether the word "thereof" refers back to the word to which it appears to relate or whether it does not.

Mr. Bell

Well, I think we have to thank the hon. Member for the phrase "Lords Temporal and Temporary", which is certainly an addition to our political vocabulary. He usually manages to enliven our proceedings. But I should think he would find it rather an attractive proposition that the other place should be put to answer such questions as whether "thereof" refers to the nearest possible antecedent or penultimate antecedent. I have gained the impression that some hon. Members opposite in recent weeks have felt that the House of Lords was better occupied in activities other than that, although I do not agree with such a view.

Perhaps I may come now to the substance of the interjection, or, at any rate, the anxiety which may be in the mind of the hon. Member for Leicester, North-West. I agree that moving an Amendment—even, almost, a drafting Amendment—on the Report stage of a Bill which has come from the Lords is always awkward because one is virtually at the last point of the Bill's proceedings and if the phrasing is unfelicitous there is not a great deal that can be done about it. I realise, also, that, in the present state of the parliamentary timetable, the hon. Gentleman is not anxious to have the Bill going on another journey in either direction.

But, despite our respect for him, our attitude to a Bill cannot be governed by the knowledge that it did not originate in this House, but has come from another place. We have to go through the procedures just the same. I was not a member of the Standing Committee on the Bill, for the excellent reason that I was on another at the same time and, therefore, this is the first opportunity I have had of improving the wording. I think that the hon. Member will agree that I am not putting forward any Amendment which he could not, if he were so disposed, accept without doing serious injury to the Bill. It is merely a balance of opinion as to the value of the Amendment. I hope that he can accept the Amendment and will feel that it will improve the wording of this provision by removing an uncertainty.

Sir B. Janner

I have been relieved of a considerable amount of work on the answer to the point made by the hon. Member for Buckinghamshire, South (Mr. Ronald Bell). If he reads the Bill closely, he will see that the Lords Spiritual as well as the Lords Temporal were fully justified in not raising this point because the word "thereof" covers what he wants to achieve. I understand that it has done so for many years and that it has been the practice to give the particulars in the way he urges. In those circumstances, it is perfectly reasonable that, at this stage, we should not wish the Bill to be returned to the other place. I hope that, to get the Bill passed, he will accept that the practice so far has been what he really wants.

Perhaps I may take this opportunity of giving the figures of cases so far involved. I understand that the average number per year has been three. I hope that, in these circumstances, the hon. Gentleman will assist. I know that he does not want to prevent the Bill from going through. It would be cumbersome if we had to alter it now and send it back for the whole thing to be discussed again. The question of time arises and I would like him to assist if he can by accepting that this aspect has never been questioned and that no one has ever asked for particulars other than these. Perhaps his conscience may be appeased by the fact that, in practice, this point simply does not arise.

11.45 a.m.

Commander Anthony Courtney

(Harrow, East)

Although I am a layman, I support my hon. Friend the Member for Buckinghamshire, South (Mr. Ronald Bell) on a point on which, not having the esoteric knowledge of other hon. Members, I would not normally intervene. I see the force of his Amendment in his endeavour to bring up to date and clarify the wording of the Schedule and thus make much more clear precisely what is to be taken away from the office of a solicitor who is alleged to have offended.

I must express some surprise that the main reason advanced by the hon. Member for Leicester, North-West (Sir B. Janner) in objecting to the Amendment should be that it would be inconvenient and disadvantageous to all concerned if we referred the Bill back. He has my full sympathy, but surely the error lies not only with the other place but with the hon. Gentleman himself if the Bill needs tightening up in this Schedule.

I speak as a complete innocent, but it is surely right that, if the Law Society wishes to arrogate to itself the right of entry to the office of a solicitor alleged to have offended, it should be seen clearly before its own members and by the country as a whole to be acting above reproach in giving full particulars of any documents that it may remove.

Sir B. Janner

Would the hon. and gallant Gentleman be good enough to look at the language—at the word "thereof", for instance? What can it mean? Will the hon. and gallant Gentleman explain what interpretation could be put upon that word other than that of the particulars of the documents? Very often, there are complaints that Acts of Parliament are unduly wordy. What the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) is doing is trying to put in a repetition of what is already in the Schedule.

Commander Courtney

This is a grammatical argument on which I must support my hon. Friend the Member for Buckinghamshire, South, who contends that "thereof" applies to the date of taking possession and not to the word "particulars". The word "particulars" should be elaborated in the sense put forward by my hon. Friend to make it crystal clear that the Law Society, taking action in accordance with this Bill—which we all hope will become an Act—is above reproach because it is required to give full and clear particulars back to the solicitor alleged to have offended of any documents taken from his office.

From the point of view of the layman, my hon. Friend's Amendment has considerable substance.

Mr. Ronald Bell

Again, I have to express my disappointment at what has been said by the hon. Member for Leicester, North-West (Sir B. Janner). As I have said, we cannot argue across the Floor of the House, as we can in Committee upstairs, the precise meaning of words in a paragraph of this kind. To some extent the test is a matter of what is called in the courts *primae impressionis*. Since Latin is talked in this Chamber nowadays I am happy to have the opportunity of using it and not translating it.

The paragraph appears to me to mean that upon taking the documents the solicitor must be served with a notice giving particulars and the date of taking possession thereof. I agree that the word "thereof" refers to the documents, but I do not think that the same enlargement of meaning or the same definition of meaning necessarily attaches to the word "particulars". I would have thought that the terms of the paragraph could be complied with if the solicitor had served upon him a notice giving particulars, and the date of taking possession thereof.

It is merely a question of how one interprets phrases, but I would have thought that if it were intended that this should refer to the list of documents it should say

"giving particulars of the documents so taken and the date of taking possession thereof."

That is what the Amendment seeks to do.

I am always a little puzzled when an Amendment of this kind is refused. One is sometimes told that the best opinion is that it is not necessary, but on such occasions I often feel that an even better opinion would be that one might as well be quite clear about the matter. Legal English in its best form is natural English. In this connection, the natural English would be

"giving particulars of the documents so received or taken and the date of taking possession thereof."

Then the matter is clear. I can make a few more comments which the hon. Member is obtaining further advice.

I am sure that the Law Society administers these things fairly and that it would normally serve on an accused solicitor a notice giving particulars which take the form of a list of the documents which have been taken away. I have little doubt that that is what it does, and we can be reasonably sure that that is the case. But it will also rather like to be in the position of not being tied by the words of the Schedule to have to do this if, for what it feels, on particular occasions, to be a good reason, it does not need to do it.

I want to help the hon. Member as much as I can. I appreciate the procedural difficulties which arise, at this time in the Session, in the case of a Bill which has come from the Lords. Not wishing to embarrass him I would be content if he would give an undertaking to consider the question in consultation with the Law Society—except that there is no subsequent stage of the Bill from now on, and it is, therefore, a case of accepting the Amendment now or leaving the paragraph as it stands.

The hon. Member may feel that he is authorised to give a general undertaking or assurance on behalf of the Law Society—which will administer these provisions—that this will be its practice except in some quite exceptional case. It may be that he can set our anxieties at rest by giving an assurance that that is the way in which the Law Society will administer these provisions in practice.

If the hon. Member can say that, I may be able to help him by asking leave to withdraw the Amendment.

Sir B. Janner

The hon. Member raised a question of there being no opportunity to amend the Bill elsewhere. There will be such an opportunity. I have had an opportunity of obtaining some more information as to what happens in the Law Society itself. It is felt that the Amendment that he has moved may be interpreted in such a way as to provide much more than he

himself would require it to do. At present, a list of documents must be given, and the person involved will know what that list contains. I have not the slightest doubt that in the event of anyone not knowing the contents of the documents which have been taken he could easily inquire, and I am certain that he would be given a copy of any document the contents of which he did not know.

I am informed that it would be extremely difficult to deal with the position which might arise in which every word or every sentence in a document was required. I can assure the hon. Member that the question of the actual identity of the documents is quite clearly covered by the word "thereof". I am sure that the Law Society will take note of what has been said today, and I have no doubt that questions of regulations or other such procedure could be discussed with it.

Mr. Ronald Bell

The point of substance is that the documents have been forcibly taken from the solicitor's office. Is the notice which he will receive an adequate receipt, showing that the documents have been taken? It must be a full list of the documents—not the contents thereof—identifying those documents so that it will be a kind of receipt for the solicitor in respect of those things which have been forcibly taken away. If the hon. Member can give me that assurance I will gladly ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. Ronald Bell

I beg to move, in page 18, line 34, after "requirement", to insert "made".

Mr. Deputy-Speaker

(Dr. Horace King)

It will be convenient to take with this Amendment the Amendment in page 18, line 34, after "notice", insert "given", and the Amendment in line 34, leave out "made".

Mr. Bell

Yes, Mr. Deputy-Speaker. I hope that we shall have less difficulty on this occasion.

These Amendments refer to paragraph 4 of the First Schedule, and the Amendment that we are discussing with the one that I have moved—if I may venture to say so—simply improve the English grammar of the paragraph. I am sorry to put the matter so crudely, but the paragraph does not make sense as drafted. It reads:

"Any requirement or notice under this Schedule shall be made in writing ..."

It is possible to make a requirement, but it is not possible to make a notice. It should read:

"Any requirement made or notice given under this Schedule shall be made in writing ..."

I suggest that that is the way in which it should be drafted and, indeed, the only way it should be drafted and that anything else is just plain slovenly.

12 noon.

Sir B. Janner

I do not wish to introduce party politics into this debate, but may I appeal to the hon. Gentleman's sense of conservatism when I say that for I do not know how many years the words as they are here have been accepted as good English. They have not been disputed at all and except for the inclusion of the words.

"or by the recorded delivery service"

the wording of this paragraph has remained the same since the Solicitors Act of 1941. So far, no purist of the English language has ventured to suggest that what was intended was

not intended. While I appreciate that language does not stand still in its pure form, it is felt, nevertheless, that the Amendments are unnecessary.

I do not wish to be in any sense offensive to the hon. Gentleman, but I am sure that he will realise that the Amendments are not necessary at this stage, even though, as a good English scholar, he may have reason to believe, from the point of view of preserving the English language, that they are. I would ask him not to place further difficulties in the way of the steps to be taken here and to accept what another place has also regarded as the correct form of English for the purpose of carrying this Schedule into effect.

I appreciate the hon. Gentleman's point. I do not profess to be sufficiently scholarly to be able to dispute what he is saying concerning the purity or correctness of the English used, but I call in aid the Lords Spiritual, the Lords Temporal and all who participated in the Committee stage of the Bill, and I hope that in these circumstances the hon. Gentleman will agree to withdraw his Amendment.

Mr. S. C. Silkin

I do not intend to detain the House for more than a moment or two. I appreciate very much the desire of the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) for purity of English, but in pursuing that desire I fail to understand why he proposes in the second of the Amendments which we are discussing to use the word "given" in respect of notice, because, as I read the Schedule, the only occasion on which the word "notice" is used is in Clause 3 and there it is not "given" but "served".

I shudder to think of the arguments that might be addressed to the court on the distinction between the notice "given" by the hon. Gentleman's Amendment under Clause 4 and the notice which has been "served" under Clause 3. If we are interested in the purity of language, let us at least ensure that we use the same language throughout the Bill.

Mr. Ronald Bell

I wish that I could be more impressed by the last contribution made to the debate. Of course the notice can be "given". It is often said that a notice shall be given by being served, and so on. The giving of the notice is one thing and the serving of it is another. I think that it is a somewhat false point which the hon. Gentleman has made.

The hon. Member for Leicester, North-West (Sir B. Janner) has come down to the bare bones on the defensive. I have never heard such embattled conservatism as that which has come from him this morning. The best thing he could say was that the wording had been there since 1941. It was drafted in the middle of the Second World War. At that time, no doubt, the best parliamentary draftsmen were in the Armed Forces. I was not here. I was in one of His Majesty's ships in Freetown Harbour when this form of words got on to the Statute Book, but I decline any responsibility for that.

Sir B. Janner

The hon. Gentleman has had 20 years in which to think about it. Why did he not do something about it before?

Mr. Bell

The hon. Gentleman is very kind to say that, but the fact is that in my occasional moments off duty in the Royal Navy I was not reading the Solicitors Act, 1941. I realise now that this was an error of judgment and that I should have been doing so. However, the first time that this form of words came before me was in July, 1965.

Having referred to the venerable antiquity of these words, the hon. Member for Leicester, North-West pointed out that they had passed the scrutiny of the Lords Spiritual and Temporal. I must confess that I have heard more favourable things said about the Lords this morning by hon. Members opposite than in all the years that I have been in the House. The hon. Gentleman made out a very good case for a revising chamber whilst I, on the other hand, seem to be making out a case against it because that Chamber let these words through.

The hon. Gentleman did not attempt to justify the words. Of course, he is driven back to the old trenches of saying, "Well, if we accept the Amendment the Bill will have to go back to the Lords with an Amendment from the Commons. That would be very inconvenient, and, therefore, I hope that the House will not do so." The hon. Gentleman has appealed to the kindness of my heart, which has been unflinching this morning, and I suppose that in the end I shall be made an honorary member of the Law Society for my work in this matter.

The hon. Gentleman first referred to the defects which it is sought to remedy

I have no desire to drive the House to a Division in which possibly less than 14 Members may vote. As the hon. Gentleman knows, that is a sanction which he has against me this morning if I do not want to lose the Bill. There is really no more that I can say. In my opinion, the arguments in favour of the Amendment are incontrovertible. The words as they stand are just bad English, but I am not prepared to see the Bill lost for the sake of improving the English in this Schedule.

When one is knocking out the old Schedule and putting in the new one in the elbow room of peace time, I do not see any good reason why it should not be done properly. I very much regret that I did not have an opportunity of pointing this out in the earlier stages of the Bill when, perhaps, it could have gone forward from us in a somewhat less shaming form than it will now go. I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. Ronald Bell

I beg to move, in page 18, line 37, to leave out "personally" and to insert "by personal service".

This is a drafting Amendment. The word "personally" might mean anything in this context. I expect the hon. Gentleman will tell me that this also was done in the stress of wartime. It might mean that, in line 35,

"... such person as may be appointed by the Society for the purpose"

should serve it in his own proper person, or that it should be served on the allegedly offending solicitor by personal service by anyone. The customary phrase wherever there is a risk, as there is here because of the anterior drafting of the previous lines, would be "by personal service". The word "personally" is used in this context only when there is no risk of ambiguity. Once again, I hope that the hon. Gentleman will consider accepting this.

The point will eventually be reached when I shall not be able to withdraw any Amendment. If the argument against any Amendment is that if it is made the Bill will have to go back to the Lords, there is no point in having a Report stage in the House of Commons. That is the logic of the hon. Gentleman's position. Indeed, there is no point in having a Committee stage here if it is said that the Bill must not go back to the Lords. If our Amendment had been made in Committee the Bill would still have to go back to another place.

The hon. Gentleman must realise that if we are to have any revising stages by the Commons, either in Committee or on Report, he cannot use this argument about not sending the Bill back to the other end of the building, particularly as the time is approaching when he will have to consider one of these Amendments on its merits. I have the perhaps optimistic faith that he will do that.

Sir B. Janner

I am sure that the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) will be comforted by the knowledge that we shall be pleased to accept this Amendment. We think that it clarifies the position. If it is in order, I can also tell him that he need not make a long speech on the next one. That too, will be accepted.

Amendment agreed to.

Mr. Ronald Bell

I beg to move in page 18, line 37, to leave out "forwarding it" and to insert "being forwarded".

What the hon. Member has just said has taken me so far that I am almost at a loss how to proceed. I am driven to say that, if the hon. Member is now reconciled to this very fleeting passage going back to the other place, why could he not have corrected the language in the first—

Mr. Deputy-Speaker

Order. We cannot go back.

Mr. Bell

I appreciate that, but I am just lamenting that this—

Mr. Deputy-Speaker

Order. Even the hon. Gentleman's lament must be in order.

Mr. Bell

I was about to make it in order quickly. I was about to welcome this receptive frame of mind. Perhaps it would not be out of order if I add the adverb "nostalgically". I am not sure whether I heard the hon. Member for Leicester, North-West (Sir B. Janner) accurately. He seemed to be saying that if I made a long speech on this Amendment, he would accept it. I do not know if that is what he said—

Sir B. Janner

I hope that the hon. Member will not provoke me, by what he is suggesting, to withdraw what I said. The point is that we are prepared to accept this Amendment.

12.15 p.m.

Mr. Bell

I want to do only what the hon. Member wants me to do.

This is a drafting Amendment. I cannot say much about it, in view of the fact that it will be accepted. At present, the wording reads:

"Any requirement or notice shall be made in writing ... and may be served on any person either personally or by forwarding it by registered letter ..."

It is quite clear that one cannot move from the passive to the active voice like that without any ceremony on passing from one voice to the other. There is no ceremony here and it is, therefore, desirable that both should be in the passive voice. As it stands, "forwarding" is an unrelated participle. I am aware that this building is the home of the unrelated participle. One can collect 50 in any week here.

One example is:

"While thanking the Minister for that answer, does he think ..."

One can collect almost a dozen such a day. However, it is unusual to have them in Acts of Parliament and by accepting this Amendment, as I understand he will, the hon. Member will be killing one unrelated participle in one Statute. If he had done nothing else in his years in the House—he has done much else—for this alone his constituency would have done something worth while in returning him to represent them.

Amendment agreed to.

Mr. Ronald Bell

I beg to move, in page 18, line 40, after "after", to insert:

"or such longer period (if any) as the Court may allow".

Mr. Deputy-Speaker

I think that it will be for the convenience of the House to take with this Amendment that in page 20, line 4.

Mr. Bell

1

The two occasions are slightly different, but the point at issue is exactly the same. The Amendment to page 18 relates to the first line of paragraph 5 of the first Schedule, and its purpose is self-evident. The notice which we have been discussing on previous Amendments has now been served on the allegedly offending solicitor. He has to be and is given some right of appeal against the somewhat drastic procedure which has been enforced upon him. This right of appeal to the High Court is one which, by paragraph 5, he can exercise within eight days after the service of the notice upon him.

