

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Legal Complaints

289. This Part of the Act establishes an independent Office for Legal Complaints (OLC), which administers an ombudsman scheme that is empowered to deal with all complaints about lawyers and where appropriate, provide redress to complainants of up to £30,000. The ombudsman scheme operates by reference to rules devised by the OLC and approved by the LSB – “scheme rules”. Prior to commencement of the Act, approved regulators had the ability to provide redress to complainants. The Act removes this ability and confers it on ombudsmen. The ombudsman scheme is expressly prohibited from taking any disciplinary action against a lawyer, the power to do so remains solely with the approved regulators.
290. In this Part, provision is made for the appointment process and necessary qualifications of the members and staff of the OLC, and the Chief Ombudsman and assistant ombudsmen responsible for making determinations under the ombudsman scheme. Provision is also made for the accountability of the OLC through the Board, the framework of rules for the OLC’s operating procedures and the changes to the regulatory arrangements of approved regulators necessary in consequence.
291. The OLC’s membership must bring together a wide range of expertise and backgrounds. The OLC has a chairman and between six and eight members. The OLC is chaired by a lay person and the majority of its members are also lay persons. The OLC is responsible for administering the ombudsman scheme and it sets policy and rules in relation to complaints handling to ensure that best practice is promoted.
292. The OLC is accountable to the Board in respect of its targets and funding. OLC members are appointed by the Board (in the case of the chairman, with the Lord Chancellor’s consent and, in the case of other members, after consultation with the chairman). In order to establish the ombudsman scheme the OLC must draw up draft scheme rules to be approved by the Board. The OLC itself appoints the Chief Ombudsman, and, with the consent of the Chief Ombudsman, may also appoint assistant ombudsmen as necessary.

Complaints Handling – the previous position

293. Prior to commencement of the Act, each of the approved regulators maintained its own complaints handling and disciplinary arrangements. A complainant who was dissatisfied with the way in which a complaint had been handled could refer the complaint to the Legal Services Ombudsman (LSO), who could ask an approved regulator to reconsider a complaint.
294. The following bodies were subject to the jurisdiction of the LSO:
- the Law Society (also subject to the jurisdiction of Legal Services Complaints Commissioner),
 - the Bar Council,

- the Council for Licensed Conveyancers,
 - the Institute of Legal Executives,
 - the Institute of Trade Mark Attorneys, and
 - the Chartered Institute of Patent Attorneys.
295. Under the previous complaints system, anyone who wished to complain about a person regulated by any of the organisations listed above would need to establish and make contact with the appropriate regulatory body. In the event that a complainant was not satisfied with the way in which a complaint had been handled by the appropriate regulatory body they could refer their complaint to the LSO. The LSO investigated the way in which the complaint was handled and the response from the professional body. If the LSO believed that a complaint had not been investigated properly, they could recommend that the professional body looked at the matter again. The LSO also had the power to re-investigate a complaint – in 2006 the LSO widened an investigation to look at the original complaint in less than 1% of cases.¹
296. Sir David Clementi’s *Review of the Regulatory Framework for Legal Services in England and Wales*, published in 2004,² observed that there were a number of issues which arise from the manner in which complaints were dealt with under those previous arrangements:
- the record of complaints handling by the approved bodies – substantial delays and questionable quality in terms of outcome,
 - the low level of consumer confidence in the independence of the system,
 - the inconsistency and lack of clarity for redress arrangements for consumers in respect of regulatory bodies with overlapping activities, and
 - the overlaps in the oversight regime.
297. Sir David concluded:
- “There is a considerable concern about how complaints are dealt with. The concern arises at a number of levels: at an operating level there is an issue about the efficiency with which the systems are run; at an oversight level there is a concern about the overlapping powers of the oversight bodies; and at a level of principle, there is an issue about whether systems for complaints against lawyers, run by lawyers themselves, can achieve consumer confidence.”³
298. The Government’s 2005 White Paper, *The Future of Legal Services: Putting Consumers First*⁴ proposed the creation of an independent Office for Legal Complaints (OLC), which would be comprised of a management Board and a single complaints handling body that would provide redress for consumers, both of which would enhance consumer confidence in the complaints process.

Complaints Handling – the new system

299. The OLC and ombudsman scheme have clearly defined powers. The ombudsman scheme can deal with consumer complaints about any services provided by authorised persons – that is persons (including bodies) regulated (in relation to a reserved legal activity) by approved regulators. Ombudsman and/or OLC staff investigate complaints, and must refer any indication or allegation of misconduct to the relevant approved regulator (which retains power to take disciplinary action). The ombudsmen may

¹ Legal Services Ombudsman, 2005
² Clementi, 2004
³ Clementi, 2004
⁴ Department for Constitutional Affairs, 2005

monitor the decisions that are made in respect of the alleged misconduct, but are not able to take any disciplinary action themselves. If necessary, an ombudsman may report any concerns to the Board for its consideration.

