



## 2016 CHAPTER 14

PROSPECTIVE

### **PART 2**

#### **COMPLAINTS AGAINST BARRISTERS**

##### *Complaints procedures for barristers*

##### **Complaints procedures for barristers**

**11.—**(1) The General Council of the Bar must make provision requiring every barrister to participate in, or make arrangements to be subject to, procedures for the resolution of relevant complaints established and maintained by such person or body as may be specified by the General Council of the Bar, and provision must be made by the Council for the enforcement of that requirement.

(2) Before making the provision mentioned in subsection (1), the General Council of the Bar must consult the Legal Services Oversight Commissioner.

(3) In subsection (1) “relevant complaint” means a complaint which relates to professional services provided by a barrister.

##### *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

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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
- (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—

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- (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
  - (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.

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### **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.

(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

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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—
- (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.

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(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)).

(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.

### *Determinations by Bar Complaints Committee*

### **Determination of complaints**

**19.**—(1) The Bar Complaints Committee may determine a complaint made in accordance with the provisions of this Part by—

- (a) upholding the complaint (or part of the complaint); or
- (b) dismissing the complaint (or part of the complaint).

(2) A determination by the Committee upholding a complaint may contain one or more of the following—

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- (a) a direction that the respondent make an apology (which shall not, of itself, amount to an admission of negligence for the purpose of any civil proceedings) to the complainant;
  - (b) a direction that—
    - (i) the fees to which the respondent is entitled in respect of the services to which the complaint relates (“the fees”) are limited to such amount (if any) as may be specified in the direction, and
    - (ii) the respondent comply, or secure compliance, with such one or more of the requirements falling within subsection (3) as appear to the Committee to be necessary in order for effect to be given to the direction under sub-paragraph (i);
  - (c) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss which, in the opinion of the Committee, has been suffered by the complainant as a result of the respondent's negligence;
  - (d) a direction that the respondent pay compensation to the complainant of such amount as is specified in the direction in respect of any loss (other than such loss as is mentioned in paragraph (c)), inconvenience or distress which has been caused to the complainant as a result of any matter connected with the complaint;
  - (e) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;
  - (f) a direction that the respondent take such steps for the completion of the matter in question within such reasonable time as the direction may specify;
  - (g) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.
- (3) The requirements referred to in subsection (2)(b)(ii) are—
- (a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded;
  - (b) that the whole or part of the fees be remitted;
  - (c) that the right to recover the fees be waived, either wholly or to any specified extent.
- (4) Where—
- (a) a direction is made under subsection (2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded; or
  - (b) a direction is made under subsection (2)(c) or (d),

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the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with rules made under section 17(1).

(5) Where the Committee has given a direction under subsection (2)(b) in relation to the fees referred to in that paragraph, then—

- (a) for the purposes of any taxation of a bill covering those fees the amount charged by the bill in respect of those fees shall be deemed to be limited to the amount (if any) specified in the Committee's direction; and
- (b) where a bill covering those fees has not been taxed in accordance with paragraph (a), the complainant shall, for the purposes of the recovery of those fees (by whatever means) and notwithstanding any statutory provision or agreement, be deemed to be liable to pay in respect of those fees only the amount (if any) specified in the Committee's direction.

(6) Where a bill covering those fees has been taxed in accordance with subsection (5)(a), the Committee's direction under subsection (2)(b) shall, so far as relating to those fees, cease to have effect.

(7) The amount of any compensation specified in a direction under subsection (2)(c) must not exceed £5,000.

(8) The amount of any compensation specified in a direction under subsection (2)(d) must not exceed £5,000.

(9) If a respondent fails to comply with a direction given under this section which has taken effect, any person may make a complaint in respect of that failure to the General Council of the Bar.

#### **Alteration of compensation limit**

**20.**—(1) The Department may by order subject to negative resolution amend subsection (7) or (8) of section 19 in accordance with a recommendation made by an interested body under subsection (2).

(2) An interested body may recommend to the Department that subsection (7) or (8) of section 19 should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in subsection (7) or, as the case may be, (8).

(3) 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 (2).

(4) An interested body must, before making a recommendation under subsection (2)—

- (a) publish a draft of the proposed recommendation;
- (b) invite representations regarding the proposed recommendation; and



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(c) consider any such representations which are made.