The House will observe that there is no flexibility here. This is not like the rule of court where there is, in the rules of the Supreme Court, a general power in the court to enlarge the time limit. I hope that I am right about this. There is such complexity in the modern rules of court that one can never be absolutely sure, but I think I am right in saying that, when there is a statutory time limit and no provision in the Statute for any enlargement of it, the court has no jurisdiction to grant an enlargement. If that is the position, there is a risk of considerable harshness here.

We are here dealing with a change from the Schedule to the principal Act. The principal Act allows a period of 14 days, and it is being reduced to eight days. Whether that is wise is another matter. I have no Amendment down about it, so I am, in effect, accepting eight days as the standard period within which an appeal must be lodged, though I conceive that the period of 14 days could well be fairer. To make it eight days is to give a harsh time limit for someone who already, presumably, is pretty deep in trouble. Perhaps the hon. Gentleman will explain why the period is eight days in the revised Schedule instead of 14 days.

I have addressed myself to the problem not by moving to replace the period of eight days by 14 days but by proposing the insertion of the words in the Amendment, which would give a discretion to the High Court, in a case where it thought that there were special reasons justifying or explaining the delay, to accept a solicitor's appeal against this quite stiff procedure although the appeal had been lodged more than eight days after the date on which the notice was served on him.

I feel sure that the hon. Member for Leicester, North-West will, on reflection, wish to accept the Amendment. We must consider the position of a solicitor who has a legitimate ground of complaint about the procedure but whose appeal is lodged, say, on the ninth day after service. He will have lost his remedy totally and irrevocably, as far as I can see, and I cannot believe that that is intended.

I may, through inadvertence, have missed a provision which permits enlargement of the time, so I move the Amendment somewhat interrogatively. On the other hand, if there is no such provision, I move it with the utmost confidence, because the present drafting goes

Comment 5
The Solicitor
already
adjudged to
be dishonest

quite against the justice of the case, giving no discretion for enlargement of the time if the court thinks that the notice was properly served.

Sir B. Janner

I have to disappoint the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) and tell him that, unfortunately, the facts and circumstances relating to this matter do not, in the view of the Law Society, justify acceptance of the Amendment. The period of eight days has been put in the Bill in substitution for the 14 days in the principal Act because the Society has found in practice that the interests of clients are often prejudiced by the longer period as the Society cannot distribute or otherwise deal with the documents covered by paragraph 6 of the Schedule unless this period has elapsed.

I know that the hon. Gentleman is anxious, as I am anxious as a member of the profession, that a solicitor should not be put in undue difficulty. But there is also the question of the client's interest.

Mr. Ronald Bell

Will the hon. Gentleman answer this question, as a great deal depends upon the answer? Can he confirm or refute my understanding that there is no discretion to enlarge the time as the Bill is at present drafted?

Sir B. Janner

I do not think that there is, although I am not altogether sure whether the Society itself would have such power if it were approached. I shall inquire about that.

May I suggest to the hon. Gentleman, who is so anxious about the English being correct, that there is a defect in his Amendment? I ask him to forgive me for pointing out that to insert the words of the first Amendment after the word "after" in line 40 would make a grammatically imperfect provision, and they should come immediately following the word "days".

Mr. Bell

The hon. Gentleman is quite right. That is a mere slip, of course, and the Amendment should be inserted after the word "days".

Sir B. Janner

I do not propose to take advantage of the point.

Mr. Bell

I do not know whether it is a printer's slip or my slip, but I accept the correction.

Sir B. Janner

Reverting for a moment to the hon. Gentleman's question, I understand that there is no discretion in the court.

I can tell the hon. Gentleman that there has been only one case in 15 years in which an application has been made to the court. That may help him to come to the conclusion that we are not wrong. Even, if the Amendment were corrected as it is now admitted that it should be, the effect of the words would be that a solicitor would have to apply to the court for an extension of the eight-day period in which to apply to the court for an order under the paragraph, and further time would thus be taken, which might prejudice the interests of clients.

It is very difficult in these cases to know how to hold the balance, but we in the profession, as the hon. Gentleman is in his profession, are anxious that the public should be protected. The main interest here is rarely appreciated as it should be. In the course of their practice, solicitors are entrusted with an enormous amount of trust, if I may use the word again, and

people put their reputations and vast sums of money—probably billions in the course of a year—into the custody of solicitors.

Mr. Norman Miscampbell

(Blackpool, North)

Before the hon. Gentleman leaves the point made by my hon. Friend the Member for Buckinghamshire, South (Mr. Ronald Bell), will he look again at paragraph 4 and consider his answer? He will see that the notice may be forwarded by registered post or the recorded delivery service. Plainly, a notice sent by either of those means could be received quite late. Is the hon. Gentleman really saying that the sponsors of the Bill are sure that no discretion can be given in the circumstances? A notice might follow the solicitor round and take two or three days to reach him.

Sir B. Janner

I think that the actual date of service would be the date of receipt by the individual. I am almost certain that that is the position, but I shall make sure about it. Obviously, the postal service is not always as good as we should like it to be, and the notice might not be delivered for some time. I do not think that that point stands in the way here.

12.30 p.m.

Enormous sums of money come into the possession of solicitors. The House may not have realised that even if an individual without any professional qualifications were entrusted with the vast sums that pass through a solicitor's office, the amount which a solicitor charges for his services would be given readily to such an individual—even if that individual had no other work attached to his services in this connection—if he were only placed in possession as a trustee of these vast sums of money.

When one hears the sort of things that are sometimes said, even in Parliament, about solicitors and their activities one wonders how people can make such statements when, in reality, the facts are such as I have outlined.

I hope that the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) will appreciate that the anxiety here is to protect the member of the public who places confidence in the solicitor who he has employed. If a *prima facie* case is made out that a solicitor has defaulted, not only is it the anxiety of the Law Society but also of all members of the profession that the client should be protected. It is also not readily realised that the solicitors as a whole themselves provide compensation to an affected person, and we are here concerned with the interest of the client.

I hope that, in these circumstances, the hon. Gentleman will withdraw the Amendment and rely on the experience—which for many years has never been doubted—of the Law Society in dealing with these matters. The Society is not anxious to impose heavier penalties on the members of the profession. It may sometimes lean over backwards, perhaps occasionally too far, in its desire to take the steps to protect clients and the interests of the public. However, the hon. Member for Buckinghamshire, South will agree that the Society has vast experience of these matters.

I hope that I have explained to his satisfaction the reason which has impelled the Society to reduce the period and that he will not regard it as being anything in the nature of an attempt to be oppressive to members of the profession.

Mr. Miscampbell

I wish to return to the point which I raised in an intervention, because it may be that I have wrongly interpreted Schedule 1(4). As I read it, it will now state, in its amended form:

"Any requirement or notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Society for the purpose and may be served on any person either ... by personal service"—

That was the Amendment which we just passed and, up to that point, the provision is quite clear. It goes on:

"or by forwarding it by registered letter"—

That is equally clear, because the person who receives it, if it is sent by registered post, must sign it personally. It continues:

"or by the recorded delivery service"—

In that case, the person does not have to sign it. Anyone in the household can sign and accept the letter. The provision ends with the words:

"addressed to his last known place of business or residence".

That indicates that he may or may not be there. That is why the words "last known" are included.

It may be that we have in the last line of Schedule 1(4) a situation in which, simply by sending a recorded letter which is received into the household in which the person last lived—or his last known place of business, whichever it may be—the requirements of the Bill for service could have been satisfied. This may not be the position. I do not hesitate to say that if the matter was pointed out to the Law Society it would not act upon it without ensuring service in person. However, there would appear to be an omission from the provision and I hope that the matter will be further considered. If there is no right for the court to give an extension, other than the eight days, if the letter should have been served within those eight days, the position I described would appear to be the case.

I make this suggestion with diffidence. I hope that I am wrong, but, since I may not be, I trust that further consideration will be given to it.

Mr. S. C. Silkin

I rather think, as advised at present, that the hon. Member for Blackpool, North (Mr. Miscampbell) is probably right. I would not wish to take a firm attitude on it, but it seems that it would be strange if, for example, the date of service to a

"... last known place of business or residence"

were other than the date of forwarding. That seems to be the grammatical effect of the words, but I may be wrong.

If one considers the substance of the matter one must look at the Schedule as a whole and not merely at subsection (4). As I read the procedure set out in the Schedule in its entirety, the first thing is that the Society requires the production of certain specified documents. The resort to the court follows only if the person who has possession or control of those documents does not comply with that requirement. If he does not do so it is open to the Society to go to the court and get an order.

Having got that order one might think that it would not even be necessary to serve a notice on him to inform him of compliance with the order, but as a greater protection the Schedule requires that a notice should be served on him to that effect—and it is at that stage that he is given, by way of even greater protection, the further right to go back to the court and say, "Please would you undo what you have done?"

In these circumstances, it does not seem necessary to provide more than the limited time which is provided in subsection (5)—eight days—because the circumstances are virtually inconceivable in which the person upon whom the notice was served would be prejudiced by his inability to make such an application after the end of those eight days when the whole of the proceeding procedure has been gone through. While I entirely accept the desire to be completely fair and impartial in this matter, I suggest that the proposal is not necessary and that the advantages might be outweighed by the delay which could arise.

This is particularly so in the case which has been mentioned, where a letter is addressed to someone's

"... last known place of business or residence"

because it might take a long time before he receives it. Then he might have the excuse for going to the court and saying that, notwithstanding everything that had gone before, he did not get it for two months and that, therefore, he should be able to reopen the whole matter.

Mr. Ronald Bell

I am not persuaded by these arguments. This is a change from the old Schedule. It is not finding fault with language which has been there for some time. The period is being brought down from 14 days to eight days. Looking through the earlier proceedings on the Bill, I find with some surprise that this is the first debate which has taken place on the provision. It was not mentioned in another place or in the previous proceedings in the House or in Committee.

The difficulties which exist cannot be put aside so lightly as the hon. and learned Member for Dulwich (Mr. S. C. Silkin) suggested. He is right in saying that one must look at the Schedule and bear in mind that this is the final stage in the enforcement procedure. If one looks at that enforcement procedure, it starts with a requirement by the Society to produce the documents. That requirement is just like a notice, and is dealt with in paragraph 4 of the Schedule. It is a requirement for a "notice under this Schedule". It has to be in writing, and it may be served on the person affected either by personal service, which raises no problems, or by registered post or by the recorded delivery service.

The only slight disagreement I have with my hon. Friend the Member for Blackpool, North (Mr. Miscampbell) is that it is true also of registered post that a person other than the addressee may sign acknowledging the receipt of the packet. Hon. Members have probably all had experience of this in their own homes. Anyone in the home can sign for a registered package. It is clear that once a letter has been received at the last known address and signed for as having been received there, service is completed.

That is the first requirement under paragraph 1. Let us suppose that the offending solicitor is not there. We do not need to trouble ourselves with whether he has moved to another address, because the requirement is simply that the notice shall be sent to his last known address, or whether he is on holiday or what it is. Let us say he does not get it. There is a time in the requirement. Let us say he does not produce the documents and does not comply with the requirement. That brings into operation paragraph 2.

Under paragraph 2(b), the Society then goes to the second stage and applies to the High Court. It appears from the language of paragraph 2(b) that that application could be, and I dare say often would be, made *ex parte*. If the solicitor has not been found, it is hardly to be imagined that the procedure under the Schedule should be defeated because it has not been possible to get personal service on him. I imagine it is envisaged that the application could be *ex parte* or at any rate heard without personal service on him. Then the various consequences follow, and certain documents are taken.

Mr. S. C. Silkin

If it were made *ex parte* and the person against whom it was made was able to prove that he had not had proper notice and so on, surely there would be an unassailable right of appeal from that order.

Mr. Bell

With respect, I do not think so. If I may continue, I think I will show that that is not the case. He will have had notice all right under the requirements of the Schedule, and there will not have been any breach of them. He gets it by post to his last known address. Then the documents are taken. The notice is served on him by the procedure that we are discussing by registered post or the recorded delivery service, and then he has eight days in which to appeal to the court. This is where the hon. and learned Member's intervention comes in. It is on this application to the court that he can have the original order set aside. That is the purpose of his application to the court.

12.45 p.m.

Mr. S. C. Silkin

The hon. Gentleman is not suggesting that is in substitution for any right of appeal against an order already made, is he?

Mr. Bell

That is an awkward one. I am sure that this is an application for return of the documents. It will undoubtedly cover the same issues—inevitably. In any case, it must be intended that paragraph 5 should be his principal and practicable remedy for getting the documents back. It could surely be argued that where this express remedy for the recovery of documents exists, the courts are allowed to make any order they think fit. But that must be his exclusive remedy for the return of the documents. If he does not make his application within eight days, he is totally and finally debarred from it, even though he may not have actual knowledge of the situation.

My point here is a very simple one. Eight days without the possibility of extension is not enough. When it is being brought down from 14 days to eight, as it is in the Schedule, then, because eight days is so short a time, some possible escape clause must be left if the High Court thinks that there is an exceptional justification. The trouble about the present drafting is that it is absolute. Let us suppose that he did know about the earlier proceedings and about paragraphs 2 and 3 and then he was extremely ill, and accordingly he did not lodge his application within eight days. With the Amendment I propose, the High Court would say, "This man was knocked over by a motor car the day after he received the notice. He could not be expected to be bothering about applying to the High Court, but he applied 10 days later, which was the earliest anyone could expect him to. In those circumstances, we will enlarge the time." They cannot do that now.

If this were in the Rules of the Supreme Court, there would be an inherent jurisdiction in the court to enlarge the time in exceptional circumstances. I say "inherent": it is one of the rules. However, because it is statutory, there is no jurisdiction. It is not a case of the Law Society taking a broad and tolerant view and saying that they will not insist on the time limit. The Law Society would be quite powerless to do anything like that. This is an application to the High Court. Under the terms of the Statute, it has to be made within eight days. It would be quite useless for the High Court to say "This is an extremely hard case. It is most unfair that his application should not be heard, because we recognise that he could not reasonably make application within eight days. We do not agree with it, but he had no chance to apply within eight days, so we do not insist on the time limit." The court would have to say, "That may be so, but there is no power in the court to extend the time limit. His appeal cannot be heard."

I do not know how many of these absolute time limits we still have left, but there must be very few of them. It is only when it is a procedural time limit in a Statute, with no provision made for the courts to enlarge it, that we get this kind of situation. It must be extremely rare. When we are dealing with penal provisions like this, and they are penal provisions, it is quite wrong that there should not be this escape hatch, this jurisdiction in the High Court to entertain an appeal by a solicitor after the lapse of eight days.

I understand the anxiety of the Law Society to be fair to clients that has moved it to propose this change in the law by fringing down the period from 14 days to eight. I appreciate the solicitude for the interests of the client which is, I am sure, the sole reason for seeking this change—there could be no other. But here the Law Society is being really too harsh to its members in the interests of the outside public, and it falls to us to temper this enthusiasm with a little mercy for the individual solicitor who may wish to defend his honour, and professional interests and reputation—and, he may even think, his client's interests—by appealing to the High Court against the enforcement procedures that have been initiated. I ask the hon. Member to think again of this point, because I really think that he ought to accept this Amendment.

Sir B. Janner

I fully appreciate the anxiety of the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) that justice should be done in all cases, but the fact is, although he may not accept this as a very strong argument, that there has been only one appeal in 15 years. Further, the point made by my hon. Friend is substantial. There has already, obviously, been an

application to the court. The court has made the order. A solicitor is a professional person, so we are not dealing with laymen, who may not know what the effect of an order is. The solicitor knows that it is an extremely serious matter for him. He has refused to produce the documents before, and the order is made. He will not be so foolish as to sit still. The hon. Member said that the solicitor might be ill, but he has someone representing him—

Sir J. Hobson

I should like to have one thing explained to me that puzzles me in this discussion. Do the powers in the Schedule generally entitle the Law Society to override the client's privilege? There was a case when I held office when, under a statutory provision, in a criminal matter possession of documents was attempted to be obtained by search warrant. The documents were subject to client's privilege. Objection was taken, but the matter was never litigated. If the powers here enable documents, including those subject to client's privilege, to be taken, what the hon. Gentleman said is correct, but if the powers here would not entitle the Law Society to seize documents, the subject not of the solicitor's but of the client's privilege, it may well be said that eight days would be too short—not for the solicitor to deal with the matter, but for the solicitor and the client to deal with the matter, because it would be the client's privilege that would be involved. I should be grateful if the hon. Gentleman would clear that point.

Sir B. Janner

I do not know exactly what documents can be taken but I assume that any document which the Law Society considers to be necessary for the purpose of investigating a complaint that has been made can be taken. They might be client's privilege, but this is the case where client's privilege will have been abused. The whole purpose of this exercise is to protect the client who himself would probably raised the issue, or would have raised the issue for that purpose. I cannot see what privilege a client would claim in those circumstances—

Comment 6

Documents
needed for
investigation

Sir J. Hobson

There might be two clients, one of whom the solicitor had assisted to the detriment of the other.

Sir B. Janner

I am not sure even of that. If there were conflicting interests between two clients, one would hardly, from the practical point of view, have the matter dealt with in the same office. I think we would find that it would be to the interest of both clients that this step should be taken if it became necessary.

Mr. Anthony Grant

(Harrow, Central)

If the Law Society invoked powers to seize papers in the possession of a recalcitrant solicitor, would it not be in exactly the same position *vis-à-vis* the client as that solicitor was? In other words, would not the Law Society be proceeding in the same way as the solicitor, and the client therefore be able to claim the documents he needed from the Law Society in the same way as from the solicitor?

Sir B. Janner

I rather thought that would be the position—for the Law Society to take possession of such documents as it considered necessary for the purpose of protecting not only that client but all the solicitor's clients. So the question would not arise.

