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# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II **E+W+S**

#### LEGAL SERVICES

##### *The Legal Services Ombudsman*

#### **21 The Legal Services Ombudsman. **E+W****

- (1) The Lord Chancellor shall appoint a person for the purpose of conducting investigations under this Act.
- (2) The person appointed shall be known as “the Legal Services Ombudsman”.
- (3) The Legal Services Ombudsman—
  - (a) shall be appointed for a period of not more than three years; and
  - (b) shall hold and vacate office in accordance with the terms of his appointment.
- (4) At the end of his term of appointment the Legal Services Ombudsman shall be eligible for re-appointment.
- (5) The Legal Services Ombudsman shall not be an authorised advocate, authorised litigator, licensed conveyancer, authorised practitioner or notary.
- (6) Schedule 3 shall have effect with respect to the Legal Services Ombudsman.

#### **22 Ombudsman’s functions. **E+W****

- (1) Subject to the provisions of this Act, the Legal Services Ombudsman may investigate any allegation which is properly made to him and which relates to the manner in which a complaint made to a professional body with respect to—
  - (a) a person who is or was an authorised advocate, authorised litigator, licensed conveyancer, registered foreign lawyer, recognised body or duly certificated notary public and a member of that professional body; or

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- (b) any employee of such a person,  
has been dealt with by that professional body.
- (2) If the Ombudsman investigates an allegation he may investigate the matter to which the complaint relates.
- (3) If the Ombudsman begins to investigate an allegation he may at any time discontinue his investigation.
- (4) If the Ombudsman decides not to investigate an allegation which he would be entitled to investigate, or discontinues an investigation which he has begun, he shall notify the following of the reason for his decision—
  - (a) the person making the allegation;
  - (b) any person with respect to whom the complaint was made; and
  - (c) the professional body concerned.
- (5) The Ombudsman shall not investigate an allegation while—
  - (a) the complaint is being investigated by the professional body concerned;
  - (b) an appeal is pending against the determination of the complaint by that body;  
or
  - (c) the time within which such an appeal may be brought by any person has not expired.
- (6) Subsection (5) does not apply if—
  - (a) the allegation is that the professional body—
    - (i) has acted unreasonably in failing to start an investigation into the complaint; or
    - (ii) having started such an investigation, has failed to complete it within a reasonable time; or
  - (b) the Ombudsman is satisfied that, even though the complaint is being investigated by the professional body concerned, an investigation by him is justified.
- (7) The Ombudsman shall not investigate—
  - (a) any issue which is being or has been determined by—
    - (i) a court;
    - (ii) the Solicitors Disciplinary Tribunal;
    - (iii) the Disciplinary Tribunal of the Council of the Inns of Court; or
    - (iv) any tribunal specified in an order made by the Lord Chancellor for the purposes of this subsection; or
  - (b) any allegation relating to a complaint against any person which concerns an aspect of his conduct in relation to which he has immunity from any action in negligence or contract.
- (8) The Ombudsman may—
  - (a) if so requested by the Scottish ombudsman, investigate an allegation relating to a complaint made to a professional body in Scotland; and
  - (b) arrange for the Scottish ombudsman to investigate an allegation relating to a complaint made to a professional body in England and Wales.
- (9) For the purposes of this section, an allegation is properly made if it is made—

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- (a) in writing; and
  - (b) by any person affected by what is alleged in relation to the complaint concerned or, where that person has died or is unable to act for himself, by his personal representative or by any relative or other representative of his.
- (10) The Ombudsman may investigate an allegation even though—
- (a) the complaint relates to a matter which arose before the passing of this Act; or
  - (b) the person making the complaint may be entitled to bring proceedings in any court with respect to the matter complained of.
- (11) In this section—
- “professional body” means any body which, or the holder of any office who—
- (a) has disciplinary powers in relation to any person mentioned in subsection (1) (a); and
  - (b) is specified in an order made by the Lord Chancellor for the purposes of this subsection;
- “recognised body” means any body recognised under section 9 of the <sup>M1</sup>Administration of Justice Act 1985 (incorporated practices) or under section 32 of that Act (incorporated bodies carrying on business of provision of conveyancing services); and
- “the Scottish ombudsman” means any person appointed to carry out functions in relation to the provision of legal services in Scotland which are similar to those of the Ombudsman.

#### Marginal Citations

M1 1985 c. 61.

## 23 Recommendations. **E+W**

- (1) Where the Legal Services Ombudsman has completed an investigation under this Act he shall send a written report of his conclusions to—
- (a) the person making the allegation;
  - (b) the person with respect to whom the complaint was made;
  - (c) any other person with respect to whom the Ombudsman makes a recommendation under subsection (2); and
  - (d) the professional body concerned.
- (2) In reporting his conclusions, the Ombudsman may recommend—
- (a) that the complaint be reconsidered by the professional body concerned;
  - (b) that the professional body concerned or any other relevant disciplinary body consider exercising its powers in relation to—
    - (i) the person with respect to whom the complaint was made; or
    - (ii) any person who, at the material time, was connected with him;
  - (c) that—
    - (i) the person with respect to whom the complaint was made; or
    - (ii) any person who, at the material time, was connected with him,

