

## BAR COMPLAINTS COMMITTEE - RULES AND PROCEDURES

### PURPOSE

These Rules give effect to Part 2 of, and Schedule 2 to, the **Legal Complaints and Regulation Act (Northern Ireland) 2016**.

### GENERAL DEFINITIONS AND INTERPRETATION

1. In these Rules:

- (a) **The Act** means the Legal Complaints and Regulation Act (Northern Ireland) 2016;
- (b) **Complainant** means an individual or a person who is eligible to present a claim under the Act;
- (c) **Respondent** means a barrister against whom a complaint has been made under the Act;
- (d) **The Committee** means the Bar Complaints Committee established pursuant to section 12 of the Act;
- (e) **The Committee Chair** means the chair of the Bar Complaints Committee;
- (f) **Complaints Panel** means a sub-committee of the Bar Complaints Committee established pursuant to paragraph 8 of Schedule 2 to the Act in order to investigate, consider and determine a complaint made under the Act;
- (g) **The Panel Chair** means the chair of a Complaints Panel;
- (h) **The Secretary** means the designated person with responsibility for providing administrative support to the Bar Complaints Committee;
- (i) **The Commissioner** means the officer appointed pursuant to section 1 of the Act;
- (j) **Relevant Complaint** means a complaint which relates to professional services provided by a barrister;
- (k) **The Benchers** means the Benchers of the Honorable Society of the Inn of Court of Northern Ireland;
- (l) **Lay Person** means a person who is not and never has been a solicitor or barrister;
- (m) **The Bar Council** means the General Council of the Bar of Northern Ireland;
- (n) **The Service Complaints Resolution Procedure** means the procedure established and maintained by the Bar Council for the resolution of Relevant Complaints pursuant to section 11 of the Act;
- (o) **The Service Complaints Resolution Committee** means the Committee established by the Bar Council for the purpose of resolving Relevant Complaints pursuant to section 11 of the Act;
- (p) **The Professional Conduct Committee** means the Professional Conduct Committee of the Bar Council;
- (q) **Code of Conduct** means the Code of Conduct of the Bar of Northern Ireland
- (r) **Barrister** means a barrister as defined by the Code of Conduct;
- (s) **The Department** means the Department of Finance.

**Bar Complaints Committee<sup>1</sup>**

2. A Relevant Complaint made pursuant to the provisions of the Act shall be investigated, considered and determined by the Committee.

**Jurisdiction of the Bar Complaints Committee<sup>2</sup>**

3. The Committee shall have jurisdiction to investigate, consider and determine a Relevant Complaint if:
  - (a) the complaint is not excluded pursuant to Rule 4; and
  - (b) the Complainant is eligible under Rule 5 and wishes to have the complaint dealt with by the Committee.

**Excluded Complaints<sup>3</sup>**

4. A Relevant Complaint is excluded from the jurisdiction of the Committee if the Complainant has not first used the Service Complaints Resolution Procedure in order to resolve the complaint unless, on application, the Committee in its discretion considers either (a) that it was not reasonably practicable for the Complainant to use the Service Complaints Resolution Procedure, or (b) that it is just and equitable in the circumstances, having regard to the gravity of the complaint, for the Committee to consider, investigate and determine the complaint under these Rules.

**Eligibility to complain<sup>4</sup>**

- 5.1. Subject to sub-paragraph 2 of this Rule, a Complainant will be eligible to make a Relevant Complaint if s/he is an individual and the services to which the complaint relates were provided by the Respondent to the Complainant or to a solicitor who procured them on the Complainant's behalf.
- 5.2. An individual is excluded from eligibility to be a Complainant if, at the time when the act or omission to which the complaint relates took place:
  - (a) the complainant was a solicitor and the services to which the complaint relates were procured by the complainant on behalf of another person; or
  - (b) the complainant was a person or body of a description prescribed by order made by the Department in accordance with a recommendation made under section 16 of the Act.

