



# Legal Services Act 2007

## 2007 CHAPTER 29

### PART 7

#### FURTHER PROVISIONS RELATING TO THE BOARD AND THE OLC

##### *Guidance*

#### 162 Guidance

- (1) The Board may give guidance—
  - (a) about the operation of this Act and of any order made under it;
  - (b) about the operation of any rules made by the Board under this Act;
  - (c) about any matter relating to the Board's functions;
  - (d) for the purpose of meeting the regulatory objectives;
  - (e) about the content of licensing rules;
  - (f) about any other matters about which it appears to the Board to be desirable to give guidance.
- (2) Guidance under this section may consist of such information and advice as the Board considers appropriate.
- (3) The Board may give financial or other assistance to persons giving information or advice of a kind which the Board could give under this section.
- (4) The Board may—
  - (a) publish its guidance,
  - (b) offer copies of its published guidance for sale at a reasonable price, and
  - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (5) When exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any guidance issued under this section which is applicable to the approved regulator.

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- (6) When exercising its functions—
- (a) in its capacity as an approved regulator by virtue of an order under section 62(1)(a), or
  - (b) in its capacity as a licensing authority under Part 5,
- the Board must have regard to any guidance it has issued under this section.

### *Voluntary arrangements*

#### **163 Voluntary arrangements**

- (1) The Board may enter into arrangements with any person under which the Board is to provide assistance for the purpose of improving standards of service and promoting best practice in connection with the carrying on of any legal activity.
- (2) These arrangements may (among other things) provide for the Board to give advice on—
  - (a) the best regulatory practice, or
  - (b) the contents of codes of practice or other voluntary arrangements.
- (3) Arrangements under this section may include provision as to the terms on which assistance is to be provided by the Board (including provision as to payment).
- (4) Where the Board enters into arrangements under this section, it must publish a statement giving details of the arrangements and explaining what they are intended to achieve.

#### **164 Power to establish voluntary scheme for resolving complaints**

- (1) This section and section 166 provide for a scheme under which legal services complaints may be resolved quickly and with minimum formality by an independent person.
- (2) The OLC may make rules (“voluntary scheme rules”) establishing such a scheme (“the voluntary scheme”), but only in relation to such kinds of legal services complaints as may be specified by order made by the Lord Chancellor for the purposes of this section.
- (3) An order under subsection (2) may in particular specify a kind of legal services complaint by reference to the description of the complainant, of the respondent, or of the legal services to which the complaint relates.
- (4) “Legal services complaint” means a complaint which relates to an act or omission of an eligible person (“the respondent”) in the course of that person providing legal services.
- (5) For that purpose a person is eligible if at the time the act or omission took place there was no activity in relation to which the person—
  - (a) was an authorised person, or
  - (b) is to be regarded as having been such a person by virtue of section 129.
- (6) Under the voluntary scheme—
  - (a) redress may be provided to the complainant, but

- (b) no disciplinary action may be taken against the respondent.
- (7) Voluntary scheme rules may confer functions on ombudsmen for the purposes of the voluntary scheme.
- (8) Section 131 applies for the purposes of the voluntary scheme as it applies for the purposes of the ombudsman scheme.
- (9) Sections 155 and 156 apply in relation to voluntary scheme rules as they apply in relation to scheme rules.
- (10) In this section—
  - “legal services” means services provided by a person which consist of or include legal activities carried on by, or on behalf of, that person;
  - “the voluntary scheme” and “voluntary scheme rules” have the meaning given by subsection (2).

#### **165 Procedure for making orders under section 164**

- (1) The Lord Chancellor may make an order under section 164(2) only on the recommendation of an interested body.
- (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 for such an order.
- (3) An interested body must, before making a recommendation for such an order—
  - (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 from an interested body for an order under section 164(2), 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—
  - (a) the OLC,
  - (b) the Board, or
  - (c) the Consumer Panel.

#### **166 Operation of voluntary scheme**

- (1) A complaint may be determined under the voluntary scheme only if—
  - (a) the complainant falls within a class of persons specified in voluntary scheme rules as qualified to make a complaint,
  - (b) the complainant wishes to have the complaint dealt with under the scheme,
  - (c) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme and voluntary scheme rules were in force in relation to the legal services in question, and

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- (d) at the time the complaint is made under the scheme the respondent has not withdrawn from the scheme in accordance with its provisions.
- (2) A person qualifies for participation in the voluntary scheme if the person falls within a class of persons specified as qualified in voluntary scheme rules.
- (3) In such circumstances as may be specified in voluntary scheme rules, a complaint may be dealt with under the voluntary scheme even though subsection (1)(c) would otherwise prevent that.
- (4) Subsection (3) applies only if the respondent participates in the voluntary scheme on the basis that complaints of that kind are to be dealt with under the scheme.
- (5) Complaints are to be dealt with and determined under the voluntary scheme on standard terms fixed by the OLC with the consent of the Board.
- (6) The OLC may modify standard terms only with the consent of the Board.
- (7) Section 204(3) applies to standard terms as it applies to rules made by the OLC.
- (8) The standard terms may in particular make provision—
  - (a) requiring the making of payments to the OLC by persons participating in the scheme of such amounts, at such times and in such circumstances, as may be determined by the OLC;
  - (b) as to the award of costs on the determination of a complaint (including provision for an award of costs in favour of the OLC for the purpose of providing a contribution to resources deployed in dealing with the complaint).
- (9) In this section “legal services”, “the voluntary scheme” and “voluntary scheme rules” have the same meaning as in section 164.

