Office for Legal Complaints

Scheme rules consultation draft

1 Introduction and definitions

Contents of this book

- 1.1 This book is about <u>complaints</u> made from [*commencement date*] to <u>authorised</u> <u>persons</u> including legal practitioners and others, authorised in England and Wales. It explains which <u>complaints</u> are covered by the <u>ombudsman service</u> and how it will deal with them.¹
- 1.2 The Legal Services Act 2007 created the Legal Services Board (to oversee <u>Approved Regulators</u>) and the Office for Legal Complaints (to establish an <u>ombudsman service</u>). This book includes a summary of relevant provisions in the Act, but it is the Act itself that counts.
- 1.3 <u>The Act</u> gave the Legal Services Board power to set requirements on how, under the rules of their <u>Approved Regulators</u>, <u>authorised persons</u> must handle <u>complaints</u>² and cooperate with an <u>ombudsman</u>.³
- 1.4 <u>The Act</u> gave the Office for Legal Complaints power to make rules affecting which <u>complaints</u> can be handled by the <u>ombudsman service</u> and how those <u>complaints</u> will be handled.
- 1.5 This book also includes some general guidance. There are six chapters –

1. Introduction and definitions:

- contents of this book;
- meaning of words that are underlined.
- 2. Who can complain about what:
- who can complain;
- what they can complain about.
- 3. What <u>authorised persons</u> must do:
- dealing with complaints themselves;
- cooperating with the <u>ombudsman service</u>.
- 4. When complaints can be referred to the ombudsman service:
- after complaining to the authorised person;
- time limit from act/omission;
- <u>ombudsman</u> extending time limits.

- 5. How the ombudsman service deals with complaints:
- first contact;
- grounds for dismissal;
- referring a complaint to court;
- referring to another complaints scheme;
- related complaints;
- informal resolution and investigation;
- evidence;
- procedural time limits;
- hearings;
- determinations and awards by an ombudsman;
- acceptance/rejection of determinations;
- publication;
- enforcement.
- 6. Case fees payable by <u>authorised persons</u>.

Meaning of words that are underlined

- 1.6 <u>Complaint</u> means an oral or written expression of dissatisfaction which:
 - a) alleges that the complainant has suffered (or may suffer) financial loss, distress, inconvenience or other detriment; and
 - b) is covered by chapter two (who can complain about what).⁴
- 1.7 <u>Authorised person</u> means:
 - a) someone authorised, in England and Wales, to carry out a <u>reserved legal</u> <u>activity</u>⁵ at the time of the relevant act/omission or covered under section 129 of <u>the Act</u>,⁶ including:
 - barristers;
 - law costs draftsmen;
 - legal executives;
 - licensed conveyancers;
 - notaries;
 - patent attorneys;
 - probate practitioners;
 - registered European lawyers;
 - solicitors;
 - trade mark attorneys; and

b) (under section 131 of the Act) includes:

- a business that is responsible for an act/omission of an employee; and
- a partnership that is responsible for an act/omission of a partner.⁷

1.8 <u>Approved Regulator</u> means:

a) a regulator approved under schedule 4 of the Act, including:

- the Association of Law Costs Draftsmen;
- the Bar Council (for barristers);
- the Chartered Institute of Patent Attorneys;
- the Council for Licensed Conveyancers;
- the Institute of Legal Executives;
- the Institute of Trade Mark Attorneys;
- the Law Society (for solicitors);
- the Master of the Faculties (for notaries).8
- 1.9 <u>Ombudsman</u> means:
 - a) any ombudsman from the ombudsman service;⁹ and
 - b) any <u>ombudsman service</u> staff member to whom an <u>ombudsman</u> has delegated the relevant functions (but an <u>ombudsman</u> cannot delegate the functions of determining a <u>complaint</u> or dismissing it without consideration of its merits).¹⁰
- 1.10 <u>Ombudsman service</u> means the ombudsman scheme established by the Office for Legal Complaints.
- 1.11 Party includes:

a) a complainant (covered by chapter two);

