



# Constitutional Reform Act 2005

## 2005 CHAPTER 4

### PART 4

#### JUDICIAL APPOINTMENTS AND DISCIPLINE

### CHAPTER 3

#### DISCIPLINE

##### *Applications for review and references*

#### **110 Applications to the Ombudsman**

- (1) This section applies if an interested party makes an application to the Ombudsman for the review of the exercise by any person of a regulated disciplinary function, on the grounds that there has been—
  - (a) a failure to comply with prescribed procedures, or
  - (b) some other maladministration.
- (2) The Ombudsman must carry out a review if the following three conditions are met.
- (3) The first condition is that the Ombudsman considers that a review is necessary.
- (4) The second condition is that—
  - (a) the application is made within the permitted period,
  - (b) the application is made within such longer period as the Ombudsman considers appropriate in the circumstances, or
  - (c) the application is made on grounds alleging undue delay and the Ombudsman considers that the application has been made within a reasonable time.
- (5) The third condition is that the application is made in a form approved by the Ombudsman.

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- (6) But the Ombudsman may not review the merits of a decision made by any person.
- (7) If any of the conditions in subsections (3) to (5) is not met, or if the grounds of the application relate only to the merits of a decision, the Ombudsman—
- (a) may not carry out a review, and
  - (b) must inform the applicant accordingly.
- (8) In this section and sections 111 to 113, “regulated disciplinary function” means any of the following—
- (a) any function of the Lord Chancellor that falls within section 108(1);
  - (b) any function conferred on the Lord Chief Justice by section 108(3) to (7);
  - (c) any function exercised under prescribed procedures in connection with a function falling within paragraph (a) or (b).
- (9) In this section, in relation to an application under this section for a review of the exercise of a regulated disciplinary function—
- “interested party” means—
- (a) the judicial office holder in relation to whose conduct the function is exercised, or
  - (b) any person who has made a complaint about that conduct in accordance with prescribed procedures;
- “permitted period” means the period of 28 days beginning with the latest of—
- (a) the failure or other maladministration alleged by the applicant;
  - (b) where that failure or maladministration occurred in the course of an investigation, the applicant being notified of the conclusion or other termination of that investigation;
  - (c) where that failure or maladministration occurred in the course of making a determination, the applicant being notified of that determination.
- (10) References in this section and section 111 to the exercise of a function include references to a decision whether or not to exercise the function.

**Modifications etc. (not altering text)**

- C1** S. 110 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), **reg. 44** (with **reg. 45**)
- C2** Ss. 110-113 applied (with modifications) (18.8.2014) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2014 \(S.I. 2014/1919\)](#), **regs. 1, 22** (with **reg. 24**)
- C3** Ss. 110-113 applied (with modifications) (13.10.2023) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2023 \(S.I. 2023/1005\)](#), **regs. 1, 21** (with **reg. 3**)

**111 Review by the Ombudsman**

- (1) Where the Ombudsman is under a duty to carry out a review on an application under section 110, he must—
- (a) on the basis of any findings he makes about the grounds for the application, decide to what extent the grounds are established;
  - (b) decide what if any action to take under subsections (2) to (7).

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- (2) If he decides that the grounds are established to any extent, he may make recommendations to the Lord Chancellor and Lord Chief Justice.
- (3) A recommendation under subsection (2) may be for the payment of compensation.
- (4) Such a recommendation must relate to loss which appears to the Ombudsman to have been suffered by the applicant as a result of any failure or maladministration to which the application relates.
- (5) If the Ombudsman decides that a determination made in the exercise of a function under review is unreliable because of any failure or maladministration to which the application relates, he may set aside the determination.
- (6) If a determination is set aside under subsection (5)—
  - (a) the prescribed procedures apply, subject to any prescribed modifications, as if the determination had not been made, and
  - (b) for the purposes of those procedures, any investigation or review leading to the determination is to be disregarded.
- (7) Subsection (6) is subject to any direction given by the Ombudsman under this subsection—
  - (a) for a previous investigation or review to be taken into account to any extent, or
  - (b) for any investigation or review which may form part of the prescribed procedures to be undertaken, or undertaken again.
- (8) This section is subject to section 112.