I would point out to the hon. Member for Buckinghamshire, South that there is the first application. The person affected would know that he was required to hand over the documents. He would not wait for the time to expire—

Mr. Ronald Bell

The hon. Gentleman says that the person affected would not know, but that implies actual knowledge. The hon. Member will bear in mind that any requirement or notice under paragraph 4 can be served on the solicitor not just in person but by one of the postal methods. He therefore might not have actual knowledge at all.

I know that the hon. Gentleman will also deal with the other point I made that a man might be quite ill. Perhaps the hon. Gentleman will bear in mind the sad words of Cesare Borgia—and I am sorry to mention him here—who said that he had provided for every contingency except the one that actually happened; namely, his own illness on the critical day.

1.0 p.m.

Sir B. Janner

The hon. Gentleman will forgive my saying that he is dealing with hypothetical cases which, in the view of one who practises in the law, not in his elevated profession but in the humbler branch, could not arise in any conceivable circumstances. If a person is charged with having defaulted to the extent that his books and documents are being taken, he will certainly have someone in the office, or, if a married man, his wife, or someone, who will see to it that if it is necessary to appeal, the appeal will be lodged.

This is a matter of lodging the appeal within eight days, and the court would then be in a position to adjourn the matter, if it so wished. It would have to give the decision within eight days. The period of 14 days has been reduced to eight days because of the practical experience of those who have to deal with these matters and who have concluded that detriment to the client can arise unless the period is reduced. This is not being done out of a venomous or sadistic desire, but in the hope of avoiding what experience has shown to be possibly disastrous or detrimental to the interests of the client. The hon. Member for Buckinghamshire, South will appreciate that the Law Society is the professional body of solicitors and, consequently, has to balance the interests of both the solicitors and those who are affected.

I should also make it clear that the period of eight days runs from the day on which the notice would ordinarily be received through the post. That is the legal position in respect of a service. I hope that in those circumstances the hon. Gentleman will realise that this has been the practice for many years and that there has been no agitation on the part of the solicitors themselves for the position to be altered.

Mr. Bell

What does the hon. Gentleman mean when he says that there has been no agitation on the part of the solicitors themselves for the position to be altered? It is the Bill which is altering the position. I would not have moved the Amendment if the period had been 14 days. It is the change to eight days which stimulates the Amendment.

Sir B. Janner

This is not the first day on which the Bill has been debated and if there had been any agitation or anxiety among solicitors, that would have been apparent from the day when the Bill had its First Reading and was available not only here, but to the various branches of the Law Society. So far as I know, there has been no objection.

In those circumstances and realising that the profession itself has not raised any objection to the proposal and that those who have considered the Bill from the highest quarters downwards have not raised an objection, perhaps the hon. Gentleman will take that into account and accordingly withdraw his Amendment.

The Minister without Portfolio

(Sir Eric Fletcher)

I do not want to embarrass my hon. Friend the Member for Leicester, North-West (Sir B. Janner), but one point has occurred to me arising out of the discussion and perhaps in the interest of clarity my hon. Friend will clear it up. Am I right in thinking that if circumstances arise in which effect is given to the provisions of the Schedule and the papers of a solicitor

Comment 7
Certain documents taken and others left

who is alleged to have committed an offence are taken by the Law Society, any client who wishes to obtain such papers from the Law Society will be able to do so?

Sir B. Janner

I am sorry, but I do not quite understand what point my hon. Friend is making. As I understand, he is asking whether if the Law Society has taken the documents, any client—obviously, a client against whom the allegation is made cannot—

Sir Eric Fletcher

I am talking about the clients of a solicitor alleged to have committed an offence and when the Law Society thinks it quite proper, in the interests of one or other client of that solicitor, to take certain documents and in the course of doing so quite properly takes documents belonging to some other client who would, presumably, be interested in having his affairs conducted by some other solicitor with despatch. What I am asking is for an assurance, which I imagine is quite easy to give, that in those circumstances any client on application to the Law Society would be able to get his papers and deal with them as he wished.

Sir B. Janner

I am informed that the client could apply within eight days of the time within which the appeal could be made, so that the client is protected and the Law Society would then hand over the papers to him.

Mr. Ronald Bell

Did the hon. Gentleman say within eight days? It seems to be very harsh if a client is to be limited to eight days within which to apply to get his own papers. Is the hon. Gentleman sure that he is not making some confusion?

Sir B. Janner

Perhaps I did not make myself clear. I meant any time after the eight days. I am sorry if I said anything different.

Mr. Bell

I thought that it may have been inadvertent, but the hon. Gentleman did say within the eight days. I think that he means after the period of eight days.

Sir B. Janner

Yes.

Mr. Bell

Here, again. I am sorry to have to express my disappointment. Some of my other Amendments were of a drafting or even a stylistic character, but this is an Amendment of substance and relates to a change which is being introduced by the Bill, a change very much to the disadvantage of the individual solicitor. Of course, I recognise that the Law Society is the professional association of solicitors, but, as I have said before, it is being extremely rigorous with its members in the interests of the public and of clients and it is possible that on this occasion its enthusiasm has gone too far.

I cannot find it in me to believe that it is right that we should consent to this period being reduced from 14 to eight days with absolutely no discretion in anyone to enlarge it for any reason whatever, so that this would be the last opportunity for a solicitor to appeal. I find that inexplicably harsh. I cannot think of any eight-day period with no escape clause.

The hon. Gentleman says that mine is the first voice which has been raised against the proposal, but, as I pointed out, this has not been mentioned in any of the earlier debates on the Bill. The hon. Gentleman is rather misleading himself when he says that anyone with an objection would have raised it when the Bill was published. I do not think that that is so. A solicitor may have had time to read through the Bill when published, but would he prick up a

little change like this, which has not been noticed in the debates in the other place and which was not noticed in Standing Committee when hon. Members were engaged in the scrutiny of the Bill?

Would a solicitor say, "One day I might find myself in the situation of a defaulting solicitor and I think that I would like to have more than eight days in which to lodge my appeal"? That is not the way in which people's minds work. They do not think of themselves as being in such a situation. I do not think that a solicitor would decide to write to the Law Society about such a matter complaining that he should have more than eight days and that there is a dreadful risk of being knocked over by a bus on the wrong day with no one having jurisdiction to let him through and present his appeal to the High Court. I am encouraged by hopeful signs I see opposite.

As I said, the other Amendments were moved in a spirit of improvement. This one I regard as being to do with substantial justice, and I think an individual member of the Law Society could be very harshly treated under this. I hope that the hon. Gentleman the Member for Leicester, North-West (Sir B. Janner), will be advised that those who originally sponsored the Bill see no infeasible objection to what is proposed. It will not hurt the Bill at all, but will merely give to the High Court the discretion we think it ought to have. The reforming changes in the Bill and in the Schedule will be unaffected.

Commander Courtney

On a point of order. I have felt at times during this interesting debate that I was at Wimbledon. Would it be for the convenience of the House, and perhaps save a lot of shoe leather for the hon. Gentleman the Member for Leicester, North-West (Sir B. Janner), if such learned advisers of his as are available could go to the Box? Is there any rule of the House which debars such normality? I must say the Wimbledon parallel occurs very strongly to me.

Mr. Deputy-Speaker

Forgetting the reference to Wimbledon, I do not think that the hon. and gallant Gentleman has raised a point of order.

Commander Courtney

With great respect, Mr. Deputy-Speaker, could I, without referring to any sporting activities, ask whether there is a rule of the House which debars learned advisers, available to hon. Gentlemen opposite, from being more conveniently situated to them, by being in the Box over there?

Mr. Deputy-Speaker

The answer is that it is impossible to accede to the request of the hon. and gallant Gentleman and remove the advisers from their present position to the place that he would like them to be.

Sir Eric Fletcher

On that point of order. I was wondering whether this is a point worth considering. There are other occasions, when a Private Member's Bill is under discussion in the House, and when what is normally called the Box—I imagine it has some other official designation—is empty. It might certainly be for the convenience of those in charge of the Measure in the House to have the most convenient access to those advisers responsible for promoting the Bill. I wonder whether you would be good enough, Mr. Deputy-Speaker, to consider, as the hon. and gallant Member has inquired, whether there is any rule of the House which forbids this, and whether it is a matter within the discretion of Mr. Speaker or the Serjeant at Arms? There is also the question whether the convenience of the House itself might not be served if some facilities of this kind were available in connection with Private Members' Bills on Fridays.

Mr. Deputy-Speaker

I hope that the House will not misunderstand me. I am not commenting upon the merits or otherwise of the suggestion. There is quite a lot in what has been submitted, but I have no

powers to change the rules or customs of the House on an *ad hoc* decision. This might be a matter that could be considered some time by the Select Committee on Procedure, or by the House itself.

1.15 p.m.

Mr. Bell

I had reached the conclusion of my remarks and I sat down because I had the impression that the hon. Member for Leicester, North-West was ready to give me the answer which he had been indicating by various cryptic signs was formulating in his mind. If that is the case I gladly sit down. If the process has not yet finalised I would not want to spoil the ship for a ha'porth of tar.

Sir B. Janner

The indication I gave to the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) was that it would, perhaps, be useful if he kept on speaking a little longer. I think that the point which has been made this morning, with regard to the assistance given by those who are most intimately concerned with the matter, is extremely important because, obviously, a private Member who is endeavouring to assist such a society as the Law Society is bound to seek its advice on points which he cannot necessarily have at his finger tips, in the same way as the Government have a Department available to turn to in respect of matters which are raised in the course of a debate, and in respect of which the Minister cannot commit himself without having its assistance.

I think that at the moment it would be of some assistance if we could hear what the Government's views would be on such a matter, so that we may come to a decision which will meet with everyone's desires.

Mr. S. C. Silkin

May I just say a word about the point raised in an intervention, and referred to by the right hon. and learned Member for Warwick and Leamington (Sir J. Hobson)? The point is as to the rights of a third party to papers which are his own papers, and which are in the custody of a solicitor to whom this procedure applies. It is apparently dealt with by paragraph 5 of the Schedule, which gives the Society the right, in circumstances there set out, to ascertain the person to whom the documents belong and to deal with those documents in accordance with the directions of that person.

It gives the Society the right, in those circumstances, to make copies from the documents. I think that it will probably generally be agreed that that, taken on its own, is not a satisfactory solution, because it remains entirely within the discretion of the Society, as I read the paragraph, as to what it will do in those circumstances. Unless there is some other power, not apparently appearing from the Schedule itself, which would enable such a person to apply to the court to get his own documents back, there seems to be a case for the insertion of such a power.

Unfortunately, I do not think that the Amendment which the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) is moving, will cover that case. I suggest before the Bill finally passes into the law, it might be considered whether there is any way of making provision to ensure such a person does have the right, which I think he ought to have.

Sir Eric Fletcher

It will be appreciated that in a matter of this kind the Government are completely neutral. This is a Private Member's Bill and the Government's main desire is that the Bill should pass into law. With regard to these Amendments, the House has to weigh in the balance the necessity of doing justice to a solicitor alleged to be defaulting, on the one hand, and, on the other, to preserve the right of any client of that solicitor alleged to be defaulting who may be affected.

Comment 9

I understand that conflict arises in this way. It should be open to the solicitor concerned to make an application to the High Court within a short time. If that time is unduly lengthened under Regulation 11 or, I suppose, Regulation 5 the period within which it would be open to a client whose interests are affected to apply would be changed because, I suppose, the Law Society would not feel prepared to hand over any papers to a client until the time available for an application to the High Court by the solicitor had expired.

On the other hand, since this is a change from the existing practice, it seems to me that this is entirely a matter for the House to decide on its merits. Like the hon. Member for Buckinghamshire, South (Mr. Ronald Bell), I would, above all, hope that we can avoid a Division, because if there were to be a Division I am sure that my hon. Friend the Member for Leicester, North-West would be the first to appreciate that unless the number of hon. Members taking part in the Division reached a certain minimum number—which is by no means certain on this occasion—the House would automatically be counted out and the Bill would lapse. In my view, that would be the most disastrous of all consequences.

It might well be that my hon. Friend would think that, rather than risk that undesirable event happening, the better course would be to accept the Amendment.

Mr. Ronald Bell

I am obliged to the Minister without Portfolio for what he has said. I think that hon. Members on both sides of the House have had an opportunity of considering what would be the best course to take. The Minister said that it is extremely desirable that there should not be any clash on detailed Amendments which could imperil the Bill. I am sure that no hon. Member on either side of the House intends to do anything to imperil the Bill.

I understand that this difficulty, which we all recognise exists, could be resolved by agreement and if I were to withdraw the Amendment and to move, with your permission, Mr. Deputy-Speaker, a manuscript Amendment. If that is acceptable to you, Mr. Deputy-Speaker, as a matter of procedure, I would ask leave to withdraw the Amendment and to move a manuscript Amendment which I have handed to you, namely, in Schedule 1, page 18, line 40, after "Within" to leave out "eight" and insert "fourteen".

Mr. Deputy-Speaker

The occupant of the Chair does not usually accept manuscript Amendments unless he is satisfied that they commend themselves clearly to both sides of the House. I understand that that is the case today. Is it your pleasure that the Amendment be withdrawn?

Amendment, by leave, withdrawn.

Mr. Deputy-Speaker

Amendment proposed as a manuscript Amendment, in Schedule 1, page 18, line 40, after "Within" to leave out "eight" and insert "fourteen". [*Interruption.*]

This is the difficulty about manuscript Amendments. It is pointed out to me by the Clerk that those interested in the manuscript Amendment will have to deal with the matter in some other way. We were dealing with an Amendment to insert words after the word "after". The manuscript Amendment proposes to insert "fourteen" after the word "Within", which is two words before "after". The manuscript Amendment therefore proposes that we should go back in the Bill.

Sir Eric Fletcher

May I offer to help you, Mr. Deputy-Speaker, on a highly technical point? I understand that it is not open to us under the rules of order to insert any words before the word "days" in line 4 of page 18 because we have withdrawn an Amendment to insert some words after the word "days". Therefore, we cannot change the word "eight" to "fourteen", and we can secure the result which we all desire only by adding words after "days".

I am sure that it would not be your wish, Mr. Deputy-Speaker, or the wish of any hon. Member, that the clear desire of Members on both sides of the House should be frustrated

by technical points of order. Therefore, I should like to suggest for your consideration that the only way in which, within the rules of order, we can secure the result that we all desire is by adding words after "days".

Perhaps the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) would be willing to move an Amendment to insert after "days" the words "or a further six days". Paragraph (5) of the First Schedule would then read:

"Within eight days or a further six days",

making 14 days in all.

I appreciate that this would be inelegant, but if the House has to choose between having its wishes frustrated by a technicality, on the one hand, and inelegance, on the other, I would prefer inelegance.

Mr. Deputy-Speaker

The Amendment which we disposed of just now came after the word "after". This is our technical problem.

Mr. Ronald Bell

That was a mere slip.

Mr. Deputy-Speaker

I cannot interpret the rules of order. I am bound by them. The hon. Member for Buckinghamshire, South (Mr. Ronald Bell) is learned in the law, and he must know that that is true.

Mr. Bell

Has it not been the practice of the Chair to take account of slips, whether made by printers or otherwise? There is a printers' error in one of my later Amendments of which the Chair has been officially informed and of which, I think, the Chair will take account, because it would be wrong if the proceedings of the House were to be impeded by a printers' error or an autographic error.

Mr. Deputy-Speaker

The Chair is bound by the rules of order. I cannot follow Shakespeare and do a little wrong to do a great right. I must abide by the rules of order.

Sir Eric Fletcher

On a point of order. You said a moment ago, Mr. Deputy-Speaker, that we had reached the word "after". With respect, the word "after" does not appear in line 4.

Mr. Eric Lubbock

(Orpington)

We are talking about line 40.

Sir B. Janner

May I make this suggestion in trying to overcome the point, which we fully appreciate is a difficult point? Could we insert after

"Within eight days after the service of a notice under paragraph (3) of this Schedule"
the words

"or a further six days on an application to the court"?

Mr. Bell

I think that to put in line 41 the words

"or within a further six days thereafter"

would meet our procedural difficulty and would do what we all want to do. It would perhaps be open to their much maligned Lordships in another place to correct the wording. May I therefore ask leave to move a manuscript Amendment: In Schedule 1, page 18, line 41, after "Schedule" to insert:

"or within a further six days thereafter"?

1.30 p.m.

Mr. Deputy-Speaker

I am grateful for the ingenuity of hon. Members, on both sides, in solving this technical problem. It will be solved if we follow the course which both hon. Members have suggested.

Amendment proposed: In Schedule 1, page 18, line 41, after "Schedule" insert:

"or within a further six days".

Mr. Ronald Bell

"thereafter" should be added, Mr. Deputy-Speaker

Mr. Deputy-Speaker I am sorry. This is a classic illustration of the difficulty of manuscript Amendments.

Amendment proposed: In page 18, line 41, after "Schedule", insert:

"or within a further six days thereafter"—[*Mr. Bell.*]

Amendment agreed to.

Mr. Ronald Bell

I beg to move, in page 18, line 43, to leave out "those" and to insert:

"all or any of the documents referred to in the notice and any other document or documents which the applicant alleges should have been referred to in that notice."

It is comforting to get back to an Amendment which is on the Notice Paper. The Amendment need not detain us long. It is of a drafting character and it is moved in the hope that it will improve and clarify the sense of the Bill.

Mr. S. C. Silkin

So far from improving and clarifying paragraph 5, the Amendment would make it obscure, because it would lead to what the hon. Member would probably call unrelated documents. He should, I think, omit "documents" as well as "those".

Mr. Bell

At this stage of the proceedings, I am prepared to believe anything. Before we get down to little difficulties like that, however, it might be well to develop the substance of the matter and see where I get with the hon. Member for Leicester, North-West (Sir B. Janner). If I have any success with him, it may be that I will have success with Mr. Deputy-Speaker. Let us cross our bridges when we come to them.