**COMPLAINTS PROCEDURE<sup>5</sup>**


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<sup>1</sup> Section 12 and Schedule 2

<sup>2</sup> Section 13

<sup>3</sup> Section 14

<sup>4</sup> Section 15

<sup>5</sup> Section 17(1): BCC must make rules setting out the procedure for the making of complaints to the Committee and the investigation, consideration and determination of complaints by the Committee.

**Time limit for making a complaint:** <sup>6</sup>

- 6.1 A complaint must be presented to the Committee (a) within four weeks from the date of notification by the Service Resolution Committee to the Complainant or his/her representative of the outcome of his/her complaint to the Service Resolution Complaints Committee and of his/her right to complain to the Committee, or (b) in the case of an application under the discretion contained within Rule 4, within six months from the date of the alleged act or omission complained of.
- 6.2 If a complaint is made after the expiration of the relevant time limit prescribed in the preceding paragraph the Committee may nevertheless, in its discretion, consider, investigate and determine the complaint if it is satisfied, from the information contained in the complaint form, that:
- (a) the complaint has been received by the Committee within three years from the date of the alleged act or omission complained of; **and**
  - (b) it was not reasonably practicable for the complaint to be made within the prescribed period and that the time can be extended without prejudice to the Respondent; **or**
  - (c) that it is just and equitable in the circumstances to do so, having regard to the gravity of the complaint.
- 6.3 For the purpose of sub-paragraph 2(a), where the matter/s complained of is or was continuing, the alleged acts and/or omissions shall be treated as having taken place at the time when the matter complained of ceased or the last date of any such alleged continuing acts or omissions.

**How to make a complaint**

- 7.1 A complaint shall be made by completing the Legal Services Complaint Form (which can be obtained from the Secretary to the Committee [support@bccni.co.uk](mailto:support@bccni.co.uk) and by sending it to the Secretary, either:
- (a) by letter addressed to the Secretary to the Committee at The Bar Library, 91 Chichester Street, Belfast, BT1 3JQ;
  - (b) by email to [support@bccni.co.uk](mailto:support@bccni.co.uk); or
  - (c) by online completion of the pro forma on the website.
- 7.2 Where a complaint has been submitted by email to the Secretary or online, and the complaint has not been acknowledged by the Secretary within 2 working days from transmission of the email or online submission by the Complainant, the Complainant should send the complaint to the Secretary by letter.

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<sup>6</sup> Section 17(2): The Rules must provide for a time limit and may provide for a discretion to extend that time limit in specified circumstances.

**Complainants deceased or otherwise unable to act <sup>7</sup>**

- 8.1 A complaint may be made or continued on behalf of another person if, in the opinion of the Committee:
- (a) that person is or becomes unable to personally make or continue the complaint due to physical or mental incapacity, disability or other good reason; and
  - (b) the person making the complaint is authorised to do so on his/her behalf or appears to the Committee to be someone who should properly be authorised to do so.
- 8.2 A Complainant who is unable to comply with any provision of, or requirement imposed under, these Rules may personally or through a nominated representative apply to the Committee for a reasonable adjustment, under the relevant legislation, or for special arrangements to be made in order to assist them in making or continuing the complaint. Any application for a reasonable adjustment should be made in writing to the Secretary, stating the nature of the incapacity or disability and the adjustment or special arrangements requested.
- 8.3 Any rights under these Rules shall apply after the death of a Complainant and may be exercised by the Personal Representatives of the deceased Complainant.

**Procedure on receipt of a complaint <sup>8</sup>**

9. As soon as reasonably practicable following receipt of a complaint, the Committee shall consider whether the complaint should be accepted for investigation and consideration or be dismissed without investigation or further consideration.
10. The Committee may, upon receipt, or at any stage of the investigation, dismiss the whole or part of a complaint in any one or more of the following circumstances:
- (a) the Committee considers the complaint or part of the complaint to be frivolous or vexatious or 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.
11. If it appears to the Committee, or to a Panel considering a complaint, that a complaint

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<sup>7</sup> Section 17(3)

<sup>8</sup> Section 17 (4)(a) and (5)

relates both to services provided and also to conduct, it may at any stage adjourn the investigation, consideration or determination of that element of the complaint until either (1) the conduct element of the complaint has been referred to, heard and determined by the Bar Disciplinary Committee, or (2) the Complainant has confirmed in writing to the Committee that he/she does not intend to pursue the conduct element of the complaint, or has formally abandoned same.

