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## **Dealing with Complaints**

The clerking team and members of the Chambers of John Fitzgerald attempt to ensure that their dealings with each other, instructing solicitors, lay clients and members of the public are trouble free. Any individual who wishes to raise a concern is invited to set out the details of the complaint to the Management Committee or the Practice Director in writing so that an investigation can take place with the aim of resolving the problem. Our complaints procedure is set out in a booklet explaining each step of the process. It is available on request from the person to whom the complaint is raised initially.

## COMPLAINTS PROCEDURE

### **Preamble**

Head of Chambers, John Fitzgerald, has a non-executive role and is only called in to deal with any aspect of Chambers administration in exceptional circumstances for which the Bar Council requires his personal involvement.

Chambers has the avowed intention of providing a professional and amicable working environment for its staff, members and clients. If a problem should arise, Chambers will take steps to resolve the matter. The policies and procedures set out below have the aim of investigating and resolving complaints impartially and justly.

Unless otherwise stated, all references to the Management Committee in this Complaints Procedure means to the members of that committee at the relevant time other than the Deputy Head of Chambers as appeal from any sanction imposed will generally lie to the Deputy Head of Chambers.

### **Definitions**

“Staff” means any permanent or casual employee of chambers, currently the Practice Director, First Junior Clerk and Fees Clerk. The First Junior Clerk and the Fees Clerk are hereinafter referred to as “the Clerks”.

“Members” are current full tenants of the Chambers of John Fitzgerald (“Chambers”),.

“Former members” are persons who have at any time been a full member of Chambers and who have, prior to termination of the agreement to become a member, paid all sums due and complied with all other obligations of tenancy.

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“Door Tenants” are current Door Tenants of Chambers.

“Former Door Tenants” are persons who have at any time been a Door Tenant of Chambers and who have, prior to termination of the agreement to become a Door Tenant, paid all sums due and complied with all other obligations of door tenancy.

“Pupils” are persons who, for the time being, are pupils of Chambers.

“Mini-pupils” are students who are guests of members of Chambers on a short-term study secondment to chambers.

“Work-experience people” are persons on a voluntary secondment to the clerks’ room.

## 1 COMPLAINTS CONCERNING STAFF

### 1.1 Complaints concerning staff may be raised by:

- Head of Chambers
- former and current members of chambers
- former and current door tenants
- other members of staff
- pupils, mini-pupils and persons on work experience
- solicitors
- members of the public including lay clients.

1.2 Other than a complaint by a pupil, a complaint about one of the clerks may be raised by any of the persons listed in 1.1 above with the Practice Director who will record it in writing and copy it to the members of the Management Committee

1.3 The Practice Director will investigate any complaint about a clerk and report to the Management Committee in writing on the result of the investigation. If the Practice Director

considers disciplinary action should be taken against a clerk, he/she will request the Management Committee to instigate disciplinary proceedings in accordance with ACAS recommended procedure and carry out the appropriate sanction if the Management Committee decides at the conclusion of those proceedings that a sanction should be applied.

1.4 A pupil who has a complaint about a clerk should inform the pupil supervisor who will record it in writing and copy it to the Practice Director to investigate the complaint and report to the Management Committee in writing on the result of the investigation. If the Practice Director considers disciplinary action should be taken against a clerk, he/she will request the Management Committee to instigate disciplinary proceedings in accordance with ACAS recommended procedure and carry out the appropriate sanction if the Management Committee decides at the conclusion of those proceedings that a sanction should be applied. Any sanction must be confirmed by the Management Committee in writing to the clerk concerned. The pupil supervisor will provide all necessary assistance to the pupil, or such assistance as the pupil may require, in taking part in any investigation or disciplinary procedures.

1.5 Complaints about the Practice Director by any of the persons listed in 1.1 above should be made in writing to the Management Committee who will arrange for the matter to be investigated and for the institution of disciplinary proceedings if appropriate, all procedures to be carried out in accordance with ACAS recommendations.