My objection to paragraph 5, in line 43, is that "those" does not seem to relate to anything. It is obviously one of these nostalgic "thoses" which goes back about three paragraphs to paragraph 1, which is a rather long way for any word to have to go back to its antecedents. It leaves open to a good deal of doubt what "those documents" means.

On an earlier Amendment of mine, we had a discussion to try to clarify what should go in the notice. I wanted a list of documents to be included in the notice, and we were left with "particulars". Exactly what "particulars" means, I am never sure. It ought to mean

everything, but I and others in the law know that when one has particulars, one then asks for further and better particulars, which suggests that particulars are not everything.

It seemed to me that if there is to be a notice, the contents of which have not been clearly defined and which now will not be clearly defined, in the power to order the return of the documents one should at least try to reach some kind of precision.

Let us assume that the solicitor has had his documents impounded. That must be the starting point. He then has served upon him a notice under paragraph 3. The notice is in the form of listing documents, some individually, some by series by reference to clients. Bearing in mind that that notice will be in some way the solicitor's receipt for the things that are taken from him, one has to remember that he goes upon his appeal procedure. Let us say that he wins his appeal, because unless he does my Amendment does not matter. The question of ordering the return of the documents or some of them arises.

Suppose that there are documents which were taken by the Society and which are not mentioned in the notice. Under the appeal procedure of paragraph 5, is the solicitor entitled to ask for their return? That is really the point. Had my first Amendment been accepted and had it meant all that I hoped it meant, this Amendment would not have been important; but because the earlier Amendment was not accepted, this one is necessary. A solicitor might say that 16 documents were listed in the notice but that another four documents which were not named in the notice were also taken and that he wants the return of all 20. Is that within the jurisdiction of the court? My Amendment would make it clear that it was. I believe that the present wording leaves it obscure and doubtful.

I hope that the hon. Member for Leicester, North-West (Sir B. Janner) will feel that he should accept the Amendment.

Sir B. Janner

I have again to point out to the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) that if he wanted to add the new words they should come after "those documents" and not after "those". Apart from that grammatical correction, paragraph 5, except for the words

"or from whose premises they were taken, as the case may be",

which are new in the Bill, have been used for the last 24 years, since the passing of the Solicitors Act, 1941. No criticism has at any time been made on the construction of the wording, nor has the paragraph been challenged in that respect.

The Law Society is of the opinion—and it seems to me that it is correct—that the Amendment is unnecessary and that what the hon. Member wants is already provided for. So that we may make further progress in this matter, and particularly as we have met the hon. Member on an important matter of substance, I hope that he will agree to withdraw the Amendment.

Mr. Bell

I am sorry, but I did not hear the hon. Member's concluding words.

Sir B. Janner

I said that I hoped that the hon. Member would see his way to withdraw the Amendment. I said, if I may repeat it, that what the hon. Member really wants is actually being done in practice. I do not want to have further Amendments, nor does the Law Society, which would encumber the Bill.

Mr. Bell

I asked for the repetition because I thought I heard the hon. Member say that in view of all this he would accept the Amendment, but that was not so: he was asking me to withdraw it. Never mind, he has been very receptive; and we have made some improvement to the Bill, I think. I do not in any way withdraw from my view that what I am proposing would be a good thing to clear up an ambiguity. At the same time, I have no desire to hold up the Bill unduly, as I said before. I think that the hon. Member has been very fair and helpful, so I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. Ronald Bell

I beg to move, in page 19, line 19, after "redirection" to insert:

"not being postal packets addressed to the solicitor at his private residence".

The object of this Amendment is self-evident. This relates to the power of redirection which the Law Society is given under the Schedule. It is in very wide terms indeed at the moment, terms so wide as really to make me feel they could be oppressive. If a redirection order is made in respect of a solicitor's place of business no one can complain. If it is made to cover also ordinary letters going to his private residence then I think that this is becoming a little hard.

I see that this leaves a loophole in an important procedure. It will not be the only loophole in procedures. In the course of procedure we have to balance between the reasonable rights and liberties of the individual and the enforcement of the law in the interests of other people. Somehow, I find it a little equivocal to think that, because a solicitor has done something which is not, I suppose, a criminal offence, but which has attracted the attention of the Law Society in its protection of the interests of clients, and its rigorous procedure has been gone through, it should also be entitled to have an order for the redirection of all post, not merely that from the place of business of the solicitor, but also his ordinary private personal letters, all of which the Society would be fully entitled to open, and, indeed, would open, to see what they were.

Of course, it would, I imagine, send them back to him—any personal family correspondence; but it would have opened them first. I think that this is going too far, and that somebody else's interest may have to be considered at this point. I would, therefore, ask the hon. Member if it would not feel it possible to accept this Amendment.

Mr. Grant

I would be glad if my hon. Friend would clarify the position which would arise if the solicitor, as might very well be very likely in cases such as this, practised from his own home. How would that be?

Mr. Bell

That is exactly the problem I have had in mind. It is a real one. Quite frankly, I do not think that there is any answer to it. At the same time, there is no answer to my point, either. If all the personal letters are to be taken to the Law Society and examined, and so on, that is rather harsh, also. We have a clash here between the interests of the solicitor and the interests of the client.

My point is that this is a procedure in addition to and outside of the ordinary criminal law of the land; it is a very special procedure. I do not think that one should give overriding and comprehensive priority outside criminal jurisdiction to third party interests. I think that one has to trim the law to take account of people's personal rights, also.

1.45 p.m.

Sir B. Janner

I suppose that everybody in the House would regard the suggestion of the hon. Member for Buckinghamshire, South (Mr. Ronald Bell) as being on the face of it something which should be considered. I am sorry that the view of the Law Society in this matter differs from his, because it put this paragraph in as being both reasonable and necessary in practice. The Society objects to limiting words being inserted in the paragraph, as the court, in making any order, will naturally take into account all the circumstances of the particular application, and the court is not going to be influenced by anything in the nature of prejudice, or which might prejudice the solicitor concerned.

As the hon. Member for Harrow, Central (Mr. Grant) has already explained, the solicitor may have an office at his residence, and, consequently, it would be difficult to distinguish

Comment 11

Here Bell seems to be talking about a Solicitor who has already been convicted not one who is only being investigated

between what is his residence and what is his professional place of business. The profession, as the hon. Member knows, is a responsible one, and those who are in charge of matters in the Law Society are mainly professional people. They are certainly professional in the sense that they are carrying out the duties of an office which requires the utmost secrecy. If there come to them letters which contain information which is extraneous to the purpose of their investigation, they are likely to—indeed, I would say with certainty they would—return immediately those letters to the individual concerned, without themselves taking any note of the content of those letters.

Of course, the interests of the clients are paramount, and not the interests of the solicitor against whom the allegation is made. I am sure that the hon. Member, on reflection, will realise that difficulties could arise if packets which are of importance to the investigation were sent to another address and were never obtainable by the investigating authority.

I would again emphasise that the court, in these circumstances, would take this into consideration. I am perfectly certain of that. I hope that in these circumstances the hon. Member will not press his Amendment.

Mr. Grant

I am sure that practising solicitors and all solicitors in the House will appreciate the keenness with which my hon. Friend the Member for Buckinghamshire, South (Mr. Ronald Bell) has sought to protect their interests. I hope that he will appreciate that there has been a desire of hon. Members here who are solicitors, as well as of the Law Society, to put the interests of the public first. I myself thought that this Amendment my hon. Friend proposes is another example along those lines.

In agreement with the hon. Member for Leicester, North-West (Sir B. Janner), I very much hope that my hon. Friend will withdraw the Amendment, because it creates far too big a loophole in the procedure. We must realise, to get this in perspective, that we are concerned here with an infinitesimally small section of the profession. In the last 15 years only one notice has been served.

Mr. Ronald Bell

I think that the hon. Member for Leicester, North-West (Sir B. Janner) will agree that that was an appeal notice under paragraph 5. I think that there have been a good many more of the others.

Mr. Grant

I appreciate that. Nevertheless, I am right in saying that this undoubtedly affects only a very tiny section of the profession. If my hon. Friend's Amendment is accepted, the loophole will be enormous. All that the solicitor involved will have to do is instruct people who might send him correspondence to direct it to his home address. Such a loophole could utterly defeat the purpose of the Bill, which embodies the desire of all solicitors and the Law Society that the interests of the client should be protected.

I hope that my hon. Friend, as a member of the Bar and whose enthusiasm on behalf of my profession we all appreciate, will accept that we in that profession are concerned with the public interest in this case and that he will withdraw the Amendment.

Mr. S. C. Silkin

While I agree with the hon. Member for Harrow, Central (Mr. Grant), there is a point here which rather worries me and which I hope my hon. Friend the Member for Leicester, North-West (Sir B. Janner) will be able to clarify. The hon. Member for Buckinghamshire, South (Mr. Ronald Bell) made reference to what happens to the postal packets if they have been taken by the Law Society. That induced me to look at the Schedule to see whether I could see the answer.

Comment 12
Janner is talking about only investigating the Solicitor

There are certain paragraphs of the Schedule, from paragraph 10 onwards, which give certain rights to the Law Society to take possession of certain monies and if this applies in relation to paragraph 8 then that supports the view that the Amendment should not be accepted because, otherwise, it would be so easy for money to be sent to a solicitor's private residence and thus become unavailable to the Law Society to make use of for the benefit of those who may have been defrauded by that solicitor.

"In any case where the Society has taken possession of documents under paragraph 1 of this Schedule and has not been required to return them by virtue of paragraph 5 thereof the following paragraphs shall apply ..."

It would seem that paragraphs 10 and after apply only to circumstances in which the Society is required to produce certain documents under paragraph 1. Possibly an order has been made under paragraph 2. But, as far as I can see, these provisions do not apply, certainly in terms, to what happens after an order has been made under paragraph 8.

If that is the case—and I hope that I am wrong—it would seem that the only consequence of an order being made under paragraph 8 is that the postal packets concerned are placed in the custody of the Law Society with apparently no right of doing anything with them except to keep them in its custody. I hope that my hon. Friend will look into this matter and explain, if I am wrong, why I am wrong, as I hope that I am.

Sir B. Janner

The answer to my hon. and learned Friend the Member for Dulwich (Mr. S. C. Silkin) is that it is not beyond the power of the court, if an application is made to it, to order these postal packets to be returned to the solicitor concerned. If the postal packets were not returned by the Law Society I understand that application could be made to the court.

Mr. S. C. Silkin

Perhaps my hon. Friend is misunderstanding me. I hope that the provisions of the Schedule are wider and give the Law Society greater powers than at the moment they appear to do. I hope that my hon. Friend will look into that and see whether the rather narrow construction which at the moment appears applicable under paragraph 8 is really appropriate.

Mr. Ronald Bell

On this occasion I feel persuaded by the arguments. I am, of course, as are all hon. Members, unhappy about the situation where an order of this kind applies to a private resident, including his personal post. I understand the answer to that feeling is that this is anyway an unhappy situation which presumably is extremely rare and that there is no way of dealing with it except by unhappy measures. Perhaps I realised that in putting down this Amendment. I did not quite like the provision and I hoped that it might be a little less difficult than has proved possible to meet the point.

In view of what has been said, however, I beg to ask leave to withdraw the Amendment.

Amendment, by leave, withdrawn.

Mr. Ronald Bell

I beg to ask leave to move a manuscript Amendment which is consequential on the manuscript Amendment which has earlier been accepted and incorporated in the Bill, Mr. Speaker. I think that you, Sir, have a manuscript copy.

Mr. Speaker

I accept the Amendment.

Mr. Bell

I beg to move, in page 20, line 4, to leave out "eight" and to insert "fourteen".

I do not think I need say anything about it, Mr. Speaker.

Amendment agreed to.

Comment 13
Money

Comment 14
Mail

3) COMMENTS (IF ANY) CONCERNING THE PURPOSE AND MEANING OF SCHEDULE 1

The following comments were made on 02 July 1965 in the Lords Chamber

Comment 1 02 July 1965 Page 315

Mr Bell

The defect which I see in that paragraph is that the Society, which, after all, will have just taken the very drastic action—admittedly on the authority of the court, but, nevertheless, it is very drastic action—of entering by force the solicitor's premises and impounding documents.

In Comment 1 Mr Bell is referring to the circumstances in which the Law Society has obtained the Documents Production Order

Comment 2 02 July 1965 Page 316

Mr Bell

I suppose that on a strict interpretation of that wording one might say that at that moment they must leave the notice saying what documents they have taken. That plainly cannot be the intention of the wording. It would never happen in that way. In practice they would take a large number of documents which they thought were clients' documents back to the Law Society's office, mull through- them and list them **and eventually** serve a notice on the solicitor showing what they had taken.

The fact that the Law Society could serve the Documents List under Para 3 'eventually' shows

- 1) that the Documents, and certain ones at that, must have been removed for investigation only.
- 2) that the Solicitor's Documents Recovery Application under Para 5 was a Non Substantive Procedural Application which is self evident from the fact that the time to make the application starts running from the date of the service of the Documents List and that could be served a month, 6 months or a year after the Documents had been taken. If it were a Substantive Hearing, it would take place with urgency.

Comment 302 July 1965 Page 316

_This could be a somewhat **oppressive** procedure. I am not casting the slightest reflection on the Law Society in saying that. Indeed, I think that everyone is grateful to the Society for, I believe, drafting the Bill and putting it forward for Parliament's consideration through the hon. Member for Leicester, North-West (Sir B. Janner), because it deals with many things which need dealing with and it is in the general public interest that the Bill should be passed. Therefore, I do not make this point in any hostile attitude to the Society. I am sure that it would not behave oppressively; that is the last thing that it would want to do. But when proposing these **very potent enforcement procedures** we must look at the procedures to see that they are scrupulously fair to both sides.

[]

The first Amendment proposes to insert the words "At the time of". That is the strict interpretation of "upon". Paragraph 3 would then read:

"At the time of taking possession of any such documents, the Society shall serve"

a notice. However, because that would in isolation be too harsh, I propose by the second Amendment to add after the word "documents" the words

"or within three days thereafter".

I speak as an outsider on the procedure of this branch of the legal profession. I hope that I speak with humility. I do not think that lawyers are necessarily characterised by humility—politicians are said very rarely to be so characterised—but I am conscious of my inadequacies on the finer points. I hope that my proposal to make provision for a period of three days makes sense. It will mean a certain amount of pressure of listing and preparing the notice and serving it. I accept that. On the other hand, a **quite drastic procedure** is proposed. Solicitor's premises may quite possibly be forcibly entered and documents taken away. He is entitled to know reasonably quickly what has been taken away. After all, these are documents of his practice—clients' documents and documents of such title such as those listed in paragraph 1 of the First Schedule.

Comment 402 July 1965 Page 317

Mr. Ronald Bell

Would not the hon. Member agree, however, that a solicitor who finds himself in this position—that is to say, who is being subjected to these harsh enforcement procedures—is really **not the kind of person from whom one would expect to get complaints about these points of procedure?** He would by that time be in such a vulnerable position that he would hardly be thinking of suggesting Amendments to the 1957 Act.

Sir B. Janner

That is not quite the full way of putting it. It may well be that the solicitor **who has suffered in consequence, perhaps, of his own misdeeds—or perhaps not—might not have raised the complaint.** Certainly, if he was suffering not in consequence of his misdeeds, he would have raised it. I have not the slightest doubt that during the past 20 or more years somebody would have raised the point in the council of the Law Society or during any debates or discussions relating to the matter.

These comment conflicts with the purpose of removing Documents for examination. According to Mr Bell and Lord Janner, the Solicitor is already condemned. No investigation is needed to prove his guilt.

Comment 5 02 July 1965 Page 327

Mr. Ronald Bell

We are here dealing with a change from the Schedule to the principal Act. The principal Act allows a period of 14 days, and it is being reduced to eight days. Whether that is wise is another matter. I have no Amendment down about it, so I am, in effect, accepting eight days as the standard period within which an appeal must be lodged, though I conceive that the period of 14 days could well be fairer. To make it eight days is to give a harsh time limit for someone who already, presumably, is pretty deep in trouble. Perhaps the hon. Gentleman will explain why the period is eight days in the revised Schedule instead of 14 days.

The Solicitor is already adjudged to be dishonest, so the Documents could not have been taken for investigation.

Comment 6 02 July 1965 Page 333

Sir B. Janner

I do not know exactly what documents can be taken but I assume that any document which the Law Society considers to be necessary for the purpose of investigating a complaint that has been made can be taken. They might be client's privilege, but this is the case where client's privilege will have been abused. The whole purpose of this exercise is to protect the client who himself would probably raised the issue, or would have raised the issue for that purpose. I cannot see what privilege a client would claim in those circumstances—

The Solicitor's Documents are needed for investigation :

Comment 7 02 July 1965 Page 334

Sir Eric Fletcher

I am talking about the clients of a solicitor alleged to have committed an offence and when the Law Society thinks it quite proper, in the interests of one or other client of that solicitor, to take certain documents and in the course of doing so quite properly takes documents belonging to some other client who would, presumably, be interested in having his affairs conducted by some other solicitor with despatch. What I am asking is for an assurance, which I imagine is quite easy to give, that in those circumstances any client on application to the Law Society would be able to get his papers and deal with them as he wished.

If only certain Documents were taken, they must have been taken for investigation.

Comment 8 02 July 1965 Page 335

Sir B. Janner

I am informed that the client could apply within eight days of the time within which the appeal could be made, so that the client is protected and the Law Society would then hand over the papers to him.

The hearing could not have been substantive, because the Client could apply

Comment 9 02 July 1965 Page 339

Mr. S. C. Silkin

May I just say a word about the point raised in an intervention, and referred to by the right hon. and learned Member for Warwick and Leamington (Sir J. Hobson)? The point is as to the rights of a third party to papers which are his own papers, and which are in the custody of a solicitor to whom this procedure applies. It is apparently dealt with by paragraph 5 of the Schedule, which gives the Society the right, in circumstances there set out, to ascertain the person to whom the documents belong and to deal with those documents in

Para 5 is the Documents Withdrawal Application so, again, if the Client can make it, it could not have been a substantive application.