#### **Provision to notify specified persons or bodies of complaints <sup>9</sup>**

12. The Committee may, if it considers it appropriate in all of the circumstances of the case, notify the following persons or bodies of a Relevant Complaint made to the Committee under these Rules:
  - (a) the Professional Conduct Committee;
  - (b) where the Respondent is an employed barrister, that barrister's employer;
  - (c) the Treasurer of the Inn of Court where it appears that the Fitness to Practice procedures of the Inn of Court may be engaged;
  - (d) where it appears that the complaint relates to a service provided by a solicitor, to the Law Society of Northern Ireland.

#### **Referral of complaint for determination to another person or body <sup>10</sup>**

13. The Committee may refer a complaint to another person or body with a view to the complaint being determined by that person or body instead of the Committee in the following circumstances where appropriate and with the consent of the Complainant:
  - (a) to the Professional Conduct Committee, where it appears to the Committee that the complaint relates to alleged conduct to which the Code of Conduct applies; or
  - (b) where the Respondent is an employed barrister, to that barrister's employer.

#### **Investigation – procedure for investigation, consideration and determination of complaints <sup>11</sup>**

- 14.1 Where the Committee has accepted a Relevant Complaint the Committee may establish a Complaints Panel ("the Panel") to investigate, consider and determine the complaint on its behalf and, where it does so, shall nominate the Chair of that Panel ("the Panel Chair"), which may in certain circumstances be the Committee Chair.
- 14.2 A Panel established pursuant to sub-paragraph 1 above should normally consist of three members or, in exceptional circumstances, such greater number as the Committee may determine.
- 14.3 A Panel established under these Rules shall be authorised to exercise on behalf of the Committee those functions of the Committee which are provided for in these Rules

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<sup>9</sup> Section 17(4)(k)

<sup>10</sup> Section 17(4)(b)

<sup>11</sup> Section 17 (1)(b)

and/or as may be varied by the Committee Chair from time to time.

15. Subject to Rules 10 and 12 the Panel shall investigate the complaint by the following means:
  - (a) the Panel Chair shall direct the Secretary to write to the Respondent, who shall be provided with a copy of the complaint and asked to respond to the complaint and may be asked to provide relevant information and/or documents within four weeks from the date of the letter;
  - (b) the Panel Chair shall direct the Secretary to write to the Complainant, if considered necessary by the Panel, in order to obtain further relevant information and/or documents within such period as may be specified in the letter;
  - (c) the Panel Chair may direct the Secretary to write to any other person who it appears to the Panel may be able to provide relevant information and/or documents to assist the investigation, including any report of the Service Complaints Resolution Committee;
  - (d) the Panel, or any member of the Panel delegated by the Panel for this purpose, may interview the Complainant, the Respondent and/or any other party who it considers may be able to assist the investigation.
- 16.1 The Panel Chair or any member of the Panel delegated by the Panel Chair may convene and require the parties to attend a case management discussion before the Panel Chair or delegated Panel member in order to address the following matters:
  - (a) the issues to be addressed in order to determine the complaint;
  - (b) the nature of the evidence to be given;
  - (c) to give directions as to how the evidence should be required or admitted and the extent to which it should be oral or written;
  - (d) whether the parties wish any steps to be taken to facilitate the settlement of a complaint in accordance with Rule 38 of these Rules;
  - (e) to ascertain whether any reasonable adjustments or special arrangements need to be made in order to assist a party to participate in the process and if so to make appropriate directions.
- 16.2 The Panel Chair may at any time issue such case management directions as are considered appropriate for the just and expeditious management of the complaint.
- 16.3 Whether or not the Panel Chair has convened a case management discussion, a Complainant or Respondent may make a written request for case management directions. Such a request shall be directed to the Secretary and state what directions are sought for the management of the case and the reasons why those directions are sought.
- 16.4 The Secretary shall send a copy of any such request, together with any other material considered relevant, to the Panel Chair who shall have discretion as to whether to agree to the request for a case management meeting and/or issue the direction/s sought.