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- pay compensation of an amount specified by the Ombudsman to the complainant for loss suffered by him, or inconvenience or distress caused to him, as a result of the matter complained of;
- (d) that the professional body concerned pay compensation of an amount specified by the Ombudsman to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the complaint was handled by that body;
- (e) that the person or professional body to which a recommendation under paragraph (c) or (d) applies make a separate payment to the person making the allegation of an amount specified by the Ombudsman by way of reimbursement of the cost, or part of the cost, of making the allegation.
- (3) More than one such recommendation may be included in a report under this section.
- (4) Where the Ombudsman includes any recommendation in a report under this section, the report shall give his 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 (9) shall be absolutely privileged.
- (6) It shall be the duty of any person to whom a report is sent by the Ombudsman under subsection (1)(b) or (c) to have regard to the conclusions and recommendations set out in the report, so far as they concern that person.
- (7) Where—
- (a) a report is sent to any person under this section; and
  - (b) the report includes a recommendation directed at him,
- he shall, before the end of the period of three months beginning with the date on which the report was sent, notify the Ombudsman of the action which he has taken, or proposes to take, to comply with the recommendation.
- (8) Any person who fails to comply (whether wholly or in part) with a recommendation under subsection (2) shall publicise that failure, and the reasons for it, in such manner as the Ombudsman may specify.
- (9) Where a person is required by subsection (8) to publicise any failure, the Ombudsman may take such steps as he considers reasonable to publicise that failure if—
- (a) the period mentioned in subsection (7) has expired and that person has not complied with subsection (8); or
  - (b) the Ombudsman has reasonable cause for believing that that person will not comply with subsection (8) before the end of that period.
- (10) Any reasonable expenses incurred by the Ombudsman under subsection (9) may be recovered by him (as a civil debt) from the person whose failure he has publicised.
- (11) For the purposes of this section, the person with respect to whom a complaint is made (“the first person”) and another person (“the second person”) are connected if—
- (a) the second person—
    - (i) employs the first person; and
    - (ii) is an authorised advocate, authorised litigator, duly certificated notary public, licensed conveyancer or partnership;
  - (b) they are both partners in the same partnership; or

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- (c) the second person is a recognised body which employs the first person or of which the first person is an officer.

## 24 Advisory functions. **E+W**

- (1) The Legal Services Ombudsman may make recommendations to any professional body about the arrangements which that body has in force for the investigation of complaints made with respect to persons who are subject to that body's control.
- (2) It shall be the duty of any professional body to whom a recommendation is made under this section to have regard to it.
- (3) The Ombudsman may refer to the Advisory Committee any matters which come to his notice in the exercise of his functions and which appear to him to be relevant to the Committee's functions.

### Modifications etc. (not altering text)

**C1** S. 24(1) restricted (*prosp.*) by 1999 c.22, ss. 52(8), 108(1) (with **Sch. 14 para. 7(2)**)

### Commencement Information

**II** S. 24 wholly in force; s. 24(1)(2) in force at 1. 1. 1991 by S.I. 1990/2484; s. 24(3) in force at 1. 4. 1991 see s. 124(3) and S.I. 1991/608, **art. 2**

## 25 Procedure and offences. **E+W**

- (1) Where the Legal Services Ombudsman is conducting an investigation under this Act he may require any person to furnish such information or produce such documents as he considers relevant to the investigation.
- (2) For the purposes of any such investigation, the Ombudsman shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.
- (3) No person shall be compelled, by virtue of subsection (2), to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
- (4) If any person is in contempt of the Ombudsman in relation to any investigation conducted under section 22, the Ombudsman may certify that contempt to the High Court.
- (5) For the purposes of this section a person is in contempt of the Ombudsman if he acts, or fails to act, in any way which would constitute contempt if the investigation being conducted by the Ombudsman were civil proceedings in the High Court.
- (6) Where a person's contempt is certified under subsection (4), the High Court may enquire into the matter.
- (7) Where the High Court conducts an inquiry under subsection (6) it may, after—
  - (a) hearing any witness produced against, or on behalf of, the person concerned; and
  - (b) considering any statement offered in his defence,

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deal with him in any manner that would be available to it had he been in contempt of the High Court.

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

- C2** Ss. 21-25 applied (with modifications) (25.10.2004) by [The Legal Services Ombudsman \(Extension of Remit\) Regulations 2004 \(S.I. 2004/2757\)](#), [regs. 3, 4](#)

**26 Extension of Ombudsman’s remit. E+W**

- (1) The Lord Chancellor may by regulation extend the jurisdiction of the Legal Services Ombudsman by providing for the provisions of sections 21 to 25 to have effect, with such modifications (if any) as he thinks fit, in relation to the investigation by the Ombudsman of allegations—
  - (a) which relate to complaints of a prescribed kind concerned with the provision of probate services; and
  - (b) which he would not otherwise be entitled to investigate.
- (2) Without prejudice to the generality of the power given to the Lord Chancellor by subsection (1), the regulations may make provision for the investigation only of allegations relating to complaints—
  - (a) made to prescribed bodies; or
  - (b) with respect to prescribed categories of person.

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