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# Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

## 1990 CHAPTER 40

### PART II

#### LEGAL SERVICES

##### *Scottish legal services ombudsman*

#### **34 Scottish legal services ombudsman.**

- (1) The Secretary of State may, after consultation with the Lord President, and subject to subsection (9) below, appoint a person, to be known as the Scottish legal services ombudsman, to examine any written complaint (a “handling complaint”) made by or on behalf of a member of the public concerning the treatment by a professional organisation within the meaning of section 33 of this Act of a conduct complaint such as is mentioned in that section made by that member of the public or on his behalf.
- (2) The ombudsman shall make such investigation of any handling complaint as seems to him to be appropriate; and for that purpose he may request the organisation concerned to provide him with such information as he may reasonably require.
- (3) Where the organisation concerned have not completed an investigation under section 33(1) of this Act within such period as the Secretary of State may from time to time determine, the ombudsman may request a report from them on the progress of the investigation.
- (4) The ombudsman—
  - (a) may, at any stage in the investigation of a handling complaint, make an interim report in relation to that investigation; and
  - (b) shall, at the conclusion of such an investigation, report the result of that investigation,

to the complainer and to the organisation concerned.

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- (5) The ombudsman may—
- (a) if so requested by any person appointed to carry out equivalent functions in relation to the provision of legal services in England and Wales, investigate a complaint against a professional body in England and Wales on that person's behalf; and
  - (b) request any person appointed as mentioned in paragraph (a) above to investigate a complaint against an organisation in Scotland on his behalf.
- (6) The Secretary of State may by regulations extend the jurisdiction of the ombudsman by providing for this section to apply, with such modifications (if any) as he thinks fit, in relation to the investigation by the ombudsman of such categories of handling complaints as may be specified in the regulations with respect to the provision of executry services by persons other than executry practitioners within the meaning of section 23 of this Act.
- (7) Without prejudice to the generality of subsection (6) above, regulations under that subsection may make provision for the investigation of handling complaints with respect to particular persons or categories of person.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) The following shall not be eligible to be appointed as the ombudsman—
- (a) advocates;
  - (b) solicitors;
  - (c) members and officers of the Scottish Conveyancing and Executry Services Board established by section 16 of this Act;
  - (d) subject to paragraph (e) below, executry practitioners within the meaning of section 23 of this Act;
  - (e) where any such executry practitioner is a partnership or a body corporate, the partners or, as the case may be, the directors, secretary or other similar officers;
  - (f) the directors, secretary or other similar officers of any recognised financial institution within the meaning of section 19(2) of this Act;
  - (g) qualified conveyancers within the meaning of section 23 of this Act; or
  - (h) any member or employee of a professional or other body any of whose members has acquired any right to conduct litigation or right of audience by virtue of section 27 of this Act.
- (10) Schedule 3 to this Act shall have effect in relation to the ombudsman.

#### Commencement Information

- II** S. 34 partly in force: s. 34(1)(9)(a)-(c)(10) wholly in force at 1.4.1991. See s. 75(2) and [S.I. 1991/822, art. 3, Schedule](#).

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VALID FROM 21/05/1997

#### **[<sup>F1</sup>34A Ombudsman’s final report and recommendations.**

- (1) Where the Scottish legal services ombudsman has completed an investigation under this Act he shall make a written report of his conclusions and shall send a copy of the report to—
  - (a) the person who made the handling complaint;
  - (b) the professional organisation concerned; and
  - (c) the practitioner concerned in the conduct complaint to which the handling complaint relates.
- (2) If the ombudsman decides to make a complaint about the practitioner concerned to the appropriate disciplinary body he may include in the report under this section a statement to that effect.
- (3) A report under this section may include one or more of the following recommendations—
  - (a) that the professional organisation concerned provide to the person making the handling complaint such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the ombudsman considers appropriate;
  - (b) that the conduct complaint be investigated further by the professional organisation concerned;
  - (c) that the conduct complaint be reconsidered by the professional organisation concerned;
  - (d) that the professional organisation concerned consider exercising their powers in relation to the practitioner concerned;
  - (e) that the professional organisation concerned pay compensation of the stated amount to the person making the handling complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the conduct complaint was handled by that organisation;
  - (f) that the professional organisation to whom a recommendation under paragraph (e) above applies pay to the person making the handling complaint an amount specified by the ombudsman by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (4) Where a report under this section includes any recommendation, the report shall state the ombudsman’s reasons for making the recommendation.
- (5) For the purposes of the law of defamation the publication of any report of the ombudsman under this section and any publicity given under subsection (8) below shall be privileged unless the publication is proved to be made with malice.
- (6) It shall be the duty of any professional organisation to whom a report is sent by the ombudsman under this section to have regard to the conclusions and recommendations set out in the report so far as relating to that organisation.
- (7) Where a report sent to a professional organisation under this section includes a recommendation relating to them, the organisation shall, before the end of the period of three months beginning with the date on which the report was sent, notify the ombudsman, and the person who made the handling complaint, of—

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- (a) the action which they have taken to comply with the recommendation or in consequence of further consideration of the matter by them; or
  - (b) their decision not to comply wholly with a recommendation and any reason for that decision.
- (8) Where, at the end of the period of three months mentioned in subsection (7) above, a professional organisation have not wholly complied with a recommendation relating to them in a report under this section, the ombudsman may take such steps as he considers reasonable to publicise that fact; but shall in so publicising it state any reason given to the ombudsman by the organisation for their not having so complied (or a summary by the ombudsman of any such reason).
- (9) Any reasonable expenses incurred by the ombudsman under subsection (8) above may be recovered by him (as a civil debt) from the professional organisation concerned.
- (10) In this section—
- “the stated amount” means such amount as may be specified by the ombudsman, being an amount which does not exceed the prescribed amount; and
  - “the prescribed amount” means £1000 or such greater amount as may from time to time be specified by order made by the Secretary of State by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F1** S. 34A inserted (21.5.1997) by 1997 c. 35, ss. 2, 6, 11(2)

VALID FROM 21/05/1997

#### [<sup>F2</sup>34B Advisory functions of ombudsman.

- (1) The Scottish legal services ombudsman may make recommendations to any professional organisation about their procedures for, and methods of, dealing with conduct complaints.
- (2) It shall be the duty of a professional organisation to whom a recommendation is made under this section—
  - (a) to consider the recommendation; and
  - (b) to notify the ombudsman of the results of that consideration and any action which they have taken, or propose to take, in consequence of the recommendation.]

#### Textual Amendments

**F2** S. 34B inserted (21.5.1997) by 1997 c. 35, ss. 3, 6, 11(2)

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