Comment 10 02 July 1965 Page 340

Mr. S. C. Silkin

Suppose that there are documents which were taken by the Society and which are not mentioned in the notice. Under the appeal procedure of paragraph 5, is the solicitor entitled to ask for their return? That is really the point. Had my first Amendment been accepted and had it meant all that I hoped it meant, this Amendment would not have been important; but because the earlier Amendment was not accepted, this one is necessary. A solicitor might say that 16 documents were listed in the notice but that another four documents which were not named in the notice were also taken and that he wants the return of all 20. Is that within the jurisdiction of the court? My Amendment would make it clear that it was. I believe that the

Comment 10 shows that not all Documents were taken.

Comment 11_02 July 1965 Page 341

Mr Ronald Bell

I see that this leaves a loophole in an important procedure. It will not be the only loophole in procedures. In the course of procedure we have to balance between the reasonable rights and liberties of the individual and the enforcement of the law in the interests of other people. Somehow, I find it a little equivocal to think that, because a solicitor has done something which is not, I suppose, a criminal offence, but which has attracted the attention of the Law Society in its protection of the interests of clients, and its rigorous procedure has been gone through, it should also be entitled to have an order for the redirection of all post, not merely that from the place of business of the solicitor, but also his ordinary private personal letters, all of which the Society would be fully entitled to open and indeed would open to see what they were

Again, Mr Bell does not appear to acknowledge that the purpose of removing the Documents is only to investigate

Comment 12_02 July 1965 Page 342

Lord Janner

Of course, the interests of the clients are paramount, and not the interests of the solicitor against whom the allegation is made. I am sure that the hon. Member, on reflection, will realise that difficulties could arise if packets which are of importance to the investigation were sent to another address and were never obtainable by the investigating authority

Lord Janner thinks they are removed to investigate.

Comment 13_02 July 1965 Page 343

Mr. S. C. Silkin

There are certain paragraphs of the Schedule, from paragraph 10 onwards, which give certain rights to the Law Society to take possession of certain monies and if this applies in relation to paragraph 8 then that supports the view that the Amendment should not be accepted because, otherwise, it would be so easy for money to be sent to a solicitor's private residence and thus become unavailable to the Law Society to make use of for the benefit of those who may have been defrauded by that solicitor.

"In any case where the Society has taken possession of documents under paragraph 1 of this Schedule and has not been required to return them by virtue of paragraph 5 thereof the following paragraphs shall apply ..."

It would seem that paragraphs 10 and after apply only to circumstances in which the Society (*read 'the Solicitor'*) is required to produce certain documents under paragraph 1. Possibly an order has been made under paragraph 2. But, as far as I can see, these provisions do not apply, certainly in terms, to what happens after an order has been made under paragraph 8.

Mr Silkin thinks that only certain documents are removed to investigate

Comment 14 02 July 1965 Page 344

Mr. S. C. Silkin

(following the above)

If that is the case—and I hope that I am wrong—it would seem that the only consequence of an order being made under paragraph 8 is that the postal packets concerned are placed in the custody of the Law Society with apparently no right of doing anything with them except to keep them in its custody. I hope that my hon. Friend will look into this matter and explain, if I am wrong, why I am wrong, as I hope that I am.

Sir B. Janner

The answer to my hon. and learned Friend the Member for Dulwich (Mr. S. C. Silkin) is that it is not beyond the power of the court, if an application is made to it, to order these postal packets to be returned to the solicitor concerned. If the postal packets were not returned by the Law Society I understand that application

Mr Silkin believes that the law Society is only entitled to keep the Solicitor's Mail, not to open it

Comment 15 02 July 1965 Page 317

_ Sir Barnett Janner

I entirely appreciate that the hon. Member for Buckingham, South (Mr. Ronald Bell) is trying to assist and that his Amendments are in no sense wrecking Amendments. On the other hand, the hon. Member was perfectly frank when he said, if I may put it this way, that he was talking without knowledge of the actual steps which are taken in these matters by the Law Society. Indeed, the hon. Member could not be expected to know those

Lord Janner has no actual knowledge of how the procedure works. Nor apparently does Mr Bell

Comment 16 02 July 1965 Page 316

_ Bell

I speak as an outsider on the procedure of this branch of the legal profession. I hope that I speak with humility. I do not think that lawyers are necessarily characterised by humility—politicians are said very rarely to be so characterised—but I am conscious of my inadequacies on the finer points. I hope that my proposal to make provision for a period of three days makes sense. .

3) GOVERNING PROVISIONS

The governing provisions were now Sections 10- 14 of the Act and Schedule 1. There was no longer any integral link with the Compensation Fund which was now governed by Section 15 and 16.

10. Re-enactment of Schedule 1 to principal Act.

The Schedule set out in Schedule 1 to this Act shall be substituted for Schedule 1 to the principal Act (which confers power to control the property of a solicitor in certain cases).

11.— Solicitors guilty of undue delay in certain matters.

(1) Where—

(a) a complaint is made to the Society 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 or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; and

(b) the Society has by notice in writing invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor has, within a period of not less than eight days specified in the said notice, 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 to the principal Act, other than paragraphs 7 and 8 thereof, shall apply in relation to that solicitor, but as regards the documents specified in paragraph 1, and the sums of money specified in paragraph 10, of that Schedule, only in so far as they relate to the matter complained of:

Provided that for the purposes of the proviso to paragraph 6 of such Schedule the Society may take copies of, or extracts from, documents which relate to the matter complained of or to that matter and to other matters in the solicitor's practice.

(2) In this section the expressions "*trust*" and "*trustee*" have the same meanings as in section 29 of the principal Act (which relates to rules as to keeping of accounts by solicitors).

12.— Control of clients' documents and money in the control or possession of certain solicitors.

(1) Where a solicitor practises in his own name or as a sole solicitor under a firm name and—

(a) is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or

(b) has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or

(c) has had an order of committal or an order for the issue of a writ of attachment made against him; or

(d) is a patient as defined by section 101 of the Mental Health Act 1959 or a person as to whom powers are exercisable and have been exercised under section 104 of that Act,

and the Council have reasonable cause to believe that in consequence of the act or default of the solicitor or of any clerk or servant of his—

(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 trust of which that solicitor is the sole trustee or co-trustee only with one or more of his clerks or servants; 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 any trust of which he is such sole trustee or co-trustee as aforesaid is in jeopardy while in the control or possession of such solicitor or his firm,

then the provisions of Schedule 1 to the principal Act, other than paragraph 7 thereof, shall apply in relation to that solicitor:

Provided that for the purposes of the proviso to paragraph 6 of such Schedule the Society may take copies of, or extracts from, documents which relate to any matter referred to in paragraph (i) of this subsection or to any sum of money referred to in paragraph (ii) of this subsection or to that matter or sum of money, as the case may be, and to other matters in the solicitor's practice.

(2) In this section the expressions "*trust*" and "*trustee*" have the same meanings as in section 29 of the principal Act.

13.— Control of deceased solicitor's practice in certain circumstances.

(1) Where—

(a) the Council have reasonable cause to believe that the personal representatives of a deceased solicitor who immediately before his death was practising as a solicitor in his own name, or as a sole solicitor under a firm name, 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 the sole trustee or co-trustee only with one or more of his clerks or servants; or

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

the provisions of the said Schedule 1, other than paragraph 7 thereof, shall apply in relation to such personal representatives and shall continue to apply to the personal representatives of the solicitor last mentioned as they apply or applied, as the case may be, in relation to the solicitor referred to in those provisions and as if the words "the personal representatives" were, with the necessary adaptations, substituted for the words "the solicitor" wherever these words occur in those provisions.

(2) In this section, the expressions "*trust*" and "*trustee*" have the same meanings as in section 29 of the principal Act.

14. On death of solicitor practising on his own account Society to deal with banking accounts of practice.

On the death of a solicitor who immediately before his death was practising as a solicitor in his own name or as a sole solicitor in a firm name the right to operate on or otherwise deal with any banking account in the name of the solicitor or his firm, being an account in the title of which the word "client" appears, shall, notwithstanding anything in the principal Act or otherwise to the contrary, vest in the Society to the exclusion of any personal representatives of such solicitor and shall be exercisable as from the death of the solicitor.

SCHEDULE 1 PROPERTY IN THE CONTROL OR POSSESSION OF CERTAIN SOLICITORS AND OTHER PERSONS

(Solicitors Act 1957 Section 31.)

31.— Power of Council to deal with property of certain solicitors.

(1) If the Council have reasonable cause to believe that solicitor, or a clerk or servant of a solicitor, has been guilty of dishonesty in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, the provisions of the First Schedule to this Act, except Paragraph 7 thereof, and, if the Council are satisfied that the solicitor, clerk or servant has been guilty as aforesaid, the said paragraph 7, shall apply in relation to that solicitor.

(2) 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 twenty-one days 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 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 trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; 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 the said First Schedule shall apply in relation to him.

(3) In the last foregoing subsection, the expression "*the material date*" means whichever is the latest of the following dates, that is to say—

(a) the date when the order of the disciplinary committee or of the court 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.

(4) In this section and in the said First Schedule, the expressions "*trust*" and "*trustee*" have the same meanings as in section twenty-nine of this Act.

Para 1.

The Society may require the production or delivery to any person appointed by the Society at a time and place to be fixed by the Society, and may take possession, of all deeds, wills, documents constituting or evidencing the title to any property, papers, books of account, records, vouchers and other documents in the possession or control of the solicitor or his firm, or relating to any trust of which he is a sole trustee or is co-trustee only with one or more of his partners, clerks or servants.

Para 2.

If any person having possession or control of any such documents fails to comply forthwith with any such requirement—

(a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding fifty pounds; and

(b) the High Court or a judge thereof may, on the application of the Society, order that person to comply with the requirement within such time as may be specified in the order, and may at the same time further order that on that person's failure to

comply with such requirement one or more officers of the Society, or one or more persons appointed by the Society for the purpose, may forthwith enter upon any premises (using such force as is reasonably necessary for the purpose) to search for, and take possession of, the documents referred to in the foregoing paragraph.

Para 3.

Upon taking possession of any such documents, the Society shall serve upon the solicitor and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under the last foregoing paragraph, a notice giving particulars and the date of taking possession thereof.

Para 4.

Any requirement or notice under this Schedule shall be made in writing under the hand of such person as may be appointed by the Society for the purpose and may be served on any person either by personal service or by being forwarded by registered letter, or by the recorded delivery service, addressed to his last known place of business or residence.

Para 5.

Within eight days after the service of a notice under paragraph 3 of this Schedule, or within a further six days thereafter, the solicitor or other person upon whom the notice was served may apply to a judge of the High Court in chambers for an order directing the Society to return those documents to the person from whom they were received, or from whose premises they were taken, as the case may be, by the Society, or to such other person as the applicant may require; and on the hearing of any such application the judge may make such order with respect to the matter as he may think fit.

Para 6.

If no application is made under the last foregoing paragraph, or if the judge to whom any such application is made directs that the documents shall remain in the custody or control of the Society, the Society may make inquiries to ascertain the person to whom those documents belong and may deal with those documents in accordance with the directions of that person:

Provided that, before dealing with such documents, the Society may take copies of, or extracts from, any such documents.

Para 7.

The High Court or a judge thereof may, on the application of the Society, order that no payment shall be made without the leave of the High Court or a judge thereof by any banker named in the order out of any banking account in the name of the solicitor or his firm.

Para 8.—

(1) The High Court or a judge thereof, on the application of the Society, may from time to time order that for such time not exceeding eighteen months as the Court or judge, as the case may be, thinks fit, postal packets (as defined by section 87(1) of the Post Office Act 1953) addressed to the solicitor or his firm at any place or places mentioned in the order for redirection shall be redirected, sent or delivered by the Postmaster General or the officers acting under him to a person appointed under paragraph 1 of this Schedule or otherwise as the Court or judge, as the case may be, directs, and the same shall be done accordingly.

(2) Where such an order is made under subparagraph (1) of this paragraph, the Society shall pay to the Postmaster General the like charges (if any) as would have been charged and payable—

(a) in respect of an application or instructions by the addressee, in the case of a permanent change of his place of business, for the redirection or delivery of postal packets to which the order relates to him at the address of the person to whom they are to be redirected, sent or delivered under the order, during the time specified in the order; and

(b) in respect of the redirection or re-transmission of any individual postal packet in accordance with the order, if the packet had been redirected or re-transmitted in accordance with such application or instructions as aforesaid.

Para 9.

In any case where the Society has taken possession of documents under paragraph 1 of this Schedule, and has not been required to return them by virtue of paragraph 5 thereof, the following paragraphs shall apply, but without prejudice to the application of paragraph 17 thereof so far as it affects any of the preceding paragraphs thereof.

Para 10.

The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his or his firm's clients or subject to any trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants, and for that purpose the Society shall serve on the solicitor or his firm, and, except where the provisions of section 14 of the Solicitors Act 1965 apply, on any banker and on any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13 of this Schedule.

Para 11.

Within fourteen days of the service of a notice under the last foregoing paragraph the solicitor or his firm, or the banker or other person upon whom the notice was served, may apply to a judge of the High Court in chambers for an order directing the Society to withdraw the notice, and on the hearing of any such application the judge may make such order with respect to the matter as he may think fit.

Para 12.

Subject to the service of any notice under paragraph 10 of this Schedule, and to any application that may be made under the last foregoing paragraph, the Society or any person in that behalf appointed by the Society may withdraw the moneys, or from time to time any part of the moneys, in any banking account in the name of the solicitor or his firm, and any moneys in the office of the solicitor or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Society or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm might have operated on, or otherwise dealt with, the said banking account:

Provided that a banker with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.

Para 13.—

(1) Subject to the two last foregoing paragraphs, the Society may serve a notice on the solicitor, or his firm, or banker or other person upon whom a notice has been served under paragraph 10 of this Schedule, directing that, immediately after the expiration of eight days from the service of the first-mentioned notice, such moneys as are referred to in that notice be transferred in accordance with the directions of the Society:

Provided that—

(a) no such directions shall be given by the Society except with the approval of the person to whom the said moneys belong, being in the case of a trust the trustee, and, where the solicitor is the sole trustee of a trust or a co-trustee thereof only with one or more of his partners, clerks or servants, the person beneficially entitled to such moneys; and

(b) the person upon whom such first-mentioned notice has been served as aforesaid shall be under no obligation to ascertain whether such approval has been obtained.

(2) In any case where the Society is unable to ascertain the person to whom the said moneys belong or where the Society otherwise thinks it expedient so to do, the Society may apply to the High Court or a judge thereof for directions as to the transfer of such moneys.

Para 14.

If any person fails to comply with the requirements of any notice given under paragraph 10 or 13 of this Schedule,

(a) he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding fifty pounds; and

(b) the High Court or a judge thereof may, on the application of the Society, order that person to comply with the requirements of the notice within such time as may be specified in the order.

Para 15.

Subject to any order for the payment of costs that may be made on an application under paragraph 2, 5, 7, 8, 11, 13(2) or 14 of this Schedule, any costs incurred by the Society for the purposes of such Schedule shall be paid by the solicitor and shall be recoverable from him as a debt owing to the Society.

Para 16.

If any claim or charge is made or any proceeding is taken against the Society or its servants or agents for any act or omission by the Society or its servants or agents done or made by it or them in good faith and in the execution or purported execution of the powers conferred or duties imposed on it or them under or by virtue of this Schedule, the Society, or its servants or agents, as the case may be, shall be reimbursed out of the Compensation Fund for all or any costs or damages which it or they may have incurred in relation to such claim, charge or proceeding, and the provisions of paragraph 1 of Schedule 2 to this Act shall have effect as if the purposes provided for in section 32 of this Act and that Schedule included the purposes of this paragraph.

Para 17.

The Society may make regulations with respect to the procedure to be followed in giving effect to the provisions of paragraphs 1, 3, 4, 6, 10, 12 and 13(1) of this Schedule and with respect to any matters incidental, ancillary or supplemental to those provisions.

4) GROUNDS

Intervention Grounds increased from two Grounds in the 1957 Act to seven Grounds in the 1965 Act..