- 16.5 The Secretary shall keep a record of any case management directions given and shall send written confirmation of such directions to the parties promptly.
- 16.6 The Panel Chair will ascertain from the parties whether they wish to proceed to have the Complaint considered and determined by way of an adversarial process, including opening statement, examination-in-chief, cross-examination and/or closing submissions or, with the agreement of both parties and subject to the discretion of the Panel, to dispense with any part of such adversarial process. If, in the opinion of the Panel, either party withholds agreement unreasonably the Panel may, notwithstanding the absence of agreement of both parties, and if it considers it appropriate to do so, dispense with any part of such adversarial process.
- 16.7 The Complaints Panel may draw such inferences as it considers appropriate in respect of the failure by a party to comply with case management directions.
17. Where a Panel has not been established under Rule 14.1, the provisions of Rule 16 and following Rules shall be read as though “Committee” and “Committee Chair” were, where the context so requires, substituted for “Panel” and “Panel Chair” respectively.

### **Production of documents and provision of information by the parties <sup>12</sup>**

- 18.1 The Panel Chair 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.
- 18.2 A notice under sub-paragraph 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 a manner or form as may be so specified.
- 18.3 The Panel or Panel Chair may require any person producing a document under this Rule to provide an explanation of it.
- 18.4 If a person who is required under this Rule to produce a document fails to do so, the Panel or Panel Chair may require that person to state, to the best of that person's knowledge and belief, where the document is.
- 18.5 No person may be required under this Rule:
- (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.

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<sup>12</sup> Sections 22, 23 and 24

- 18.6 Where the Committee is of the opinion that a Respondent has failed to comply with a requirement imposed under sub-paragraph 1 the Committee must give to the Bar Council a report which:
- (a) states that the Committee is of that opinion;
  - (b) gives details of the failure.
- 18.7 A report under sub-paragraph 6 may require the Bar Council to report to the Committee the action which has been or is to be taken by it in response to the report under that sub-paragraph and the reasons for that action being taken.
- 18.8 The duty imposed under sub-paragraph 6 is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under sub-paragraph 1.
- 18.9 Where the Committee is of the opinion that a person (“the defaulter”) has failed to comply with any requirement imposed under sub-paragraph 1 the Committee may certify the defaulter’s failure to comply with the requirement to the High Court. Where the defaulter is a barrister the Committee may not certify their failure to the Court until a report by the Committee has been made as required by sub-paragraph 6 and the Committee is satisfied:
- (a) that the Bar Council 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 sub-paragraph 1 related.

In the case of a defaulter being a lay person the Committee may certify the individual’s failure directly to the Court.

### **Complaint Hearing**

19. The Secretary shall, subject to Rule 36, serve a notice of hearing on the parties no less than 28 days before the date fixed for the hearing of the complaint. The notice of hearing shall:
- (a) state the date, time and venue of the hearing;
  - (b) inform the parties that the hearing shall be conducted in accordance with these Rules;
  - (c) inform the parties of his/her right to attend and to be represented or accompanied at the hearing by a solicitor and/or counsel or to appear in person;
  - (d) inform the parties that the Committee or Panel may proceed with the hearing in his/her absence in accordance with Rule 21.4;
  - (e) require the parties to inform the Secretary, within ten days beginning with and including the day on which the notice is served, whether s/he intends to:
    - (i) attend the hearing;
    - (ii) be represented at the hearing, and if so, by whom;
    - (iii) give evidence in person;



