



## 2016 CHAPTER 14

### **PART 2**

#### **COMPLAINTS AGAINST BARRISTERS**

PROSPECTIVE

##### *Bar Complaints Committee*

##### **Bar Complaints Committee**

**12.—**(1) The Benchers of the Honorable Society of the Inn of Court of Northern Ireland (in this Part referred to as “the Benchers”) must, in accordance with the provisions of this Part, establish and maintain a committee to be known as the Bar Complaints Committee to deal with any complaint made by or on behalf of a complainant within section 15 in relation to professional services provided by a barrister.

(2) Schedule 2 makes further provision in relation to the Bar Complaints Committee.

##### **Jurisdiction of the Bar Complaints Committee**

**13.—**(1) A complaint which relates to an act or omission of a barrister (“the respondent”) in the course of providing professional services is within the jurisdiction of the Bar Complaints Committee if—

- (a) the complaint is not excluded from the jurisdiction of the Committee by section 14; and

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(b) the complainant is within section 15 and wishes to have the complaint dealt with by the Committee.

(2) The right of a person to make a complaint to the Bar Complaints Committee, and the jurisdiction of the Committee to investigate, consider and determine a complaint, may not be limited or excluded by any contract term.

### **Excluded complaints**

**14.—**(1) A complaint is excluded from the jurisdiction of the Bar Complaints Committee if the complainant has not first used the respondent's complaints procedures in relation to the complaint.

(2) The respondent's complaints procedures are the procedures which the respondent participates in, or is subject to, in accordance with section 11.

(3) Rules made by the Committee under section 17(1) must provide that subsection (1) of this section does not apply in such circumstances as may be specified in the rules.

### **Complainants**

**15.—**(1) A complainant (“C”) is within this section if C—

(a) meets the first and second conditions; and

(b) is not excluded by subsection (4).

(2) The first condition is that C is—

(a) an individual; or

(b) a person (other than an individual) or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.

(3) The second condition is that—

(a) the services to which the complaint relates were provided by the respondent to C;

(b) the services to which the complaint relates were provided by the respondent to a solicitor who procured them on C's behalf; or

(c) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Department in accordance with a recommendation made under section 16.

(4) C is excluded if, at the time when the act or omission to which the complaint relates took place—

(a) C was a solicitor and the services to which the complaint relates were procured by C on behalf of another person; or

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(b) C was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16.

(5) An order made under this section is subject to negative resolution.

### **Orders under section 15**

**16.—**(1) An interested body may recommend to the Department that the Department make an order under section 15(2)(b), (3)(c) or (4)(b).

(2) An interested body must, if requested to do so by the Department, consider whether or not it is appropriate to make a recommendation under subsection (1).

(3) An interested body must, before making a recommendation under subsection (1)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and
- (c) consider any such representations which are made.

(4) Where the Department receives a recommendation under subsection (1), the Department must consider whether to follow the recommendation.

(5) If the Department decides not to follow the recommendation, the Department must publish a notice to that effect which includes the Department's reasons for the decision.

(6) In this section “interested body” means—

- (a) the Bar Complaints Committee; or
- (b) the Legal Services Oversight Commissioner.

### **Procedure for complaints**

**17.—**(1) The Bar Complaints Committee must make rules setting out the procedure for—

- (a) the making of complaints to the Committee; and
- (b) the investigation, consideration and determination of complaints by the Committee.

(2) Rules under subsection (1)—

- (a) must provide that a complaint is to be entertained by the Committee only if the complainant has made the complaint before the applicable time limit (determined in accordance with the rules) has expired; and
- (b) may provide that the Committee may extend that time limit in specified circumstances.

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(3) Rules under subsection (1) must make provision permitting such persons as may be specified to continue a complaint made by a person who has died or is otherwise unable to act, and for that purpose may modify references to the complainant in this Part and in the rules.

(4) Rules under subsection (1) may (among other things) make provision—

- (a) for the whole or part of a complaint to be dismissed, in such circumstances as are mentioned in subsection (5);
- (b) for the reference of a complaint, in such circumstances as may be specified and with the consent of the complainant, to another person or body with a view to the complaint being determined by that person or body instead of by the Committee;
- (c) about the evidence which may be required or admitted and the extent to which it should be oral or written;
- (d) subject to the provisions of sections 22 to 24, for requiring parties to the complaint to attend to give evidence, produce documents and provide information;
- (e) for the Committee, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before the Committee;
- (f) for the Committee to award costs against the respondent in favour of the complainant;
- (g) for the Committee to award costs against the respondent in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint;
- (h) for the Committee to award costs against the complainant in favour of the respondent if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
- (i) for the Committee to award costs against the complainant in favour of the Committee for the purpose of providing a contribution to resources deployed in dealing with the complaint if, in the opinion of the Committee, the complainant acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
- (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it;
- (k) for specified persons or bodies to be notified of complaints made to the Committee.

(5) The circumstances referred to in subsection (4)(a) are the following—

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- (a) the Committee considers the complaint or part of the complaint to be frivolous or vexatious or totally without merit;
  - (b) the Committee considers that the complaint or part of the complaint would be better dealt with by arbitration or by legal proceedings;
  - (c) the Committee considers that there has been undue delay in the making of the complaint or part of the complaint, or in the provision of evidence to support it;
  - (d) the Committee is satisfied that the matter which is the subject of the complaint or part of the complaint has previously been dealt with by the Committee or by legal proceedings;
  - (e) the Committee considers that there are other compelling reasons why it is inappropriate for the complaint or part of the complaint to be dealt with by the Committee.
- (6) No person may be required by rules under subsection (1)—
- (a) to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court; or
  - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (7) An amount due under an award made in favour of the Committee by virtue of any provision made under subsection (4)(g) or (i) shall be payable to the Executive Council of the Inn of Court of Northern Ireland.
- (8) Rules under subsection (1) may authorise the Committee, on making an award of costs, to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules.
- (9) An amount payable to a person by virtue of any provision made under subsection (4)(e) to (i) is recoverable as a debt due to that person.
- (10) In subsections (2), (3) and (4), “specified” means specified in rules made under subsection (1).

### **Notification requirements**

**18.—**(1) This section applies where a complaint made to the Bar Complaints Committee—

- (a) is excluded from the jurisdiction of the Committee under section 14;
- (b) is dismissed, or referred to another body, by virtue of rules under section 17(1);
- (c) is settled, determined, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of rules under section 17(1)).

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(2) The Committee must notify—

- (a) the complainant; and
- (b) the respondent,

and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.

(3) When the Committee has determined a complaint the Committee must prepare a written statement of the determination giving reasons for the Committee's determination.

(4) The Committee must give a copy of the statement to—

- (a) the complainant;
- (b) the respondent;
- (c) the Benchers;
- (d) the General Council of the Bar; and
- (e) the Legal Services Oversight Commissioner.

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