



# Administration of Justice Act 1985

## 1985 CHAPTER 61

### PART III

#### LEGAL AID

##### *Legal aid complaints*

#### 40 Legal aid complaints: preliminary.

- (1) For the purposes of this Part of this Act a legal aid complaint is a complaint relating to the conduct of a barrister or solicitor in connection with [<sup>F1</sup>the provision for any person of services [<sup>F2</sup>funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service] including, in the case of a solicitor, provision for any person of such services in the capacity of agent for that person's solicitor.]
- (2) In this Part—  
“legally assisted person” means a person to whom aid is ordered to be given under section 28 of the <sup>M1</sup>Legal Aid Act 1974;  
“the Senate” means the Senate of the Inns of Court and the Bar; and  
“Senate Disciplinary Tribunal” means any committee of the Senate which in accordance with the regulations of the Senate is to be known as a Disciplinary Tribunal.
- (3) In the Legal Aid Act 1974, sections 12(3) to (5) and 38(2) to (6) (which are superseded by this Part) shall cease to have effect.

#### Textual Amendments

- F1** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45(1), [Sch. 5 para. 17](#)
- F2** Words in s. 40(1) substituted (1.4.2000) by [1999 c. 22, s. 24, Sch. 4 para.33](#) (with [Sch. 14 para. 7\(c\)](#)); [S.I. 2000/774](#), [art. 2\(a\)\(ii\)](#) (subject to [arts. 3, 4](#))

*Status: Point in time view as at 26/03/2001.*

*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1985, Part III. (See end of Document for details)*

#### Modifications etc. (not altering text)

- C1** S. 40 applied (with modification) by S.I. 2000/1119, Sch. 4 para. 24(1) (as substituted (1.7.2009) by The Legal Services Act 2007 (Registered European Lawyers) Order 2009 (S.I. 2009/1587), arts. 1(1), 3(17))

#### Marginal Citations

- M1** 1974 c. 4.

### [<sup>F3</sup>41] Application to legal aid complaints against barristers of disciplinary provisions.

- (1) The disciplinary provisions applicable to barristers shall apply to legal aid complaints relating to the conduct of barristers as they apply to other complaints about their conduct.
- (2) Subject to any exclusion or restriction made by those provisions, any disciplinary tribunal which hears a legal aid complaint relating to the conduct of a barrister may, if it thinks fit and whether or not it makes any other order, order that any fees [<sup>F4</sup>otherwise payable by the Legal Services Commission in connection with services provided by him as part of the Community Legal Service or Criminal Defence Service]] shall be reduced or cancelled.
- (3) Accordingly, in so far as any of sections 9, 11, 15(6) and (7) and 25(2) of the Legal Aid Act 1988 (which relate to remuneration for legal aid work) has effect in relation to any fees reduced or cancelled by an order under subsection (2) above, it shall so have effect subject to the provisions of that order.
- (4) An appeal shall lie in the case of an order under subsection (2) above in the same manner as an appeal would lie in the case of any other order of such a tribunal.
- (5) The reference in subsection (2) above to a disciplinary tribunal is a reference to a tribunal acting under the disciplinary provisions applicable to barristers and it includes a reference to a member exercising any functions of the tribunal delegated to him.

#### Textual Amendments

- F3** Ss. 41, 42 substituted by Legal Aid Act 1988 (c. 34, SIF 70:1), s. 33
- F4** Words in s. 41(2) substituted (1.4.2000) for s. 41(2)(a)(b) by 1999 c. 22, s. 24, Sch. 4 para.34 (with Sch. 14 para. 7(2)); S.I. 2000/774, art. 2(a)(ii) (subject to arts. 3, 4)

### [<sup>F5</sup>42] Exclusion of barristers from legal aid work.

- (1) Subject to any exclusion or restriction made by the disciplinary provisions applicable to barristers, where a disciplinary tribunal hears a charge of professional misconduct or breach of professional standards against a barrister, it may order that he shall be excluded from legal aid work, either temporarily or for a specified period, if it determines that there is good reason for the exclusion arising out of—
  - (a) his conduct in connection with any such services as are mentioned in section 40(1), or
  - (b) his professional conduct generally.
- (2) Subsection (4) of section 41 shall apply to an order under subsection (1) as it applies to an order under subsection (2) of that section.

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- (3) The disciplinary provisions applicable to barristers shall include provision enabling a barrister who has been excluded from legal aid work under this section to apply for an order terminating his exclusion from such work.
- (4) In this section—
  - (a) the reference to a disciplinary tribunal shall be construed in accordance with section 41(5); and
  - (b) references to a person being excluded from legal aid work are references to his being excluded from those who may be selected or assigned under section 32 of the Legal Aid Act 1988.]