300. All authorised persons are required to maintain in-house complaints handling arrangements. These are the first port of call for a consumer, and the ombudsman scheme does not consider complaints that have not been considered in-house in the first instance, except in very limited circumstances as may be set out in scheme rules. If the complaint is not resolved satisfactorily in-house, the consumer is able to bring complaints to the ombudsman scheme free of charge.
301. The handling of complaints is the responsibility of the ombudsmen (headed by the Chief Ombudsman), although the Act enables certain functions, for example, investigations, to be delegated to members of staff who are not ombudsmen. However, the determination of complaints cannot be delegated. The OLC is responsible for making scheme rules by which the complaints handling scheme operates, but the Act generally envisages that, in the first instance, a complaint will be allocated to a case worker who will investigate and attempt to mediate the complaint.
302. The Chief Ombudsman and assistant ombudsmen become involved where mediation by a caseworker has not been successful, in which case, an ombudsman is responsible for making a final determination which, if accepted by the complainant, is final and becomes binding on all parties to the complaint.
303. When determining a complaint, the ombudsman may direct the respondent to do one or more of the following:
 - apologise to the complainant;
 - forego all or part of the respondent's fee;
 - pay the complainant a determined amount to compensate for any loss, inconvenience or distress;
 - correct or redo any work responsible for any error, omission or deficiency at their own expense (with no charge to the complainant); or
 - at their own expense, take such other action as is specified in the direction and in the interest of the complainant.
304. The "total value" of the orders together cannot exceed more than £30,000 (not including any amount by way of repayment of fees, or any interest, the rates for which will be set out in scheme rules).
305. The costs of the OLC and the ombudsman scheme are recouped from the legal professions by a combination of a general levy on approved regulators, and case fees payable in circumstances specified in scheme rules by individual respondents to complaints.
306. The detail of the way in which complaints will be dealt with under the ombudsman scheme is set out in scheme rules (the power to make those rules is set out at section 133).

Section 112: Complaints procedures of authorised persons

307. This section provides that each approved regulator must require each authorised person subject to its regulation to maintain in-house complaints procedures, and must make provision for the enforcement of this requirement. The provisions made by the approved regulator must satisfy any requirements specified by the Board.

Section 113: Overview of the scheme

308. *Section 113(1)* describes the purpose of the ombudsman scheme which is to be established; namely the resolution of complaints which relate to an act or omission of a person in carrying out an activity and which are within the jurisdiction of the scheme (as defined by section 125).
309. *Section 113(2) to 113(4)* define the boundary between the ombudsman scheme and the regulatory arrangements of an approved regulator or the Board (in its capacity as a licensing authority). Awarding redress to a complainant is reserved to the ombudsman scheme (section 157), and the taking of disciplinary action is reserved to the approved regulators (or the Board when acting in that capacity).

Section 114: The Office for Legal Complaints

310. This section provides for the establishment of the OLC.
311. **Schedule 15** makes provision for such structural matters as the membership of the OLC, the terms of appointment and tenure of members, staffing, committees, the delegation of functions, the OLC's status, budget and accounting requirements, and the initial location of its principal office.
312. Sub-paragraph (1) of paragraph 1 of the Schedule provides for the OLC to consist of a chairman appointed by the Board with the approval of the Lord Chancellor, and between six and eight other persons appointed by the Board following consultation with the chairman.
313. **Paragraph 2** provides for the OLC to have a lay chairman and a lay majority, a lay person being defined as someone who has never been an authorised person. An "authorised person" for this purpose includes, by virtue of section 161, a person authorised by the claims management regulator under Part 2 of the Compensation Act 2006 to provide regulated claims management services. Under paragraph 3, an ombudsman may be a member (but not chairman) of the OLC, but ombudsmen must not make up the majority of the Board. In appointing members of the OLC, the Board must have regard to the desirability of securing that the OLC includes members who (between them) have experience in or knowledge of a range of the matters. Paragraph 4 lists these.
314. Terms of appointment for OLC members are set out in paragraphs 5 to 9, and are similar to those for members of the Board. Members must be appointed for a fixed period, which must not exceed five years. A person can be re-appointed once only. A lay member of the OLC who becomes an authorised person will for that reason cease to be a member of the OLC. The chairman may be removed from office by the Board, with the approval of the Lord Chancellor. The Board may also remove other OLC members, but only after consultation with the chairman. Sub-paragraph (2) of paragraph 8 limits the circumstances in which the Board can remove OLC members, essentially to those indicating unfitness or inability to discharge the functions of office.
315. **Paragraphs 10 to 12** set out the terms of remuneration of members. The Board is able, if it is considered necessary, to pay pensions, allowances or gratuities to the chairman and other ordinary members of the Board. The Board may also pay compensation to the chairman or other members in certain circumstances.
316. **Paragraphs 13 to 17** enable the OLC to appoint staff to assist in the performance of its functions, and makes provision for their terms and conditions.
317. **Paragraph 18** allows the OLC to make arrangements with those it considers appropriate to provide assistance to it or to the ombudsman. Arrangements can be made with approved regulators and include arrangements for assistance to be provided to an ombudsman in relation to the investigation and consideration of a complaint. In making such arrangements the OLC may pay those persons providing assistance.