- (iv) seek to call any witnesses at the hearing, and if so, details of any witness/es to be called.
  - (f) require the Respondent to inform the Secretary, within ten days beginning with and including the day on which the notice is served, whether the Respondent admits or disputes the complaint (whether in whole or in part) and, if the complaint is disputed to any degree, on what grounds (whether legal and/or factual).
- 20. Not less than seven days prior to the hearing the parties shall make copies of any documents upon which they intend to rely available to the Secretary and to the other party or that party's legal representative.
- 21.1 The hearing before the Complaints Panel shall be governed by the rules of natural justice.
- 21.2 The Complainant and Respondent ("the parties") may each appear at the hearing personally or by counsel and with or without instructing a solicitor as they may think fit.
- 21.3 An audio recording shall be made of the hearing and retained by the Secretary. Any audio recording of the hearing may be transcribed if the Panel Chair so directs and if transcribed, the transcript shall be retained by the Secretary.
- 21.4 Where a party is neither present nor represented at any hearing and the Panel is satisfied that:
  - (a) service of the Notice of Hearing has been properly effected on that party; or
  - (b) all reasonable efforts have been made to serve the party with a Notice of Hearing,

the Panel may nevertheless proceed to consider and determine the complaint.
- 21.5 The Panel Chair shall ensure that the hearing is conducted in such a manner so as to enable the Complainant to explain his/her complaint and the Respondent to answer the complaint against him/her.
- 21.6 A Complaint Panel will proceed with a legal member and two lay persons but the Chair must be lay.
- 21.7 If a Panel Chair or member becomes unable to act the Committee Chair shall nominate a new Panel Chair or member, as the case may be.

**Evidence**<sup>13</sup>

- 22.1 All questions of admissibility of evidence and/or production of documents shall be decided by the Panel which may, subject only to section 17(6) of the Act and the requirements of relevance and fairness, receive any documentary and/or oral evidence.
- 22.2 At a hearing where a party wishes to adduce a witness statement, the Complaints Panel may only receive such evidence if the statement:
- (a) contains an attestation in a format acceptable to the Complaints Panel that the statement is true; and
  - (b) is signed and dated by the person making it.
- 22.3 At a hearing the Complaints Panel may only allow a party to adduce written evidence which has not been served in accordance with these Rules in such exceptional circumstances as it may determine.

**Panel hearing: order of proceedings**

23. Subject to the overriding discretion of the Panel Chair the order of proceedings at a hearing before the Complaints Panel is to be in accordance with sub-paragraphs (a) to (g) of this Rule:
- (a) the Panel Chair shall introduce the members of the Panel;
  - (b) the Panel Chair shall, where the parties are present, require the parties or their legal representative/s to confirm their names;
  - (c) the Complaints Panel shall first hear and consider any preliminary legal arguments;
  - (d) the Secretary to the Complaints Panel shall read out the complaint;
  - (e) the Panel Chair shall enquire as to whether the Respondent wishes to make any admissions;
  - (f) where facts are admitted, the Panel Chair shall announce that such facts have been found proved;
  - (g) where facts remain in dispute, the Panel Chair will ascertain from the parties whether they wish to proceed to have the complaint considered and determined by way of an adversarial process, including opening statement, examination-in-chief, cross-examination and/closing submissions or to dispense with any part of such adversarial process subject to the discretion of the Complaints Panel.
24. Unless it has been decided to dispense with all or any part of the adversarial process, the order of proceedings shall be in accordance with sub-paragraphs (a) to (d) of this Rule.
- (a) The Complainant may make an opening statement, adduce evidence and call witnesses who may be cross-examined by the Respondent or his/her legal representative;

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<sup>13</sup> Section 17 (4)(c)

