



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 6

#### LEGAL COMPLAINTS

##### *Determinations under the scheme*

#### **137 Determination of complaints**

- (1) A complaint is to be determined under the ombudsman scheme by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case.
- (2) The determination may contain one or more of the following—
  - (a) a direction that the respondent make an apology to the complainant;
  - (b) a direction that—
    - (i) the fees to which the respondent is entitled in respect of the services to which the complaint relates (“the fees”) are limited to such amount as may be specified in the direction, and
    - (ii) the respondent comply, or secure compliance, with such one or more of the permitted requirements as appear to the ombudsman to be necessary in order for effect to be given to the direction under subparagraph (i);
  - (c) a direction that the respondent pay compensation to the complainant of such an amount as is specified in the direction in respect of any loss which has been suffered by, or any inconvenience or distress which has been caused to, the complainant as a result of any matter connected with the complaint;
  - (d) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify;
  - (e) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify.

*Changes to legislation:* There are currently no known outstanding effects for the Legal Services Act 2007, Cross Heading: Determinations under the scheme. (See end of Document for details)

- (3) For the purposes of subsection (2)(b) “the permitted requirements” are—
- (a) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded;
  - (b) that the whole or part of the fees be remitted;
  - (c) that the right to recover the fees be waived, whether wholly or to any specified extent.
- (4) Where—
- (a) a direction is made under subsection (2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded, or
  - (b) a direction is made under subsection (2)(c),
- the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with scheme rules.
- (5) The power of the ombudsman to make a direction under subsection (2) is not confined to cases where the complainant may have a cause of action against the respondent for negligence.

#### Commencement Information

- I1** S. 137 partly in force; s. 137 not in force at Royal Assent see s. 211; s. 137(4) in force at 1.1.2009 by [S.I. 2008/3149, art. 2\(e\)\(i\)](#)
- I2** S. 137(1)-(3) (5) in force at 6.10.2010 by [S.I. 2010/2089, art. 2\(a\)](#)

### 138 Limitation on value of directions under the ombudsman scheme

- (1) Where a determination is made under the ombudsman scheme in respect of a complaint, the total value of directions under section 137(2)(c) to (e) contained in the determination must not exceed [<sup>F1</sup>£50,000.]
- (2) For this purpose the total value of such directions is the aggregate of—
- (a) the amount of any compensation specified in a direction under subsection (2) (c) of section 137, and
  - (b) the amount of any expenses reasonably incurred by the respondent when complying with a direction under subsection (2)(d) or (e) of that section.
- (3) For the purposes of determining that total value, any interest payable on an amount within subsection (2)(a) of this section, by virtue of section 137(4), is to be ignored.

#### Textual Amendments

- F1** S. 138(1) substituted (1.2.2013) by [The Legal Services Act 2007 \(Alteration of Limit\) Order 2012 \(S.I. 2012/3091\)](#), [arts. 1, 2](#)

#### Commencement Information

- I3** S. 138 in force at 6.10.2010 by [S.I. 2010/2089, art. 2\(a\)](#)

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### 139 Alteration of limit

- (1) The Lord Chancellor may by order amend section 138(1) in accordance with a recommendation made by an interested body under subsection (2).
- (2) An interested body may, at any time, recommend to the Lord Chancellor that section 138(1) should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in that provision.
- (3) An interested body must, if requested to do so by the Lord Chancellor, consider whether or not it is appropriate to make a recommendation under subsection (2).
- (4) An interested body must, before making a recommendation under subsection (2)—
  - (a) publish a draft of the proposed recommendation,
  - (b) invite representations regarding the proposed recommendation, and
  - (c) consider any such representations which are made.
- (5) Where the Lord Chancellor receives a recommendation under subsection (2), the Lord Chancellor must consider whether to follow the recommendation.
- (6) If the Lord Chancellor decides not to follow the recommendation, the Lord Chancellor must publish a notice to that effect which includes the Lord Chancellor's reasons for the decision.
- (7) In this section “interested body” means—
  - (a) the OLC,
  - (b) the Board, or
  - (c) the Consumer Panel.

#### Commencement Information

**I4** S. 139 in force at 6.10.2010 by [S.I. 2010/2089](#), [art. 2\(a\)](#)

### 140 Acceptance or rejection of determination

- (1) When an ombudsman has determined a complaint the ombudsman must prepare a written statement of the determination.
- (2) The statement must—
  - (a) give the ombudsman's reasons for the determination,
  - (b) be signed by the ombudsman, and
  - (c) require the complainant to notify the ombudsman, before a time specified in the statement (“the specified time”), whether the complainant accepts or rejects the determination.
- (3) The ombudsman must give a copy of the statement to—
  - (a) the complainant,
  - (b) the respondent, and
  - (c) any relevant authorising body in relation to the respondent.
- (4) If the complainant notifies the ombudsman that the determination is accepted by the complainant, it is binding on the respondent and the complainant and is final.

