

# CHARTER CHAMBERS

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## Complaints & Discipline Procedure

Adopted: February 1<sup>st</sup> 2018

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This Complaints Procedure is applicable to barristers, pupils and Associates barristers. It is not to be applied to staff.

A complaint can be internal or external. It is important that all complaints are taken seriously and Chambers will deal with all complaints on that basis. A complaint can be made in a number of ways, in writing or orally. Where made orally, the nature or essence of the complaint might initially not be clear. If this occurs the Chambers Director will strive to capture and commit a complaint to writing as soon as possible, and ideally agree this with the complainant as part of this Policy. However, in the event that it cannot be agreed, this does not mean that what is regarded as being the complaint is not acted on. Chambers will always be mindful that some complaints can come from individuals where English is not their first language. In those circumstances, Chambers will do all it can to ensure that it has understood and captured the nature of the complaint as part of its procedure.

### *Time Limits*

Chambers expects where a complaint arises that it will be made in a timely manner as and when it arises. It is therefore acceptable to assume that three months from when the incident occurred is an appropriate time limit in which to make a complaint. Complaints older than three months will **not** be considered by chambers, unless there are exceptional circumstances that explain the delay.

### *Procedure*

Chambers will do all that it can to deal with complaints swiftly and fairly.

Upon receipt of a complaint to Chambers:

1. Chambers Director will consider whether the complaint is within the time limit.

2. If a complaint is outside the time limit, and where in the Chambers Director's opinion Chambers *might* considered accepting the complaint for investigation, the Director should refer the matter to the Joint Head of Chambers within twenty four hours of receipt. The Joint Head of Chambers shall consider whether exceptional circumstances apply to explain the delay and determine whether to accept or reject the complaint. The Joint Head of Chambers shall give their reasons in writing whether there are exceptional circumstances or not.
3. In the event that a complaint is time limited and/or if there are no exceptional circumstances to admit the complaint to these procedures, the complainant shall be notified of this in writing by the Chambers Director.
4. If the complaint is within time, the Chambers Director will open a file, and notify the complainant of receipt of complaint within seven days of receipt. Where the precise nature of the complaint is not clear, the Chambers Director will endeavour to agree the true nature of the complaint with the complainant within the seven day period. For the avoidance of doubt, if the nature of the complaint remains unclear, the time limits shall still apply and Chambers shall continue to deal with the matter as a complaint.
5. Where a complaint is within the time limit, the Chambers Director will notify a Joint Head of Chambers of the complaint within twenty-four hours receipt.
6. There is a two stage process for complaints. The Joint Head of Chambers will initially consider if there is any merit in seeking to settle the complaint informally. This will depend on the nature of the complaint received. The Joint Head of Chambers decision whether to commence with the Stage One informal route or Stage Two formal route is final.

### ***Informal***

#### **Stage one: - Local resolution of the problem (the informal stage)**

7. With certain complaints which are 'low level' these can and should be resolved quickly. Where the nature of the complaint is such that by contacting the complainant and seeking their views as to redress. In some cases, action can be taken that will quickly and effectively remedy the situation without any formal findings or intervention against the barrister concerned.
8. Any initial communication to the person who complains can be by letter, email, telephone conversation or by making an appointment with the individual in person. Where this action does not lead to the problem being resolved then the complaint should be dealt with through the formal stages of this procedure.

9. Where the matter is settled informally to the satisfaction of the complainant the Chambers Director shall write to the complainant setting out how the matter has been resolved and that it concludes the matter.

### **Stage 2 Formal Resolution**

10. If the matter cannot be resolved informally or the Joint Head of Chambers determines that the complaint requires formal resolution immediately, the case moves to Stage 2.
11. The Joint Head of Chambers will appoint a member of Chambers to investigate the complaint within twenty-four hours of notification.

### ***Investigation***

12. The Investigator will undertake an investigation into the complaint.
  - a) The Investigator must ensure that their investigation is fair and balanced.
  - b) An investigation must draw to the barrister's attention, the nature of the complaint and elicit a response from them or give them the opportunity to respond to the allegation.
  - c) The Investigator may interview any person as part of their investigation.
  - d) The Investigator must be cautious in certain cases, where there is sensitivity to the nature of the complaint, to ensure that the essence of the complaint is fairly put to the barrister so that they can deal with it. This does not necessarily mean that the Investigator must supply or disclose any or all of the original documentation/complaint to the barrister.
  - e) The Investigator shall keep notes of any meetings and accounts given. It is good practice for the Investigator to have their notes agreed for accuracy by the interviewee, which can be done by them being signed or if digital the interviewee confirming their accuracy by email. Records of this agreement must be kept and supplied with the investigators report.
  - f) Investigators should note that complainants have the right to obtain notes of interviews as part of the investigation process under FOI legislation.
13. The Investigator will report back in writing to the Joint Head of Chambers within seven days whether, in his opinion, a Disciplinary Panel needs to be convened. The time for reporting can be extended if reasonable circumstances require it, but;
  - a) the investigator must apply for an extension in writing to the Head of Chambers;
  - b) the Head of Chambers, must, respond to that request in writing, and if they agree to an extension, state the reasons for doing so and set a new date by which the report shall be completed, and,

