



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Handling by relevant professional organisations of conduct complaints*

#### **23 Handling by relevant professional organisations of conduct complaints: investigation by Commission**

- (1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of any complaint made to it by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person and remitted to a relevant professional organisation under section 6(a) or 15(5)(a) has been dealt with by the organisation (such a complaint being referred to in this Act as a “handling complaint”).
- (2) The Commission may decide—
  - (a) not to investigate a handling complaint;
  - (b) to discontinue the investigation of a handling complaint.
- (3) If the Commission decides not to investigate, or to discontinue the investigation of, a handling complaint it must give notice in writing to—
  - (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates,by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (4) The Commission must not investigate a handling complaint where either—
  - (a) the relevant professional organisation has not completed its investigation of the conduct complaint to which the handling complaint relates; or

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- (b) the handling complaint is made after the expiry of the period of 6 months after such date as the Scottish Ministers may specify by order, but paragraph (a) does not apply in any of the circumstances mentioned in subsection (5).
- (5) The circumstances are that—
- (a) the handling complaint is that the relevant professional organisation—
    - (i) has acted unreasonably in failing to start an investigation into the complaint; or
    - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
  - (b) the Commission considers that, even though the complaint is being investigated by the organisation, an investigation by the Commission is justified.
- (6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to—
- (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates,
- by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (7) An order under subsection (4)(b) may specify different dates for different purposes.
- (8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to—
- (a) the person who made the handling complaint;
  - (b) the relevant professional organisation;
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (9) The Scottish Ministers may by order amend the period of time referred to in subsection (4)(b).

## **24 Investigation under section 23: final report and recommendations**

- (1) Where the Commission has completed an investigation under section 23 it must—
- (a) make a written report of its conclusions;
  - (b) send a copy of the report to—
    - (i) the person who made the handling complaint;
    - (ii) the relevant professional organisation;
    - (iii) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (2) A report under this section may include one or more of the following recommendations—

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- (a) that the relevant professional organisation provide to the person making the handling complaint such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the Commission considers appropriate;
  - (b) that the conduct complaint be investigated further by the relevant professional organisation;
  - (c) that the conduct complaint be reconsidered by the relevant professional organisation;
  - (d) that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned;
  - (e) that the relevant professional organisation pay compensation of such amount, not exceeding £5000, as the Commission may specify to the person making the handling complaint for loss, inconvenience or distress resulting from the way in which the conduct complaint was handled by the organisation;
  - (f) that the relevant professional organisation pay to the person making the handling complaint an amount specified by the Commission by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (3) Where a report under this section includes any recommendation, the report must state the reasons for making the recommendation.
- (4) A relevant professional organisation to whom a report is sent by the Commission under this section must have regard to the conclusions and recommendations set out in the report so far as relating to the organisation.
- (5) Where a report sent to a relevant professional organisation under this section includes a recommendation relating to it, the organisation must, before the end of the period of 3 months beginning with the date on which the report was sent, notify the Commission, the person who made the handling complaint and the practitioner concerned, in writing, of—
- (a) the action which it has taken to comply with the recommendations or in consequence of further consideration of the matter by it;
  - (b) its decision not to comply wholly with a recommendation and any reason for that decision.
- (6) Where the Commission is either—
- (a) notified under subsection (5)(b) that the relevant professional organisation has decided not to comply wholly with a recommendation; or
  - (b) of the opinion that the relevant professional organisation has not complied wholly with a recommendation before the end of the period of 3 months beginning with the date on which the report was sent to the organisation under this section,
- the Commission may direct the professional organisation to comply with that recommendation if the Commission thinks fit; and the organisation must comply with the direction.
- (7) For the purposes of subsection (6), a “recommendation” means any recommendation referred to in paragraphs (a) to (c), (e) or (f) of subsection (2).
- (8) The Scottish Ministers may by order, after consulting—
- (a) the relevant professional organisations;

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(b) such groups of persons representing consumer interests as they consider appropriate,  
amend subsection (2)(e) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

## **25 Failure to comply with recommendation**

- (1) If the Commission considers that a relevant professional organisation has failed to comply with a direction under section 24(6), the Commission may apply by petition to the court for the organisation to be dealt with in accordance with subsection (2).
- (2) Where such a petition is presented, the court may inquire into the matter and after hearing—
  - (a) any witnesses who may be produced against or on behalf of the professional organisation; and
  - (b) any statement that may be offered in defence,may order the organisation to comply with the recommendation with which the direction under section 24(6) is concerned.

## **26 Abolition of Scottish legal services ombudsman**

- (1) The office of the Scottish legal services ombudsman (“the ombudsman”) is abolished on such date as the Scottish Ministers may by order specify.
- (2) The Scottish Ministers may not make an order under subsection (1) unless the ombudsman has no exercisable functions.
- (3) The functions of the ombudsman cease to be exercisable except in relation to the advice, services and activities mentioned in section 77(2).