- (b) The Complaints Panel shall require parties and witnesses who give evidence at the hearing to give his/her evidence under oath/affirmation;
  - (c) The Respondent shall be entitled at the end of the presentation of the Complainant's evidence to make a submission of 'no case to answer' on the ground that insufficient evidence has been adduced to support the complaint and the Complaints Panel shall consider and give its decision as to whether such submission should be upheld;
  - (d) The Respondent may open his/her case and may adduce evidence and call witnesses who may be cross-examined by the Complainant or his/her representatives;
  - (e) The parties may each address and make submissions to the Complaints Panel.
25. The members of the Complaints Panel shall make such enquiries of persons appearing before the Panel as they consider appropriate for the clarification of the issues and the just handling of the hearing.
26. The Complaints Panel shall consider, and the Panel Chair shall announce, its findings of fact and whether the complaint is upheld and give reasons, such reasons to be confirmed in a written decision. The Panel may do so at the conclusion of the hearing or at a later date fixed by it for this purpose.
27. The Complaints Panel may receive further evidence and hear any further submissions from the parties as to any appropriate remedy to be imposed including evidence as to any mitigating circumstances. If all or part of the complaint is upheld, the Panel shall consider and announce its decision as to any remedy to be applied and shall give its reasons for that decision, such reasons to be confirmed in a written decision.
28. The burden of proof shall be on the Complainant. The Complaints Panel shall apply the civil standard of proof when deciding whether a complaint should be upheld.
29. The Complaints Panel may reach its decision by a majority.

#### **Determination of Complaint and Remedies <sup>14</sup>**

30. A Complaints Panel may determine a complaint made by:
- (a) upholding the complaint (or part of the complaint); or
  - (b) dismissing the complaint (or part of the complaint).
31. A determination by a Complaints Panel upholding a complaint in whole or in part may contain one or more of the following remedies:
- (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:

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<sup>14</sup> Section 19

- (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 Rule 34 as appear to the Panel 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, inconvenience or distress which has been caused to the Complainant as a result of any matter connected with the complaint, such amount not to exceed £5000;
  - (d) 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;
  - (e) 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; and/or
  - (f) 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.

32. The requirements referred to in sub-paragraph 31(b) 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.

33. If a Respondent fails to comply with a direction given under Rule 31 which has taken effect, any person may make a complaint in respect of that failure to the Bar Council.

#### **Awards of costs <sup>15</sup>**

34.1 Where a Complaints Panel upholds a complaint against a Respondent in whole or in part, the Panel shall have a discretion to award costs against the Respondent:

- (a) in favour of the Complainant; and
- (b) in favour of the Committee for the purpose of providing a contribution to the resources deployed in dealing with the complaint;

34.2 Where a Complaints Panel does not uphold a complaint in whole or in part the panel shall have a discretion to award costs against the Complainant:

- (a) in favour of the Respondent, if in the opinion of the Complaints Panel 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; and

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<sup>15</sup> Section 17(4)(f–i)

- (b) in favour of the Committee for the purpose of providing a contribution to the resources deployed in dealing with the complaint, if in the opinion of the Complaints Panel 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.

34.3 An amount due under an award made in favour of the Committee by virtue of any provision made under sub-paragraphs 34.1(b) or 34.2(b) shall be payable to the Executive Council of the Inn of Court of Northern Ireland.

34.4 An amount payable to a person by virtue of any provision made under sub-paragraphs 1 or 2 is recoverable as a debt due to that person.

#### **Awards of expenses <sup>16</sup>**

35. The Complaints Panel shall have a discretion to allow any person who has attended a hearing before the Panel to be paid such sum in respect of expenses incurred by him/her in connection with his/her attendance at the hearing as the Complaints Panel shall think fit.

#### **Facilitating resolution of a complaint <sup>17</sup>**

36.1 The Panel shall have a discretion to take such steps or make such orders or directions as it sees fit for the purpose of facilitating the resolution of a complaint, with the agreement of the parties to the complaint.