318. Paragraphs 19 to 21 allow the OLC to establish committees and sub-committees to carry out any of its functions, and provide that a vacancy in any office or a defect in the appointment, or disqualification, of the chairman or any member is not to affect the validity of any act of the OLC.
319. Under paragraph 22 the OLC may delegate specified functions to any member of the OLC, any staff member of the OLC or any committee or sub-committee. However, the OLC will retain accountability for the exercise of its statutory functions.
320. Paragraph 23 sets out the arrangements for the OLC's budget, which must be approved in advance by the Board. Paragraph 25 confers restricted borrowing powers on the OLC with the result that it can borrow money only with the consent of the Board or in accordance with general authorisation given by the Board. The Board can give the OLC consent, or a general authorisation, only with the consent of the Lord Chancellor.
321. By virtue of paragraph 24, the OLC must not acquire or dispose of an interest in land without the consent of the Lord Chancellor. Paragraph 24 applies for five years beginning with the day on which the first interim Chief Executive of the OLC is appointed under paragraph 10 of Schedule 22, or the first member of the OLC is appointed, whichever is first.
322. Paragraph 26 sets out the requirements for the OLC's accounts. The OLC must keep proper accounts and proper records, and prepare an annual financial statement of accounts, with oversight by the Comptroller and Auditor General and ultimately Parliament.
323. Paragraph 27 sets out the OLC's status. As an independent body it is not to be regarded as having the same status as the Crown. The staff appointed under paragraph 13 are not to be regarded as servants or agents of the Crown or as enjoying the same status.
324. Paragraphs 31 to 33 make provision for amendments to the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, the Freedom of Information Act 2000 and the Public Records Act 1958. These are standard provisions which apply to many public bodies.
325. Paragraph 34 exempts the OLC, any member of the OLC, any ombudsman and any member of the OLC's staff from being liable for damages for anything done in the exercise of their functions. This exemption does not apply to anything done in bad faith or prevent an award of damages in respect of act which is unlawful as a result of section 6(1) of the Human Rights Act 1998.

Section 116: General obligations

326. The OLC, like the Board and the approved regulators, has a duty to act compatibly with the regulatory objectives in section 1, and to act in a way which it considers most appropriate to meet those objectives. It also has to have regard to the principles of best practice in relation to the administration of ombudsman schemes.

Section 117: Corporate governance

327. This section requires the OLC to have regard to generally accepted principles of good corporate governance in managing its affairs.

Section 118: Annual report

328. This section places a duty on the OLC to produce an annual report to be sent to the Board, reporting the extent to which, in the OLC's opinion, it has met the regulatory objectives. The report must include a copy of the annual report prepared by the Chief Ombudsman under section 123. This report will be laid before Parliament by the Lord Chancellor.

Section 119: Supplementary powers

329. This section makes standard provision empowering the OLC to do anything necessary for carrying out its functions.

Section 120: Reporting to the Board

330. This section empowers the Board to require a report from the OLC, separately from the annual report. This enables the Board to, for example, monitor the OLC's performance or to seek its views on a particular issue. The Board has a duty to publish any report made by the OLC under this section.

Section 121: Performance targets and monitoring

331. This section empowers the Board to set performance targets for the OLC in relation to any of its functions, or to direct it to set its own targets relating to its functions. *Sections 121(3) and 121(4)* state that any targets must be published. *Section 121(5)* allows the Board to monitor the extent to which the OLC has met these targets.

Section 122: Appointment of Chief Ombudsman and assistant ombudsmen

332. This section sets out the appointment process whereby the OLC must appoint a person (who must be a lay person, and who will cease to hold office if that person ceases to be a lay person) to act as Chief Ombudsman. The OLC may also appoint assistant ombudsmen with the consent of the Chief Ombudsman. Any person appointed must (by virtue of *section 122(4)*) have appropriate qualifications and experience. Although assistant ombudsmen, unlike the Chief Ombudsman, are not required to be lay persons, *section 122(3)* specifies that assistant ombudsmen must not carry out any reserved legal activity for reward during their period of appointment and *section 122(7)* requires the assistant ombudsman's terms and conditions to set out what consequences may ensue on breach of this condition. *Section 122(8)* makes provision for the terms and conditions of any ombudsman's appointment to be such as will ensure their independence, and *section 122(9)* (related to paragraph 27 of Schedule 15) makes it clear that an ombudsman is not a Crown servant.