- b) an <u>authorised person</u> (covered by chapter two) against whom the <u>complaint</u> is made;
- c) an <u>authorised person</u> (covered by chapter five) whom an <u>ombudsman</u> treats as a joint respondent to a <u>complaint</u>.¹¹
- 1.12 <u>Public body</u> means any government department, local authority or any other body constituted for the purposes of the public services, local government or the administration of justice.¹²
- 1.13 <u>Reserved legal activity</u> (as defined in schedule 2 of <u>the Act</u>) means:

a) exercising a right of audience;

- b) conducting litigation;
- c) reserved instrument activities;
- d) probate activities;
- e) notarial activities; or
- f) administration of oaths.
- 1.14 <u>The Act</u> means the Legal Services Act 2007.

2 Who can complain about what

Who can complain

2.1 A complainant must be an individual; or:^{13 14}

[we would like to ask the Lord Chancellor to include the following in our jurisdiction:

- a) a micro-enterprise as defined in European Recommendation 2003/361/EC of 6 May 2003 (broadly, an enterprise with fewer than 10 staff and a turnover or balance sheet value not exceeding €2 million);
- b) a charity with an annual income less than £1 million;
- c) a club, association or society with an annual income less than £1 million;
- d) a trustee of a trust with a net asset value less than £1 million; or
- e) a personal representative or the residuary beneficiaries of an estate where a person with a <u>complaint</u> died before referring it to the <u>ombudsman scheme</u>.]
- 2.2 If a complainant who has referred a <u>complaint</u> to the <u>ombudsman service</u> dies or is otherwise unable to act, the <u>complaint</u> can be continued by:¹⁵
 - a) anyone authorised by law (for example:
 - the executor of a complainant who has died; or
 - someone with a lasting power of attorney from a complainant who is incapable); or
 - b) the residuary beneficiaries of the estate of a complainant who has died.¹⁶
- 2.3 A complainant must not have been, at the time of the act/omission to which the <u>complaint</u> relates:
 - a) a <u>public body</u> (or acting for a <u>public body</u>) in relation to the services complained about; or
 - b) an <u>authorised person</u> who procured the services complained about on behalf of someone else.^{17 18}
- 2.4 For example, where the <u>complaint</u> is about a barrister who was instructed by a solicitor on behalf of a consumer, the consumer is covered but the solicitor is not.
- 2.5 A complainant can authorise someone else in writing (including an <u>authorised</u> <u>person</u>) to act for the complainant in pursuing a <u>complaint</u>, but the <u>ombudsman</u> <u>service</u> remains free to contact the complainant direct where it considers that appropriate.¹⁹

What they can complain about

- 2.6 The <u>complaint</u> must relate to an act/omission by someone who was an <u>authorised</u> <u>person</u> at that time²⁰ but:
 - a) an act/omission by an employee is usually treated also as an act/omission by their employer, whether or not the employer knew or approved;²¹ and
 - b) an act/omission by a partner is usually treated also as an act/omission by the partnership, unless the complainant knew (at the time of the act/omission) that the partner had no authority to act for the partnership.²²
- 2.7 The act/omission does not have to:
 - a) relate to a reserved legal activity;²³ nor
 - b) be after the Act came into force²⁴ (but see the time limits in chapter four).
- 2.8 The <u>complaint</u> must relate to services which the <u>authorised person</u> provided:
 - a) to the complainant; or
 - b) to another <u>authorised person</u> who procured them on behalf of the complainant; or
 - c) to (or as) a personal representative/trustee where the complainant is a beneficiary of the estate/trust.^{25 26}
- 2.9 A <u>complaint</u> is not affected by any change in the membership of a partnership or other unincorporated body.²⁷
- 2.10 Where <u>authorised person</u> A ceases to exist and B succeeds to the whole (or substantially the whole) of A's business:

a) acts/omissions by A become acts/omissions of B;²⁸ and

b) <u>complaints</u> already outstanding against A become <u>complaints</u> against B.²⁹

2.11 [The following complaints are excluded:]^{30 31}

3 What authorised persons must do

Dealing with complaints themselves

- 3.1 <u>Authorised persons</u> including legal practitioners and others must comply with their <u>Approved Regulator</u>'s rules on handling <u>complaints</u> that are covered by chapter two.
- 3.2 [The Legal Services Act 2007 allows the Legal Services Board to make requirements to guide in-house complaints handling. If the Legal Services Board were to set requirements for in-house complaints handling, the OLC would include a summary of those principles here.]