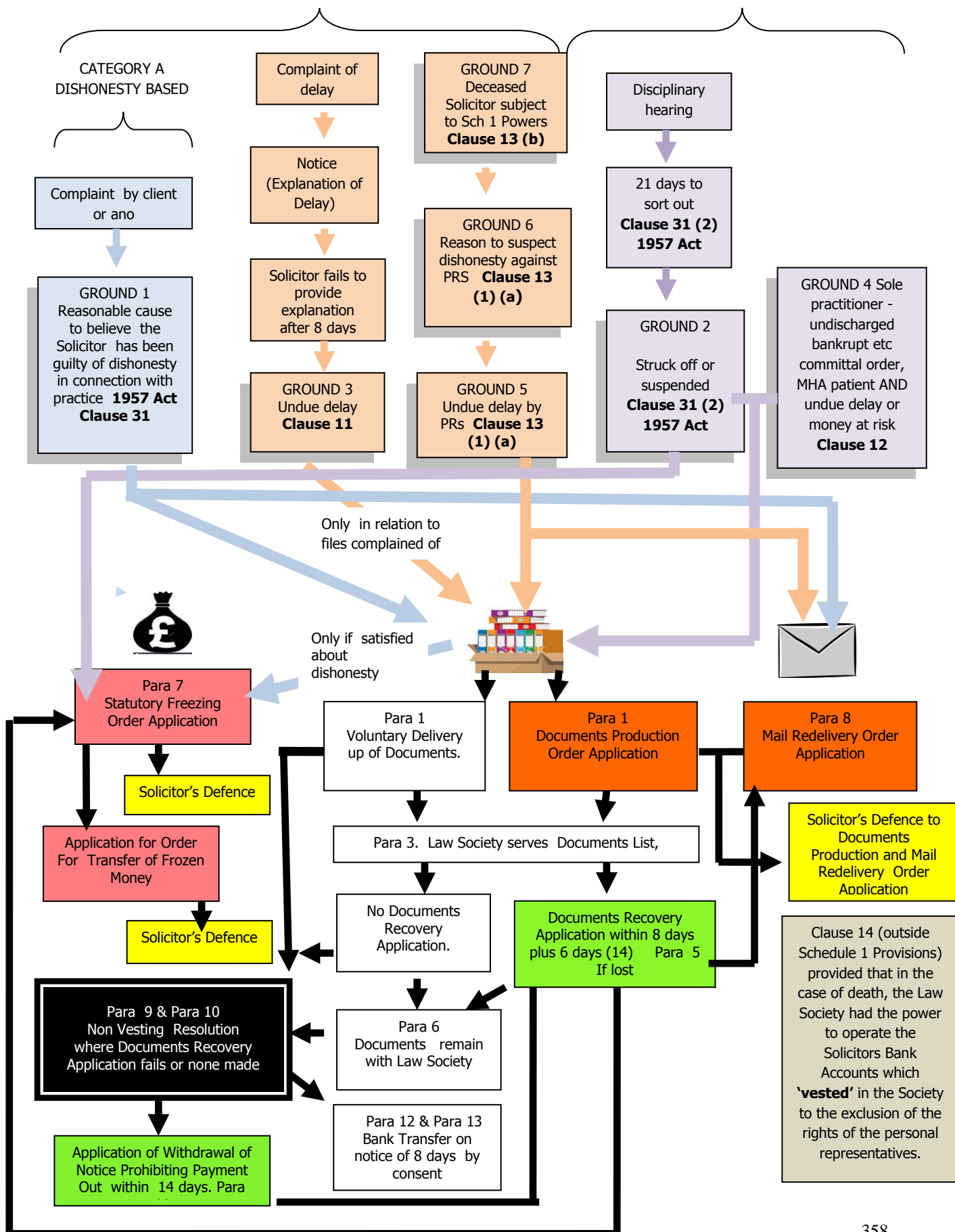
SUMMARY OF THE 1965 ACT GROUNDS.		
GROUNDS		SCHEDULE 1 PROCEDURE: QUALIFICATIONS, CONDITIONS AND EXCEPTIONS
Category A Grounds . Decision by the Law Society. Solicitor's Dishonesty		
Ground 1	Dishonesty by Solicitor or Ors 1957 Act Clause 31 (1)	Para 7 of Schedule 1 (Statutory Freezing Order) applies subject to Satisfaction of Guilt
Category B Grounds . Decision by the Law Society. Other		
Ground 3	No Explanation for Delay 1965 Act s. 11	Para 7 of Schedule 1 (Statutory Freezing Order) does not apply Para 8 of Schedule 1 (Mail Redirection Procedure) does not apply Documents Production Procedure only applies to the matter complained of Para 10 (1965 Act Non Vesting Resolution) only applies to the matter complained of Para 6 . Law Society can take copies
Ground 5	Delay by Personal Representative 1965 Act s. 13 (1) (a)	
Ground 6	Dishonesty by Personal Representative 1965 Act s. 13 (1) (a)	Para 7 of Schedule 1 (Statutory Freezing Order) does not apply
Ground 7	Deceased Sole Solicitor Subject to Sch. 1 1965 Act s.13 (1) (b)	Para 7 of Schedule 1 (Statutory Freezing Order) does not apply
Category C Grounds . Decision based on Tribunal or Court's Decision		
Ground 2	Solicitor Struck Off With No Arrangements 1957 Act s. 31 (2) (a)	
Ground 4	Bankruptcy or Mental Health Act Case AND Delay and Client Money at Risk 1965 Act s. 12	Para 7 of Schedule 1 (Statutory Freezing Order) does not apply . Para 6 . Law Society can take copies

5) DIAGRAMS AND TABLES

THE SOLICITORS ACT 1965 INTERVENTION PROCEDURE

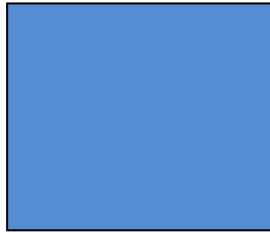
CATEGORY B. DECISION BY LAW SOCIETY

CATEGORY C. DECISION BY COURT OR TRIBUNAL



LEGEND

In the following diagrams , these marks, tints and symbols have the meaning stated:



A substantive hearing



A non substantive or a procedural hearing



Ground 1 and 2 Cases - the route to obtain the money and documents



Ground 5, 6 and 7 Cases - the route to obtain the money and documents



Ground 4 Cases - the route to obtain the money and documents



Ground 3 Cases - the route to obtain the money and documents



The Non Vesting Route Procedure



The Interim Disclosure Route which would be taken in Ground 1 and 4 Cases if the Law Society having obtained the Documents for examination applied for neither the Statutory Freezing Order nor the Documents Production Final Order



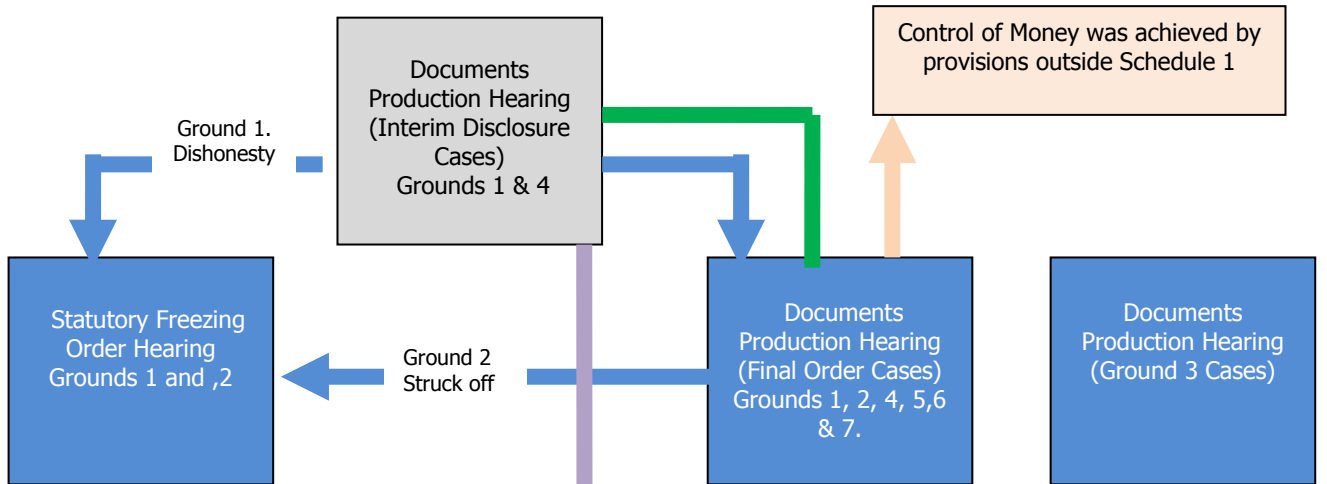
Route to obtain supplemental orders which could be used mischievously

THE 1965 ACT			
A TABLE SHOWING THE ROUTE TO OBTAIN CONTROL OF MONEY AND DOCUMENTS WITH REFERENCE TO THE GROUND			
GROUND	WERE THE DOCUMENTS REQUIRED FOR INVESTIGATION?	ROUTE TO OBTAIN CONTROL OF MONEY	ROUTE TO OBTAIN ALL DOCUMENTS
Ground 2 Solicitor struck of or suspended and had not made arrangements in relation to his Practice within 21 days	No investigation needed. The Solicitor's failure to make arrangements would be self evident.	Statutory Freezing Order	The Documents Production (Final Order) could be made to obtain all of the Solicitor's Documents
Ground 1 Reasonable cause to believe that the Solicitor had been dishonest in his practice	Investigation needed to confirm or dispel suspicion of dishonesty	Documents Production (Interim Disclosure) Order to obtain the Documents to investigate	The Documents Production (Final Order) could be made to obtain all of the Solicitor's Documents
		On conclusion of the investigation the Statutory Freezing Order Subject to satisfying the Satisfaction Test	
Ground 4 Bankruptcy. Mental illness AND undue delay and money at risk	Investigation needed to show that that was undue delay and money was at risk	A Statutory Freezing Order could not be made . The rationale may have been that the Trustee in Bankruptcy or Mental Health Receiver took control.	Documents Production (Interim Disclosure) Order to obtain the Documents to investigate if necessary
		The Non Vesting Resolution Procedure would be used to obtain control over the Solicitor's Bank Accounts	On conclusion of investigation the Documents Production (Final Order)
Ground 5 Reasonable cause to believe undue delay by PR	No investigation needed. Reasonable cause was sufficient and that could have been achieved by the Solicitor's failure to provide an adequate response .	A Statutory Freezing Order could not be made presumably because under s 14 the account vested in the Law Society in priority to PRs The Non Vesting Resolution Procedure would be used to obtain control over the Solicitor's Bank Accounts	The Documents Production (Final Order) could be made to obtain all of the Solicitor's Documents

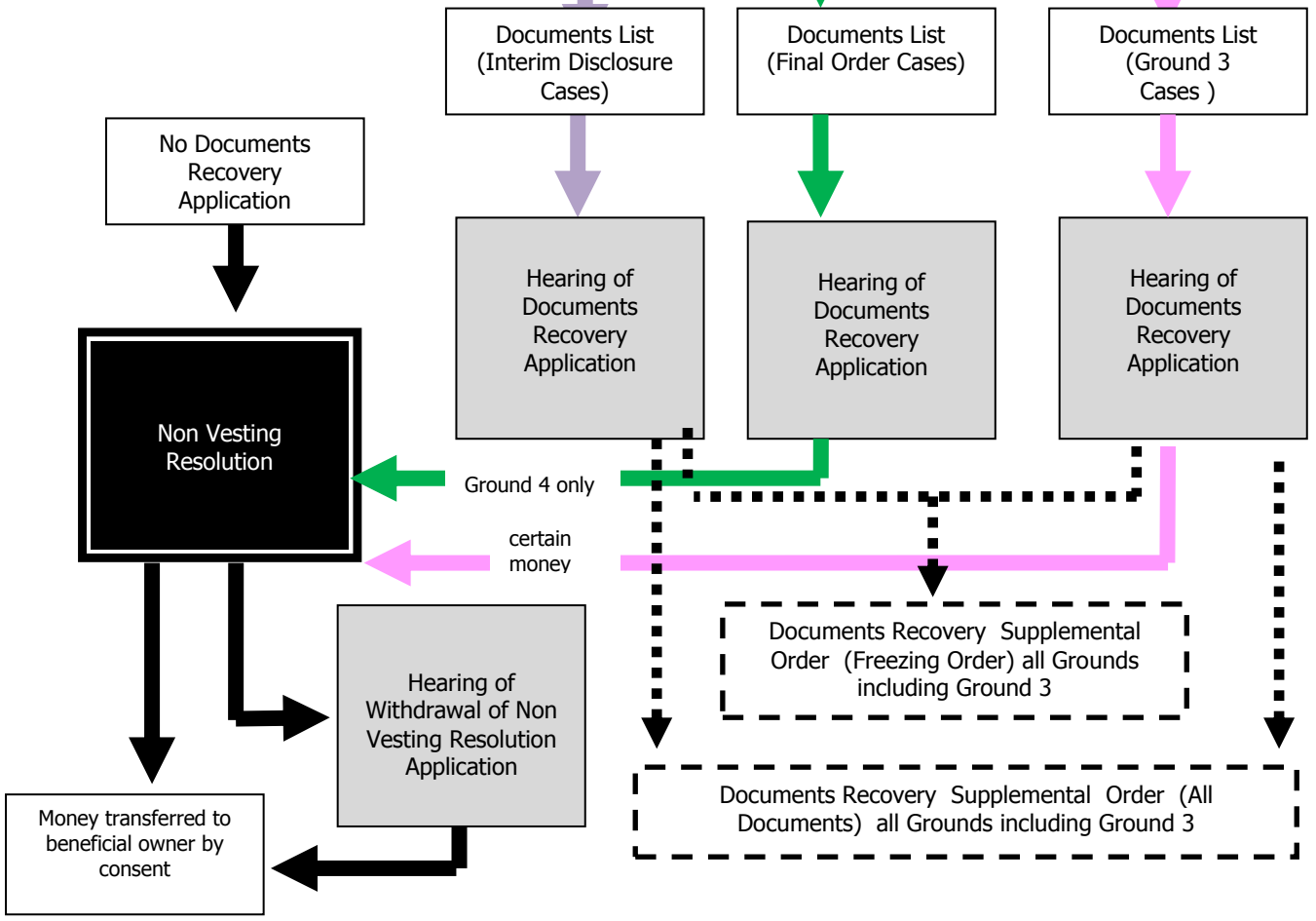
Ground 6 Reasonable cause to believe dishonesty PR	No investigation needed. Reasonable cause was sufficient and that could have been achieved by the Solicitor's failure to provide an adequate response .	A Statutory Freezing Order could not be made f presumably because under s 14 the account vested in the Law Society in priority to PRs The Non Vesting Resolution Procedure would be used to obtain control over the Solicitor's Bank Accounts	The Documents Production (Final Order) could be made to obtain all of the Solicitor's Documents
Ground 7 Schedule 1 Provisions applied to deceased solicitor	Investigation may or may not have been needed	A Statutory Freezing Order could not be made presumably because under s 14 the account vested in the Law Society in priority to PRs The Non Vesting Resolution Procedure would be used to obtain control over the Solicitor's Bank Accounts	The Documents Production (Final Order) could be made to obtain all of the Solicitor's Documents
Ground 3 Failure by Solicitor to provide explanation following allegation of undue delay	No investigation needed . The Solicitor's failure was sufficient to prove the Ground.	A Statutory Freezing Order could not be made in this case presumably because it was not thought sufficiently serious The Non Vesting Resolution Procedure applied ONLY in relation to the monies which were the subject of the complaint	The Documents Production (Ground 3 Case) in relation ONLY to the documents relating to the complaint .

HOW THE 1965 ACT SCHEDULE 1 PROVISION SHOULD HAVE WORKED

SUBSTANTIVE PROCEEDINGS

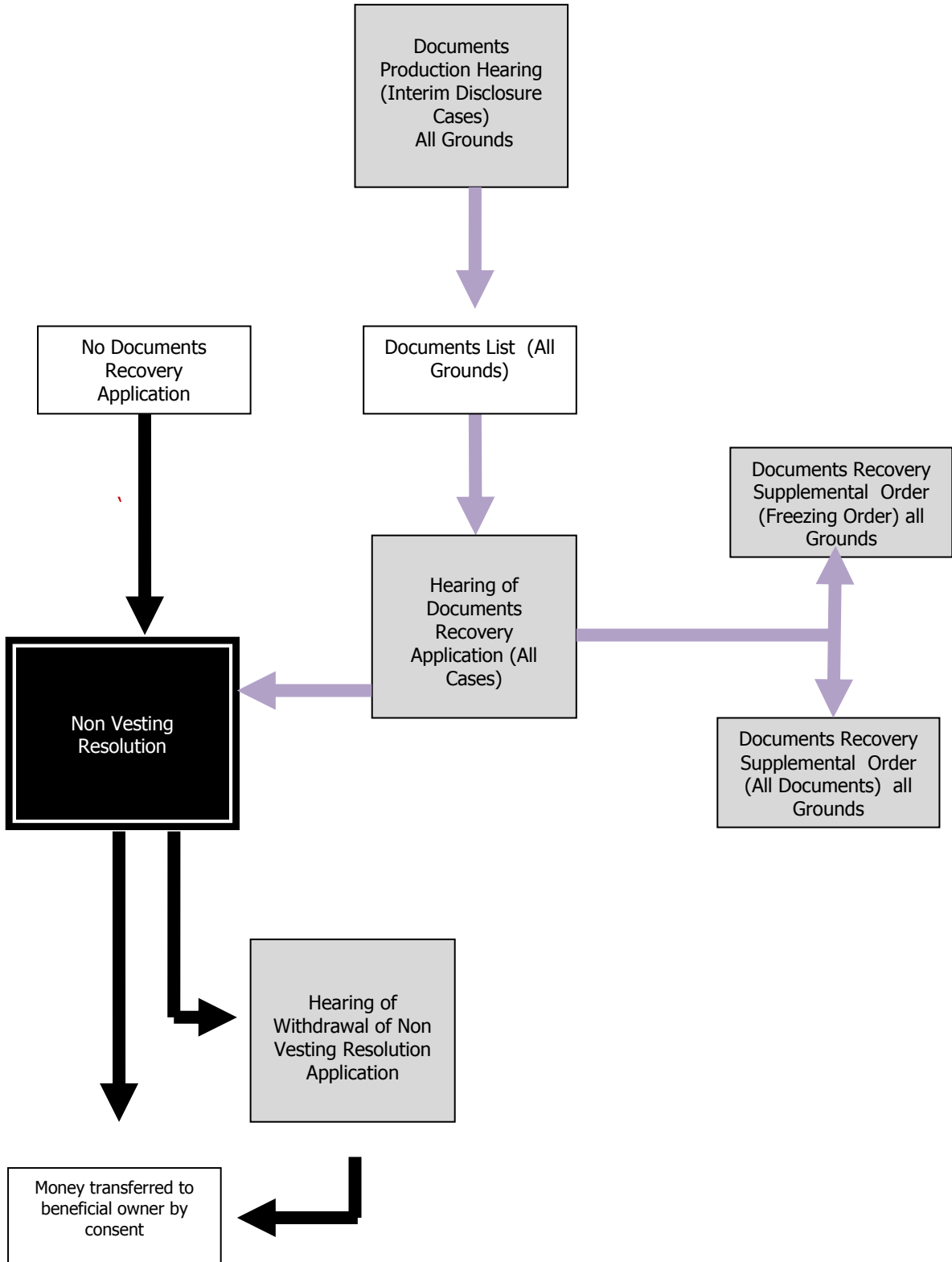


NON SUBSTANTIVE PROCEEDINGS



HOW THE 1965 ACT SCHEDULE 1 PROVISION COULD BE MANIPULATED

NON SUBSTANTIVE PROCEEDINGS



6) HOW THE 1965 ACT INTERVENTION PROVISIONS WORKED

a) GROUNDS

Under the 1965 Act, there were seven grounds, two grounds were dishonesty based (Grounds 1 and 6), one ground was misconduct based (Ground 2) and four grounds were not dishonesty based (Grounds 3, 5, 4 and 7)

Ground 3 (Delay) was treated differently. Under Ground 3, the Law Society was only able to take control of only those monies and those Documents to which the complaint related. The purpose of Ground 3 Interventions therefore seems to have been simply to enable an aggrieved Client to recover his money and files from a recalcitrant solicitor.

b) INTERVENTION STARTS WITH THE SUBSTANTIVE PROCEDURES

i) THE LAW SOCIETY'S APPLICATION FOR A DOCUMENT PRODUCTION ORDER

Para 9 (1) provided for Voluntary Production on penalty of a summary conviction and a small fine (the Para 9 (3) Penalty) if the Solicitor or any other person having possession of the Documents refused to deliver them up. The offence was comparable to not having TV licence, being intoxicated in public or urinating in public

Some interventions required prior investigation and, in these cases, the Law Society could apply for a Document Production (Interim Disclosure) Order. Investigation might be needed to be carried out in interventions under the following Grounds to discover whether there had been dishonesty or delay or whether Client Money was at risk:

- 1) Ground 1 (Dishonesty by Solicitor or Ors)
- 2) Ground 3 (No Explanation for Delay)
- 3) Ground 4 (Bankruptcy or Mental Health Act Case AND Delay and Client Money at Risk)
- 4) Ground 5 (Delay by Personal Representative)
- 5) Ground 6 (Dishonesty by Personal Representative)

An investigation might also be needed where the Law Society sought to apply for the Statutory Freezing Order to enable it to meet the Satisfaction of Guilt Requirement .

