



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 6

#### LEGAL COMPLAINTS

##### *Jurisdiction and operation of the ombudsman scheme*

#### **125 Jurisdiction of the ombudsman scheme**

- (1) A complaint which relates to an act or omission of a person (“the respondent”) in carrying on an activity is within the jurisdiction of the ombudsman scheme if—
  - (a) the complaint is not excluded from the jurisdiction of the scheme by section 126, or by scheme rules made under section 127,
  - (b) the respondent is within section 128, and
  - (c) the complainant is within section 128 and wishes to have the complaint dealt with under the scheme.
- (2) In subsection (1) references to an act or omission include an act or omission which occurs before the coming into force of this section.
- (3) The right of a person to make a complaint under the ombudsman scheme, and the jurisdiction of an ombudsman to investigate, consider and determine a complaint, may not be limited or excluded by any contract term or by notice.

#### **126 Complaints excluded because respondent’s complaints procedures not used**

- (1) A complaint is excluded from the jurisdiction of the ombudsman scheme if the complainant has not first used the respondent’s complaints procedures in relation to the complaint.
- (2) The respondent’s complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulatory arrangements (or licensing rules of the Board) made in accordance with section 112.

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- (3) Scheme rules may provide that subsection (1) does not apply in specified circumstances.

### **127 Complaints excluded by scheme rules**

- (1) Scheme rules may make provision excluding complaints of a description specified in the rules from the jurisdiction of the ombudsman scheme.
- (2) But they may not make provision excluding a complaint from the jurisdiction of the ombudsman scheme on the ground that it relates to a matter which has been or could be dealt with under the disciplinary arrangements of the respondent's relevant authorising body.

### **128 Parties**

- (1) The respondent is within this section if, at the relevant time, the respondent was an authorised person in relation to an activity which was a reserved legal activity (whether or not the act or omission relates to a reserved legal activity).
- (2) The complainant ("C") is within this section if C—
- (a) meets the first and second conditions, and
  - (b) is not excluded by subsection (5).
- (3) The first condition is that C is—
- (a) an individual, or
  - (b) a person (other than an individual) of a description prescribed by order made by the Lord Chancellor in accordance with a recommendation made under section 130.
- (4) The second condition is that—
- (a) the services to which the complaint relates were provided by the respondent to C;
  - (b) the services to which the complaint relates were provided by the respondent to an authorised person who procured them on C's behalf;
  - (c) the services to which the complaint relates were provided by the respondent—
    - (i) in the respondent's capacity as a personal representative or trustee, or
    - (ii) to a person acting as a personal representative or trustee,and C is a beneficiary of the estate or trust in question; or
  - (d) C satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Lord Chancellor in accordance with a recommendation made under section 130.
- (5) C is excluded if, at the relevant time—
- (a) C was an authorised person in relation to an activity which was a reserved legal activity and the services to which the complaint relates were procured by C on behalf of another person,
  - (b) C was a public body or was acting on behalf of such a body in relation to the services to which the complaint relates, or
  - (c) C was a person prescribed, or of a description prescribed, as excluded by order made by the Lord Chancellor in accordance with a recommendation made under section 130.

(6) In subsection (4)(b) “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.

(7) In this section—

“public body” means any government department, local authority or other body constituted for purposes of the public services, local government or the administration of justice;

“relevant time”, in relation to a complaint, means the time when the act or omission to which the complaint relates took place.

### **129 Pre-commencement acts and omissions**

(1) For the purposes of section 128 a person is to be regarded as an authorised person in relation to an activity which is a reserved legal activity, at a time before section 125 comes into force, if the person was at that time—

- (a) a person of the kind mentioned in paragraph 2(4) of Schedule 15,
- (b) a body recognised under section 9 or 32 of the Administration of Justice Act 1985 (c. 61) (recognised bodies), or
- (c) a legal partnership, a conveyancing partnership, a patent attorney body or a trade mark attorney body.