Cooperating with the Ombudsman service

3.3 <u>Authorised persons</u> must comply with their <u>Approved Regulator</u>'s rules on cooperating with an <u>ombudsman</u>. The <u>Approved Regulator</u>'s rules must include any requirements that may be set by the Legal Services Board.³²

4 When complaints can be referred to the Ombudsman service

After complaining to the authorised person

- 4.1 Ordinarily, a complainant cannot use the <u>ombudsman service</u> unless the complainant has first used the <u>authorised person</u>'s complaints procedure (referred to in chapter three).³³
- 4.2 But a complainant can use the ombudsman service if:³⁴
 - a) the <u>complaint</u> has not been resolved to the complainant's satisfaction within eight weeks of being made to the <u>authorised person;</u> or
 - b) an <u>Ombudsman</u> considers that there are exceptional reasons to consider the <u>complaint</u> sooner, or without it having been made first to the <u>authorised person</u>.
 - c) where in-house resolution is not possible due to irretrievable breakdown in the relationship between the lawyer and the person making the complaint.
- 4.3 For example, an <u>ombudsman</u> may decide that the <u>ombudsman service</u> should consider the <u>complaint</u> where the authorised person has refused to consider it, or where delay would harm the complainant.
- 4.4 Ordinarily, a complainant must refer a <u>complaint</u> to the <u>ombudsman</u> service within six months of the date of the <u>authorised person</u>'s written response (referred to in chapter three), if that written response prominently included:
 - a) an explanation that the <u>ombudsman service</u> was available if the complainant remained dissatisfied; and
 - b) full contact details for the <u>ombudsman service</u> and a warning that the complaint must be referred to the <u>ombudsman service</u> within six months.

Time limit from act/omission

- 4.5 Ordinarily, a complainant must also refer a <u>complaint</u> to the <u>ombudsman</u> service within:
 - a) [one year] from the act/omission; or
 - b) [one year] from when the complainant should reasonably have known there was cause for complaint without taking advice from a third party;

whichever is later.35

4.6 When the complainant should reasonably have known there was cause for complaint will be assessed on the basis of the complainant's own knowledge, disregarding what the complainant might have been told if he/she had sought advice.

Ombudsman extending time limits

- 4.7 If an <u>ombudsman</u> considers that there are exceptional circumstances, he/she may extend any of these time limits to the extent that he/she considers fair.³⁶
- 4.8 For example, an <u>ombudsman</u> might extend a time limit if the complainant was prevented from meeting the time limit as a result of serious illness.

5 How the Ombudsman service will deal with complaints³⁷

- 5.1 The <u>ombudsman service</u> may require a complainant to complete its complaint form.³⁸
- 5.2 In the case of a partnership (or former partnership), it is sufficient for the <u>ombudsman service</u> to communicate with any partner (or former partner).³⁹

First contact

- 5.3 Unless:
 - a) the <u>authorised person</u> has already had eight weeks to consider the <u>complaint</u>; or
 - b) the <u>authorised person</u> has already issued a written response to the <u>complaint;</u> or
 - c) an ombudsman considers that there are exceptional reasons;
- the ombudsman service will:
 - a) refer the complaint to the authorised person;
 - b) notify the complainant; and
 - c) explain why to both of them.40
- 5.4 If the <u>authorised person</u> claims that all or part of the <u>complaint</u>:
 - a) is not covered by the ombudsman service under chapter two; or
 - b) is out-of-time under chapter four; or
 - c) should be dismissed without considering its merits;

an <u>ombudsman</u> will give all <u>parties</u> an opportunity to make representations before deciding.

- 5.5 Otherwise, if an <u>ombudsman</u> considers that all or part of the <u>complaint</u>:
 - a) may not be covered by the ombudsman service under chapter two; or
 - b) may be out-of-time under chapter four; or
 - c) may be one that should be dismissed without considering its merits;

the <u>ombudsman</u> will give the complainant an opportunity to make representations before deciding.

