



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 6

#### LEGAL COMPLAINTS

##### *Complaints procedures of authorised persons*

#### **112 Complaints procedures of authorised persons**

- (1) The regulatory arrangements of an approved regulator must make provision requiring each relevant authorised person—
  - (a) to establish and maintain procedures for the resolution of relevant complaints, or
  - (b) to participate in, or make arrangements to be subject to, such procedures established and maintained by another person,and provision for the enforcement of that requirement.
- (2) The provision made for the purposes of subsection (1) must satisfy such requirements as the Board may, from time to time, specify for the purposes of that subsection.
- (3) In this section—

“relevant authorised person”, in relation to an approved regulator, means a person in relation to whom the approved regulator is a relevant approved regulator;

“relevant complaint”, in relation to a relevant authorised person, means a complaint which—

  - (a) relates to an act or omission of that person, and
  - (b) may be made under the scheme provided for by this Part.
- (4) The Board must publish any requirements specified by it for the purposes of subsection (2).
- (5) This section applies in relation to the licensing rules of the Board as it applies in relation to the regulatory arrangements of an approved regulator except that

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subsection (3) has effect as if for the definition of “relevant authorised person” there were substituted—

““relevant authorised person”, in relation to the Board, means a person licensed by the Board under Part 5;”.

### *Overview of the scheme*

#### **113 Overview of the scheme**

- (1) This Part provides for a scheme under which complaints which—
  - (a) relate to an act or omission of a person (“the respondent”) in carrying on an activity, and
  - (b) are within the jurisdiction of the scheme (see section 125),may be resolved quickly and with minimum formality by an independent person.
- (2) Under the scheme—
  - (a) redress may be provided to the complainant, but
  - (b) no disciplinary action may be taken against the respondent.
- (3) Section 157 prevents provision relating to redress being included in the regulatory arrangements of an approved regulator, or licensing rules made by the Board in its capacity as a licensing authority.
- (4) But neither the scheme nor any provision made by this Part affects any power of an approved regulator, or the Board in its capacity as a licensing authority, to take disciplinary action.
- (5) “Disciplinary action” means the imposition of sanctions, in respect of a breach of conduct rules or discipline rules, on a person who is an authorised person in relation to an activity which is a reserved legal activity.

### *The Office for Legal Complaints*

#### **114 The Office for Legal Complaints**

- (1) There is to be a body corporate called the Office for Legal Complaints (in this Act referred to as “the OLC”).
- (2) Schedule 15 is about the OLC.

#### **115 The ombudsman scheme**

- (1) The scheme provided for by this Part is to be administered by the OLC in accordance with this Part and with scheme rules made under this Part.
- (2) In this Part “scheme rules” means rules made by the OLC.
- (3) The scheme is to be operated under a name (which must include the word “ombudsman”) chosen by the OLC, and is referred to in this Act as “the ombudsman scheme”.

## **116 General obligations**

- (1) In discharging its functions the OLC must comply with the requirements of this section.
- (2) The OLC must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives, and
  - (b) which it considers most appropriate for the purpose of meeting those objectives.
- (3) The OLC must have regard to any principles appearing to it to represent the best practice of those who administer ombudsman schemes.

## **117 Corporate governance**

In managing its affairs, the OLC must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

## **118 Annual report**

- (1) The OLC must prepare a report (“the annual report”) for each financial year.
- (2) The annual report must deal with—
  - (a) the discharge of the functions of the OLC,
  - (b) the extent to which, in the OLC’s opinion, the OLC has met the regulatory objectives, and
  - (c) such other matters as the Board may from time to time direct.
- (3) The OLC must include in the annual report a copy of the report prepared by the Chief Ombudsman under section 123 for the financial year in question.
- (4) As soon as reasonably practicable after the end of each financial year, the OLC must give the Board a copy of the annual report prepared for that year.
- (5) The Board must give a copy of the annual report to the Lord Chancellor.
- (6) The Lord Chancellor must lay a copy of the annual report before Parliament.
- (7) In this section “financial year” means—
  - (a) the period beginning with the day on which the OLC is established and ending with the next following 31 March, and
  - (b) each successive period of 12 months.