36.2 If the Panel in its discretion and without prejudice to its powers under these Rules considers that mediation may be a suitable means of resolving a complaint, the Panel Chair may at his/her discretion invite the parties to consider mediation. If the parties agree to mediate the following procedure shall apply:

- (a) the commencement or continuation of any formal process provided for in these rules shall be deferred for such period as the Panel may determine in order to allow the mediation process to take place;
- (b) if mediation does not result in the resolution of the complaint or if at any time it appears to the Panel that mediation is no longer a suitable means of resolving the complaint, the Committee may deal with the matter in accordance with these Rules;
- (c) the Complainant and the Respondent shall be obliged to keep the Panel Chair informed of the progress of the mediation process if and as requested from time to time, and must inform the Panel Chair if and when the mediation process has concluded;
- (d) once the Panel Chair has been informed that the mediation process has been concluded the matter will be referred back to the Panel in order to consider whether the matter should be dealt with in accordance with these Rules.

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<sup>16</sup> Section 17(4)(e)

<sup>17</sup> Section 17(4)(j)

**Notifications of exclusions, dismissals and other outcomes** <sup>18</sup>

37.1 Where a complaint made to the Committee:

- (a) is excluded from the jurisdiction of the Committee under Rule 4 “excluded complaints”; or
- (b) is dismissed, or referred to another body by virtue of Rule 13; or
- (c) is settled, determined, withdrawn, abandoned or treated as withdrawn or abandoned by virtue of Rule 36;

the Committee shall notify:

- (i) the Complainant; and
- (ii) the Respondent.

37.2 Where sub-paragraph 1(a) or (b) apply, the Committee shall give reasons for the exclusion, dismissal or referral of the complaint.

**Notification of determinations to third parties** <sup>19</sup>

38. When the Committee has determined a complaint it shall prepare a written statement of the determination and shall give a copy of the statement to the following:

- (a) the Complainant;
- (b) the Respondent;
- (c) the Benchers;
- (d) the Chair of the Bar Council;
- (e) the Chair of the Northern Ireland Judicial Appointments Commission; and
- (f) the Legal Services Complaints Oversight Commissioner.

**Publication of reports of investigations** <sup>20</sup>

39.1 The Committee may, if it considers it appropriate to do so in any particular case, publish a report of its investigation, consideration and determination of a complaint made to it.

39.2 A report under sub-paragraph 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.

**Right of Appeal** <sup>21</sup>


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<sup>18</sup> Section 18

<sup>19</sup> Section 18(4)

<sup>20</sup> Section 25

<sup>21</sup> Section 21 - “*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*”.

40. There shall be a right of Appeal to the High Court against determinations of the Bar Complaints Committee.

### **Service of documents**

- 41.1 Any notice given or document required to be sent to a party or to the Committee under these Rules shall be in writing and may be given or sent:

- (a) by post;
- (b) by email;
- (c) by personal hand delivery.

- 41.2 Where a notice or document has been given or sent in accordance with paragraph 1, that notice or document shall, unless the contrary is proved, be taken to have been received by the party to whom it is addressed:

- (a) in the case of a notice or document given or sent by post, on the second working day after the date of posting;
- (b) in the case of a notice or document transmitted by email, on the second working day after the date the email is sent;
- (c) in the case of a notice or document delivered in person, on the next working day after receipted hand delivery.

- 41.3 All notices and documents required to be sent or given to any person or to the Committee under these Rules may be sent to or delivered at the Bar Library, 91 Chichester Street, Belfast, BT1 3JQ:-

- (a) in the case of a Complainant or representative of a Complainant, to the postal or email address contained in the complaint form or otherwise notified by the Complainant or his/her representative to the Secretary;
- (b) on a barrister, if by post or delivery, to the Bar Library, 91 Chichester Street, Belfast BT1 3JQ, or such other address notified by the barrister to the Secretary or if served by email, to an email address notified by the barrister to the Secretary;
- (c) on the Committee, to the Secretary at the Bar Library, 91 Chichester Street, Belfast, BT1 3JQ.

### **Record keeping and confidentiality – including compliance with Data Protection Act 2018/GDPR**

42. The Committee shall keep confidential all information relating to complaints and investigation of complaints received. The Committee shall not disclose the fact that a complaint has been made or details of the complaint or of its disposal except as provided for in these Rules or in the Act or as otherwise required by law.