- c) the barrister against whom the complaint has been made must be notified of the extension in writing, the reasons for it and the new date by which the report shall be completed for the Head of Chambers.
14. The outcome of an investigation would usually find one of the following outcomes but it is not limited to:
- a) The evidence indicates that the complaint was substantiated and therefore upheld;
  - b) The complaint was substantiated in part and the part upheld and identified only is upheld;
  - c) There is insufficient evidence to reach a conclusion so the complaint is inconclusive and not proven;
  - d) The complaint is not substantiated by the evidence and therefore not upheld;
15. When the investigation report is received the Joint Head of Chambers shall come to a conclusion. The investigation report is not binding upon the Joint Head of Chambers.
16. If the Joint Head of Chambers decides that there is no case to answer, the complainant is notified of that decision and the reasons for it in writing within seven days by the Head of Chambers. Where this occurs, the Head of Chambers must report the decision to the Board and the reasons for it. The Board has no power to review or reverse the decision.
17. If the Joint Head of Chambers decides there is a case to answer they shall order a Disciplinary Panel to be convened. The Disciplinary Panel shall meet within seven days. This panel must not have either Joint Head of Chambers on the Panel. It must consist of three members of chambers, one of whom must be Queen's Counsel.

### ***Disciplinary Panel Hearing***

18. Where a Disciplinary Panel hearing is to take place:
- a) The barrister must be informed of that decision in writing by the Head of Chambers at the same time the decision is made.
  - b) The barrister shall receive a copy of the investigation report unless circumstances\* require it to be not be served.
  - c) If circumstances exist to not serve the investigation report, the Joint Head of Chambers shall set out the reasons in writing why those circumstances apply, but they shall also set out the nature of the allegation against the barrister so that they are informed of the nature of the allegation against them sufficient for the Disciplinary Panel hearing.

\*Examples of circumstances may include for example an allegation of harassment where the individual concerned wishes to maintain anonymity or elements of anonymity due its sensitive or sexual nature.

19. Two days before the Panel hearing, the barrister must respond to the report or the Head of Chambers summary of allegations. The barrister shall set out (i) what is agreed (ii) what is disputed, and (iii) where there is a dispute, the reasons for the dispute.
20. The barrister against whom the complaint is made is invited to attend the Disciplinary Panel. They will be entitled to be accompanied by a colleague.
21. Panel procedure.
  - a) The Investigator's report is automatically admissible but the barrister has the opportunity to cross examine the accuracy of it or call additional evidence to undermine it.
  - b) The Panel must be satisfied that the charge is proved on the balance of probabilities. This is taken to mean that two of the three panellists must be in agreement.
  - c) The Panel has the right to call witnesses and cross examine.
22. The Disciplinary Panel will inform the barrister against whom the complaint has been made in writing within twenty-four hours of the hearing of its findings. If sanctions are imposed as a result of the hearing they may take the form of:
  - a) an informal warning,
  - b) a first warning,
  - c) a final written warning,
  - d) suspension or
  - e) expulsion.

There is no circumstance under which a barrister will be ordered to pay compensation to a client, nor shall chambers make any such payment.

23. Where the Disciplinary Panel impose a sanction of suspension on a barrister the Panel shall state the period the barrister must be suspended for.
24. Where the Disciplinary Panel impose a sanction of expulsion on a barrister they shall state the period which they *recommend* to the Board that the barrister should be regarded as being financially liable for on their departure. Expulsion does not affect the barrister's obligation to pay the bond under the terms of the Constitution. The Board shall have regard to the recommendation

but retain a discretion as to the length of time the barrister will remain financially liable for any other outstanding debts as otherwise provided for within Chambers Constitution.

25. The barrister can appeal against the decision of the Disciplinary Panel. They must do so in writing to the Other Joint Head of Chambers who has not made the initial decision that a Panel hearing is required. This appeal must be lodged within five days. The barristers appeal shall set out in clear terms the grounds for any appeal.
26. The Other Joint Head of Chambers shall write to the complainant notifying them of the result of the Disciplinary Panel's findings within forty-eight hours of the *expiry* of the *appeal* period as provided for in paragraph 19. The Other Joint Head of Chambers shall state in clear terms if they confirm the Disciplinary Panel's decision, and their reason for doing so.
27. Where an appeal is lodged, the Other Joint Head of Chambers shall review the Grounds of Appeal and the Panel decision. Within three days of the appeal notice being lodged the Other Head of Chambers shall notify the barrister in writing whether:
  - a) They confirm the Panel's findings, and give reasons for doing so; or
  - b) They allow the barristers appeal in whole or part, and give reasons for doing so.
28. In exceptional circumstances\* the Head of Chambers has a discretion to order a second Disciplinary Panel hearing. If the decision is made to order a second Panel hearing, then the exceptional reasons shall be supplied in writing to the barrister within the three day period after the expiry of the appeal period.

\*Exceptional circumstances will be very rare but could for example include a fundamental error or flaw in the first panel hearing.
29. The procedure for a second Panel hearing shall be as provided for in this Policy, save:
  - a) The Head of Chambers shall appoint new panel members.
  - b) The second Panel hearing shall be conducted as a fresh hearing and the procedure shall be as provided for in this Policy.
30. The procedure and time limits after a second Panel hearing has concluded shall be the same as provided for in this Policy for the first Panel hearing. This includes the power to appeal. In the event of a barrister's appeal this shall return to the Other Head of Chambers, who did not make

the original hearing decision and that Head of Chambers shall act in accordance with paragraph 21 (a) and (b).

31. The Head of Chambers has no power or discretion to order a third Panel Hearing.
32. Chambers will keep a record of all complaints made and the actions taken. When receiving anonymous complaints in the majority of cases the only action the Chambers Director and Head of Chambers will take is to log the complaint and record any action taken in response to the complaint if required, as provided for by this policy.
33. This policy was adopted on February 1<sup>st</sup> 2018. It will be reviewed on an annual basis by the Board.

Joint Heads of Chambers