## **119 Supplementary powers**

The OLC may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

## **120 Reporting to the Board**

- (1) The Board may require the OLC to prepare and give the Board, within a specified period, a report in respect of any specified matter relating to the functions of the OLC.
- (2) In subsection (1) “specified” means specified in the requirement.

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- (3) The Board must publish any report given to it under this section.

## **121 Performance targets and monitoring**

- (1) The Board may—
- (a) set one or more performance targets relating to the performance by the OLC of any of its functions, or
  - (b) direct the OLC to set one or more performance targets relating to the performance by the OLC of any of its functions.
- (2) A direction under subsection (1)(b) may impose conditions with which the performance targets must conform.
- (3) The Board must publish any target set or direction given by it under this section.
- (4) The OLC must publish any target set by it pursuant to a direction under subsection (1)(b).
- (5) The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under this section is being, or has been, met.

### *The ombudsmen*

## **122 Appointment of the Chief Ombudsman and assistant ombudsmen**

- (1) The OLC—
- (a) must appoint a person to act as Chief Ombudsman for the purposes of the ombudsman scheme, and
  - (b) may, with the consent of the Chief Ombudsman, appoint one or more other persons to act as assistant ombudsmen for those purposes.
- (2) The person appointed under subsection (1)(a) must be a lay person.
- (3) It is a condition of an appointment under subsection (1)(b) that the person appointed must not during the appointment carry on any activity which is a reserved legal activity for or in expectation of any fee, gain or reward.
- (4) Each person appointed under subsection (1)(a) or (b) must be a person appearing to the OLC to have appropriate qualifications and experience to act as an ombudsman for the purposes of the ombudsman scheme.
- (5) In this Act a reference to an “ombudsman” (except in the expressions “ombudsman scheme”, “Chief Ombudsman” and “assistant ombudsman”) is a reference to the Chief Ombudsman or an assistant ombudsman.
- (6) A person’s appointment as Chief Ombudsman ceases if that person ceases to be a lay person.
- (7) The terms and conditions on which a person is appointed as an assistant ombudsman must specify the consequences of a breach of the condition imposed by subsection (3).
- (8) Subject to that, a person’s appointment as an ombudsman is to be on such terms and conditions (including terms as to the duration and termination of a person’s appointment and as to remuneration) as the OLC considers—

- (a) consistent with ensuring the independence of the person appointed, and
  - (b) otherwise appropriate.
- (9) Appointment as an ombudsman does not confer the status of Crown servant.
- (10) In this section “lay person” has the same meaning as in Schedule 15.

### **123 Annual report of Chief Ombudsman**

- (1) The Chief Ombudsman must prepare a report for each financial year on the discharge of the functions of the ombudsmen.
- (2) A report under this section must comply with any requirements specified by the OLC.
- (3) The OLC must publish any requirements specified for the purposes of subsection (2).
- (4) As soon as reasonably practicable after the end of each financial year, the Chief Ombudsman must give the OLC a copy of the report prepared under this section for the year.
- (5) In this section “financial year” has the meaning given by section 118(7).

### **124 Additional reports of Chief Ombudsman**

- (1) The OLC may require the Chief Ombudsman to prepare and give the OLC, within a specified period, a report in respect of any specified matter relating to the functions of the ombudsmen.
- (2) In subsection (1) “specified” means specified in the requirement.

#### *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.

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- (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.
- (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.

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- (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—
  - (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
  - (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;

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- (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—
- (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.

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### *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.
- (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.

### **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 £30,000.
- (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.

### **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.

### **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

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- (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.
- (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.

#### **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—

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- (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, 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 a county court.

#### **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
  - (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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*Status: This is the original version (as it was originally enacted).*

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### *Reporting misconduct*

#### **143 Reporting possible misconduct to approved regulators**

- (1) This section applies where—
  - (a) an ombudsman is dealing, or has dealt, with a complaint under the ombudsman scheme, and
  - (b) the ombudsman is of the opinion that the conduct of the respondent or any other person in relation to any matter connected with the complaint is such that a relevant authorising body in relation to that person should consider whether to take action against that person.
- (2) The ombudsman must give the relevant authorising body a report which—
  - (a) states that the ombudsman is of that opinion, and
  - (b) gives details of that conduct.
- (3) The ombudsman must give the complainant a notice stating that a report under subsection (2) has been given to the relevant authorising body.
- (4) 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 and the reasons for that action being taken.
- (5) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint.
- (6) If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under subsection (4), 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
  - (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.