Section 123: Annual report of Chief Ombudsman

333. *Section 123* requires the Chief Ombudsman to prepare a report each financial year on the discharge of the functions of the ombudsmen. The report is to comply with any requirements specified by the OLC (which the OLC must publish), and is to be included in the annual report which the OLC is required to produce by virtue of *section 118*.

Section 124: Additional reports of Chief Ombudsman

334. *Section 124* enables the OLC to require the Chief Ombudsman to prepare a report in respect of any other specified matter relating to the functions of the ombudsmen, as the OLC considers necessary.

Section 125: Jurisdiction of the ombudsman scheme

335. This section broadly defines what types of person are eligible to bring complaints to the OLC and who may be the subject of a complaint. A complaint will fall within the jurisdiction of the ombudsman scheme if:
- it is not excluded under *sections 126 or 127* (because the respondent's "in-house" complaints procedures have not been used, or the complaint is otherwise excluded by provision made in the scheme rules);
 - if the respondent falls within *section 128* (i.e. the respondent was an authorised person at the relevant time); and

- the complainant falls within section 128 and wishes to have the complaint dealt with under the scheme.

336. *Section 125(3)* prevents an authorised or other person from restricting in any contract or notice the right of a person to bring a complaint.

Section 126: Complaints excluded because respondent's complaints procedures not used

337. *Section 126(1)* provides that a complaint does not fall within the jurisdiction of the ombudsman scheme unless the complainant has first used the respondent's in-house complaints procedure (defined in *section 126(2)*). *Section 126(3)* allows for the scheme rules to disapply section 126(1) in certain circumstances.

Section 127: Complaints excluded by scheme rules

338. *Section 127(1)* provides that the scheme rules may exclude certain described complaints from the jurisdiction of the scheme. *Section 127(2)* states that complaints cannot be excluded on the ground that they relate to any matter which could be dealt with under an authorised body's disciplinary arrangements.

Section 128: Parties

339. This section sets out further conditions as to the parties to a complaint to be handled by the ombudsman scheme. *Section 128(1)* defines the respondent as an authorised person in relation to a reserved legal activity; but it does not matter if the matter being complained about relates to a reserved legal activity or not. *Section 128(2) to 128(4)* set out the conditions for a complainant to be eligible. The first condition (section 128(3)) is that the complainant is not excluded (see *section 128(5)*) and is either:

- an individual, or
- a person (other than an individual) described in an order made by the Lord Chancellor, pursuant to a recommendation under section 130.

340. In addition to this, a complainant must also show that (section 128(4)):

- the respondent provided the services being complained about to the complainant directly;
- the respondent provided the services being complained about to an authorised person who procured them on the complainant's behalf (for example, where a solicitor instructs counsel);
- the respondent provided the services being complained about in their capacity as a personal representative or trustee and the complainant is the beneficiary of the property or trust;
- the respondent provided the services being complained about to a person acting on behalf of the complainant as their personal representative or trustee and the complainant is the beneficiary of the property or trust; or
- the complainant meets such other conditions as set out in an order made by the Lord Chancellor pursuant to a recommendation under section 130.

341. Under section 128(5), a complainant is excluded from the ombudsman scheme if:

- the complainant is an authorised person in relation to a reserved legal activity, and procured the services to which the complaint relates on behalf of another person, (so that, for example, a solicitor who instructs counsel on behalf of a client may not complain about counsel),

*These notes refer to the Legal Services Act 2007 (c.29)
which received Royal Assent on 30th October 2007*

- the complainant is a public body (defined in section 128(7)), or
- the complainant falls within an order made by the Lord Chancellor pursuant to a recommendation made under section 130.

Section 129: Pre-commencement acts and omissions

342. This section makes transitional provision to cover cases where the act or omission complained of took place before commencement of the ombudsman scheme, so that the respondent will not have been an authorised person within the terms of the Act. Its effect is that the complaint will be within the jurisdiction of the scheme as long as the respondent was at the time a person who, after commencement, comes within the definition of “authorised person”.

Section 130: Orders under section 128

343. The Lord Chancellor is empowered to make an order under section 128(3)(b), (4)(d) or (5)(c) only on the recommendation of an interested body. The effect of these orders is for new categories of complainants or complaints to be included in or excluded from the scope of the ombudsman scheme’s jurisdiction. For these purposes the “interested bodies” are the OLC, the Board and the Consumer Panel. The Lord Chancellor may require those bodies to consider making a recommendation under this section. If the Lord Chancellor declines to accept a recommendation, the Lord Chancellor must publish reasons for doing so.

