



# Legal Profession and Legal Aid (Scotland) Act 2007

2007 asp 5

## PART 1

### THE SCOTTISH LEGAL COMPLAINTS COMMISSION

#### *Handling by relevant professional organisations of conduct complaints*

#### **23 Handling by relevant professional organisations of conduct complaints: investigation by Commission**

[<sup>F1</sup>(1) The Commission may, subject to subsection (4), carry out such investigation as appears to it to be appropriate of a handling complaint.

(1A) In this Act, a “handling complaint” means a complaint which—

- (a) relates to the manner in which a conduct complaint has been dealt with by a relevant professional organisation to which it has been remitted under section 6(2)(a) or 15(5)(a), and—
- (b) is made—
  - (i) by or on behalf of the person by whom or on whose behalf the conduct complaint was made,
  - (ii) by the practitioner concerned in the conduct complaint.]

(2) The Commission may decide—

- (a) not to investigate a handling complaint;
- (b) to discontinue the investigation of a handling complaint.
- [<sup>F2</sup>(c) to reinstate the investigation of a discontinued handling complaint.]

(3) If the Commission decides not to investigate, or to discontinue [<sup>F3</sup>or reinstate] the investigation of, a handling complaint it must give notice in writing to—

- (a) the person who made the handling complaint [<sup>F4</sup>(and, if made on behalf of another person, that other person)];
- [<sup>F5</sup>(aa) the other party to the conduct complaint to which the handling complaint relates; ]

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- (b) the relevant professional organisation;  
<sup>F6</sup>(c) .....
- by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (4) The Commission must not investigate a handling complaint where either—
- (a) the relevant professional organisation has not completed its investigation of the conduct complaint to which the handling complaint relates; or
  - (b) the handling complaint is made after the expiry of the period of 6 months after such date as the Scottish Ministers may specify by order,
- but paragraph (a) does not apply in any of the circumstances mentioned in subsection (5).
- (5) The circumstances are that—
- (a) the handling complaint is that the relevant professional organisation—
    - (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 Commission considers that, even though the complaint is being investigated by the organisation, an investigation by the Commission is justified.
- (6) Where the Commission decides that subsection (4)(a) does not prevent it investigating a handling complaint because any of the circumstances referred to in subsection (5) apply, it must give notice in writing to—
- (a) the person who made the handling complaint [<sup>F7</sup>(and, if made on behalf of another person, that other person)];
  - <sup>F8</sup>(aa) the other party to the conduct complaint to which the handling complaint relates; ]
  - (b) the relevant professional organisation;
  - <sup>F9</sup>(c) .....
- by sending to each of them a copy of the decision and specifying the reasons for the decision.
- (7) An order under subsection (4)(b) may specify different dates for different purposes.
- (8) Where the Commission is conducting an investigation under this section, it may at any time make a written interim report in relation to the investigation and must send a copy of any such report to—
- (a) the person who made the handling complaint [<sup>F10</sup>(and, if made on behalf of another person, that other person)];
  - <sup>F11</sup>(aa) the other party to the conduct complaint to which the handling complaint relates; ]
  - (b) the relevant professional organisation;
  - <sup>F12</sup>(c) .....
- (9) The Scottish Ministers may by order amend the period of time referred to in subsection (4)(b).
- <sup>F13</sup>(10) In this section and section 24, “the other party to the conduct complaint to which the handling complaint relates” is—

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- (a) in the case of a handling complaint made in accordance with subsection (1A) (b)(i), the practitioner concerned in the conduct complaint to which the handling complaint relates,
- (b) in the case of a handling complaint made in accordance with subsection (1A) (b)(ii), the complainer in the conduct complaint to which the handling complaint relates.]

#### Textual Amendments

- F1** S. 23(1)(1A) substituted for s. 23(1) (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(a)** (with reg. 4)
- F2** S. 23(2)(c) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(b)** (with reg. 4)
- F3** Words in s. 23(3) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(c)(i)** (with reg. 4)
- F4** Words in s. 23(3)(a) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(c)(ii)** (with reg. 4)
- F5** S. 23(3)(aa) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(c)(iii)** (with reg. 4)
- F6** S. 23(3)(c) omitted (1.1.2015) by virtue of The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(c)(iv)** (with reg. 4)
- F7** Words in s. 23(6)(a) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(d)(i)** (with reg. 4)
- F8** S. 23(6)(aa) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(d)(ii)** (with reg. 4)
- F9** S. 23(6)(c) omitted (1.1.2015) by virtue of The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(d)(iii)** (with reg. 4)
- F10** Words in s. 23(8)(a) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(e)(i)** (with reg. 4)
- F11** S. 23(8)(aa) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(e)(ii)** (with reg. 4)
- F12** S. 23(8)(c) omitted (1.1.2015) by virtue of The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(e)(iii)** (with reg. 4)
- F13** S. 23(10) inserted (1.1.2015) by The Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 (S.S.I. 2014/232), regs. 1(2), **2(13)(f)** (with reg. 4)

## 24 Investigation under section 23: final report and recommendations

- (1) Where the Commission has completed an investigation under section 23 it must—
  - (a) make a written report of its conclusions;
  - (b) send a copy of the report to—
    - (i) the person who made the handling complaint [<sup>F14</sup>(and, if made on behalf of another person, that other person)];
    - [<sup>F15</sup>(ia) the other party to the conduct complaint to which the handling complaint relates;]
    - (ii) the relevant professional organisation;
    - [<sup>F16</sup>(iii) .....
- (2) A report under this section may include one or more of the following recommendations—