### *Co-operation with investigations*

#### **144 Duties to share information**

- (1) Scheme rules must make provision requiring persons within subsection (3) to disclose to an approved regulator information of such description as may be specified in the rules, in such circumstances as may be so specified.
- (2) The regulatory arrangements of an approved regulator must make provision requiring the approved regulator to disclose to persons within subsection (3) information of such description as may be specified in the arrangements, in such circumstances as may be so specified.
- (3) The persons are—
  - (a) the OLC;
  - (b) an ombudsman;
  - (c) a member of the OLC's staff appointed under paragraph 13 of Schedule 15.



- (4) Provision made under subsection (1) or (2) must satisfy such requirements as the Board may, from time to time, specify.
- (5) In specifying requirements under subsection (4) the Board must have regard to the need to ensure that, so far as reasonably practicable—
  - (a) duplication of investigations is avoided;
  - (b) the OLC assists approved regulators to carry out their regulatory functions, and approved regulators assist with the investigation, consideration and determination of complaints under the ombudsman scheme.
- (6) The Board must publish any requirements specified by it under subsection (4).
- (7) The OLC must—
  - (a) before publishing under section 205(2) a draft of rules it proposes to make under subsection (1), consult each approved regulator to which the proposed rules apply, and
  - (b) when seeking the Board’s consent to such rules under section 155, identify any objections made by an approved regulator to the rules and not withdrawn.
- (8) An approved regulator must—
  - (a) consult the OLC before making provisions in its regulatory arrangements of the kind mentioned in subsection (2), and
  - (b) where an application is made for the Board’s approval of such provisions, identify any objections made by the OLC to the provisions and not withdrawn.
- (9) This section applies to the Board in its capacity as a licensing authority and licensing rules made by the Board as it applies to an approved regulator and its regulatory arrangements; and for this purpose the reference in subsection (5)(b) to “regulatory functions” is to be read as a reference to the Board’s functions under its licensing rules.

#### **145 Duties of authorised persons to co-operate with investigations**

- (1) The regulatory arrangements of an approved regulator, and licensing rules made by the Board in its capacity as a licensing authority, must make—
  - (a) provision requiring each relevant authorised person to give ombudsmen all such assistance requested by them, in connection with the investigation, consideration or determination of complaints under the ombudsman scheme, as that person is reasonably able to give, and
  - (b) provision for the enforcement of that requirement.
- (2) The provision made for the purposes of subsection (1) must satisfy such requirements as the Board may, from time to time, specify for the purposes of that subsection.
- (3) The Board must publish any requirements specified by it under subsection (2).
- (4) In this section “relevant authorised person”—
  - (a) in relation to an approved regulator, has the same meaning as in section 112, and
  - (b) in relation to the Board in its capacity as a licensing authority, means a person licensed by the Board under Part 5.

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#### **146 Reporting failures to co-operate with an investigation to approved regulators**

- (1) This section applies where an ombudsman is of the opinion that an authorised person has failed to give an ombudsman all such assistance requested by the ombudsman, in connection with the investigation, consideration or determination of a complaint under the ombudsman scheme, as that person is reasonably able to give.
- (2) The ombudsman must give each relevant authorising body, in relation to that person, a report which—
  - (a) states that the ombudsman is of that opinion, and
  - (b) gives details of the failure.
- (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 that subsection and the reasons for that action being taken.
- (4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint.
- (5) 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
  - (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.
- (6) In this section “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.

#### *Information*

#### **147 Information and documents**

- (1) An ombudsman may, by notice, require a party to a complaint under the ombudsman scheme—
  - (a) to produce documents, or documents of a description, specified in the notice, or
  - (b) to provide information, or information of a description, specified in the notice.
- (2) A notice under subsection (1) may require the information or documents to be provided or produced—
  - (a) before the end of such reasonable period as may be specified in the notice, and
  - (b) in the case of information, in such manner or form as may be so specified.
- (3) This section applies only to information and documents the provision or production of which the ombudsman considers necessary for the determination of the complaint.
- (4) An ombudsman may—
  - (a) take copies of or extracts from a document produced under this section, and
  - (b) require the person producing the document to provide an explanation of it.

