



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, [^{F1}for the purpose of conducting investigations under this Act].
- [^{F2}(1A) Subject to subsection (1E) below, the ombudsman may investigate any written complaint (a “handling complaint”) made to him by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person has been dealt with by the professional organisation concerned.
- (1B) Subsection (1A) above applies whether or not the professional organisation concerned have treated the conduct complaint as a conduct complaint.
- (1C) The ombudsman may decide—
- (a) not to investigate a handling complaint; or
 - (b) to discontinue his investigation of a handling complaint.
- (1D) If the ombudsman decides not to investigate a handling complaint or decides to discontinue his investigation of such a complaint he shall notify—
- (a) the person who made the handling complaint; and
 - (b) the professional organisation concerned,
- of his decision and the reason for it.
- (1E) The ombudsman shall not investigate a handling complaint where—

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- (a) the professional organisation concerned have not completed their investigation of the conduct complaint to which it relates; or
- (b) it is made after the expiry of such period of time as may be specified for the purpose of this subsection in directions given by the Secretary of State by virtue of paragraph 2 of Schedule 3 to this Act.

(1F) Paragraph (a) of subsection (1E) above does not apply if—

- (a) the handling complaint is that the professional organisation concerned—
 - (i) have acted unreasonably in failing to start an investigation into the complaint; or
 - (ii) having started such an investigation, have failed to complete it within a reasonable time; or
- (b) the ombudsman considers that, even though the complaint is being investigated by that organisation, an investigation by him is justified.]

(2) The ombudsman shall make such investigation of any handling complaint as seems to him to be appropriate ^{F3}. . . .

[^{F4}(2A) Where the ombudsman is conducting an investigation under this Act, he may require the professional organisation concerned—

- (a) to provide him with such information, being information which is within the knowledge of the professional organisation, as he considers relevant to his investigation; or
- (b) to produce to him such documents, being documents which are within the possession or control of the organisation, as he considers relevant to his investigation,

(including any information or, as the case may be, documents obtained by the organisation from the practitioner concerned while investigating the conduct complaint to which the handling complaint relates); and, notwithstanding any duty of confidentiality owed to any person by the professional organisation as respects any such information or, as the case may be, documents, the organisation shall comply with such a requirement.

^{F4}(2B) Where any information requested by the ombudsman under subsection (2A) above is not within the knowledge of the professional organisation concerned, or any documents so requested are not within their possession or control, the ombudsman may require the practitioner concerned in the conduct complaint to which the handling complaint relates—

- (a) to provide him with that information, in so far as it is within the knowledge of the practitioner; or
- (b) to produce to him those documents, if they are within the possession or control of the practitioner;

and, notwithstanding any duty of confidentiality owed to any person by the practitioner as respects any such information or, as the case may be, documents, the practitioner shall comply with such a requirement.]

(3)

[^{F5}(4) Where the ombudsman is conducting an investigation under this Act, he may at any time make a written interim report in relation to the investigation and shall send a copy of any such report to—

- (a) the person who made the handling complaint; and

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(b) the professional organisation concerned.]

(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.

^{F6}(6)

^{F6}(7)

^{F6}(8)

(9) The following shall not be eligible to be appointed as the ombudsman—

- (a) advocates;
- (b) solicitors;
- ^{F7}(c)
- (d) ^{F8}..., executry practitioners within the meaning of section 23 of this Act;
- ^{F7}(e)
- ^{F7}(f)
- (g) [^{F9}conveyancing practitioners] 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.

Textual Amendments

- F1** Words in s. 34(1) substituted (21.5.1997) by 1997 c. 35, ss. 1(2), 6, 11(2)
- F2** S. 34(1A)-(1F) inserted (21.5.1997) by 1997 c. 35, ss. 1(3), 6, 11(2)
- F3** Words in s. 34(2) repealed (21.5.1997) by 1997 c. 35, ss. 1(4), 6, 10, 11(2), Sch.
- F4** S. 34(2A)(2B) inserted (21.5.1997) by 1997 c. 35, ss. 1(5), 6, 11(2)
- F5** S. 34(4) substituted (21.5.1997) by 1997 c. 35, ss. 1(7), 6, 11(2)
- F6** S. 34(6)(7)(8) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(a); S.S.I. 2003/384, art. 2(d)
- F7** S. 34(9)(c)(e)(f) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(i); S.S.I. 2003/384, art. 2(d)
- F8** Words in s. 34(9)(d) repealed (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(ii); S.S.I. 2003/384, art. 2(d)
- F9** Words in s. 34(9)(g) substituted (15.8.2003) by Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), s. 21(2), Sch. 4 para. 12(13)(b)(iii); S.S.I. 2003/384, art. 2(d)

Modifications etc. (not altering text)

- C1** S. 34(9) extended (21.5.2000) by S.S.I. 2000/121, reg. 37, Sch. 2 para. 6(3)
- C2** S. 34(9) applied (1.10.2004) by Solicitors (Scotland) Act 1980 (Foreign Lawyers and Multi-national Practices) Regulations 2004 (S.S.I. 2004/383), regs. 1(1), 16

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Commencement Information

- II** S. 34 partly in force; s. 34 not in force at Royal Assent see 75(2); s. 34(1)(9)(a)-(c)(10) in force at 1.4.1991 by **S.I. 1991/822, art. 3, Sch.**; s. 34(2)-(8) in force at 3.6.1991 by **S.I. 1991/1252, art. 3, Sch. 1**; s. 34(9)(d)(e)(g) in force at 1.3.1997 by **S.I. 1996/2894, art. 3, Sch.** and **S.I. 1996/2966, art. 2**

[^{F10}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.

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- (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—
- (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

F10 S. 34A inserted (21.5.1997) by 1997 c. 35, ss. 2, 6, 11(2)

[^{F11}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

F11 S. 34B inserted (21.5.1997) by 1997 c. 35, ss. 3, 6, 11(2)

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