In cases in which the Law Society could prove the Ground without investigating, or in Ground 2 Cases (Solicitor Struck Off With No Arrangements) where the fact was sufficient, the Law Society could proceed straight to the Document Production (Final) Order Application. The Table at **B3(5)(d)** shows the likely route to obtain Documents in relation to each Ground.

ii) THE LAW SOCIETY'S APPLICATION FOR A STATUTORY FREEZING ORDER

Grounds 1 and 2 were the only grounds under which a Statutory Freezing Order could be made.

Section 11 of the 1965 Act provided that Para 7 did not apply in Ground 3 Cases

11.— Solicitors guilty of undue delay in certain matters.

(1) Where—

(a) a complaint is made to the Society 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 or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; and

(b) the Society has by notice in writing invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor has, within a period of not less than eight days specified in the said notice, 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 to the principal Act, other than paragraphs 7 and 8 thereof, shall apply in relation to that solicitor, but as regards the documents specified in paragraph 1, and the sums of money specified in paragraph 10, of that Schedule, only in so far as they relate to the matter complained of.....

Section 12 provided that Para 7 did not apply in Ground 4 Cases

12.— Control of clients' documents and money in the control or possession of certain solicitors.

(1) Where a solicitor practises in his own name or as a sole solicitor under a firm name and—

(a) is an undischarged bankrupt or a receiving order in bankruptcy is in force against him; or

(b) has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or

(c) has had an order of committal or an order for the issue of a writ of attachment made against him; or

(d) is a patient as defined by section 101 of the Mental Health Act 1959 or a person as to whom powers are exercisable and have been exercised under section 104 of that Act,

and the Council have reasonable cause to believe that in consequence of the act or default of the solicitor or of any clerk or servant of his—

(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 trust of which that solicitor is the sole trustee or co-trustee only with one or more of his clerks or servants; 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 any trust of which he is such sole trustee or co-trustee as aforesaid is in jeopardy while in the control or possession of such solicitor or his firm,

then the provisions of Schedule 1 to the principal Act, other than paragraph 7 thereof, shall apply in relation to that solicitor:.....

Section 13 provided that Para 7 did not apply in Ground 5, 6 and 7 Cases

13.— Control of deceased solicitor’s practice in certain circumstances.

(1) Where—

(a) the Council have reasonable cause to believe that the personal representatives of a deceased solicitor who immediately before his death was practising as a solicitor in his own name, or as a sole solicitor under a firm name, 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 the sole trustee or co-trustee only with one or more of his clerks or servants; or

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

the provisions of the said Schedule 1, **other than paragraph 7 thereof**, shall apply in relation to such personal representatives ...

iv) TRANSFER OF MONEY ORDER

The Solicitor’s Money could be transferred on the authority of a Court Order made in any of Substantive Procedures.

v) THE LAW SOCIETY’S APPLICATION FOR A MAIL REDELIVERY ORDER

Para 10 (1) provided for the Law Society to make the Mail Redelivery Order Application :

Mail

Para 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 court thinks fit postal packets (as defined by section 87(1) of the [1953 c. 36.] Post Office Act 1953) addressed to the solicitor 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 there mentioned; 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 Post Office the like charges (if any), as would have been payable for the re-direction of the packets by virtue of any scheme made under section 28 of the [1969 c. 48.] Post Office Act 1969, if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the Post Office to redirect them to him at the address mentioned in the order.

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

b) INTERVENTION ENDS WITH THE ADMINISTRATIVE PROCEDURES

i) THE LAW SOCIETY'S DOCUMENTS LIST

If the Solicitor lost the Documents Production Order Application, the Intervention moved on to administrative procedures which were needed to conclude it

The Law Society was required to serve the Solicitor with the Documents List providing particulars of the documents which had been delivered up. Parliament states the Documents List should be served 'eventually'

Comment 2 02 July 1965 Page316

Mr Bell

I suppose that on a strict interpretation of that wording one might say that at that moment they must leave the notice saying what documents they have taken. That plainly cannot be the intention of the wording. It would never happen in that way. In practice they would take a large number of documents which they thought were clients' documents back to the Law Society's office, mull through- them and list them and eventually serve a notice on the solicitor showing what they had taken.

A large practice might have many thousands or tens of thousands of documents, in which case it might take many months , perhaps over a year, to complete and serve the Documents List .

The fact that no time limit was specified for the service of the Documents List confirms that the procedures which followed were merely administrative and procedural. There was no urgency because the public was no longer at risk from the Solicitor: the Solicitor's Banked Money was been frozen, the Solicitor's Documents had been delivered up and his Mail had been redirected.

ii) RECOVERY OF DOCUMENTS PROCEDURE

Within 14 days of service of the Documents List, the Solicitor and any other person from whom the Documents were taken (the Para 9 (7) Third Parties) were able to make the Recovery of Documents Application.

The purpose of the Documents Recovery Procedure was to enable mistakes to be corrected and other administrative irregularities to be resolved.

Comment 10 02 July 1965 Page 340

Mr. S. C. Silkin

Suppose that there are documents which were taken by the Society and which are not mentioned in the notice. Under the appeal procedure of paragraph 5, is the solicitor entitled to ask for their return? That is really the point. Had my first Amendment been accepted and had it meant all that I hoped it meant, this Amendment would not have been important; but because the earlier Amendment was not accepted, this one is necessary. A solicitor might say that 16 documents were listed in the notice but that another four documents which were not named in the notice were also taken and that he wants the return of all 20. Is that within the jurisdiction of the court? My Amendment would make it clear that it was. I believe that the present wording leaves it obscure and doubtful

The Recovery of Documents Hearings marked the end of the Solicitor's substantive and administrative challenge to the Intervention.

If the hearing was lost, the case proceeded to the Non Vesting Resolution Procedure to deal with the remaining Money issues.

iii) NON VESTING RESOLUTION PROCEDURE

1) PARA 9 – PARA 13

A entirely new procedure, the Non Vesting Resolution Procedure, was introduced in the 1965 Act.

Para 9.

In any case where the Society has taken possession of documents under paragraph 1 of this Schedule, and has not been required to return them by virtue of paragraph 5 thereof, the following paragraphs shall apply, but without prejudice to the application of paragraph 17 thereof so far as it affects any of the preceding paragraphs thereof.

Para 10.

The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his or his firm's clients or subject to any trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants, and for that purpose the Society shall serve on the solicitor or his firm, and, except where the provisions of section 14 of the Solicitors Act 1965 apply, on any banker and on any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13 of this Schedule.

Para 11.

Within fourteen days of the service of a notice under the last foregoing paragraph the solicitor or his firm, or the banker or other person upon whom the notice was served, may apply to a judge of the High Court in chambers for an order directing the Society to withdraw the notice, and on the hearing of any such application the judge may make such order with respect to the matter as he may think fit.

Para 12.

Subject to the service of any notice under paragraph 10 of this Schedule, and to any application that may be made under the last foregoing paragraph, the Society or any person in that behalf appointed by the Society may withdraw the moneys, or from time to time any part of the moneys, in any banking account in the name of the solicitor or his firm, and any moneys in the office of the solicitor or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Society or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm might have operated on, or otherwise dealt with, the said banking account:

Provided that a banker with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.

Para 13.—

(1) Subject to the two last foregoing paragraphs, the Society may serve a notice on the solicitor, or his firm, or banker or other person upon whom a notice has been served under paragraph 10 of this Schedule, directing that, immediately after the expiration of eight days from the service of the first-mentioned notice, such moneys as are referred to in that notice be transferred in accordance with the directions of the Society:

Provided that—

(a) no such directions shall be given by the Society except with the approval of the person to whom the said moneys belong, being in the case of a trust the trustee, and, where the solicitor is the sole trustee of a trust or a co-trustee thereof only with one or more of his partners, clerks or servants, the person beneficially entitled to such moneys; and

(b) the person upon whom such first-mentioned notice has been served as aforesaid shall be under no obligation to ascertain whether such approval has been obtained.

(2) In any case where the Society is unable to ascertain the person to whom the said moneys belong or where the Society otherwise thinks it expedient so to do, the Society may apply to the High Court or a judge thereof for directions as to the transfer of such moneys.

2) THE APPLICATION OF THE NON VESTING RESOLUTION PROCEDURE

The Non Vesting Resolution Procedure was the method by which Law Society could obtain control of Money in three types of cases

- 1) Where Third Parties had an interest in All Non Vesting Resolution Money which conflicted the Law Society's rights, namely in Grounds 5 and Ground 6 (Personal Representative) and in Ground 4 (the Trustee in Bankruptcy or Official Receiver) which is presumably why a Statutory Freezing Order could not be made. (Money Subject to Third Party Interests Cases)
- 2) Vesting Resolution Money held with Non Vesting Resolution Money which applied in Ground 3 (No Explanation for Delay) and in all other Grounds in which the Money cannot be frozen, e.g. where money is held to order by another solicitor in a conveyancing case or deposited in court as a Payment in (Mixed Money Cases)
- 3) Money Subject to Third Party Interests Cases and Mixed Money Cases discovered after the substantive determination of the Intervention which applied in all Grounds ('**Later Discovered Money**')

AVAILABILITY OF FREEZING ORDER AND OR VESTING RESOLUTION UNDER 1965 AND 1974 ACTS

1965 ACT	STATUTORY FREEZING ORDER AVAILABLE?	1974 ACT	STATUTORY FREEZING ORDER AVAILABLE?	CAN ACCOUNT BE FROZEN UNDER 1974 VESTING RESOLUTION ?
Ground 1 (Dishonesty by Solicitor or Ors)	Yes, subject to Satisfaction of Dishonesty	Ground 1 (Dishonesty by Solicitor or Ors)	Yes	Yes
Ground 6 (Dishonest Personal Representative)	No	Ground 1 PR's Dishonesty(Dishonest Personal Representative)	Yes	Yes
Ground 5 PRs (Delay by Personal Representative.)	No	Ground 2 (Delay by Personal Representative. Death of Sole Solicitor),	Yes	Yes
		Ground 3 (Breach of Account Rules),	Yes	Yes
Ground 4 (Bankruptcy or Mental Health Act Case AND Delay and Client Money at Risk)	No	Ground 4 (Bankruptcy)	Yes	Yes
		Ground 5 (Prison)	Yes	Yes
Ground 4 (Mental Health Act Cases)	No	Ground 6 Mental Health Act (Mental Health Act Cases)	Yes	Yes
Ground 2 (Solicitor Struck Off/Suspended) ,	Yes	Ground 7 (Solicitor Struck Off/Suspended) ,	Yes	Yes
Ground 3 (No Explanation for Delay)	No	Ground 8 (No Explanation for Delay)	No	Yes, but only for Ground 8 Relevant Money
		Ground 9 No Delay by Personal Representative . Death of Sole Solicitor. Fraudulent Ground linked with Ground 2	Yes	Yes, Client Account only

3) ISSUED AFTER CONCLUSION OF DOCUMENTS PRODUCTION PROCEDURE

As the Non Vesting Resolution Procedure was concerned with the interests of the Para 10 Third Parties, and not the substantive rights of the Solicitor, it is obvious why the Law Society was entitled to make the Non Vesting Resolution after the Solicitor had lost his substantive challenge and the Recovery of Documents Application had been determined.

4) APPLICATION FOR WITHDRAWAL OF THE NOTICE PROHIBITING PAYMENT OUT

The parties entitled to make the Para 11 Withdrawal Application were the Solicitor and the Para 10 Third Parties who had been served with :

- 1) The Notice Prohibiting Payment Out
- 2) A certified copy of the Non Vesting Resolution

They would be or more of the parties listed above.

(Assuming that the Vesting Resolution Procedure applies to all Grounds; not just where the Statutory Freezing Order Procedure does not apply)

- 1) The Solicitor;
- 2) The Firm;
- 3) Each of the Firm's Banks;
- 4) A financial institution holding stocks, shares and securities as controlled trust money;
- 5) The Trustee in Bankruptcy (Ground 4);
- 6) The Official Receiver (Ground 4) ;
- 7) A Personal Representative (Ground 5)
- 8) Another firm of Solicitors with whom the intervened upon Solicitor might have deposited Money to avoid the intervention or in anticipation of working under that firm's aegis;
- 9) A firm holding the Solicitor's Practice Money on a hold to order undertaking, say in a conveyancing transaction
- 10) A firm holding the Solicitor's Practice Money pending completion of a settlement
- 11) Other persons having control or possession of Practice Money.

Plainly, the Para 11 Withdrawal Procedure contemplated the making of multiple applications.

4) TRANSFER OF MONEY

a) STAGE 1 PARA 13 (1) (A) . OBTAINING CONSENT FROM BENEFICIAL OWNER

Para 13.—

(1) Subject to the two last foregoing paragraphs, the Society may serve a notice on the solicitor, or his firm, or banker or other person upon whom a notice has been served under paragraph 10 of this Schedule, directing that, immediately after the expiration of eight days from the service of the first-mentioned notice, such moneys as are referred to in that notice be transferred in accordance with the directions of the Society:

Provided that—

- (a) no such directions shall be given by the Society except with the approval of the person to whom the said moneys belong, being in the case of a trust the trustee, and, where the solicitor is the sole trustee of a trust or a co-trustee thereof only with one or more of his partners, clerks or servants, the person beneficially entitled to such moneys;
- (b) the person upon whom such first-mentioned notice has been served as aforesaid shall be under no obligation to ascertain whether such approval has been obtained.

The Para 11 Non Vesting Resolution Withdrawal Procedure was following by a multi stage procedure leading to the transfer of the Solicitor's Banked Money.

To transfer money from the Solicitor's Bank Accounts, the Law Society had to first obtain the consent of the owner and then give 8 days notice to the Bank of the proposed transfer:

The Solicitor's Banked Money remained with the Account Holder until the beneficial owner (often the Client) requested a transfer of his money Para 13 (1) (a) .

b) STAGE 2 PARA 13 (1) EIGHT DAY NOTICE OF TRANSFER

If a request was made , the Law Society served the Para 13 Notice , a notice directing the Account Holder to transfer the money within 8 days.

The procedure was subject to the Para 10 Notice having been given and the Non Vesting Resolution Withdrawal Application.

The Solicitor would have been able to challenge the application under the prevailing Rules of Court.

c) STAGE 3 PARA 12. TRANSFER OF MONEY

Para 12.

Subject to the service of any notice under paragraph 10 of this Schedule, and to any application that may be made under the last foregoing paragraph, the Society or any person in that behalf appointed by the Society may withdraw the moneys, or from

time to time any part of the moneys, in any banking account in the name of the solicitor or his firm, and any moneys in the office of the solicitor or his firm due to or held on behalf of his clients, and pay them into a special account or special accounts in the name of the Society or such person appointed as aforesaid and may operate on, and otherwise deal with, such special account or accounts as the solicitor or his firm might have operated on, or otherwise dealt with, the said banking account:

Provided that a banker with whom such special account or accounts is or are kept shall be under no obligation to ascertain whether that account or those accounts is or are being so operated on or otherwise dealt with.