- (5) If a person who is required under this section to produce a document fails to do so, an ombudsman may require that person to state, to the best of that person’s knowledge and belief, where the document is.
- (6) No person may be required under this section—
  - (a) to provide any information 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.
- (7) In this section “party”, in relation to a complaint, means—
  - (a) the complainant;
  - (b) the respondent;
  - (c) any other person who in accordance with the scheme rules is to be regarded as a party to the complaint.

#### **148 Reporting failures to provide information or produce documents**

- (1) This section applies where an ombudsman is of the opinion that an authorised person has failed to comply with a requirement imposed under section 147(1).
- (2) The ombudsman must give each relevant authorising body, in relation to that person, a report which—
  - (a) states that the ombudsman is of that opinion, and
  - (b) gives details of the failure.
- (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 that subsection and the reasons for that action being taken.
- (4) The duty imposed by subsection (2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under section 147(1).
- (5) 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
  - (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.
- (6) In this section “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.

#### **149 Enforcement of requirements to provide information or produce documents**

- (1) This section applies where an ombudsman is of the opinion that a person (“the defaulter”) has failed to comply with a requirement imposed under section 147(1).

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- (2) The ombudsman may certify the defaulter’s failure to comply with the requirement to the court.
- (3) Where an ombudsman certifies a failure to the court under subsection (2), the court may enquire into the case.
- (4) If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with—
  - (a) the defaulter, and
  - (b) in the case of a body, any manager of the body, as if that person were in contempt.
- (5) Subsection (6) applies in a case where the defaulter is an authorised person in relation to any activity which is a reserved legal activity.
- (6) The ombudsman (“the enforcing ombudsman”) may not certify the defaulter’s failure to the court until a report by that or another ombudsman has been made as required by section 148(2) and the enforcing ombudsman is satisfied—
  - (a) that each relevant authorising body to whom such a report was made has been given a reasonable opportunity to take action in respect of the defaulter’s failure, and
  - (b) that the defaulter has continued to fail to provide the information or produce the documents to which the requirement under section 147 related.
- (7) In this section “court” means the High Court.

## **150 Reports of investigations**

- (1) The OLC may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made under the ombudsman scheme.
- (2) A report under subsection (1) must not (unless the complainant consents)—
  - (a) mention the name of the complainant, or
  - (b) include any particulars which, in the opinion of the OLC, are likely to identify the complainant.

## **151 Restricted information**

- (1) Except as provided by section 152, restricted information must not be disclosed—
  - (a) by a restricted person, or
  - (b) by any person who receives the information directly or indirectly from a restricted person.
- (2) In this section and section 152—

“restricted information” means information (other than excluded information) which is obtained by a restricted person in the course of, or for the purposes of, an investigation into a complaint made under the ombudsman scheme (including information obtained for the purposes of deciding whether to begin such an investigation or in connection with the settlement of a complaint);

“restricted person” means—

- (a) the OLC,
  - (b) an ombudsman, or
  - (c) a person who exercises functions delegated under paragraph 22 of Schedule 15.
- (3) For the purposes of subsection (2) “excluded information” means—
- (a) information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
  - (b) information which at the time of the disclosure is or has already been made available to the public from other sources;
  - (c) information which was obtained more than 70 years before the date of the disclosure.

