



# Enterprise Act 2016

## 2016 CHAPTER 12

### PART 1

#### THE SMALL BUSINESS COMMISSIONER

##### *Complaints scheme*

#### **4 The SBC complaints scheme**

- (1) The Commissioner must establish, maintain and administer a scheme (in this Part referred to as “the SBC complaints scheme”) under which the Commissioner—
  - (a) enquires into, considers and determines relevant complaints, and
  - (b) may make recommendations as to how the issues raised by those complaints may be remedied, resolved or mitigated or how similar issues may be prevented from arising in future.
- (2) The Commissioner must establish, maintain and administer the SBC complaints scheme in accordance with regulations made by the Secretary of State under section 7 (scheme regulations).
- (3) “Relevant complaint” means a complaint which—
  - (a) is made by a small business (“the complainant”) which has an agreement to supply, or has supplied or may supply, goods or services to a larger business (“the respondent”),
  - (b) relates to a payment matter (see subsection (4)), and
  - (c) is not excluded from the scheme (see subsection (5)).
- (4) A complaint relates to a payment matter if it relates to—
  - (a) a request or other act, or a failure to pay or other omission, in relation to a payment—
    - (i) for or in connection with the supply of goods or services, or

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- (ii) in connection with the relationship or possible relationship between the small business and the larger business so far as relevant to the supply, or
  - (b) any provision made or proposed to be made in connection with the supply or that relationship which restricts, or purports to restrict, any right of the small business to make a complaint under the SBC complaints scheme or to have a complaint enquired into, considered or determined under the scheme.
- (5) A complaint is excluded from the scheme if—
- (a) it relates to the appropriateness of the price payable or proposed to be payable under a contract for the goods or services supplied or to be supplied by the small business under the contract by comparison with those goods or services,
  - (b) it concerns matters which are currently the subject of legal proceedings or adjudication proceedings,
  - (c) it falls within the jurisdiction of an ombudsman, regulator or public authority (other than the Commissioner, a court or a tribunal),
  - (d) the complainant has a statutory right to refer the complaint for adjudication by a person other than a court or tribunal,
  - (e) the complaint relates to—
    - (i) an act or omission which occurred before the appointed start date, or
    - (ii) an act or omission in accordance with a term of a contract entered into before that date, where that term has not been varied on or after that date, or
  - (f) it is of a description specified by regulations made by the Secretary of State.
- (6) For the purposes of paragraph (e) of subsection (5), “the appointed start date” means the date appointed by the Secretary of State by regulations.
- (7) Regulations under this section may—
- (a) make transitory or transitional provision or savings;
  - (b) make different provision for different purposes.
- (8) Regulations under subsection (6) may appoint different dates for different areas.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section (other than regulations under subsection (6)) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) In this section “larger business” has the meaning given by section 3(11).

**Modifications etc. (not altering text)**

- C1** S. 4(6): appointed day for the purposes of s. 4(5)(e) (6.4.2017) by [The Enterprise Act 2016 \(Commencement No. 4 and Appointed Start Date\) Regulations 2017 \(S.I. 2017/473\)](#), **reg. 4**

**Commencement Information**

- I1** S. 4 in force at Royal Assent for specified purposes, see s. 44(1)
- I2** S. 4 in force at 1.10.2017 in so far as not already in force by [S.I. 2017/473](#), **reg. 3(a)**

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## 5 Enquiry into, consideration and determination of complaints

- (1) This section applies where a complaint is to be determined under the SBC complaints scheme.
- (2) The Commissioner may ask the complainant or the respondent to provide the Commissioner voluntarily with any information or documents relevant to the complaint.
- (3) The Commissioner must give the respondent, and may give the complainant, an opportunity to make representations to the Commissioner.
- (4) In enquiring into, considering and determining a complaint, the Commissioner must act impartially as between the complainant and the respondent.
- (5) A complaint is to be determined under the SBC complaints scheme by reference to what is, in the Commissioner's opinion, fair and reasonable in all the circumstances of the case.
- (6) The determination may contain one or more recommendations as to the steps that ought to be taken by the complainant or the respondent to remedy, resolve or mitigate any issue which is the subject of the complaint or to prevent a similar issue from arising in future.
- (7) Where a complaint has been determined, the Commissioner must prepare a written statement of the determination.
- (8) The statement must give the Commissioner's reasons for the determination (including any recommendations).
- (9) If the determination does not contain any recommendations, the statement must contain the Commissioner's reasons for this.
- (10) The Commissioner must give a copy of the statement to the complainant and the respondent.
- (11) A determination made under the SBC complaints scheme is not legally binding.

### Commencement Information

- I3** S. 5 in force at Royal Assent for specified purposes, see s. 44(1)  
**I4** S. 5 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

## 6 Reports on complaints

- (1) The Commissioner may publish a report of the enquiry into, consideration and determination of a complaint under the SBC complaints scheme.
- (2) A report under subsection (1) must not identify the complainant, unless the complainant consents.

See also section 7(7) which requires provision to be made about factors to be taken into account when deciding whether to identify the respondent in a report.

- (3) A report identifies a person if it—
  - (a) mentions the person's name, or

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- (b) includes any particulars which, in the Commissioner's opinion, are likely to identify the person.
- (4) Before publishing a report under subsection (1), the Commissioner must give the respondent and the complainant an opportunity to make representations to the Commissioner about the proposed publication of the report (including, in the case of the respondent, about any proposal to identify the respondent in the report).