#### *Disclosure and use of information*

### **167 Restricted information**

- (1) Except as provided by section 168, 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 168—
  - “restricted information” means information (other than excluded information) which is obtained by the Board in the exercise of its functions;
  - “restricted person” means—
    - (a) the Board (including the Board in its capacity as an approved regulator or a licensing authority),
    - (b) a person who exercises functions delegated under paragraph 23 of Schedule 1 or section 73 or by virtue of section 64(2)(k).
- (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.

### **168 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 enabling or assisting the Board to exercise its functions (whether as an approved regulator, a licensing authority or otherwise).
- (3) Section 167 also does not preclude the disclosure of restricted information—
  - (a) where the disclosure is a result of the Board exercising any power to publish information under this Act;
  - (b) for the purposes of enabling or assisting the OLC, ombudsmen or persons who exercise functions delegated under paragraph 22 of Schedule 15, to exercise any of its or their functions,
  - (c) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its 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, or
  - (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.

### **169 Disclosure of information to the Board**

- (1) Information which is held by or on behalf of a permitted person (whether obtained before or after this section comes into force) may be disclosed to the Board for the purposes of enabling or assisting the Board to exercise its functions (whether as an approved regulator, a licensing authority or otherwise).
- (2) A disclosure under this section is not to be taken to breach any restriction on the disclosure of information (however imposed).
- (3) But nothing in this section authorises the making of a disclosure—
  - (a) which contravenes the Data Protection Act 1998 (c. 29), or
  - (b) which is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) This section does not affect a power to disclose which exists apart from this section.

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- (5) The following are permitted persons—
- (a) a chief officer of police of a police force in England and Wales;
  - (b) a chief constable of a police force in Scotland;
  - (c) the Chief Constable of the Police Service of Northern Ireland;
  - (d) the Director General of the Serious Organised Crime Agency;
  - (e) the Commissioners for Her Majesty’s Revenue and Customs;
  - (f) the Financial Services Authority.
- (6) The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which the Lord Chancellor considers are of a public nature (including a person discharging regulatory functions in relation to any description of activities).
- (7) Information must not be disclosed under this section on behalf of the Commissioners for Her Majesty’s Revenue and Customs unless the Commissioners authorise the disclosure.
- (8) The power to authorise a disclosure under subsection (7) may be delegated (either generally or for a specific purpose) to an officer of Revenue and Customs.

#### **170 Data protection**

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

“(4B) Personal data processed for the purposes of discharging any function of the Legal Services Board 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.”

#### **171 Use of information**

Information obtained by the Board (whether in its capacity as an approved regulator or licensing authority or otherwise) may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

#### *Payments by Lord Chancellor*

#### **172 Funding**

- (1) The Lord Chancellor may—
- (a) pay to the Board such sums as the Lord Chancellor may determine as appropriate for the purpose of meeting the expenditure of the Board incurred under or for the purposes of this Act or any other enactment (including any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority), and
  - (b) pay to the OLC such sums as the Lord Chancellor may determine as appropriate for the purposes of meeting the expenditure of the OLC incurred under or for the purposes of this Act.
- (2) The Lord Chancellor may—

- (a) determine the manner in which and times at which the sums mentioned in subsection (1) are to be paid, and
- (b) impose conditions on the payment of those sums.

*The levy*

**173 The levy**

- (1) The Board must make rules providing for the imposition of a levy on leviable bodies for the purpose of raising an amount corresponding to the aggregate of—
  - (a) the leviable Board expenditure,
  - (b) the leviable OLC expenditure, and
  - (c) the leviable Lord Chancellor expenditure.
- (2) A levy imposed under this section is payable to the Board.
- (3) Before making rules under this section, the Board must satisfy itself that the apportionment of the levy as between different leviable bodies will be in accordance with fair principles.
- (4) The Board may not make rules under this section except with the consent of the Lord Chancellor.
- (5) “Leviable body” means—
  - (a) an approved regulator,
  - (b) the person designated under section 5(1) of the Compensation Act 2006 (c. 29) (the Regulator in relation to claims management services), or
  - (c) any other person prescribed by the Lord Chancellor by order.
- (6) The “leviable Board expenditure” means the difference between—
  - (a) the expenditure of the Board incurred under or for the purposes of this Act or any other enactment (including any expenditure incurred in connection with its establishment and any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority), and
  - (b) the aggregate of the amounts which the Board pays into the Consolidated Fund under section 175(1)(a), (c) to (e) and (k) to (m) or by virtue of regulations under paragraph 7(g) of the Schedule to the Compensation Act 2006.
- (7) The “leviable OLC expenditure” means the difference between—
  - (a) the expenditure of the OLC incurred under or for the purposes of this Act (including any expenditure incurred in connection with its establishment), and
  - (b) the aggregate of the amounts which the OLC pays into the Consolidated Fund under section 175(1)(g), (h) or (n).
- (8) But subsection (7)(a) does not include such proportion of the expenditure of the OLC incurred under or for the purposes of this Act as may reasonably be attributed to the exercise of its functions under sections 164 to 166.
- (9) The “leviable Lord Chancellor expenditure” means any expenditure incurred by the Lord Chancellor in connection with the establishment of the Board or the OLC (including expenditure incurred under or for the purposes of paragraph 10 of Schedule 22 (Interim Chief Executive of the OLC)).