## **152 Disclosure of restricted information**

- (1) A restricted person may disclose restricted information to another restricted person.
- (2) 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.
- (3) Section 151 also does not preclude the disclosure of restricted information—
- (a) in a report made under—
    - (i) section 143(2) (report of possible misconduct to approved regulators),
    - (ii) section 146(2) (report of failure to co-operate with investigation),
    - (iii) section 148 (reporting failures to provide information or produce documents), or
    - (iv) section 150 (reports of investigations),
  - (b) for the purposes of enabling or assisting the Board to exercise any of its functions,
  - (c) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its regulatory functions,
  - (d) with the consent of the person to whom it relates and (if different) the person from whom the restricted person obtained it,
  - (e) for the purposes of an inquiry with a view to the taking of any criminal proceedings or for the purposes of any such proceedings,
  - (f) where the disclosure is required by or by virtue of any provision made by or under this Act or any other enactment or other rule of law,
  - (g) to such persons (other than approved regulators) who exercise regulatory functions as may be prescribed by order made by the Lord Chancellor, for such purposes as may be so prescribed.
- (4) Subsections (2) and (3) are subject to subsection (5).
- (5) The Lord Chancellor may by order prevent the disclosure of restricted information by virtue of subsection (2) or (3) in such circumstances, or for such purposes, as may be prescribed in the order.

### 153 Data protection

In section 31 of the Data Protection Act 1998 (c. 29) (regulatory activity), after subsection (4B) (inserted by section 170) insert—

“(4C) Personal data processed for the purposes of the function of considering a complaint under the scheme established under Part 6 of the Legal Services Act 2007 (legal complaints) are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of the function.”

### *Defamation*

### 154 Protection from defamation claims

For the purposes of the law of defamation—

- (a) proceedings in relation to a complaint under the ombudsman scheme are to be treated as if they were proceedings before a court, and
- (b) the publication of any matter by the OLC under this Part is absolutely privileged.

### *Scheme rules*

### 155 Consent requirements for rules

- (1) Before making scheme rules under any provision of this Part, the OLC must obtain—
  - (a) the consent of the Board, and
  - (b) in the case of rules under section 136 (charges payable by respondents), the consent of the Lord Chancellor.
- (2) In subsection (1) the reference to making rules includes a reference to modifying rules.

### 156 The Board’s powers in respect of rules

- (1) The Board may direct the OLC to take such steps as are necessary—
  - (a) to modify its scheme rules in accordance with such general requirements as are specified in the direction, or
  - (b) to make a specified modification to its scheme rules.
- (2) Before giving a direction under subsection (1)(b), the Board must—
  - (a) give the OLC a notice giving details of the proposed modification and containing a statement that representations about the proposal may be made to the Board within a period specified in the notice,
  - (b) publish a copy of that notice, and
  - (c) have regard to any representations duly made.
- (3) The following provisions do not apply in relation to any modification made by the OLC to its rules in compliance with a direction under subsection (1)(b)—
  - (a) section 155(1)(a) (requirement to obtain the Board’s consent to rules);
  - (b) section 205 (requirement to consult before making rules).

- (4) Where the Board revokes a direction, it must—
  - (a) give the OLC notice of the revocation, and
  - (b) publish that notice.

*Effect on existing arrangements for redress etc*

**157 Approved regulators not to make provision for redress**

- (1) The regulatory arrangements of an approved regulator must not include any provision relating to redress.
- (2) If at the time this subsection comes into force the regulatory arrangements of an approved regulator contravene subsection (1), any provision relating to redress included in those regulatory arrangements ceases to have effect at that time, subject to subsection (3).
- (3) An order under section 211 which appoints a day for the coming into force of subsection (2) may include transitional provision in respect of any proceedings which, immediately before that day are awaiting determination under any provision relating to redress made by an approved regulator.

This subsection is without prejudice to any other transitional provision which may be made by or under this Act.

- (4) For the purposes of this section “provision relating to redress” means any provision made in regulatory arrangements (whether it is statutory or non-statutory) for redress in respect of acts or omissions of authorised persons and any provision connected with such provision.
- (5) Nothing in this section prevents an approved regulator making—
  - (a) provision in its regulatory arrangements of the kind required by section 112 (requirement for authorised persons to have complaints procedures etc),
  - (b) indemnification arrangements or compensation arrangements, or
  - (c) provision which by virtue of section 158 is not prohibited by this section.
- (6) In subsection (4) “authorised person” means an authorised person in relation to any activity which is a reserved legal activity.
- (7) This section applies to licensing rules made by the Board in its capacity as a licensing authority as it applies in relation to the regulatory arrangements of an approved regulator.