Section 131: Acts and omissions by employees etc

344. This section establishes vicarious responsibility in respect of matters which are the subject of complaints. Any act or omission by an employee which is in the course of their employment will, for the purposes of the ombudsmen scheme, be treated as an act or omission on the part of the employer as well as the employee. Similarly, an act or omission by a partner in a partnership, in the course of carrying on the partnership’s normal business in the usual way, will be treated as an act or omission of the partnership, unless the partner had no authority to act for the partnership and this was known to the person seeking to rely on the partnership’s liability.

Section 132: Continuity of complaints

345. This section makes provision to ensure that a complaint does not fail simply because of a change in membership of the partnership or body against which the complaint is made. This section also requires the OLC to make rules setting out the circumstances in which complaints can be continued where a legal person ceases to exist (for example, where a partnership is dissolved) but another person succeeds to the business, and for the continuation of a complaint by persons specified in scheme rules where a complainant dies or becomes unable to act.

Section 133: Operation of the ombudsman scheme

346. This section provides for the detailed framework for the ombudsman scheme to be determined by the OLC in scheme rules. It allows the OLC the flexibility to adapt its procedures in line with changing notions of best practice. The rules made by the OLC under this section will determine how complaints are to be made and how they are investigated, considered and determined by the ombudsman. Procedures for making scheme rules, including requirements as to consent and prior consultation, are set out in sections 155 and 205.
347. *Section 133(1)* provides a broad duty to make scheme rules. *Section 133(2)* requires scheme rules to establish time limits for the making of complaints, and allows for the possibility of extension in circumstances specified in the rules. *Section 133(3)* lists areas

in which the OLC may wish to make rules. This list is intended purely as an indicative one, and not to limit the breadth of the OLC's power to make rules in other areas or to require them to make rules in the areas specified. *Section 133(4)* provides further detail about the circumstances in which rules may provide for complaints to be summarily dismissed (one of the matters listed in section 133(3)). *Section 133(5)* prevents the power to make scheme rules from being used to compel disclosure where a person could not be so compelled in civil proceedings before the High Court. *Section 133(6)* enables scheme rules to provide for awards of costs to bear interest at such rate as specified in or determined in accordance with the rules.

Section 134: Delegation of an ombudsman's functions

348. This section enables the delegation of the ombudsman's functions to a member of the OLC's staff, with two exceptions: staff to whom these functions are delegated may investigate or consider a complaint, but they may not make a determination, nor may they dismiss a complaint summarily in the terms prescribed by section 133(3) (a). This will enable OLC staff to carry out initial handling of complaints, and work directed to mediation, with the Chief Ombudsman and assistant ombudsmen becoming directly involved with a complaint if the parties do not accept the caseworker's solution. In this instance the caseworker would submit the complaint to an ombudsman for a binding determination under section 137. Similarly, if on initial investigation a complaint appears manifestly unfounded or frivolous, the caseworker would refer it to an ombudsman to consider dismissal (in accordance with section 133(3)(a)). The Chief Ombudsman's powers of delegation are further restricted, in that they may not delegate powers of consent to the appointment of an assistant ombudsman, or the duties imposed to produce an annual report.

Section 135: Notification requirements

349. This section makes provision to the effect that if a complaint is excluded, dismissed, referred to another scheme, settled, withdrawn or abandoned, then the ombudsman must inform the complainant, the respondent and any relevant authorising body in relation to the respondent. If a complaint is dismissed, referred to another body or excluded, the ombudsman must give reasons for doing so.

Section 136: Charges payable by respondents

350. The OLC will be partly funded through "case fees" payable, subject to the exceptions set out below, by respondents (i.e. those legal professionals who are the subject of complaints). By *section 136(2)*, scheme rules must provide for fees to be waived or wholly refunded where:
- the complaint is determined or otherwise resolved in favour of the respondent; and
 - where the ombudsman is satisfied that the respondent took all reasonable steps to try and resolve the complaint under the respondent's complaints procedures.
351. *Section 136(4)* defines the scope of the respondent's complaints procedures.
352. In accordance with *section 136(5)*, scheme rules may also provide for case fees to be reduced, waived or refunded in other circumstances. This subsection also allows the rules to set different charges for different stages of a complaint.
353. Scheme rules can provide that unpaid case fees incur interest and, by virtue of *section 136(6)*, unpaid case fees can be recovered by the OLC as a debt.
354. The OLC will, as is the procedure with all scheme rules, be obliged to consult and gain the Board's approval before making rules on case fees under this section and, in addition, (by virtue of section 155) must also obtain the consent of the Lord Chancellor.