(2) In this section—

“conveyancing partnership” has the meaning given by paragraph 11(5) of Schedule 5;

“legal partnership” has the meaning given by paragraph 7(4) of that Schedule;

“patent attorney body” has the meaning given by paragraph 14(7) of that Schedule;

“trade mark attorney body” has the meaning given by paragraph 16(7) of that Schedule.

### **130 Orders under section 128**

(1) An interested body may, at any time, recommend to the Lord Chancellor that the Lord Chancellor make an order under section 128(3)(b), (4)(d) or (5)(c).

(2) 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 (1).

(3) An interested body must, before making a recommendation under subsection (1)—

- (a) publish a draft of the proposed recommendation,
- (b) invite representations regarding the proposed recommendation, and
- (c) consider any such representations which are made.

(4) Where the Lord Chancellor receives a recommendation under subsection (1), the Lord Chancellor must consider whether to follow the recommendation.

(5) 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.

(6) In this section “interested body” means—

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- (a) the OLC,
- (b) the Board, or
- (c) the Consumer Panel.

### **131 Acts and omissions by employees etc**

- (1) For the purposes of this Part and the ombudsman scheme, any act or omission by a person in the course of the person's employment is to be treated as also an act or omission by the person's employer, whether or not it was done with the employer's knowledge or approval.
- (2) For the purposes of this Part and the ombudsman scheme, any act or omission by a partner in a partnership in the course of carrying on, in the usual way, business of the kind carried on by the partnership is to be treated as also an act or omission by the partnership.
- (3) But subsection (2) does not apply if the partner had no authority to act for the partnership and the person purporting to rely on that subsection knew, at the time of the act or omission, that the partner had no such authority.

### **132 Continuity of complaints**

- (1) The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body.
- (2) Scheme rules must make provision determining the circumstances in which, for the purposes of the ombudsman scheme, an act or omission of a person ("A") is, where A ceases to exist and another person ("B") succeeds to the whole or substantially the whole of the business of A, to be treated as an act or omission of B.
- (3) Rules under subsection (2) must, in relation to cases where an act or omission of A is treated as an act or omission of B, make provision about the treatment of complaints under the ombudsman scheme which are outstanding against A at the time A ceases to exist.
- (4) Scheme rules must make provision permitting such persons as may be specified in the rules to continue a complaint made by a person who has died or is otherwise unable to act; and for that purpose may modify references to the complainant in this Part and in scheme rules.

### **133 Operation of the ombudsman scheme**

- (1) Scheme rules must set out the procedure for—
  - (a) the making of complaints under the ombudsman scheme, and
  - (b) the investigation, consideration and determination of complaints by an ombudsman.
- (2) Scheme rules—
  - (a) must provide that a complaint is to be entertained under the ombudsman scheme only if the complainant has made the complaint under that scheme before the applicable time limit (determined in accordance with the scheme rules) has expired, and

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- (b) may provide that an ombudsman may extend that time limit in specified circumstances.
- (3) Scheme rules made under subsection (1) may (among other things) make provision—
- (a) for the whole or part of a complaint to be dismissed, in specified circumstances, without consideration of its merits;
  - (b) for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to it being determined by that body instead of by an ombudsman;
  - (c) for a person who, at the relevant time (within the meaning of section 128(7)) was an authorised person in relation to an activity to be treated in specified circumstances, for the purposes of the scheme and this Part, as if that person were a co-respondent in relation to a complaint;
  - (d) about the evidence which may be required or admitted and the extent to which it should be oral or written;
  - (e) for requiring parties to the complaint to attend to give evidence and produce documents, and for authorising the administration of oaths by ombudsmen;
  - (f) about the matters which are to be taken into account in determining whether an act or omission was fair and reasonable;
  - (g) for an ombudsman, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before an ombudsman;
  - (h) for an ombudsman to award costs against the respondent in favour of the complainant;
  - (i) for an ombudsman to award costs against the complainant or the respondent in favour of the OLC for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the ombudsman’s opinion that person acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award;
  - (j) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it;
  - (k) for specified persons to be notified of complaints, determinations and directions under the ombudsman scheme.
- (4) The circumstances specified under subsection (3)(a) may include the following—
- (a) the ombudsman considers the complaint or part to be frivolous or vexatious or totally without merit;
  - (b) the ombudsman considers that the complaint or part would be better dealt with under another ombudsman scheme, by arbitration or by other legal proceedings;
  - (c) the ombudsman considers that there has been undue delay in the making of the complaint or part, or the provision of evidence to support it;
  - (d) the ombudsman is satisfied that the matter which is the subject of the complaint or part has previously been dealt with under another ombudsman scheme, by arbitration or by other legal proceedings;
  - (e) the ombudsman considers that there are other compelling reasons why it is inappropriate for the complaint or part to be dealt with under the ombudsman scheme.
- (5) No person may be required by scheme rules—