5.6 The <u>ombudsman</u> will then give the complainant and the <u>authorised person</u> his/her decision and the reasons for it.⁴¹

Grounds for dismissal⁴²

- 5.7 An <u>ombudsman</u> may (but does not have to) dismiss all or part of a <u>complaint</u> without considering its merits if, in his/her opinion:
 - a) it does not have any reasonable prospect of success, or is frivolous or vexatious; or
 - b) the complainant has not suffered (and is unlikely to suffer) financial loss, distress, inconvenience or other detriment; or
 - c) the <u>authorised person</u> has already offered fair and reasonable redress in relation to the circumstances alleged by the complainant and the offer is still open for acceptance; or
 - d) the complainant has previously complained about the same issue to the <u>ombudsman service</u> or a predecessor complaints scheme (unless the <u>ombudsman</u> considers that material new evidence, likely to affect the outcome, only became available to the complainant afterwards); or
 - e) a comparable independent complaints (or costs-assessment) scheme or a court has already dealt with the same issue; or
 - f) a comparable independent complaints (or costs-assessment) scheme or a court is dealing with the same issue, unless those proceedings are first stayed (by the agreement of all parties or by a court order) so that the <u>ombudsman service</u> can deal with the issue; or
 - g) it would be more suitable for the issue to be dealt with by a court, by arbitration or by another complaints (or costs-assessment) scheme;⁴³ or
 - h) the issue concerns an authorised person's decision when exercising a discretion under a will or trust; or
 - i) the issue concerns an authorised person's failure to consult a beneficiary before exercising a discretion under a will or trust, where there is no legal obligation to consult;
 - j) the issue involves someone else who has not complained and the <u>ombudsman</u> considers that it would not be appropriate to deal with the issue without their consent; or
 - k) it is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission; or
 - the issue concerns an act/omission outside England and Wales and the circumstances do not have a sufficient connection with England and Wales;⁴⁴ or
 - m) there are other compelling reasons why it is inappropriate for the issue to be dealt with under the <u>ombudsman scheme</u>.

Referring a complaint to court

- 5.8 Exceptionally (at the instance of an <u>ombudsman</u>) where the <u>ombudsman</u> considers that:
 - a) resolution of a particular legal question is necessary in order to resolve a dispute; but
 - b) it is not more suitable for the whole dispute to be dealt with by a court;

the <u>ombudsman</u> may (but does not have to) refer that legal question to court.

- 5.9 Exceptionally, (at the instance of an <u>authorised person</u>) where:
 - a) the <u>authorised person</u> requests, and also undertakes to pay the complainant's legal costs and disbursements on terms the <u>ombudsman</u> considers appropriate; and
 - b) an <u>ombudsman</u> considers that the whole dispute would be more suitably dealt with by a court as a test case between the complainant and the <u>authorised</u> <u>person</u>;

the <u>ombudsman</u> may (but does not have to) dismiss the <u>complaint</u> without considering its merits, so that a court may consider it as a test case.⁴⁵

- 5.10 By way of example only, in relation to a test case (at the instance of an <u>authorised</u> <u>person</u>) the <u>ombudsman</u> might require an undertaking in favour of the complainant that, if the complainant or the <u>authorised person</u> starts court proceedings against the other in respect of the <u>complaint</u> in any court in England and Wales within six months of the <u>complaint</u> being dismissed, the <u>authorised person</u> will:
 - a) pay the complainant's reasonable costs and disbursements (to be assessed if not agreed on an indemnity basis);
 - b) pay these in connection with the proceedings at first instance and also any subsequent appeal made by the <u>authorised person</u>; and
 - c) make interim payments on account if and to the extent that it appears reasonable to do so.
- 5.11 Factors the <u>ombudsman</u> may take into account in considering whether to refer a legal question to court, or to dismiss a <u>complaint</u> so that it may be the subject of a test case in court, include (but are not limited to):
 - a) any representations made by the authorised person or the complainant;
 - b) the stage already reached in consideration of the dispute;
 - c) how far the legal question is central to the outcome of the dispute;
 - d) how important or novel the legal question is in the context of the dispute;
 - e) the remedies that a court could impose;
 - f) the amount at stake; and
 - g) the significance for the <u>authorised person</u> (or similar <u>authorised persons</u>) or their clients.