#### Commencement Information

- I5** S. 6 in force at Royal Assent for specified purposes, see s. 44(1)
- I6** S. 6 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

## 7 Scheme regulations

- (1) The Secretary of State must make regulations (“scheme regulations”) about—
  - (a) the making of complaints for consideration under the SBC complaints scheme,
  - (b) the consideration and determination of complaints by the Commissioner, and the making of any recommendations, and
  - (c) the preparation and publication of reports under section 6.
- (2) Scheme regulations must—
  - (a) provide that a complaint (or part of a complaint) is, except in specified circumstances, to be dismissed if the Commissioner considers that the complainant has not previously communicated the substance of the complaint (or part) to the respondent and given the respondent a reasonable opportunity to deal with it;
  - (b) provide that a complaint is not to be entertained under the SBC complaints scheme unless the complainant has referred it under the scheme before the expiry of the applicable time limit (determined in accordance with the scheme regulations);
  - (c) provide that the Commissioner may extend that time limit in specified circumstances.
- (3) Scheme regulations may, among other things—
  - (a) make provision about the content and form of a complaint and the manner in which it is to be made;
  - (b) allow the Commissioner to fix time limits for any aspect of the proceedings and to extend a time limit;
  - (c) provide that a complaint may, or may in specified circumstances, be dismissed, if or to the extent that the Commissioner considers—
    - (i) that the complaint is frivolous or vexatious,
    - (ii) that the complaint concerns matters which are more appropriately dealt with in another way,
    - (iii) that the complainant has not suffered, and is not likely to suffer, any financial loss, material distress, material inconvenience or other material adverse effect, as a result of the matter to which the complaint relates,
    - (iv) that the matter to which the complaint relates has been remedied,

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- (v) that the complainant is seeking an outcome other than a recommendation of the kind that can be made under the scheme,
  - (vi) that the complaint concerns matters that have been the subject of legal proceedings or adjudication proceedings,
  - (vii) that the matter to which the complaint relates has previously been considered under the SBC complaints scheme or by another complaints-handling body, ombudsman or regulator,
  - (viii) that any other condition specified by the scheme regulations is met, or
  - (ix) that there are other compelling reasons why it is inappropriate for the complaint to be dealt with under the SBC complaints scheme;
- (d) provide that a complaint is to be dismissed if or to the extent that it becomes the subject of legal proceedings or adjudication proceedings;
  - (e) require the Commissioner to notify the person who makes a complaint under the scheme if the Commissioner considers that it is not a relevant complaint or it is dismissed in accordance with the scheme regulations;
  - (f) authorise or require the Commissioner to notify the person against whom a complaint is made if it is not a relevant complaint or it is dismissed in accordance with the scheme regulations.
- (4) For the purposes of regulations under subsections (2)(a) and (3)(c) and (d) it does not matter whether there has been a consideration of the merits of the complaint by the time it is dismissed.
- (5) Scheme regulations must also specify matters which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner in determining under the scheme whether an act or omission was fair and reasonable.
- Those matters must include any relevant law.
- (6) But nothing in this section requires or authorises scheme regulations to specify that particular practices are to be regarded by the Commissioner, in making that determination, as “fair” or “unfair”.
- (7) Scheme regulations must make provision about factors which are to be taken into account, or are to be taken into account in specified circumstances, by the Commissioner when deciding whether to identify the respondent in a report under section 6(1).
- (8) Scheme regulations may—
- (a) confer a discretion on the Commissioner;
  - (b) make transitional or transitory provision or savings;
  - (c) make different provision for different purposes.
- (9) Before making scheme regulations the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (12) In this section—
- “relevant complaint” has the meaning given by section 4(3);

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“specified” means specified in scheme regulations.

#### Commencement Information

- I7** S. 7 in force at Royal Assent for specified purposes, see s. 44(1)  
**I8** S. 7 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

## 8 Confidentiality

- (1) The Commissioner may not make a disclosure of information that the Commissioner considers is likely to cause someone to think that a particular person has made a complaint under the SBC complaints scheme, except where subsection (2) applies.
- (2) This subsection applies if—
- (a) the Commissioner has obtained the consent of the person concerned,
  - (b) the disclosure is made by the Commissioner to the respondent in relation to the complaint or in a report published under section 6,
  - (c) the disclosure is required for the purposes of any [<sup>F1</sup>[<sup>F2</sup>assimilated] obligation],
  - (d) the disclosure is required, under rules of court or rules of a tribunal, or an order of a court or tribunal, for the purposes of legal proceedings of any description, or
  - (e) the information has already been made available to the public from other sources.

#### Textual Amendments

- F1** Words in s. 8(2)(c) substituted (31.12.2020) by [The Groceries Code Adjudicator Act 2013, Small Business, Enterprise and Employment Act 2015 and Enterprise Act 2016 \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1046\)](#), regs. 1, 4; 2020 c. 1, Sch. 5 para. 1(1)
- F2** Word in s. 8(2)(c) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 85**

#### Commencement Information

- I9** S. 8 in force at Royal Assent for specified purposes, see s. 44(1)  
**I10** S. 8 in force at 1.10.2017 in so far as not already in force by S.I. 2017/473, reg. 3(a)

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