STATUTORY INSTRUMENTS

1968 No. 1220 (L.13)

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

Made - - - 17*th July* 1968

Coming into Operation 1*st October* 1968

I, Gerald, Baron Gardiner, Lord High Chancellor of Great Britain, in exercise of the powers vested in me by section 82 of the Criminal Justice Act 1967(**a**), hereby make the following Rules :—

Title, commencement and interpretation

1.—(1) These Rules may be cited as the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968 and shall come into operation on 1st October 1968.

(2) The Interpretation Act 1889(**b**) shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(3) In these Rules, unless the context otherwise requires—

"the Applicant" means a person duly authorised by the Bar Council or the Council of The Law Society to make application under these Rules ;

"the Bar Council" means the General Council of the Bar ;

"the Clerk" means the clerk to the appropriate Complaints Tribunal or any deputy or person appointed temporarily to perform the duties of that Office ;

"The Law Society" means the Society incorporated and regulated by Royal Charter dated the 26th day of February 1845, and Royal Charters supplemental thereto and any reference to the Council of The Law Society shall be taken as a reference to the Council elected in accordance with the provisions of the said Charters ;

"the Tribunal" means a Complaints Tribunal constituted in accordance with these Rules.

(4) In these Rules a rule or form referred to by number means the rule or form so numbered in these Rules.

Complaints tribunals

2.—(1) For the purpose of hearing and determining complaints against any barrister or solicitor arising out of his conduct when acting in

(**a**) 1967 c. 80. (**b**) 1889 c. 63.

criminal proceedings for a legally assisted person or his professional conduct generally, there shall be constituted—

(*a*) in a case relating to a barrister, a Tribunal consisting of the Chairman or Vice-Chairman of the Bar Council, three practising barristers nominated by the Bar Council, and a person (not being a practising barrister or solicitor) nominated by the Lord Chancellor;

(*b*) in a case relating to a solicitor, a Tribunal consisting of the President or Vice-President of The Law Society, three solicitors nominated by the Council of The Law Society, and a person (not being a practising barrister or solicitor) nominated by the Lord Chancellor.

(2) In a case relating both to a barrister and solicitor, the Tribunals shall have power at their discretion in any particular case to sit together for all or any of the following purposes—

(*a*) to hear evidence;

(*b*) to make joint findings of fact;

(*c*) to make orders in accordance with Rule 3.

(3) Three members of a Tribunal shall form a quorum of whom the person nominated by the Lord Chancellor shall be one, and any decision of a Tribunal shall be taken, in the event of a difference between members, by the votes of a majority.

(4) The Bar Council or, as the case may be, The Law Society, shall appoint Clerks to the Tribunals for barristers and solicitors respectively and provide premises and other facilities for hearing and determining complaints, and any expenses so incurred by them shall be expenses of the Tribunals.

Powers of a tribunal

3. Where a Tribunal determine that a complaint against a barrister or solicitor has been substantiated they shall have power—

(*a*) to exclude him from acting in criminal proceedings for legally assisted persons (whether permanently or temporarily) and, in the case of a solicitor, to exclude any other person who is for the time being a member of the same firm;

(*b*) to reduce or cancel the remuneration otherwise payable under a Legal Aid Order to him or, in the case of a solicitor, payable under a Legal Aid Order to him or to his firm;

(*c*) to order him to pay all or any of the costs of the proceedings on any such complaint.

Applications to tribunals

4.—(1) The Bar Council or, as the case may be, The Law Society, shall receive and consider any complaints concerning the conduct when acting in criminal proceedings for legally assisted persons of, respectively, a barrister or a solicitor.

(2) Where the Bar Council or The Law Society are of the opinion, as a result of any such complaint or by reason of his professional conduct generally, that there may be good reason for imposing upon the barrister or solicitor (as the case may be) any of the penalties set out in Rule 3, they shall apply to the appropriate Tribunal to hear and determine the matter.

Procedure

5. The provisions of the Schedule to these Rules shall have effect with respect to the proceedings of a Tribunal.

Dated 17th July 1968.

Gardiner, C.

SCHEDULE

Form of application

1. An application to a Tribunal shall be in writing under the hand of the applicant in such one of the forms annexed hereto and numbered 1 and 2 as shall be appropriate and shall be sent to the Clerk together with an affidavit by the applicant in such one of the forms set out in the Schedule hereto and numbered 3 and 4 stating the matters of fact on which he relies in support of his application.

Supplementary information

2. Before fixing a day for the hearing the Tribunal may require the applicant to supply such further information and documents relating to the application as they think fit.

Dismissal of application without hearing

3.—(1) In the case of an application where, in the opinion of the Tribunal, no *prima facie* case is shown in favour of the application, the Tribunal may dismiss the application without requiring the respondent to answer the allegations, and without hearing the applicant.