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- (5) If, by the specified time, the complainant has not notified the ombudsman of the complainant's acceptance or rejection of the determination, the complainant is to be treated as having rejected it.
- (6) But if—
- (a) the complainant notifies the ombudsman after the specified time that the determination is accepted by the complainant,
  - (b) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination, and
  - (c) the ombudsman is satisfied that such conditions as may be prescribed by the scheme rules for the purposes of this subsection are satisfied,
- the determination is treated as if it had never been rejected by virtue of subsection (5).
- (7) The ombudsman must give notice of the outcome to—
- (a) the complainant,
  - (b) the respondent, and
  - (c) any relevant authorising body in relation to the respondent.
- (8) Where a determination is rejected by virtue of subsection (5), that notice must contain a general description of the effect of subsection (6).
- (9) A copy of the determination on which appears a certificate signed by an ombudsman is evidence that the determination was made under the scheme.
- (10) Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown.
- (11) Neither the complainant nor the respondent, in relation to a complaint, may institute or continue legal proceedings in respect of a matter which was the subject of a complaint, after the time when a determination by an ombudsman of the complaint becomes binding and final in accordance with this section.

#### **Commencement Information**

- I5** S. 140 partly in force; s. 140 not in force at Royal Assent see s. 211; s. 140(6)(c) in force at 1.1.2009 by [S.I. 2008/3149](#), **art. 2(e)(i)**
- I6** S. 140(1)-(5) (6)(a) (b) (7)-(11) in force at 6.10.2010 by [S.I. 2010/2089](#), **art. 2(a)**

### **141 Enforcement by complainant of directions under section 137**

- (1) This section applies where—
- (a) a determination is made in respect of a complaint under the ombudsman scheme,
  - (b) one or more directions are made under section 137(2), and
  - (c) the determination is final by virtue of section 140(4).
- (2) An amount payable in accordance with—
- (a) a direction under subsection (2)(b) of section 137 which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded, or
  - (b) a direction under subsection (2)(c) of that section,

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including any interest payable by virtue of subsection (4) of that section, is recoverable, if a court so orders on the application of the complainant or an ombudsman, as if it were payable under an order of that court.

- (3) If the respondent fails to comply with any other direction under section 137(2), the complainant or an ombudsman may make an application to the court under this subsection.
- (4) If, on an application under subsection (3), the court decides that the respondent has failed to comply with the direction in question, it may order the respondent to take such steps as the court directs for securing that the direction is complied with.
- (5) An ombudsman may make an application under subsection (2) or (3) only in such circumstances as may be specified in scheme rules, and with the complainant's consent.
- (6) If the court makes an order under subsection (2) on the application of an ombudsman, the ombudsman may in such circumstances as may be specified in scheme rules and with the complainant's consent recover the amount mentioned in that subsection on behalf of the complainant.
- (7) In this section “court” means the High Court or [<sup>F2</sup>the county court].

#### Textual Amendments

- F2** Words in s. 141(7) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\), s. 61\(3\), Sch. 9 para. 52](#); [S.I. 2014/954, art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956, arts. 3-11](#))

#### Commencement Information

- I7** S. 141 partly in force; s. 141 not in force at Royal Assent see s. 211; s. 141(5)-(7) in force at 1.1.2009 by [S.I. 2008/3149, art. 2\(e\)\(i\)](#)
- I8** S. 141(1)-(4) in force at 6.10.2010 by [S.I. 2010/2089, art. 2\(a\)](#)

## 142 Reporting court orders made against authorised persons

- (1) Where a court makes an order under section 141, it must give the OLC notice to that effect.
- (2) Where the order is made against a person who is an authorised person in relation to any activity which is a reserved legal activity, the OLC must make arrangements to ensure that an ombudsman gives to each relevant authorising body, in relation to that person, a report which states that the order has been made.
- (3) A report under subsection (2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report under subsection (2) and the reasons for that action being taken.
- (4) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (3), or any failure to comply with such a requirement, considers—
  - (a) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions, or

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- (b) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions,  
the ombudsman may make a report to that effect to the Board.

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**Commencement Information**

**19** S. 142 in force at 6.10.2010 by [S.I. 2010/2089](#), [art. 2\(a\)](#)

**Changes to legislation:**

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