

LEGAL SERVICES ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Legal Complaints

Complaints Handling – the new system

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),
 - the complainant is a public body (defined in section 128(7)), or

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

- the complainant falls within an order made by the Lord Chancellor pursuant to a recommendation made under section 130.