(2) If required so to do, either by the applicant or the respondent, the Tribunal shall make a formal order dismissing such application.

Parties

4. In the case of an application against a solicitor who is a member of a firm the parties to the proceedings shall be—

(i) the applicant,

(ii) the solicitor, and

(iii) if the Tribunal so direct, every solicitor who is for the time being a partner of such solicitor.

Fixing hearing

5.—(1) In the case of an application in which, in the opinion of the Tribunal, a *prima facie* case is shown in favour of the application, the Tribunal shall fix a day for the hearing, and the Clerk shall serve notice thereof on each party to the proceedings and shall serve on each party, other than the applicant, a copy of the application and affidavit.

(2) There shall be at least 21 days between the service of any such notice and the day fixed therein for the hearing.

(3) The notice shall be in such one of the forms annexed hereto and numbered 5, 6 and 7, as shall be appropriate and shall require the party to whom it is addressed to furnish to the Clerk and to every other party at least 14 days before the day fixed for the hearing, unless the Tribunal direct otherwise, a list of all documents on which he intends to rely.

Inspection and copies of documents

6.—(1) Any party may inspect the documents included in the list furnished by any other party.

(2) A copy of any document mentioned in the list furnished by any party shall, on application and on payment of the proper charges therefor by the party requiring it, be furnished to that party by the other within 3 days after the receipt of such application.

Failure of party to appear at hearing

7. If any party fails to appear at the hearing the Tribunal may, upon proof of service on such party of the notice of hearing, proceed to hear and determine the application in his absence.

Affidavits

8. The Tribunal may, in their discretion, either as to the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

Disciplinary proceedings

9. Where it appears that the application against the respondent is based on circumstances which have—

(*a*) in the case of a respondent who is a barrister, been considered by the Senate of the four Inns of Court; or

(*b*) in the case of a respondent who is a solicitor, been considered in proceedings against him before the Disciplinary Committee constituted under the Solicitors Act 1957(a);

the Tribunal may—

(i) act on such evidence as they may think sufficient as to what was the decision of the Senate or were the Findings and Order of the Disciplinary Committee (as the case may be); and

(ii) accept as conclusive in the proceedings before the Tribunal any facts found by the Senate or Disciplinary Committee.

Pronouncement of Findings and Order

10. If the Findings and Order of the Tribunal are not pronounced on the day of the hearing, the Clerk shall give notice to the parties of the date when the Findings and Order will be pronounced.

Copies of Findings and Order

11.—(1) The Clerk shall on the day of pronouncement, or on such other date as the Tribunal shall have ordered, send copies of the Findings and Order to the Lord Chancellor, the Secretary of State for the Home Department, the Secretary of the Bar Council and to the Secretary of The Law Society.

(2) Within 4 days of the date when the Findings and Order shall have been pronounced, the Clerk shall send a copy thereof to each party to the application.

Hearings to be in private

12. The Tribunal shall hear all applications in private.

Withdrawal of application

13.—(1) Unless the Tribunal direct otherwise, no application shall be withdrawn after it has been sent to the Clerk.

(2) Where a party has applied for leave to withdraw his original application the Tribunal may, upon such terms as to costs or otherwise as they shall think fit, grant such leave, or of their own motion or upon the application of any party adjourn the hearing.

Adjournments

14. The Tribunal may, of their own motion or upon the application of any party, adjourn the hearing upon such terms, as to cost or otherwise, as the Tribunal shall think fit.

(a) 1957 c. 27.

Amendments

15. If upon the hearing it shall appear to the Tribunal that the allegations in the affidavit require to be amended, or added to, the Tribunal may permit such amendment, or addition, or if in the opinion of the Tribunal such amendment or addition is not within the scope of the affidavit, may require the same to be embodied in a further affidavit, provided that if such amendment, or addition, shall be such as to take any party by surprise, or prejudice the conduct of his case, the Tribunal shall grant an adjournment of the hearing, upon such terms as to costs, or otherwise, as the Tribunal shall think fit.

Suspension of publication of Order

16.—(1) The Tribunal shall have power upon the application of any party to suspend the sending of a copy of any Order thereof to the Lord Chancellor, the Secretary of State for the Home Department, the Secretary of The Law Society and to the Secretary of the Bar Council.

(2) Where the Tribunal grant an application under the preceding subparagraph, the Order shall not take effect until it has been sent to the Secretary of State for the Home Department, and if the Order is an Order that a barrister or solicitor be excluded from a panel for a period, the period of exclusion shall be deemed to begin on the date when the Order is so sent to the Secretary of State for the Home Department.

Shorthand notes

17.—(1) Shorthand notes of proceedings may be taken by a person appointed by the Tribunal; and any party who appeared at the proceedings shall be entitled to inspect the transcript thereof.