Referring to another complaints scheme

- 5.12 An ombudsman may refer a complaint to another complaints scheme if:
 - a) he/she considers it appropriate; and
 - b) the complainant agrees.46
- 5.13 If an <u>ombudsman</u> refers a <u>complaint</u> to another complaints scheme, the <u>ombudsman</u> will give the complainant and the <u>authorised person</u> reasons for the referral.⁴⁷

Arrangements for assistance

5.14 The <u>ombudsman service</u> may make such arrangements as it considers appropriate (which may include paying fees) for <u>Approved Regulators</u> or others to provide assistance to an <u>ombudsman</u> in the investigation or consideration of a complaint.⁴⁸

Related complaints

- 5.15 The ombudsman service may:
 - a) tell a complainant that a related <u>complaint</u> could have been brought against some other <u>authorised person</u>;⁴⁹ or
 - b) treat someone else who was an <u>authorised person</u> at the time of the act/ omission as a joint respondent to the <u>complaint</u>.⁵⁰
- 5.16 Where two or more complaints against different <u>authorised persons</u> relate to connected circumstances:
 - a) the <u>ombudsman service</u> may investigate them together, but an <u>ombudsman</u> will make separate determinations;⁵¹ and
 - b) the determinations may require the <u>authorised persons</u> to contribute towards the overall redress in the proportions the <u>ombudsman</u> considers appropriate.

Informal resolution

- 5.17 The <u>ombudsman service</u> will try to resolve <u>complaints</u> at the earliest possible stage, by whatever means it considers appropriate including informal resolution.
- 5.18 If a <u>complaint</u> is settled, abandoned or withdrawn, an <u>ombudsman</u> will tell both the complainant and the <u>authorised person</u>.⁵²

Investigation

- 5.19 If the <u>ombudsman service</u> considers that an investigation is necessary, it will:
 - a) ensure both parties have been given an opportunity of making representations;
 - b) send the <u>parties</u> a provisional decision (which <u>the Act</u> calls an 'assessment'), with a time limit for response; and
 - c) if any <u>party</u> indicates disagreement within that time limit, arrange for an <u>ombudsman</u> to issue a final decision (which <u>the Act</u> calls a 'determination').
- 5.20 If neither <u>party</u> indicates disagreement within that time limit, the <u>ombudsman</u> <u>service</u> may treat the complaint as resolved by the provisional decision.

Evidence

- 5.21 An apology will not of itself be treated as an admission of liability.53
- 5.22 An <u>ombudsman</u> cannot require anyone to produce any information or document which that person could not be compelled to produce in High Court civil proceedings, and the following provisions are subject to this.⁵⁴
- 5.23 An ombudsman may give directions on:
 - a) the issues on which evidence is required; and
 - b) the way in which evidence should be given.

- 5.24 An ombudsman may:
 - a) take into account evidence from <u>Approved Regulators</u> or the Legal Services Board;
 - b) take into account evidence from other third parties;
 - c) treat any finding of fact in disciplinary proceedings against the <u>authorised</u> <u>person</u> as conclusive;
 - d) include/exclude evidence that would be inadmissible/admissible in court;
 - e) accept information in confidence where he/she considers that is both necessary and fair; $^{\rm 55}$
 - f) make a determination on the basis of what has been supplied;
 - g) draw inferences from any party's failure to provide information requested; and
 - h) dismiss a complaint if the complainant fails to provide information requested.
- 5.25 An <u>ombudsman</u> may require a <u>party</u> to attend to give evidence and produce documents at a time and place specified by the <u>ombudsman</u>.⁵⁶
- 5.26 An <u>ombudsman</u> may require a <u>party</u> to produce any information or document that the <u>ombudsman</u> considers necessary for the determination of a <u>complaint</u>.⁵⁷
- 5.27 An ombudsman may:
 - a) specify the time within which this must be done;
 - b) specify the manner or form in which the information is to be provided; and
 - c) require the person producing the document to explain it.58
- 5.28 If the document is not produced, an <u>ombudsman</u> may require the relevant <u>party</u> to say, to the best of his/her knowledge and belief, where the document is.⁵⁹
- 5.29 If an <u>authorised person</u> fails to comply with a requirement to produce information or a document, the <u>ombudsman</u>:
 - a) will tell the relevant Approved Regulator;
 - b) may require that <u>Approved Regulator</u> to tell the <u>ombudsman</u> what action it will take; and
 - c) may report any failure by that <u>Approved Regulator</u> to the Legal Services Board.⁶⁰
- 5.30 Subject to this, if any <u>party</u> fails to comply with a requirement to produce information or a document, the <u>ombudsman</u> may enforce the requirement through the High Court.⁶¹