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- (a) that the relevant professional organisation provide to the person making the handling complaint [<sup>F17</sup>(and, if made on behalf of another person, that other person)] such information about the conduct complaint to which the handling complaint relates, and how it was dealt with, as the Commission considers appropriate;
  - (b) that the conduct complaint be investigated further by the relevant professional organisation;
  - (c) that the conduct complaint be reconsidered by the relevant professional organisation;
  - (d) that the relevant professional organisation consider exercising its powers in relation to the practitioner concerned;
  - (e) that the relevant professional organisation pay compensation of such amount, not exceeding £5000, as the Commission may specify to the person making the handling complaint [<sup>F18</sup>(or the person on whose behalf it was made)] for loss, inconvenience or distress resulting from the way in which the conduct complaint was handled by the organisation;
  - (f) that the relevant professional organisation pay to the person making the handling complaint [<sup>F19</sup>(or the person on whose behalf it was made)] an amount specified by the Commission by way of reimbursement of the cost, or part of the cost, of making the handling complaint.
- (3) Where a report under this section includes any recommendation, the report must state the reasons for making the recommendation.
- (4) A relevant professional organisation to whom a report is sent by the Commission under this section must have regard to the conclusions and recommendations set out in the report so far as relating to the organisation.
- (5) Where a report sent to a relevant professional organisation under this section includes a recommendation relating to it, the organisation must, before the end of the period of [<sup>F20</sup>14 days] beginning with the date on which the report was sent, notify the Commission, the person who made the handling complaint [<sup>F21</sup>(and, if made on behalf of another person, that other person)] and [<sup>F22</sup>the other party to the conduct complaint to which the handling complaint relates], in writing, of—
- <sup>F23</sup>(a) .....
  - (b) its decision not to comply wholly with a recommendation and any reason for that decision.
- (6) Where the Commission is either—
- (a) notified under subsection (5)<sup>F24</sup>... that the relevant professional organisation has decided not to comply wholly with a recommendation; or
  - (b) of the opinion that the relevant professional organisation has not complied wholly with a recommendation before the end of the period of 3 months [<sup>F25</sup>(or such longer period as the Commission may determine under subsection (6A))] beginning with the date on which the report was sent to the organisation under this section,
- the Commission may direct the professional organisation to comply with that recommendation if the Commission thinks fit; and the organisation must comply with the direction.

<sup>F26</sup>(6A) If the relevant professional organisation considers that it is not practicable to comply wholly with a recommendation within 3 months, the Commission may determine a longer period within which the relevant professional organisation must so comply.

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- (6B) If the Commission determines a longer period under subsection (6A), the relevant professional organisation must notify—
- (a) the person who made the handling complaint (and, if made on behalf of another person, that other person),
  - (b) the other party to the conduct complaint to which the handling complaint relates.]
- (7) For the purposes of subsection (6), a “recommendation” means any recommendation referred to in paragraphs (a) to (c), (e) or (f) of subsection (2).
- (8) The Scottish Ministers may by order, after consulting—
- (a) the relevant professional organisations;
  - (b) such groups of persons representing consumer interests as they consider appropriate,
- amend subsection (2)(e) by substituting for the amount for the time being specified in that subsection such other amount as they consider appropriate.

#### Textual Amendments

- F14** Words in s. 24(1)(b)(i) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(a)** (with reg. 4)
- F15** S. 24(1)(b)(ia) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(b)** (with reg. 4)
- F16** S. 24(1)(b)(iii) omitted (1.1.2015) by virtue of [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(c)** (with reg. 4)
- F17** Words in s. 24(2)(a) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(d)(i)** (with reg. 4)
- F18** Words in s. 24(2)(e) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(d)(ii)** (with reg. 4)
- F19** Words in s. 24(2)(f) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(d)(iii)** (with reg. 4)
- F20** Words in s. 24(5) substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(e)(i)** (with reg. 4)
- F21** Words in s. 24(5) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(e)(ii)** (with reg. 4)
- F22** Words in s. 24(5) substituted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(e)(iii)** (with reg. 4)
- F23** S. 24(5)(a) omitted (1.1.2015) by virtue of [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(e)(iv)** (with reg. 4)
- F24** Word in s. 24(6)(a) omitted (1.1.2015) by virtue of [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(f)(i)** (with reg. 4)
- F25** Words in s. 24(6)(b) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(f)(ii)** (with reg. 4)
- F26** S. 24(6A)(6B) inserted (1.1.2015) by [The Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \(S.S.I. 2014/232\)](#), regs. 1(2), **2(14)(g)** (with reg. 4)

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## **25 Failure to comply with recommendation**

- (1) If the Commission considers that a relevant professional organisation has failed to comply with a direction under section 24(6), the Commission may apply by petition to the court for the organisation to be dealt with in accordance with subsection (2).
- (2) Where such a petition is presented, the court may inquire into the matter and after hearing—
  - (a) any witnesses who may be produced against or on behalf of the professional organisation; and
  - (b) any statement that may be offered in defence,may order the organisation to comply with the recommendation with which the direction under section 24(6) is concerned.

## **26 Abolition of Scottish legal services ombudsman**

- (1) The office of the Scottish legal services ombudsman (“the ombudsman”) is abolished on such date as the Scottish Ministers may by order specify.
- (2) The Scottish Ministers may not make an order under subsection (1) unless the ombudsman has no exercisable functions.
- (3) The functions of the ombudsman cease to be exercisable except in relation to the advice, services and activities mentioned in section 77(2).

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 2(6)(ba) inserted by [2010 asp 16 s. 118\(4\)](#)