#### Textual Amendments

**F5** Ss. 41, 42 substituted by [Legal Aid Act 1988 \(c. 34, SIF 70:1\)](#), s. 33

### 43 Jurisdiction and powers of Solicitors Disciplinary Tribunal in relation to complaints against solicitors.

- (1) The Solicitors Disciplinary Tribunal shall have jurisdiction to hear and determine any legal aid complaint relating to the conduct of a solicitor and made to the Tribunal under this section by or on behalf of the Law Society.
- (2) In the following provisions of the <sup>M2</sup>Solicitors Act 1974, namely—
  - (a) subsections (7) to (11) of section 46 (procedure of Tribunal); and
  - (b) section 47(2) (powers of Tribunal),any reference to a complaint or to a complaint made to the Tribunal under that Act shall be construed as including a reference to a legal aid complaint or to a legal aid complaint made to the Tribunal under this section.
- (3) On the hearing of a legal aid complaint against a solicitor the Tribunal may, if it thinks fit and whether or not it makes any other order on the hearing, order that [<sup>F6</sup>any costs otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the Community Legal Service or Criminal Defence Service] shall be reduced or cancelled.
- (4) Accordingly, in so far as [<sup>F7</sup>any of sections 9, 11, 15(6) and (7) and 25(2) of, or any provision made under, the Legal Aid Act 1988] has effect in relation to any costs reduced or cancelled by an order under subsection (3), it shall so have effect subject to the provisions of that order.
- (5) Without prejudice to the generality of subsection (1)(b) of section 49 of the <sup>M3</sup>Solicitors Act 1974, an appeal shall lie to the High Court under that section against an order of the Tribunal under subsection (3), but such an appeal shall lie only at the instance of the solicitor with respect to whom the legal aid complaint was made.
- (6) In this section “costs” includes fees, charges, disbursements, expenses and remuneration.

#### Textual Amendments

**F6** Words in s. 43(3) substituted (1.4.2000) by 1999 c. 22, s. 24, [Sch. 4 para.36](#) (with [Sch. 14 para. 7\(2\)](#)); [S.I. 2000/774](#), [art. 2\(a\)\(ii\)](#) (subject to [arts. 3, 4](#))

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**F7** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45(1), [Sch. 5 para. 18\(b\)](#)

#### Marginal Citations

**M2** [1974 c. 47](#).

**M3** [1974 c. 47](#).

#### 44 Exclusion of solicitor from legal aid work.

(1) Section 47 of the Solicitors Act 1974 (jurisdiction and powers of the Solicitors Disciplinary Tribunal) shall be amended as follows.

(2) In subsection (2), after paragraph (b) there shall be inserted—

“(bb) in the circumstances referred to in subsection (2A), the exclusion of that solicitor from legal aid work (either permanently or for a specified period);”.

(3) After that subsection there shall be inserted—

“(2A) An order of the Tribunal may make provision for the exclusion of a solicitor from legal aid work as mentioned in subsection (2)(bb) where the Tribunal determines that there is good reason for doing so arising out of—

- [<sup>F8</sup>(a) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services under the Legal Aid Act 1988; or  
(b) his professional conduct generally.]

(2B) Where the Tribunal makes any such order as is referred to in subsection (2A) in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if it thinks fit, order that any other person who is for the time being a member of the firm shall be excluded (either permanently or for a specified period) from legal aid work.

(2C) The Tribunal shall not make an order under subsection (2B) excluding any person from legal aid work unless an opportunity is given to him to show cause why the order should not be made.

(2D) Any person excluded from legal aid work by an order under this section may make an application to the Tribunal for an order terminating his exclusion from such work.”.

(4) After subsection (5) there shall be inserted—

“(6) In this section references to a person being excluded from legal aid work are references to his being excluded from [<sup>F9</sup>those who may be selected or assigned for the purpose of providing for any person services under the Legal Aid Act 1988.]”

#### Textual Amendments

**F8** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45(1), [Sch. 5 para. 19\(a\)](#)

**F9** Words substituted by [Legal Aid Act 1988 \(c. 34, SIF 77:1\)](#), s. 45(1), [Sch. 5 para. 19\(b\)](#)

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*Status:* Point in time view as at 26/03/2001.

**Changes to legislation:** There are currently no known outstanding effects for the Administration of Justice Act 1985, Part III. (See end of Document for details)

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*Advice and assistance*

45 ..... F10

**Textual Amendments**

F10 Ss. 45, 46 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(2), Sch. 6

*Legal aid in criminal proceedings*

46 ..... F11

**Textual Amendments**

F11 Ss. 45, 46 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45(2), Sch. 6

**Status:**

Point in time view as at 26/03/2001.

**Changes to legislation:**

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