**158 Regulatory arrangements not prohibited by section 157**

- (1) Section 157 does not prohibit the regulatory arrangements of an approved regulator from making provision requiring, or authorising the approved regulator to require, a relevant authorised person—
  - (a) to investigate whether there are any persons who may have a claim against the relevant authorised person in relation to a matter specified by the approved regulator;
  - (b) to provide the approved regulator with a report on the outcome of the investigation;

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- (c) to identify persons (“affected persons”) who may have such a claim;
  - (d) to notify affected persons that they may have such a claim;
  - (e) to provide affected persons with information about the relevant authorised person’s complaints procedures and the ombudsman scheme;
  - (f) to ensure that the relevant authorised person’s complaints procedures operate as if an affected person had made a complaint against the relevant authorised person in respect of the act or omission to which the claim relates.
- (2) For the purposes of subsection (1) “claim”, in relation to a relevant authorised person, means a claim for redress resulting from an act or omission of that person.
- (3) For the purposes of this section—
- (a) “relevant authorised person”, in relation to an approved regulator, means a person authorised by that approved regulator to carry on an activity which is a reserved legal activity, and
  - (b) a relevant authorised person’s complaints procedures are the procedures established by that person, or which that person participates in or is subject to, in accordance with regulatory arrangements made in accordance with section 112.
- (4) This section applies in relation to the Board in its capacity as a licensing authority as it applies in relation to an approved regulator, and in relation to the Board references to regulatory arrangements are to be read as references to the Board’s licensing rules.

## **159 Legal Services Complaints Commissioner and Legal Services Ombudsman**

- (1) The offices of Legal Services Complaints Commissioner and Legal Services Ombudsman are abolished.
- (2) Accordingly—
- (a) sections 51 and 52 of, and Schedule 8 to, the Access to Justice Act 1999 (c. 22), and
  - (b) sections 21 to 26 of, and Schedule 3 to, the Courts and Legal Services Act 1990 (c. 41),
- are repealed.

### *Interpretation*

## **160 Interpretation of Part 6**

In this Part—

“complainant”, in relation to a complaint, means the person who makes the complaint;

“relevant authorising body”, in relation to a person, means—

- (a) an approved regulator by which the person is authorised to carry on an activity which is a reserved legal activity, or
- (b) where the person is authorised to carry on such an activity by the Board in its capacity as a licensing authority, the Board;

“respondent”, in relation to a complaint, is to be construed in accordance with section 125 (except that, where scheme rules of the kind mentioned in



section 133(3)(c) have effect, references to the “respondent” include a person treated as a co-respondent under those rules).

### *Claims management services*

## **161 Extension of Part 6 to claims management services**

- (1) For the purposes of this Part (and sections 1, 21 and 27 as they apply in relation to this Part)—
  - (a) the Claims Management Services Regulator is to be treated as an approved regulator;
  - (b) regulated claims management services are to be treated as a reserved legal activity;
  - (c) a person authorised by the Claims Management Services Regulator, under Part 2 of the Compensation Act 2006 (c. 29), to provide regulated claims management services is to be treated as an authorised person in relation to that activity;
  - (d) the Claims Management Services Regulator is to be treated as a relevant authorising body in relation to such a person; and
  - (e) regulations under section 9 of, and the Schedule to, the Compensation Act 2006 (regulations about the functions of the Claims Management Services Regulator etc) are to be treated as regulatory arrangements of the Claims Management Services Regulator.
- (2) For the purposes of sections 112 and 145 (as extended by this section) a person authorised by the Claims Management Services Regulator under Part 2 of the Compensation Act 2006 to provide regulated claims management services is to be treated as a “relevant authorised person” in relation to the Regulator.
- (3) Section 9 of, and the Schedule to, the Compensation Act 2006 (regulations about the functions of the Claims Management Regulator etc) are subject to any requirements imposed by this Part in relation to the regulatory arrangements of the Claims Management Regulator.
- (4) In this section—

“Claims Management Services Regulator” means—

  - (a) the person designated under section 5(1) of the Compensation Act 2006,  
or
  - (b) at a time when no person is so designated, the Board;

“regulated claims management services” has the same meaning as in Part 2 of the Compensation Act 2006.