1.6 Appeal by a member of staff against any decision of the Management Committee lies to the Deputy Head of Chambers.

## 2 COMPLAINTS CONCERNING BARRISTERS GENERALLY

2.1 Complaints concerning barristers may be raised by:

- Head of Chambers
- former and current members of chambers
- former and current door tenants
- members of staff
- pupils, mini-pupils and persons on work experience

- solicitors
- members of the public including lay clients.

2.2 Complaints should be raised to the Management Committee in writing unless the complaint is about a member of the Management Committee in which case it should be made to the other member(s) of the Management Committee who is(are) not the subject of the complaint. As Head of Chambers is not generally involved in chambers' administration, it is anticipated that, whereas external complaints may well be raised to Head of Chambers, the Management Committee will take over the administration of the complaint and Head of Chambers will only be directly involved in exceptional circumstances.

### 2.3 **Complaints about Head of Chambers**

2.3.1 At least three members of the Management Committee will deal with complaints about Head of Chambers. The most junior member of the Management Committee ("the investigator") will investigate the complaint and report to the others ("the panel") who will determine whether any step should be taken. At all stages, Head of Chambers is entitled to be represented by a member of Chambers of his choice.

2.3.2 Investigation and resolution of the complaint will normally involve the following:

- The investigator will inform Head of Chambers that the complaint has been made.
- The investigator will pass the complaint and any relevant documents to Head of Chambers.
- The investigator will take a statement in writing from Head of Chambers after he has seen the complaint and related documents and supply a copy to Head of Chambers.
- The investigator will present the results of his investigation in writing to the panel ("the report") and supply a copy to Head of Chambers
- Upon receipt of the report the panel will convene a meeting with Head of Chambers who may make a written statement or elect to make an oral statement to the panel. He may elect to request the presence of the complainant or other witnesses at the panel meeting.
- Head of Chambers will attend a meeting with the panel and any other witness to the facts provided that the said witness has given a written statement to the

investigator and the panel and a copy has been provided to Head of Chambers at least seven days before the hearing.

- Head of Chambers may be accompanied by a member of staff or chambers if he so wishes so that an independent record of proceedings may be made.
- The panel will consider the statements and may ask questions of the witnesses, including Head of Chambers. Head of Chambers may cross-examine witnesses or challenge the contents of any written statement.
- If Head of Chambers admits the conduct which is the subject of the complaint, he may offer an explanation or otherwise seek to mitigate his conduct.
- The panel, the most senior of whom will have a casting vote in the event that any decision is not unanimous, will determine if any sanction should be taken within the constraints of the Code of Conduct of the General Council of the Bar which makes it clear that each barrister is personally responsible for his own standards.
- The panel may:
  - (i) exonerate Head of Chambers from the complaint;
  - (ii) advise him that the complaint is well-founded but merits no sanction;
  - (iii) advise him that the complaint is well-founded and offer specific advice in relation to the matters raised;
  - (iv) in addition to (iii), warn him in writing that a repeat of any matter which is the subject of the complaint may result in the panel dealing with that complaint requesting him to offer his resignation as Head of Chambers or require him to submit himself for re-election;
  - (v) if the complaint is a repetition of a previous complaint or a further complaint on a related ground for which a written warning has been given, he may be asked to offer his resignation or required to submit himself for re-election.
  - (vi) any decision of the panel shall be confirmed to the Head of Chambers in writing.

### 2.3.3 **Appeal**

Head of Chambers may appeal in writing against the decision of the panel to the Deputy Head of Chambers

## 2.4 COMPLAINTS ABOUT MEMBERS OF CHAMBERS

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2.4.1 A complaint about a member of Chambers may be made to the Management Committee by any person listed in 2.1 above. The complaints procedure will commence by acknowledgment of the complaint, followed by an investigation which will be carried out by the most junior member of the Management Committee who will present the result of the investigation (“the report”) in writing to a hearing panel consisting of the other members of the Committee, the most senior of whom will have a casting vote in the event that any decision is not unanimous.