After 8 days and subject to any objection. the Money was transferred

If the Solicitor's Banked Money could be transferred only with the consent of the beneficial owner or by Court order where the beneficial owner could not be traced that meant that if a Client refused to transfer his money elsewhere, regardless of any findings made against the Solicitor, his money would remain in the Solicitor's Bank Accounts, albeit under the control of the Law Society

d) COURT ORDER AUTHORISING TRANSFER MONEY WHERE OWNERSHIP NOT KNOWN

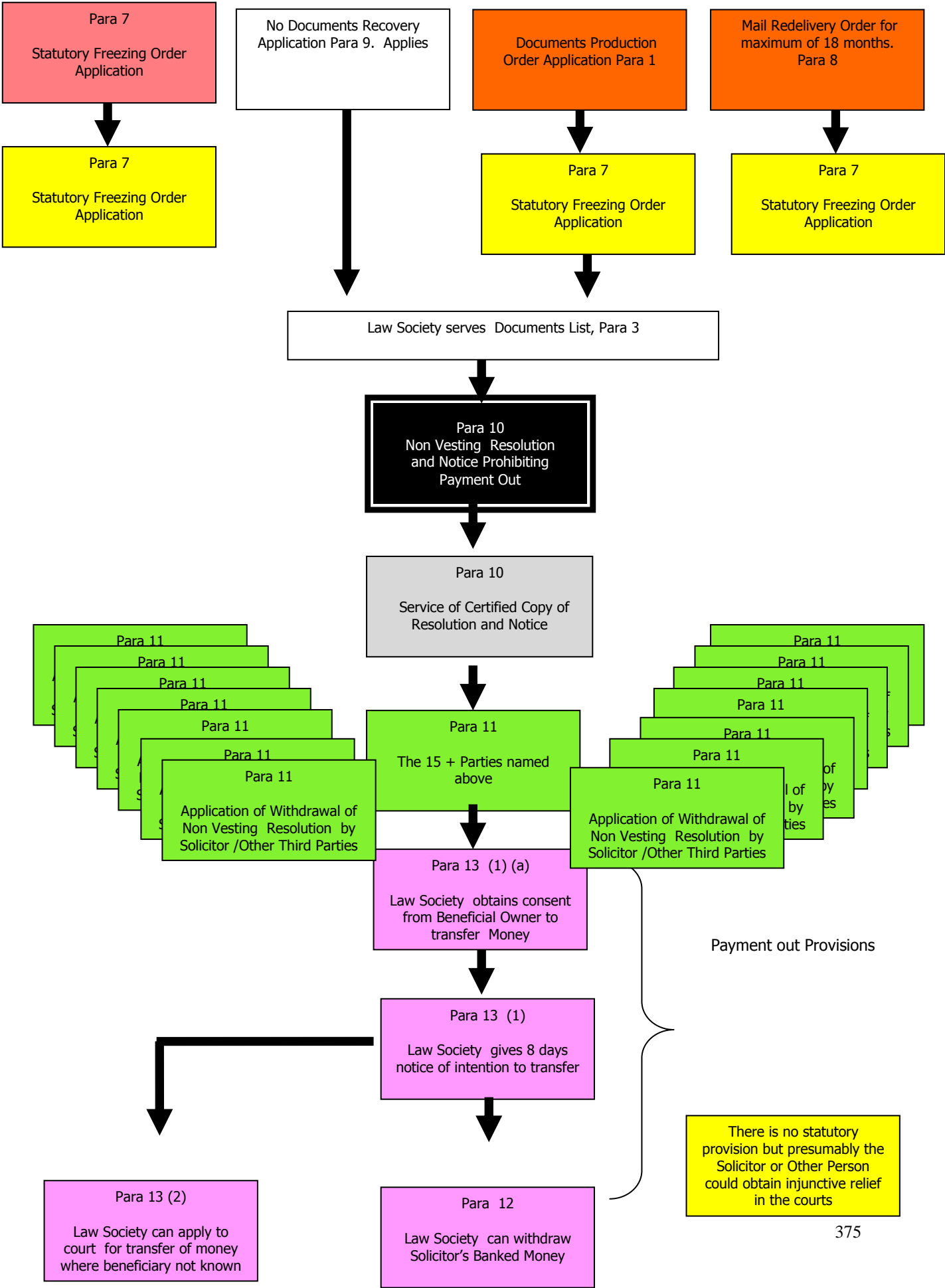
Para 13

(2) In any case where the Society is unable to ascertain the person to whom the said moneys belong or where the Society otherwise thinks it expedient so to do, the Society may apply to the High Court or a judge thereof for directions as to the transfer of such moneys.

Para 13 (2) provided that where the beneficial owner was unknown, the Law Society could make an application to court for directions as to the transfer of the money

Presumably, in this case also, the Solicitor would be able to challenge the application.

1965 ACT NON VESTING RESOLUTION PROCEDURE



7) CONFUSION, FLAWS, INCONSISTENCIES AND MISCHIEFS IN THE 1965 ACT INTERVENTION PROCEDURE

a) HOW THE PROVISIONS COULD BE MANIPULATED TO DEPRIVE THE SOLICITOR OF HIS RIGHT TO ANY SUBSTANTIVE TRIAL

By manipulating the Schedule 1 Provisions, the Law Society could conduct the entire intervention process on non substantive or interim hearings or paper hearings, thereby circumventing all substantive hearings.

Where the Grounds required prior investigation, the Law Society would start with the Documents Production (Interim Disclosure) Procedure and then proceed to the substantive hearings to obtain the Final Orders. In Grounds which did not require investigation, the Law Society could proceed straight to the Document Production Final Order Applications.

However, under the wording of the provisions there was nothing to prevent the Law Society from following the Documents Production (Interim Disclosure) Procedure whether or not there was a genuine need to investigate in order to carry out a fishing exercise.

The Law Society could obtain the Documents at an interim hearing without having to disclose the reasons for the intervention. It would be unlikely that the Court would refuse production if the claimed purpose was do nothing more than to investigate.

The Law Society could then delay making the application for the Document Production Final Order, a substantive application in which the Law Society would have to particularise its allegations against the Solicitor. That would give the Solicitor two choices:

1. The Solicitor could do nothing, effectively acquiescing in final Document Production, In such a case: :
 - 1) the Law Society would be able to obtain control of the Solicitor's Bank Accounts not via a Substantive Hearing, but via the Non Vesting Resolution Procedure or by a Supplemental Order (Money) and
 - 2) the Law Society would be able to obtain possession of all Documents by a Supplemental Order (Documents) which was also Non Substantive
2. Alternatively, the Solicitor could make the Documents Recovery Application. The hearing would not be a Substantive Hearing because the Documents Recovery Procedure was never intended to be substantive procedure . The Solicitor would have no understanding of the allegations against him and would not be able to prepare in a mere 8/14 days. If he lost, which he was bound to do, the Law Society would be able to obtain control of the Solicitor's Bank Accounts and possession of all Documents in the same way .

The advantage to the Law Society was that it could intervene without having to disclose its case in any Substantive Procedure.

b) WHY DID PARLIAMENT CONFINE THE DEBATE TO SCHEDULE 1 PARA. 3 - SERVICE OF THE DOCUMENTS LIST?

The amendments to Schedule 1 in the 1965 Solicitors Amendments Bill were significant:

1. First, an entirely new procedure, the 1965 Act Non Vesting Resolution Procedure, had been introduced.
2. Second, the number of Grounds had increased from two to seven.
3. Third, different procedures applied to different Grounds

These were only some of the changes.

Para 3 was concerned with the service of the Documents List, which took place after the conclusion of the Substantive Hearings. It read

Para 3.

Upon taking possession of any such documents, the Society shall serve upon the solicitor and every person from whom those documents were received, or from whose premises they were taken by virtue of an order made under the last foregoing paragraph, a notice giving particulars and the date of taking possession thereof.

In the extract from the Debate appearing below, Mr Bell refers to the other amendments to Schedule 1 but says it is not in order for him to comment on any of them at that point. They are not commented upon at any point in the debate or even mentioned.

Para 3 was not new. It was identical to the procedure in the 1941 and 1957 Act. So why did Parliament consider it again and ignore the amendments to the 1957 Act?

02 Jul 1965 Lords Chamber. Amendments debated.

As amended (in the Standing Committee), considered.

Mr. Bell

This is an Amendment to the third paragraph of the First Schedule, which is a substitute for the First Schedule of the principal Act, the Solicitors Act, 1957. The Schedule makes certain Amendments, on which it would not be in order for me to comment at this point, in the Schedule in the principal Act.

The two Amendments relate to paragraph 3, which is not really a change in the principal Act. My Amendments should therefore be regarded as an attempt to improve the wording and operation of paragraph 3, not necessarily in relation to the fact that it is now a paragraph in a new Schedule, but possibly doing something that might have been done in 1957. When one is tightening up the disciplinary procedures, the enforcement procedures, under the Solicitors Act—and that is one of the purposes of this Bill—then it becomes even more important than it was before that there should be accurate wording, and wording which is fair to the solicitor against whom these disciplinary procedures are being evoked.

c) DID PARLIAMENT UNDERSTAND THAT THE GROUNDS HAD CHANGED?

While Parliament's damning opinion about the Solicitor who is subject an Intervention would be understandable if the Grounds were concerned with dishonesty or misconduct, as they had been in the 1941 Act and the 1957 Act, such harsh comments are scarcely warranted where the Solicitor is mentally ill or bankrupt (Ground 3), has delayed in dealing with a case (Ground 3) or has died (Grounds 5, 6 and 7).

It is as though Parliament was unaware that the Grounds were still the same as in the earlier Acts.

Comment 4 02 July 1965 Page 317

Mr. Ronald Bell

Would not the hon. Member agree, however, that a solicitor who finds himself in this position—that is to say, who is being subjected to these harsh enforcement procedures—is really **not the kind of person from whom one would expect to get complaints about these points of procedure?** He would by that time be in such a vulnerable position that he would hardly be thinking of suggesting Amendments to the 1957 Act.

Sir B. Janner

That is not quite the full way of putting it. It may well be that the solicitor **who has suffered in consequence, perhaps, of his own misdeeds—or perhaps not—might not have raised the complaint.** Certainly, if he was suffering not in consequence of his misdeeds, he would have raised it. I have not the slightest doubt that during the past 20 or more years somebody would have raised the point in the council of the Law Society or during any debates or discussions relating to the matter.

Comment 5 02 July 1965 Page 327

Mr. Ronald Bell

We are here dealing with a change from the Schedule to the principal Act. The principal Act allows a period of 14 days, and it is being reduced to eight days. Whether that is wise is another matter. I have no Amendment down about it, so I am, in effect, accepting eight days as the standard period within which an appeal must be lodged, though I conceive that the period of 14 days could well be fairer. **To make it eight days is to give a harsh time limit for someone who already, presumably, is pretty deep in trouble.** Perhaps the hon. Gentleman will explain why the period is eight days in the revised Schedule instead of 14 days.

Comment 11 02 July 1965 Page 341

Mr Ronald Bell

I see that this leaves a loophole in an important procedure. It will not be the only loophole in procedures. In the course of procedure we have to balance between the reasonable rights and liberties of the individual and the enforcement of the law in the interests of other people. Somehow, I find it a little equivocal to think that, **because a solicitor has done something which is not, I suppose, a criminal offence, but which has attracted the attention of the Law Society in its protection of the interests of clients, and its rigorous procedure has been gone through,** it should also be entitled to have an order for the redirection of all post, not merely that from the place of business of the solicitor, but also his ordinary private personal letters, all of which the Society would be fully entitled to open, and, indeed, would open, to see what they were

d) A STRUCK OFF SOLICITOR HAS 21 DAYS TO SELL HIS PRACTICE, BUT A SOLICITOR WHOM THE LAW SOCIETY HAS REASONABLE CAUSE TO BELIEVE HAS BEEN DISHONEST DOES NOT HAVE THAT RIGHT

Ground 1 and Ground 2 are governed by s. 31 (1) of the 1957 Act which provides as follows :

31.— Power of Council to deal with property of certain solicitors.

(1) - If the Council have reasonable cause to believe that solicitor, or a clerk or servant of a solicitor, has been guilty of dishonesty in connection with that solicitor's practice as a solicitor or in connection with any trust of which that solicitor is a trustee, the provisions of the First Schedule to this Act, except Paragraph 7 thereof, and, if the Council are satisfied that the solicitor, clerk or servant has been guilty as aforesaid, the said paragraph 7, shall apply in relation to that solicitor.

Ground 2 was governed by s. 31 (2) :

(2) 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 twenty-one days 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 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 trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; 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 the said First Schedule shall apply in relation to him.

Ground 1 was based not on any finding against the Solicitor, but on a reasonable cause to believe that the Solicitor had been guilty of dishonesty.

Ground 2 was based on an actual finding of the Disciplinary Tribunal that the Solicitor had been guilty of professional misconduct, which might have been dishonesty based; but equally might not.

Under Ground 1, the Solicitor was visited with the Full Intervention as a consequence of which he would lose his practice.

Under Ground 2, the Solicitor was given the opportunity to dispose of his practice, and was faced with the Full Intervention only if he failed to do so within 21 days.

The difference in treatment of the Solicitor in each case is completely irrational.

e) THE GROUND 3 PROCEDURE ONLY CONCERNED 'CERTAIN MONEY AND CERTAIN DOCUMENTS'. DOES THAT MEAN THAT AN INTERVENTION WAS DIFFERENT IN EVERY CASE?

Section 11 of the 1965 Act provided as follows:

11.— Solicitors guilty of undue delay in certain matters.

(1) Where—

(a) a complaint is made to the Society 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 or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; and

(b) the Society has by notice in writing invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor has, within a period of not less than eight days specified in the said notice, 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 to the principal Act, other than paragraphs 7 and 8 thereof, shall apply in relation to that solicitor, but as regards the documents specified in paragraph 1, and the sums of money specified in paragraph 10, of that Schedule, only in so far as they relate to the matter complained of.....

In Ground 3 Cases therefore:

- 1) The Statutory Freezing Order Procedure did not apply
- 2) Where the Document Production Procedure applied, it applied only to the subject matter of the complaint
- 3) Where the 1965 Act Non Vesting Resolution Procedure applied, it applied only to the money referable to the subject matter of the complaint

These provisions indicate that in Ground 3 Cases an intervention was nothing more than a procedure whereby the Client's files and money could be retrieved from the Solicitor.

f) GROUND 3 SHOWS THAT PARLIAMENT DID NOT UNDERSTAND ANYTHING ABOUT SOLICITORS' BANKING

The 1965 Act provided

11.— Solicitors guilty of undue delay in certain matters. (Ground 3 Cases)

(1) Where—

(a) a complaint is made to the Society 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 or any matter which relates to the administration of a trust of which that solicitor is the sole trustee or co-trustee only with one or more of his partners, clerks or servants; and

(b) the Society has by notice in writing invited the solicitor to give an explanation in respect of that matter; and

(c) the solicitor has, within a period of not less than eight days specified in the said notice, 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 to the principal Act, other than paragraphs 7 and 8 thereof, shall apply in relation to that solicitor, but as regards the documents

specified in paragraph 1, and the sums of money specified in paragraph 10, of that Schedule, only in so far as they relate to the matter complained of:

Provided that for the purposes of the proviso to paragraph 6 of such Schedule the Society may take copies of, or extracts from, documents which relate to the matter complained of or to that matter and to other matters in the solicitor's practice.

(2) In this section the expressions "trust" and "trustee" have the same meanings as in section 29 of the principal Act (which relates to rules as to keeping of accounts by solicitors).

Para 10 provided that:

The Society may, on a resolution in that behalf made by the Council, take control of all sums of money due from the solicitor or his firm to, or held by him or his firm on behalf of, his or his firm's clients or subject to any trust of which he is the sole trustee or co-trustee only with one or more of his partners, clerks or servants, and for that purpose the Society shall serve on the solicitor or his firm, and, except where the provisions of section 14 of the Solicitors Act 1965 apply, on any banker and on any other person having possession or control of any such sums of money a notice, together with a certified copy of such resolution, prohibiting the payment out of such sums of money otherwise than pursuant to paragraph 12 or 13 of this Schedule.

The Solicitor will hold a General Client Account in which all Client Monies are banked. The total sum held in Client Account may represent the deposits held on behalf of hundreds or thousands of client. It is not possible for the Bank to distinguish the ownership of money in Client Account, which is recorded in Client Ledgers.

So, where a Solicitor holding £5m in Client Account on behalf 2500 Clients is subject to an Intervention under Ground 3 in which the sum concerned is £75, how could only £75 of Client Account be frozen ?

g) WHAT WOULD HAPPEN IF THE OWNER DID NOT CONSENT TO TRANSFER OF MONEY UNDER THE NON VESTING RESOLUTION PROCEDURE?

Para 13 made provision for the transfer of money in the Non Vesting Resolution Procedure:

Para 13.—

(1) Subject to the two last foregoing paragraphs, the Society may serve a notice on the solicitor, or his firm, or banker or other person upon whom a notice has been served under paragraph 10 of this Schedule, directing that, immediately after the expiration of eight days from the service of the first-mentioned notice, such moneys as are referred to in that notice be transferred in accordance with the directions of the Society:

Provided that—

(a) no such directions shall be given by the Society except with the approval of the person to whom the said moneys belong, being in the case of a trust the trustee, and, where the solicitor is the sole trustee of a trust or a co-trustee thereof only with one or more of his partners, clerks or servants, the person beneficially entitled to such moneys; and

(b) the person upon whom such first-mentioned notice has been served as aforesaid shall be under no obligation to ascertain whether such approval has been obtained.

Para 13 (a) in effect provides that the prior consent of the owner of the money was needed before the transfer could take place.

What if a Client refused to give consent, but insisted that the Solicitor should keep his money, even after the Full Intervention?

h) PARLIAMENT CONTEMPLATED THAT ON THE SOLICITOR'S DOCUMENTS RECOVERY APPLICATION ,THE COURT COULD ORDER THAT SOME DOCUMENTS BE RETURNED TO THE SOLICITOR AND SOME BE RETAINED BY THE LAW SOCIETY

Comment 10_02 July 1965 Page 340

Mr. S. C. Silkin

Suppose that there are documents which were taken by the Society and which are not mentioned in the notice. Under the appeal procedure of paragraph 5, is the solicitor entitled to ask for their return? That is really the point. Had my first Amendment been accepted and had it meant all that I hoped it meant, this Amendment would not have been important; but because the earlier Amendment was not accepted, this one is necessary. A solicitor might say that 16 documents were listed in the notice but that another four documents which were not named in the notice were also taken and that he wants the return of all 20. Is that within the jurisdiction of the court? My Amendment would make it clear that it was. I believe that the present wording leaves it obscure and doubtful