Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997

1997 CHAPTER 35

PART I

SCOTTISH LEGAL SERVICES OMBUDSMAN

1 Functions and powers of ombudsman.

(1) Section 34 of the 1990 Act (Scottish legal services ombudsman: institution and functions) shall be amended as follows.

(2) In subsection (1), for the words from "to examine" to the end there shall be substituted the words " for the purpose of conducting investigations under this Act ".

(3) After subsection (1) there shall be inserted—

"(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

Changes to legislation: *There are currently no known outstanding effects for the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, Part I. (See end of Document for details)*

(b) the professional organisation concerned,

of his decision and the reason for it.

(1E) The ombudsman shall not investigate a handling complaint where—

(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.”.

(4) In subsection (2), the words from “; and” to the end shall cease to have effect.

(5) After subsection (2) there shall be inserted—

“(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.

(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.”.

(6) Subsection (3) shall cease to have effect.

(7) For subsection (4) there shall be substituted—

"(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

(b) the professional organisation concerned.".

2 Report and recommendations.

The following section shall be inserted after section 34 of the 1990 Act—

"**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.

Changes to legislation: *There are currently no known outstanding effects for the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, Part I. (See end of Document for details)*

(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—

(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.".

3 Advisory functions.

The following section shall be inserted after section 34A of the 1990 Act—

"**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.”.

4 Provision of reports and information to Secretary of State.

In Schedule 3 to the 1990 Act (Scottish legal services ombudsman: terms of appointment etc.), after paragraph 9 there shall be inserted—

“9A The ombudsman may, in addition to making a report under paragraph 9 above, report to the Secretary of State at any time on any matter relating to the discharge of the ombudsman’s functions.

9B The ombudsman shall provide the Secretary of State with such information relating to the discharge of the ombudsman’s functions as the Secretary of State may see fit to require.”.

5 Minor and consequential amendments of 1990 Act.

(1) In section 33 of the 1990 Act (complaints about legal services)—
  (a) in subsection (2), for the words from “the procedures” to the end there shall be substituted the words “ their procedures for dealing with conduct complaints do not conflict with the duty imposed by section 34A of this Act in relation to any report sent to them under that section ”;
  (b) subsections (3) and (4) shall cease to have effect; and
  (c) in subsection (5), after the words “this section” there shall be inserted the words “ and sections 34, 34A and 34B of this Act ”.

(2) In Schedule 3 to the 1990 Act (Scottish legal services ombudsman: terms of appointment etc.)—
  (a) in paragraph 1, the words “(the “ombudsman”)”; and
  (b) paragraphs 7 and 8,

shall cease to have effect.

6 Handling complaints: application and transition.

(1) This Part of this Act and, in so far as they relate to the 1990 Act, section 10 of and the Schedule to this Act shall apply as respects any handling complaint made on or after the coming into force of this section (irrespective of whether the conduct complaint to which it relates was made or dealt with before the coming into force of this section).

(2) As respects any handling complaint to which, by virtue of subsection (1) above, the provisions mentioned in that subsection do not apply, the provisions of the 1990 Act shall continue to apply as if that Act had not been affected by this Act.

(3) In subsection (1) above—

Changes to legislation: *There are currently no known outstanding effects for the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, Part I. (See end of Document for details)*

"handling complaint" shall be construed in accordance with section 34(1A) of the 1990 Act (as inserted by section 1(3) of this Act) but, for the purposes of subsection (2) above, includes a handling complaint as defined in section 34(1) of that Act; and

"conduct complaint" shall be construed in accordance with section 33(1) of that Act.

Changes to legislation:
There are currently no known outstanding effects for the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, Part I.