2.4.2 The procedure is:

- a) The member against whom the complaint has been made has the right to see the investigation report and respond to it in writing within seven days of its receipt unless exceptional circumstances apply whereby the member seeks, in writing, an extension of time to a specific date. Extensions of time will not be permitted unless written evidence is provided of the reason for needing the additional time.
- b) The normal method of communication will be e-mail or hard copy of documents left in the member’s pigeon hole.
- c) All communications will be assumed to have been received on the day sent.
- d) Any further investigation prompted by the member’s response will be carried out within seven days from the receipt of member’s response and the results communicated in writing to the member on the seventh day.
- e) The member will attend a meeting with the panel within fourteen days of the conclusion of the investigation to discuss the contents of the report[s] and his response. The member may be accompanied at the meeting by a member of chambers of his choice.
- f) The member will be asked questions and has the right to invite witnesses to attend to speak on his behalf provided that the panel is informed previously of the name of any witness and is provided at least two working days before the meeting with a written statement of the evidence on which the witness proposes to rely. The panel will also require copies of any document on which the member or his witness propose to rely.
- g) The decision will be whether or not the complaint has been upheld.
- h) In the event that the complaint is upheld, the panel will decide whether to:
  - advise the member to apologise to the complainant;

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- advise the member to undertake further training or take other actions consistent with dealing with the cause of the complaint;
  - reprimand the member;
  - warn the member that future conduct of this nature may necessitate the sanctions set out below;
  - consider requesting the member to resign;
  - consider expulsion of the member;
  - report the matter to the General Council of the Bar.
- i) The decision of the panel will be communicated in writing to the member and will contain reasons.
- (j) Appeal against any decision of the hearing panel lies to the Deputy Head of Chambers and any other members of the Management Committee (if there are more than four members of the Management Committee).

2.4.3 If the complaint is about a member of the Management Committee, the investigation will be carried out by the most junior of the remaining members of the Management Committee and will be determined by the other member(s) of the Management Committee. The procedure of investigation and hearing of the complaint will be as set out in Paragraph 2.4.2 save that the other member(s) of the Management Committee will determine the level of advice and/or nature of any warning to be imposed. An appeal against the decision of the other member(s) of the Management Committee will be to the Deputy Head of Chambers.

2.4.4 If the complaint is about the Deputy Head of Chambers the investigation will be carried out by the most junior of the remaining members of the Management Committee and will be determined by the other members of the Management Committee. The procedure of investigation and hearing of the complaint will be as set out in Paragraph 2.4.2 save that the other members of the Management Committee will determine the level of advice and/or nature of any warning to be imposed. An appeal against the decision of the members of the Management Committee will be to Head of Chambers.

2.4.5 If the complaint is raised by a solicitor or member of the public, the investigation will include asking the complainant for further details of the complaint if further details are required.

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The procedure is similar to that set out in Paragraph 2.4.2. The barrister and any witness to fact will be asked by the investigator to make a statement in writing for use at a panel hearing. The barrister may be accompanied at the panel hearing by a member of chambers or of staff of his/her choice. The barrister may supplement the written statement by oral representations to the panel. The panel will consist of the other members of the Management Committee. Appeal against a decision of the panel lies to the Deputy Head of Chambers.

### 3 GENERAL MATTERS

The procedures described may vary in accordance with the nature of the complaint and the availability of Management Committee members and/or Deputy Head of Chambers to deal with a complaint. The procedure will be carried out impartially with the object of maintaining proper standards of professional conduct in accordance with the ethics of the Bar.

### 4 OUTCOME AND APPEALS

4.1 The outcome of the complaints procedure and the reasons for making any decision in relation to the complaint will be made known to the complainant in writing. The complainant will be informed at that time that, if he is dissatisfied with the outcome, he should appeal in writing to the relevant person within 14 days of the date of the notice of decision setting out the reasons for his appeal.

4.2 Within 14 days of receipt of written grounds of appeal the appeal shall be heard by the relevant person(s).

4.3 The appeal decision will then be relayed to the complainant in writing within 7 days of the appeal hearing. The appeal may not increase the severity of the sanction applied.

4.4 If the complainant remains dissatisfied with the appeal decision he has the right to refer the matter to the Bar Standards Board where that body is empowered to deal with such a complaint.

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