(5) Where the Department receives a recommendation under subsection (2), the Department must consider whether to follow the recommendation.

(6) 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.

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

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

### *Appeals*

#### **Appeals**

**21.**—(1) The Department must, with the concurrence of the Lord Chief Justice, make regulations providing for appeals to the High Court against such determinations of the Bar Complaints Committee as are specified in the regulations.

(2) Regulations under subsection (1) may not be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

### *Information*

#### **Information and documents**

**22.**—(1) The Bar Complaints Committee may, by notice, require a party to a complaint—

- (a) to produce such documents, or documents of such a description, as may be specified in the notice; or
- (b) to provide such information, or information of such a description, as may be specified in the notice.

(2) A notice under subsection (1) may require the documents or information to be provided or produced—

- (a) before the end of such reasonable period as may be specified in the notice; and
- (b) in the case of information, in such manner or form as may be so specified.

(3) The Committee may require any person producing a document under this section to provide an explanation of it.

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(4) If a person who is required under this section to produce a document fails to do so, the Committee may require that person to state, to the best of that person's knowledge and belief, where the document is.

(5) No person may be required under this section—

(a) to provide any information 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.

### **Reporting failures to provide information or produce documents**

**23.**—(1) This section applies where the Bar Complaints Committee is of the opinion that a respondent has failed to comply with a requirement imposed under section 22.

(2) The Committee must give to the General Council of the Bar a report which—

(a) states that the Committee is of that opinion; and

(b) gives details of the failure.

(3) A report under subsection (2) may require the General Council of the Bar to report to the Committee the action which has been or is to be taken by it in response to the report under that subsection and the reasons for that action being taken.

(4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 22.

### **Enforcement of requirements to provide information or produce documents**

**24.**—(1) This section applies where the Bar Complaints Committee is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 22.

(2) The Committee may certify the defaulter's failure to comply with the requirement to the court.

(3) Where the Committee certifies a failure to the court under subsection (2), the court may enquire into the case.

(4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter as if that person were in contempt.

(5) Subsection (6) applies where the defaulter is a barrister.

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(6) The Committee may not certify the defaulter's failure to the court until a report by the Committee has been made as required by section 23(2) and the Committee is satisfied—

- (a) that the General Council of the Bar has been given a reasonable opportunity to take action in respect of the defaulter's failure; and
- (b) that the defaulter has continued to fail to produce the documents or provide the information to which the requirement under section 22 related.

(7) In this section “the court” means the High Court.

### **Reports of investigations**

**25.**—(1) The Bar Complaints Committee may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made to it.

(2) A report under subsection (1) must not (unless the complainant consents)

- (a) mention the name of the complainant; or
- (b) include any particulars which the Committee considers are likely to identify the complainant.

### *Defamation*

### **Protection from defamation claims**

**26** For the purposes of the law of defamation—

- (a) proceedings in relation to the investigation, consideration and determination of a complaint by the Bar Complaints Committee are to be treated as if they were proceedings before a court; and
- (b) the publication of any matter by the Committee under this Part is absolutely privileged.

### *Rules*

### **Consultation requirements for Bar Complaints Committee rules**

**27.**—(1) This section applies in relation to rules made by the Bar Complaints Committee under this Part.

(2) If the Committee proposes to make any rules, it must publish a draft of the proposed rules.

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(3) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Committee within the period specified in the notice.

(4) Before making the rules, the Committee must have regard to any representations duly made.

(5) Before making the rules, the Committee must consult the Legal Services Oversight Commissioner.

(6) The Committee must publish any rules it makes, and rules may not take effect before the time they are published.

(7) The Committee may make a reasonable charge for providing a person with a copy of—

(a) a draft published under subsection (2); or

(b) rules published under subsection (6).

(8) In this section references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications.

### *Interpretation*

#### **Interpretation of Part 2**

**28** In this Part—

“complainant”, in relation to a complaint, means the person who makes the complaint;

“the General Council of the Bar” means the General Council of the Bar of Northern Ireland;

“party”, in relation to a complaint, means—

(i) the complainant;

(ii) the respondent;

(iii) any other person who, in accordance with rules made under section 17(1), is to be regarded as a party to the complaint;

“respondent”, in relation to a complaint, is to be construed in accordance with section 13.

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