Section 137: Determination of complaints

355. This section makes provision for the ombudsman's powers in making a determination. The governing principle, set out in *section 137(1)*, is that the ombudsman must determine a complaint according to what is fair and reasonable in all the circumstances of the case. *Sections 137(2) and 137(3)* set out the directions which the ombudsman may make in a determination, namely:
- that the respondent make an apology to the complainant;
 - that the respondent's fees for the services to which the complaint relates are limited to a specified amount (and any other action be taken, such as a refund, which may be necessary to give effect to this);
 - that the respondent pay compensation for loss, inconvenience or distress;
 - that the respondent at their own expense secure rectification of any specified error, omission or other deficiency in connection with the matter under complaint; or
 - that the respondent at their own expense take such other action in the interests of the complainant as the direction may specify.
356. *Section 137(4)* allows for any amount payable pursuant to a determination to bear interest. *Section 137(5)* provides that the powers of the ombudsman in making a determination are not confined to cases where the complainant may have a cause of action in negligence (and so may be available in cases of "simple" inadequate professional service).

Section 138: Limitation on value of directions under the ombudsman scheme

357. This section ensures the total value of the directions made under section 137(2)(c) to (e) on the determination of a complaint under the ombudsman scheme does not exceed £30,000 (excluding interest – see subsection (3)). Prior to the commencement of the Act, the highest level of compensation in the legal sector was £15,000.
358. *Section 138(2)* explains "total value" as the aggregate of the amount of any compensation payable, plus the amount of expenses reasonably incurred by the respondent in rectifying any specified error, omission or deficiency. It does not include any reduction in the level of fees payable, or associated refund etc, by virtue of a direction under section 137(2)(b).

Section 139: Alteration of limit

359. This section empowers the Lord Chancellor, by order, to amend the limit on the total value of directions imposed by section 138, on the recommendation of an "interested body" (the OLC, the Board or the Consumer Panel). The body recommending alteration of the limit must first publish its proposed recommendation and consider representations made in respect of it. If asked to do so by the Lord Chancellor, an interested body must consider whether it is appropriate to make a recommendation under this section.

Section 140: Acceptance or rejection of determination

360. In determining a complaint the ombudsman is required to prepare a written statement of the determination (*section 140(1)*). *Section 140(2)* sets out the detail of what should be included in this statement, and *section 140(3)* lists the people and bodies to whom the statement must be supplied. If the determination is accepted by the complainant, it is binding on both parties (*section 140(4)*), and no further legal proceedings can be instituted with regard to the matter that was the subject of the complaint (*section 140(11)*); but if the complainant does not notify acceptance within the time specified for this purpose, the complainant is to be taken as having rejected

the determination (*section 140(5) and 140(8)*). However, there may be circumstances where a person is unable to reply to the determination within the time specified and *sections 140(6) and 140(7)* provide for this. On acceptance or rejection by the complainant, the ombudsman must give notice to those parties set out in *section 140(7)*, and the ombudsman's certificate of determination is evidence that the determination was duly made under the scheme (*sections 140(9) and 140(10)*).

Section 141: Enforcement by complainant of directions under section 137

361. This section makes provision for enforcement of directions made by an ombudsman. The complainant or an ombudsman can apply to the High Court or a county court. The court may order that any amount due under a direction to refund fees or pay compensation, including interest, is recoverable as if the amount were payable under an order of the court. If the respondent fails to comply with any other direction pursuant to a determination, the court may, on the application of the complainant or an ombudsman, order the respondent to take such steps as the court directs to comply with it. An ombudsman may only make an application with the complainant's consent and only in circumstances specified by scheme rules (*section 141(5)*).

Section 142: Reporting court orders made against authorised persons

362. This section makes provision governing reporting of any order for enforcement of directions made by a court under *section 141*. The court must give the OLC notice of any order made against a person, and the OLC in turn must make arrangements to inform any relevant approved regulators, and may require the approved regulator to report on what action it has taken. If, in such a case, an ombudsman is not satisfied with the action taken, then it may inform the Board.

Section 143: Reporting possible misconduct to approved regulators

363. In the course of consideration of a complaint, it may become apparent that there is a possibility that a respondent, or other person in relation to the matter concerned, has breached their regulator's rules of conduct. Where the ombudsman is of such an opinion, this section allows the ombudsman to notify that person's regulator, and to notify the complainant that they have done this. The regulator can be required to report to the ombudsman on the actions it takes. If the ombudsman, on studying the report, is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board.