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- (10) But the leviable Lord Chancellor expenditure does not include any expenditure under section 172 (funding of Board and OLC).
- (11) In subsection (5) the reference to “an approved regulator” does not include the Board where it is designated as an approved regulator under section 62.

#### **174 The levy: supplementary provisions**

- (1) In this section—
- “leviable body” has the meaning given by section 173;
  - “the levy” means the levy payable by virtue of that section;
  - “the levy rules” means the rules made in accordance with that section.
- (2) The levy is to be payable at such rate and at such times as may be specified in the levy rules.
- (3) The provision made in the levy rules for determining the amount of the levy payable in respect of a particular period—
- (a) may require account to be taken of estimated as well as actual expenditure and receipts, and
  - (b) must require the Board to obtain the Lord Chancellor’s agreement to the amount payable in respect of a particular period.
- (4) The levy rules may provide for different parts of the levy to be payable at different rates.
- (5) Any amount which is owed to the Board in accordance with the levy rules may be recovered as a debt due to the Board.
- (6) The levy rules must require the Board—
- (a) to calculate the amount of the levy payable by each leviable body,
  - (b) to notify each leviable body of its liability to pay an amount of levy and the time or times at which it becomes payable.
- (7) Without prejudice to subsections (2) to (6), the levy rules may—
- (a) make provision about the collection and recovery of the levy;
  - (b) make provision about the circumstances in which any amount of the levy payable may be waived;
  - (c) provide that if the whole or any part of an amount of the levy payable under the levy rules is not paid by the time when it is required to be paid under the rules, the unpaid balance from time to time carries interest at the rate determined by or in accordance with the levy rules.

#### *Payments into the Consolidated Fund*

#### **175 Amounts payable into the Consolidated Fund**

- (1) The following must be paid into the Consolidated Fund—
- (a) any application fee received by the Board;
  - (b) any sum received by the Board under sections 37 to 40 (financial penalties and interest);



- (c) amounts paid to the Board under section 49(10) or 50(5) (charges for providing draft and final policy statements);
  - (d) any sums received by the Board in its capacity as an approved regulator by virtue of rules within section 64(2)(f) (practising fees etc);
  - (e) any sums received by the Board in its capacity as a licensing authority by virtue of its licensing rules within paragraph 1, 4, 6, 7 or 21 of Schedule 11 or by virtue of paragraph 17 or 18 of Schedule 14;
  - (f) any sums received by the Board in its capacity as a licensing authority under sections 95 to 97 (financial penalties and interest);
  - (g) any charges received by the OLC by virtue of rules under section 136 (charges payable by respondents), together with any interest payable in accordance with those rules;
  - (h) any amount payable to the OLC in accordance with scheme rules within subsection (3)(i) of section 133 (costs of OLC payable by the complainant or the respondent in relation to a complaint), together with any interest payable on such an amount under subsection (6) of that section;
  - (i) any amount payable to the OLC by virtue of standard terms within section 166(8);
  - (j) any sum received by the Board in accordance with rules under section 173 (the levy);
  - (k) amounts paid to the Board under section 162(4)(c) (charges for providing copies of guidance);
  - (l) any amount payable to the Board under arrangements entered into under section 163 (voluntary arrangements);
  - (m) amounts paid to the Board under subsection (8) of section 205 (charges for providing copies of rules and draft rules);
  - (n) amounts paid to the OLC under that subsection.
- (2) In this section “application fee” means a fee within—
- (a) paragraph 3(3)(d) of Schedule 4 (application fees in respect of designation as approved regulator);
  - (b) section 45(3)(b) (application fees in respect of cancellation of designation as approved regulator);
  - (c) paragraph 1(4)(d) of Schedule 10 (application fees in respect of designation as licensing authority);
  - (d) section 76(3)(b) (application fees in respect of cancellation of designation as licensing authority);
  - (e) paragraph 3(4)(c) of Schedule 18 (application fees in respect of designation as qualifying regulator for the purposes of Part 5 of the Immigration and Asylum Act 1999 (c. 33)).