(2) The shorthand writer shall, if required, supply to the Tribunal, to any person entitled to be heard upon an appeal against an Order of the Tribunal, to the Bar Council and to The Law Society, but to no other person, a copy of the transcript of such notes on payment of his charges.

(3) If no shorthand notes be taken the Chairman of the Tribunal shall take a note of the proceedings, and the provisions of this Rule as to inspection and taking copies shall apply to such note accordingly.

(4) In this paragraph any reference to a shorthand note of any proceedings shall be construed as including a reference to a record of the proceedings made by mechanical means and, in relation to such a record, the reference to the shorthand writer shall be construed as a reference to the person responsible for transcribing the record.

Service

18. Service of any notice or document may be effected under these Rules by post addressed, in the case of a barrister, to his last known place of business and to his place of abode and in the case of a solicitor, to his place of business appearing in the Register (commonly known as the Practising Roll) kept by the Registrar of Solicitors and to his place of abode (if known) and such service shall be deemed to be effected at the time when the letter would be delivered in the ordinary course of post.

Power to dispense with requirements of Schedule

19. The Tribunal may dispense with any requirements of the Schedule respecting notices, affidavits, documents, service, or time, in any case where it appears to the Tribunal to be just so to do.

Extensions of time

20. The Tribunal may extend any of the times fixed by the Schedule.

Custody of documents

21.—(1) All affidavits shall be filed with and kept by the Clerk.

(2) The Tribunal may order that any books, papers, or other exhibits, produced or used at a hearing, shall be retained by the Clerk until the time within which an apeal may be entered has expired, and, if notice of appeal is given, until the appeal is heard or otherwise disposed of.

Application of Evidence Act

22. The Evidence Act 1938(a), shall apply in relation to proceedings before the Tribunal in the same manner as they apply in relation to civil and criminal proceedings.

Notice to admit

23. (1) Any party may, by notice in writing at any time not later than 9 days before the day fixed for the hearing, call upon any other to admit any document saving all just exceptions and if such other party desires to challenge the authenticity of the document he shall, within 6 days after service of such notice, give notice that he does not admit the document and requires it to be proved at the hearing.

(2) If such other party refuses or neglects to give notice of non-admission within the time prescribed in the last preceding paragraph he shall be deemed to have admitted the document unless otherwise ordered by the Tribunal.

(3) Where a party gives notice of non-admission within the time prescribed by the sub-paragraph (1) of this paragraph and the document is proved at the hearing, the costs of proving the document shall be paid by the party who has challenged the document, whatever the Order of the Tribunal may be, unless in their Findings the Tribunal shall find that there were reasonable grounds for not admitting the authenticity of the document.

FORM 1

Form of Application against a Barrister

To the Clerk to the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

In the Matter of J.K., a Barrister

and

In the Matter of the Criminal Justice Act 1967

I, the undersigned A.B. a person duly authorised in this behalf by [the General Council of the Bar] [the Council of The Law Society] make application that J.K. of
barrister may be excluded from acting for legally assisted persons and that such other Order may be made as the Tribunal shall think right.

In witness whereof I have hereunto set my hand this day of 19 .

.....Signature

.....Address

.....

..... } Profession, business,
..... } or occupation.

(a) 1938 c. 28.

FORM 2

Form of Application against a Solicitor

To the Clerk to the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

In the Matter of C.D., [E.F. and G.H.] [a] Solicitor[s]

and

In the Matter of the Criminal Justice Act 1967

I, the undersigned A.B. a person duly authorised in this behalf by [the Council of the Law Society] [the General Council of the Bar] make application that C.D. of solicitor [and E.F. of and G.H. of solicitors, partners of the said C.D.] may be excluded from acting for legally assisted persons and that such other Order may be made as the Tribunal shall think right.

In witness whereof I have hereunto set my hand this day of 19

.....Signature

.....Address

.....

..... } Profession, business,
..... } or occupation.

FORM 3

Form of Affidavit by Applicant (Application against a Barrister)

In the Matter of J.K., a Barrister

and

In the Matter of the Criminal Justice Act 1967

I, A.B. of
make oath and say as follows:—

1. I am duly authorised by [the General Council of the Bar] [the Council of The Law Society] to make application that C.D. of (hereinafter called the respondent) may be excluded from acting for legally assisted persons and that such other Order may be made as the Tribunal shall think right.

2. The respondent was called to the Bar by in and is a practising barrister with Chambers at

3. [Here state the facts with regard to the complaint concisely in numbered paragraphs and show deponent's means of knowledge.]

FORM 4

Form of Affidavit by Applicant (Application against a Solicitor)

In the Matter of C.D., [E.F. and G.H.] [a] Solicitor[s]

and

In the Matter of the Criminal Justice Act 1967

I, A.B. of
make oath and say as follows:—

1. I am duly authorised by [the Council of The Law Society] [the General Council of the Bar] to make application that C.D. of solicitor [and E.F. of and G.H. of solicitors, partners of the said C.D.] may be excluded from acting for legally assisted persons and that such other Order may be made as the Tribunal shall think right.

