



# 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—
- the giving of advice or assistance under Part I of the Legal Aid Act 1974;
  - the provision of services for any person receiving legal aid under that Part of that Act;
  - the provision of services for any legally assisted person in pursuance of Part II of that Act; or
  - in the case of a solicitor, the provision of advice and representation pursuant to section 1 of the Legal Aid Act 1982 (duty solicitors);
- and the reference in each of paragraphs (b) and (c) to the provision of services for any such person as is there mentioned includes, in the case of a solicitor, the provision of services for any such person 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 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- (3) In the Legal Aid Act 1974, sections 12(3) to (5) and 38(2) to (6) (which are superseded by this Part) shall cease to have effect.

#### **41 Jurisdiction and powers of Senate Disciplinary Tribunals in relation to complaints against barristers**

- (1) The jurisdiction of a Senate Disciplinary Tribunal to hear and determine charges of professional misconduct against barristers shall include jurisdiction to hear and determine, as a charge of professional misconduct, any legal aid complaint relating to the conduct of a barrister and referred to the tribunal under this section in accordance with the regulations of the Senate.
- (2) Such a tribunal may on the hearing of any such complaint, if it thinks fit and whether or not it makes any other order on the hearing, order that any fees—
  - (a) otherwise payable under or in accordance with Part I or Part II of the Legal Aid Act 1974, or
  - (b) otherwise chargeable as mentioned in section 5(1) of that Act (payment for advice and assistance otherwise than through client's contribution),in connection with services provided by the barrister shall be reduced or cancelled.
- (3) Accordingly, in so far as any of sections 4, 5, 10(1) and 37(2) of the Legal Aid Act 1974 (which relate to remuneration for legal aid work) has effect in relation to any fees reduced or cancelled by an order under subsection (2), it shall so have effect subject to the provisions of that order.
- (4) An appeal shall lie in the case of an order of a Senate Disciplinary Tribunal under subsection (2) in the same manner as an appeal would lie in the case of any other order of such a tribunal.

#### **42 Exclusion of barrister from legal aid work**

- (1) Where on the hearing of a charge of professional misconduct against a barrister (whether pursuant to section 41(1) or otherwise) a Senate Disciplinary Tribunal determines that there is good reason for so ordering arising out of
  - (a) the barrister's conduct in connection with any such matters as are mentioned in paragraphs (a) to (c) of section 40(1); or
  - (b) his professional conduct generally,the tribunal may order that the barrister shall be excluded from legal aid work (either permanently or for a specified period).
- (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.
- (3) A barrister who has been excluded from legal aid work by an order under subsection (1) may, in accordance with the regulations of the Senate, make an application to a Senate Disciplinary Tribunal for an order terminating his exclusion from such work.
- (4) In this section references to a person being excluded from legal aid work are references to his being excluded from those who may be selected under section 12 of the Legal Aid Act 1974 and from those who may be assigned to act for legally assisted persons.

#### **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 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 any costs—
  - (a) otherwise payable under or in accordance with Part I or Part II of the Legal Aid Act 1974 ; or
  - (b) otherwise chargeable as mentioned in section 5(1) of that Act; or
  - (c) otherwise payable under regulations made by virtue of section 1(6) of the Legal Aid Act 1982,in connection with services provided by the solicitor shall be reduced or cancelled.
- (4) Accordingly, in so far as—
  - (a) any of sections 4, 5, 10(1) and 37(2) of the Legal Aid Act 1974; or
  - (b) any provision made by virtue of section 1(1) (b) of the Legal Aid Act 1982,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 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.

#### **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—

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*Status: This is the original version (as it was originally enacted).*

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- (a) his conduct in connection with the giving of advice or assistance under Part I of the Legal Aid Act 1974;
- (b) his conduct in connection with the provision of services for any person receiving legal aid under that Part of that Act;
- (c) his conduct in connection with the provision of services for any legally assisted person in pursuance of Part II of that Act; or
- (d) his conduct in connection with the provision of advice and representation pursuant to section 1 of the Legal Aid Act 1982 (duty solicitors); or
- (e) his professional conduct generally ;

and the reference in each of paragraphs (b) and (c) to the provision of services for any such person as is there mentioned includes the provision of services for any such person in the capacity of agent for that person's solicitor.

(2B) Where the Tribunal makes any such order as is re-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 each of the following classes of persons, namely—

- (a) those who may be selected under section 12(1) of the Legal Aid Act 1974;
- (b) those who may be assigned to act for legally assisted persons under Part II of that Act; and
- (c) those who may be selected to provide advice and representation pursuant to section 1 of the Legal Aid Act 1982;

and references to a legally assisted person are references to a person to whom aid is ordered to be given under section 28 of the Legal Aid Act 1974.”.