Procedural time limits

- 5.31 An <u>ombudsman</u> may fix (and may extend) a time limit for any stage of the investigation, consideration and determination of a <u>complaint</u>.
- 5.32 If any <u>party</u> fails to comply with such a time limit, the <u>ombudsman</u> may:
 - a) proceed with the investigation, consideration and determination;
 - b) draw inferences from the failure;
 - c) where the failure is by the complainant, dismiss the complaint; or
 - d) where the failure is by the <u>authorised person</u>, include compensation for any inconvenience caused to the complainant in any award.

Hearings

- 5.33 An <u>ombudsman</u> will only hold a hearing where he/she considers that the <u>complaint</u> cannot be fairly determined without one. In deciding whether (and how) to hold a hearing, the <u>ombudsman</u> will take account of article 6 in the European Convention on Human Rights.
- 5.34 A party who wishes to request a hearing must do so in writing, setting out:
 - a) the issues he/she wishes to raise; and
 - b) (if appropriate) any reasons why the hearing should be in private;
- so the ombudsman may consider whether:
 - a) the issues are material;
 - b) a hearing should take place; and
 - c) any hearing should be in public or private.
- 5.35 A hearing may be held by any means the <u>ombudsman</u> considers appropriate in the circumstances, including (for example) by phone.⁶²

Determinations and awards by an ombudsman

- 5.36 An <u>ombudsman</u> will determine a complaint by reference to what is, in his/her opinion, fair and reasonable in all the circumstances of the case.⁶³
- 5.37 In determining what is fair and reasonable, the <u>ombudsman</u> will take into account (but is not bound by):
 - a) what decision a court might make;
 - b) the relevant <u>Approved Regulator</u>'s rules of conduct at the time of the act/ omission; and
 - c) what the <u>ombudsman</u> considers to have been good practice at the time of the act/omission.⁶⁴
- 5.38 The <u>ombudsman</u>'s determination may contain one or more of the following directions to the <u>authorised person</u> in favour of the complainant:⁶⁵
 - a) to apologise;
 - b) to pay compensation of a specified amount for loss suffered;
 - c) to pay interest on that compensation from a specified time;66
 - d) to pay compensation of a specified amount for inconvenience/distress caused;
 - e) to ensure (and pay for) putting right any specified error, omission or other deficiency;
 - f) to take (and pay for) any specified action in the interests of the complainant;
 - g) to pay a specified amount for costs the complainant incurred in pursuing the <u>complaint</u>;^{67 68}
 - h) to limit fees to a specified amount.
- 5.39 As a complainant does not usually need assistance to pursue a <u>complaint</u> with the <u>ombudsman service</u>, awards of costs are likely to be rare.