**Modifications etc. (not altering text)**

- C2** Ss. 110-113 applied (with modifications) (18.8.2014) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2014 \(S.I. 2014/1919\)](#), regs. 1, **22** (with reg. 24)
- C3** Ss. 110-113 applied (with modifications) (13.10.2023) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2023 \(S.I. 2023/1005\)](#), regs. 1, **21** (with reg. 3)
- C4** S. 111 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), {reg. 44} (with reg. 45)

## 112 Reports on reviews

- (1) In this section references to the Ombudsman's response to an application are references to the findings and decisions referred to in section 111(1).
- (2) Before determining his response to an application the Ombudsman must prepare a draft of a report of the review carried out on the application.
- (3) The draft report must state the Ombudsman's proposed response.
- (4) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (5) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response to the application should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (6) The Ombudsman must produce a final report that sets out—

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- (a) the Ombudsman's response to the application, including any changes made to it to give effect to a proposal under subsection (5);
  - (b) a statement of any proposal under subsection (5) that is not given effect to.
- (7) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (8) The Ombudsman must also send a copy of the final report to the applicant, but that copy must not include information—
- (a) which relates to an identified or identifiable individual other than the applicant, and
  - (b) whose disclosure by the Ombudsman to the applicant would (apart from this subsection) be contrary to section 139.
- (9) Each copy must be signed by the Ombudsman.
- (10) No part of the Ombudsman's response to an application has effect until he has complied with subsections (2) to (9).

**Modifications etc. (not altering text)**

- C2** Ss. 110-113 applied (with modifications) (18.8.2014) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2014 \(S.I. 2014/1919\)](#), regs. 1, **22** (with reg. 24)
- C3** Ss. 110-113 applied (with modifications) (13.10.2023) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2023 \(S.I. 2023/1005\)](#), regs. 1, **21** (with reg. 3)
- C5** S. 112 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), **reg. 44** (with reg. 45)

**113 References to the Ombudsman relating to conduct**

- (1) The Ombudsman must investigate any matter referred to him by the Lord Chancellor or the Lord Chief Justice that relates to the exercise of one or more regulated disciplinary functions.
- (2) A matter referred to the Ombudsman under subsection (1) may relate to the particular exercise of a regulated disciplinary function or to specified descriptions of the exercise of such functions.

**Modifications etc. (not altering text)**

- C2** Ss. 110-113 applied (with modifications) (18.8.2014) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2014 \(S.I. 2014/1919\)](#), regs. 1, **22** (with reg. 24)
- C3** Ss. 110-113 applied (with modifications) (13.10.2023) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2023 \(S.I. 2023/1005\)](#), regs. 1, **21** (with reg. 3)
- C6** S. 113 applied (3.4.2006) by [The Judicial Discipline \(Prescribed Procedures\) Regulations 2006 \(S.I. 2006/676\)](#), **reg. 44** (with reg. 45)

**114 Reports on references**

- (1) Where the Ombudsman carries out an investigation under section 113 he must prepare a draft of a report of the investigation.

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- (2) If the investigation relates to a matter which is the subject of a review on an application under section 110, subsection (1) applies only when the Ombudsman has sent a copy of the final report on that review to the Lord Chancellor, the Lord Chief Justice and the applicant.
- (3) The draft report must state the Ombudsman's proposals as to—
  - (a) the findings he will make;
  - (b) any recommendations he will make for action to be taken by any person in relation to the matter subject to investigation.
- (4) Those findings and recommendations are referred to in this section as the Ombudsman's response on the investigation.
- (5) The Ombudsman must submit the draft report to the Lord Chancellor and the Lord Chief Justice.
- (6) If the Lord Chancellor or the Lord Chief Justice makes a proposal that the Ombudsman's response on the investigation should be changed, the Ombudsman must consider whether or not to change it to give effect to that proposal.
- (7) The Ombudsman must produce a final report that sets out—
  - (a) the Ombudsman's response on the investigation, including any changes made to it to give effect to a proposal under subsection (6);
  - (b) a statement of any proposal under subsection (6) that is not given effect to.
- (8) The Ombudsman must send a copy of the final report to each of the Lord Chancellor and the Lord Chief Justice.
- (9) Each copy must be signed by the Ombudsman.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 132(4A) words substituted by [2015 c. 2 s. 83\(1\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(2\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(3\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(4\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(6\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(8\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(9\)](#)
- Sch. 7 para. 4Pt. A words inserted by [2007 c. 15 s. 144\(10\)\(a\)](#)
- Sch. 7 para. 4Pt. A words substituted by [2007 c. 15 s. 144\(10\)\(b\)](#)