

2004 No. 2951

LEGAL SERVICES, ENGLAND AND WALES

**The Probate Services (Approved Body) Complaints Regulations
2004**

<i>Made</i> - - - -	<i>11th November 2004</i>
<i>Laid before Parliament</i>	<i>12th November 2004</i>
<i>Coming into force</i> - -	<i>7th December 2004</i>

The Secretary of State, in exercise of the powers conferred by section 55(2)(d)(ii) of the Courts and Legal Services Act 1990 (a), and now vested in him (b), hereby makes the following Regulations:

1. These Regulations may be cited as the Probate Services (Approved Body) Complaints Regulations 2004 and shall come into force on 7th December 2004.

2. In these Regulations—

- (a) “1990 Act” means the Courts and Legal Services Act 1990;
- (b) “approved body” means a professional or other body which is approved by the Secretary of State under Schedule 9 to the 1990 Act;
- (c) “scheme” means a complaints scheme which is referred to in section 55(2)(d) of the 1990 Act;
- (d) “member” means a provider of probate services who is a member of an approved body and who has been granted exemption from section 23(1) of the Solicitors Act 1974(c) under section 55(1) of the 1990 Act;
- (e) “service user” means a person contracting with the member for the provision of probate services.

3. A provider of probate services who is seeking to become a member must supply the approved body with a written copy of the scheme of which he is a member or to which he is subject on application for exemption under section 55(2) of the 1990 Act.

4. Regulations 5 to 14 set out the requirements which the scheme must comply with in order for members to be granted exemption from section 23(1) of the Solicitors Act 1974 in accordance with the provisions of section 55 (2) of the 1990 Act.

5. The scheme must be appropriate to the needs of service users and a copy must be provided to every service user as an appendix to the member’s terms of business letter.

(a) 1990 c.41.

(b) The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887)

(c) 1974 c.47

6.—(1) A service user may make a complaint relating to the provision of probate services by the member.

(2) The complaint may be made in writing or orally and, if orally, a note shall be taken by the member and sent to the service user for agreement as to the scope of the complaint.

7.—(1) The scheme must provide for investigation of the complaint by a suitable investigator independent of all parties to the complaint.

(2) In the absence of agreement as to the suitability of the investigator, on application by either party, the approved body must nominate an investigator independent of both parties.

8.—(1) The member must co-operate with the investigation and provide such copies of documents as may be reasonably required by the investigator to further the investigation, at the member's expense.

(2) The investigator may refuse or terminate at any stage an investigation if—

- (a) it discloses no reasonable grounds; or
- (b) it has already been the subject of an investigation; or
- (c) the service user has not co-operated with any reasonable request of the investigator.

9. The investigator will, as soon as reasonably practicable and in any event within 28 days of receipt of the complaint by him, notify the parties in writing of the scope of the complaint and a proposed timetable for investigation.

10.—(1) The investigator will give full reasons for his decision and will notify the parties in writing of the decision.

(2) The investigator will, as soon as reasonably practicable following notification to the parties, send a copy of his decision to the approved body.

11.—(1) If either party is not satisfied with the decision of the investigator on the grounds that it is unreasonable he may apply in writing to the approved body for a review of the decision.

(2) The approved body will consider the application for review and give full reasons for its decision.

(3) The approved body must send a copy of the review decision to both parties.

12.—(1) If either party is not satisfied with the review decision of the approved body he may appeal in writing, within 3 calendar months of receipt of the review decision, to the Legal Services Ombudsman.

(2) He must follow such directions as the Legal Services Ombudsman may give, including provision of any copy documents, in order for the Legal Services Ombudsman to consider the appeal.

13.—(1) The member must keep a copy of the investigator's decision for 3 years.

(2) The member must supply to the approved body, at its request and at its expense, a statement showing the number of complaints and outcomes for the preceding 12 months.

14. The approved body must supply, at its expense, to the Legal Services Ombudsman, at his request, a statement showing the number of complaints and their outcomes and reviews and their outcomes for the preceding 12 months.

Signed by authority of the Secretary of State

Dated 11th November 2004

David Lammy
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations set out the minimum requirements for a complaints scheme which a person seeking to obtain exemption from the provisions of section 23 (1) of the Solicitors Act 1974 (unqualified person not to prepare papers for probate etc) must be a member of, or subscribe to, in order to comply with section 55 (2) of the Courts and Legal Services Act 1990. Section 55 (2) allows bodies approved by the Secretary of State under Schedule 9 to the 1990 Act to grant exemption to members fulfilling criteria including being a member of a complaints scheme.

STATUTORY INSTRUMENTS

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