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- (a) to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court, or
  - (b) to produce any document which that person could not be compelled to produce in such proceedings.
- (6) Scheme rules may authorise an ombudsman making an award of costs in accordance with rules within subsection (3)(h) or (i) to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules.
- (7) An amount due under an award made in favour of a person by virtue of provision made under subsection (3)(g), (h) or (i) is recoverable as a debt due to that person.
- (8) In this section—
- “party”, in relation to a complaint, means—
    - (a) the complainant,
    - (b) the respondent, and
    - (c) any other person who in accordance with scheme rules is to be regarded as a party to the complaint;
  - “specified” means specified in scheme rules.

#### **134 Delegation of an ombudsman’s functions**

- (1) An ombudsman may delegate to a member of the OLC’s staff appointed under paragraph 13 of Schedule 15—
- (a) any function of the ombudsman in relation to the making, investigation or consideration of a complaint;
  - (b) any other function conferred on the ombudsman by or by virtue of this Part.
- (2) Nothing in subsection (1) applies to the following functions—
- (a) the function of determining a complaint;
  - (b) the function of deciding that a complaint should be dismissed by virtue of rules under section 133(3)(a);
  - (c) the Chief Ombudsman’s power to consent to the appointment of an assistant ombudsman under section 122;
  - (d) the duties imposed on the Chief Ombudsman by section 123 (Chief Ombudsman’s report).

#### **135 Notification requirements**

- (1) This section applies where a complaint—
- (a) is excluded from the jurisdiction of the ombudsman scheme under section 126, or by virtue of scheme rules made under section 127;
  - (b) is dismissed, or referred to another body, by virtue of scheme rules;
  - (c) is settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of scheme rules).
- (2) The ombudsman must notify—
- (a) the complainant;
  - (b) the respondent;

(c) any relevant authorising body, in relation to the respondent, notified of the complaint in accordance with rules within section 133(3)(k), and, in a case within subsection (1)(a) or (b), must give reasons for the exclusion, dismissal or referral.

### **136 Charges payable by respondents**

- (1) Scheme rules must require respondents, in relation to complaints under the ombudsman scheme, to pay to the OLC such charges as may be specified in the rules.
- (2) The rules must provide for charges payable in relation to a complaint to be waived (or wholly refunded) where—
  - (a) the complaint is determined or otherwise resolved in favour of the respondent, and
  - (b) the ombudsman is satisfied that the respondent took all reasonable steps to try to resolve the complaint under the respondent’s complaints procedures.
- (3) The rules may make provision as to—
  - (a) the circumstances in which a complaint is to be treated as determined or otherwise resolved in favour of the respondent (which may include circumstances where a complaint is settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of scheme rules));
  - (b) matters to be taken into account by the ombudsman for the purposes of subsection (2)(b).
- (4) The respondent’s complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulatory arrangements (or licensing rules of the Board) made in accordance with section 112.
- (5) The rules may, among other things—
  - (a) provide for the OLC to reduce or waive a charge in such other circumstances as may be specified;
  - (b) set different charges for different stages of the proceedings on a complaint;
  - (c) provide for charges to be wholly or partly refunded in such other circumstances as may be specified;
  - (d) provide that if the whole or any part of a charge is not paid by the time by which it is required to be paid under the rules, the unpaid balance from time to time carries interest at the rate specified in, or determined in accordance with, the rules.
- (6) Any charge which is owed to the OLC by virtue of rules made under this section may be recovered as a debt due to the OLC.