Section 144: Duties to share information

364. *Section 144(1)* requires scheme rules to set out that the OLC, an ombudsman or a member of the OLC's staff must disclose information to an approved regulator. The information to be disclosed must be specified in the rules, as must the circumstances in which it must be disclosed. Each approved regulator must provide in its regulatory arrangements for the provision of information to the OLC, an ombudsman or members of the OLC's staff, of such description and in such circumstances as may be specified in the arrangements (*section 144(2)*). The Board may specify requirements which arrangements under *section 144(2)* or rules under *section 144(1)* must fulfil (and must publish any such requirements). In specifying those requirements, the Board must take into account the need, so far as is reasonably practicable, to avoid duplication of investigations and to ensure that the OLC assists approved regulators and vice versa (*section 144(4) to 144(6)*). *Sections 144(7) and 144(8)* impose a mutual obligation on the OLC and on approved regulators to consult one another in relation to draft rules/provisions of the kind described in *sections 144(1) and 144(2)*, and, when seeking the Board's consent to those rules/provisions, to identify any ongoing objections on the part of the other party.

Section 145: Duties of authorised persons to co-operate with investigations

365. *Section 145(1)* requires each approved regulator to make provision in its regulatory arrangements that all authorised persons regulated by it must provide co-operation and assistance to the ombudsmen in relation to an investigation, consideration or determination of a complaint; and this must include provision for enforcing that requirement. The Board may specify requirements which such provision must satisfy (*subsection 145(2)*), and must publish any such requirements (*subsection 145(3)*).

Section 146: Reporting failures to co-operate with an investigation to approved regulators

366. Where an authorised person fails to co-operate with an ombudsman as stated in section 146 the ombudsman can notify that person's approved regulator. The regulator may be required to report to the ombudsman on the action it takes; and if the ombudsman is of the opinion that the approved regulator is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board (and may do so even if the complaint is subsequently withdrawn).

Section 147: Information and documents

367. This section empowers an ombudsman to require such information and/or documents from parties to a complaint as the ombudsman may specify, before the end of such period (which must be a reasonable period) as the ombudsman may specify, and in such manner or form as the ombudsman may specify (*sections 147(1) and 147(2)*); provided that the ombudsman considers that the information necessary to determine the complaint (*section 147(3)*). The ombudsman may take copies of or extracts from a document and, in the absence of a document may require the person asked to produce it to state to the best of that person's knowledge and belief where it is (*sections 147(4) and 147(5)*). None of these powers may be used to compel disclosure which could not be compelled in civil proceedings before the High Court (*section 147(6)*).

Section 148: Reporting failures to provide information or produce documents

368. This section follows the approach and structure of sections 142 and section 146. Where the ombudsman considers that an authorised person has failed to co-operate with an ombudsman as required by section 147, the ombudsman can notify that person's authorising body, which can be required to report to the ombudsman on the actions it takes. If the ombudsman is of the opinion that the authorising body is seriously or persistently failing to enforce its rules of conduct, the ombudsman may report this to the Board (and may do so even if the complaint is subsequently withdrawn).

Section 149: Enforcement of requirements to provide information or produce documents

369. This section applies if a party, other than the authorised person (the defaulter), has failed to co-operate with an ombudsman as required by section 147. In such a case, the ombudsman may inform the court (which in this case means the High Court – *section 149(7)*) of the person's failure to comply with the request for information. However (by virtue of *sections 149(5) and 149(6)*), where the defaulter is an authorised person, the ombudsman must first be satisfied that each relevant authorising body to which a report was made under section 148 has been given a reasonable opportunity to take action, and that the defaulter has continued to be in default. The High Court may thereupon enquire into the case, and if satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter (and, in the case of bodies corporate and other legal persons, any directors or similar persons) as if the defaulter were in contempt (*section 149(4)*).

Section 150: Reports of investigations

370. The OLC may publish a report about the investigation, consideration and determination of any particular case if it considers it appropriate. The report may not contain the complainant's name or any other identifying information, unless the complainant consents to the inclusion of that information.

Section 151: Restricted information

371. Under this section, "restricted information" is any information that has been collected during an investigation of a complaint. This section protects the complainant in that all such information is classed as confidential and, except as listed under section 152, must not be disclosed except to the extent that it is excluded information. Excluded information is information which was obtained more than 70 years before the date of disclosure, or which is already available to the public, or which is in an appropriately "anonymised" form so that information relating to a particular individual cannot be ascertained from it.

Section 152: Disclosure of restricted information

372. This section makes exceptions to section 151. First, one restricted person (i.e. the OLC, an ombudsman or a member of the OLC's staff – see section 151(2)) may disclose restricted information to another restricted person (*section 152(1)*). Second, restricted information may be disclosed for the purposes of the investigation in the course of which, or for the purposes of which, it was obtained (*section 152(2)*); and third, restricted information may be disclosed for a variety of specific and limited purposes listed in *section 152(3)*, with the possibility (*section 152(3)(g)*) of additional purposes being added by order made by the Lord Chancellor.
373. The section also confers on the Lord Chancellor a power to make an order preventing the disclosure of information in circumstances or for purposes prescribed in the order.