2. The said C.D. (hereinafter called the [first] respondent) was admitted as a solicitor of the Supreme Court of Judicature in England on the [The said E.F. (hereinafter called the second respondent) was admitted on the and the said G.H. (hereinafter called the third respondent) was admitted on the].

3. The first respondent practises as a solicitor at [and according to the best of my knowledge, information and belief the second and third respondents practise in partnership with him] [under the style or firm of].

4. [Here state the facts with regard to the complaint concisely in numbered paragraphs and show deponent's means of knowledge.]

Sworn, etc.

FORM 5

Form of Notice to Applicant by the Clerk to the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

[Heading as in Form 1 or Form 2.]

To A.B. of

The day of is the day fixed by the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968, for the hearing of your application in the matter of [barrister] [solicitor[s]].

The Tribunal will sit at
at o'clock in the noon.

*[The parties to the application are as follows:—]

You are required by the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968 to furnish to every other party to the application and to the Clerk to the Tribunal at The General Council of the Bar, Carpmael Building, Temple, London, E.C.4, or The Law Society, Chancery Lane, London, W.C.2 as appropriate at least 14 days before the said day of a list of all the documents on which you intend to rely.

You are requested to acknowledge receipt of this notice without delay.

Dated this day of 19

Clerk to the Tribunal

*To be deleted where the application is against a barrister.

FORM 6

Form of Notice to a Barrister by the Clerk to the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

[Heading as in Form 1]

To J.K. of , a barrister.

Application has been made by A.B., a person duly authorised in that behalf by [the General Council of the Bar] [the Council of The Law Society] that you may be excluded from the panels maintained under the Legal Aid Scheme, 1950 or from such of them as the Tribunal shall think fit, and that such other Order may be made as the Tribunal shall think right.

A copy of the affidavit in support of this application accompanies this notice.

The day of is the day fixed by the Tribunal for the hearing of the application. The Tribunal will sit at at o'clock in the noon.

If you fail to appear the Tribunal may, in accordance with the Legal Aid in Criminal Cases (Complaints Tribunals) Rules 1968, proceed in your absence.

You are required by the said Rules to furnish to every other party to the application to the Clerk to the Tribunal at The General Council of the Bar, Carpmael Building, Temple, London, E.C.4, at least 14 days before the said day of a list of all the documents on which you propose to rely.

Either party may inspect the documents included in the list furnished by any other and a copy of any document mentioned in the list of any party must, on application and on payment of the proper charges therefor by the party requiring it, be furnished to that party by the other within 3 days after receipt of such application.

You are requested to acknowledge receipt of this notice without delay.

Dated this day of 19 .

Clerk to the Tribunal

[*N.B.*—A copy of the Legal Aid in Criminal Cases (Complaints Tribunals) Rules, 1968, is sent herewith for your information and guidance.]

FORM 7

Form of Notice to Solicitor by the Clerk to the Complaints Tribunal constituted under the Legal Aid in Criminal Cases (Complaints Tribunal) Rules 1968

[Heading as in Form 2]

To C.D. of
[E.F. of and G.H. of
], solicitor[s].

Application has been made by A.B., a person duly authorised in that behalf by [the Council of The Law Society] [the General Council of the Bar] that you [and E.F. and G.H.] may be excluded from, acting for legally assisted persons, and that such other Order may be made as the Tribunal shall think right.

The parties to the application are as follows:—

A copy of the affidavit in support of this application accompanies this notice.

The day of is the day fixed by the Tribunal for the hearing of the application. The Tribunal will sit at at o'clock in the noon.

If you fail to appear the Tribunal may, in accordance with the Legal Aid in Criminal Cases (Complaints Tribunals) Rules 1968, proceed in your absence.

You are required by the said Rules to furnish to every other party to the application and to the Clerk to the Tribunal at The Law Society, Chancery Lane, London, W.C.2, at least 14 days before the said day of a list of all the documents on which you propose to rely.

Any party may inspect the documents included in the list furnished by any other and a copy of any document mentioned in the list of any party must, on application and on payment of the proper charges therefor by the party requiring it, be furnished to that party by the other within 3 days after receipt of such application.

You are requested to acknowledge receipt of this notice without delay.

Dated this day of 19 .

[*N.B.*—A copy of the Legal Aid in Criminal Cases (Complaints Tribunals) Rules 1968, is sent herewith for your information and guidance.]

EXPLANATORY NOTE

(*This Note is not part of the Rules.*)

These Rules constitute two Complaints Tribunals for hearing and determining complaints against, respectively, barristers and solicitors arising out of their conduct when acting in criminal proceedings for legally aided persons or their professional conduct generally.