Section 153: Data protection

374. This section amends the Data Protection Act 1998 to ensure that Part 6 of the Legal Services Act is able to operate compatibly with it by exempting personal data processed by the OLC in complaints handling from the subject information provisions where application of those provisions would prejudice the proper discharge of the complaints handling functions. This will ensure that frivolous applications do not impact adversely on the ombudsman scheme. This amendment is similar to provision made in the 1998 Act for certain other regulators and ombudsmen and will ensure that privileged information may be disclosed in certain specific situations.

Section 154: Protection from defamation claims

375. This section makes provision placing OLC proceedings and publications on a par with court proceedings for the purposes of the law of defamation.

Section 155: Consent requirements for rules

376. This section requires the consent of the Board prior to any scheme rules being made or modified by the OLC. It also specifically requires the consent of the Lord Chancellor to rules under section 136 which impose charges on respondents to complaints. The OLC is required to consult on its proposed rules before seeking the necessary consent: the consultation requirements are in section 205.

Section 156: The Board's powers in respect of rules

377. Under this section the Board has the power to direct the OLC to amend any of its rules. The direction may be in general terms or it may require a specific modification. Before

making a direction under [section 156\(1\)\(b\)](#) to make a specific modification, the Board must give the OLC a formal notice that gives details of the proposed modifications, and must publish that notice and take account of any representations made ([section 156\(2\)](#)). In such a case the consultation procedure under section 205 is disapplied, as is the requirement to obtain the Board's consent ([section 156\(3\)](#)).

Section 157: Approved regulators not to make provision for redress

378. The OLC is to be the single point of entry for all complaints. This is subject to the requirement, in section 126, that complaints (except in specified circumstances) must, in the first place, be considered under the respondent's internal complaints procedures.
379. The OLC will investigate complaints and provide redress, but it will report any possible misconduct to the relevant approved regulator, which will take any necessary disciplinary action. There is therefore a clear split between the power to consider redress (OLC), and consideration of disciplinary action (approved regulators). As part of the provision for this split, this section prohibits approved regulators from including in their regulatory arrangements any provision relating to redress (defined in [section 157\(4\)](#)).
380. In accordance with [section 157\(5\)](#) the prohibition on provision relating to redress does not prevent provision for certain types of arrangements: compensation arrangements, indemnification arrangements and certain regulatory arrangements (as specified in section 158).
381. Transitional arrangements cover proceedings in respect of complaints under way at the date of commencement of the OLC's operations, which are made by order under section 211 ([sections 157\(2\) and 157\(3\)](#)).

Section 158: Regulatory arrangements not prohibited by section 157

382. [Section 158](#) makes clear that section 157 does not prohibit approved regulators from making provision in their regulatory arrangements requiring, or authorising the approved regulator to require, an authorised person to take certain action of a type described in [sections 158\(1\)\(a\) to \(f\)](#). That action is to investigate whether there are any persons who may have a claim for redress against the relevant authorised person (section 158(1)(a)), to report back to the approved regulator on the outcome (section 158(1)(b)), to identify any affected persons who may have a claim and notify them that they may have a claim (sections 158(1)(c) and (d)), and to provide any affected persons with information about the authorised person's complaints procedures and the ombudsman scheme and ensure that the complaints procedures operate as if the affected person had made a formal complaint (sections 158(1)(e) and (f)). The intention behind the section is to ensure that approved regulators are not prevented by section 157 from making provisions – subject to the Board's approval – requiring authorised persons to take proactive steps in cases where a number of clients may have been affected by the relevant authorised persons' acts or omissions and may have a claim for redress against them.

Section 159: Legal Services Complaints Commissioner and Legal Services Ombudsman

383. This section abolishes the offices of Legal Services Complaints Commissioner and Legal Services Ombudsman. Until this section is commenced, the Legal Services Ombudsman will examine the handling of individual complaints by legal professional bodies on behalf of members of the public, and the Legal Services Complaints Commissioner will examine the Law Society's capability to handle complaints made about its members efficiently and effectively. The complaints handling scheme which this Act establishes replaces these offices.

Section 161: Extension of Part 6 to claims management services

384. This section extends Part 6 of the Act to bring claims management services within the ombudsman scheme complaints handling jurisdiction. Although the provision of regulated claims management services is not designated as a reserved legal activity, this section brings those persons authorised under Part 2 of the Compensation Act 2006 within the ombudsman scheme's jurisdiction on the same basis as authorised persons in relation to an activity which is a reserved legal activity.
385. For the purposes of Part 6, the claims management regulator is treated as an approved regulator, and regulated claims management services are treated as a reserved legal activity. This affects, among other things, the definition of a lay person in Schedule 15, which is to be read as excluding a person authorised under Part 2 of the 2006 Act (so that a person who is or has been authorised under Part 2 of the 2006 Act may not be appointed as Chief Ombudsman).