- 5.40 If the determination contains a direction to limit fees to a specified amount, it may also require the <u>authorised person</u> to ensure that:⁶⁹
 - a) all or part of any amount paid is refunded;
 - b) interest is paid on that refund from a specified time;⁷⁰
 - c) all or part of the fees are remitted;
 - d) the right to recover the fees is waived, wholly or to a specified extent; or
 - e) any combination of these.
- 5.41 An <u>ombudsman</u> may set a time limit for the <u>authorised person</u> to comply with a determination (and may set different time limits for the <u>authorised person</u> to comply with different parts of a determination).
- 5.42 Any interest payable under the determination will be at the rate:
 - a) specified in the determination; or
 - b) (if not specified) at the rate payable on High Court judgment debts.⁷¹
- 5.43 There is a limit of £30,000 on the total value that can be awarded by the determination of a <u>complaint</u> in respect of:⁷²
 - a) compensation for loss suffered;
 - b) compensation for inconvenience/distress caused;
 - c) the reasonable cost of putting right any error, omission or other deficiency; and
 - d) the reasonable cost of any specified action in the interests of the complainant.
- 5.44 If (before or after the determination is issued) it appears that the total value will exceed £30,000, an <u>ombudsman</u> may direct which part or parts of the award are to take preference.
- 5.45 That limit does not apply to:
 - a) an apology;
 - b) interest on specified compensation for loss suffered;⁷³
 - c) a specified amount for costs the complainant incurred in pursuing the <u>complaint;</u>
 - d) limiting fees to a specified amount; or
 - e) interest on fees to be refunded.

Acceptance/rejection of determinations

- 5.46 The determination will:74
 - a) be in writing, signed by the ombudsman;
 - b) give reasons for the determination; and
 - c) require the complainant to notify the <u>ombudsman</u>, before a specified time, whether the complainant accepts or rejects the determination.
- 5.47 The <u>ombudsman</u> may require any acceptance or rejection to be in writing, but will have regard to any reason why the complainant may be unable to use writing.

- 5.48 The <u>ombudsman</u> will send copies of the determination to the <u>parties</u> and the relevant <u>Approved Regulator</u>.⁷⁵
- 5.49 If the complainant tells the <u>ombudsman</u> that he/she accepts the determination, it is binding on the <u>parties</u> and final.⁷⁶
- 5.50 Once a determination becomes binding and final, neither <u>party</u> may start or continue legal proceedings in respect of the subject matter of the <u>complaint</u>.
- 5.51 If the complainant does not tell the <u>ombudsman</u> (before the specified time) that he/she accepts the determination, it is treated as rejected unless:
 - a) the complainant tells the <u>ombudsman</u> (after the specified time) that he/she accepts the determination; and
 - b) the complainant has not previously told the <u>ombudsman</u> that he/she rejects the determination; and
 - c) the <u>ombudsman</u> is satisfied that there are sufficient reasons why the complainant did not respond in time.⁷⁷
- 5.52 If the complainant did not respond before the specified time, the <u>ombudsman</u> will notify the <u>parties</u> and the relevant <u>Approved Regulator</u> of the outcome, describing the provisions concerning late acceptance that are set out above.⁷⁸
- 5.53 If the complainant accepts or rejects the determination, the <u>ombudsman</u> will notify the <u>parties</u> and the relevant <u>Approved Regulator</u> of the outcome.⁷⁹
- 5.54 If a determination is rejected (or treated as rejected) by the complainant, it has no effect on the legal rights of any <u>party</u>.

Publication

5.55 The <u>ombudsman service</u> may publish a report of its investigation, consideration and determination of a complaint. The report will not name (or otherwise identify) the complainant, unless the complainant agrees.⁸⁰

Enforcement

- 5.56 A binding and final determination can be enforced through the High Court or a county court by the complainant.⁸¹
- 5.57 A binding and final determination can also be enforced through the High Court or a county court by an <u>ombudsman</u>, if:
 - a) the complainant agrees; and
 - b) the ombudsman considers it appropriate in all the circumstances.82
- 5.58 A court which makes an enforcement order must tell the <u>ombudsman service</u>, and then an <u>ombudsman</u>:
 - a) will tell the relevant Approved Regulator;
 - b) may require that <u>Approved Regulator</u> to tell the <u>ombudsman</u> what action it will take; and
 - c) may report any failure by that <u>Approved Regulator</u> to the Legal Services Board.⁸³

Misconduct

- 5.59 If (at any stage after the <u>ombudsman service</u> receives a <u>complaint</u>) an <u>ombudsman</u> considers that the <u>complaint</u> discloses any alleged misconduct about which the relevant <u>Approved Regulator</u> should consider action against the <u>authorised person</u>, the <u>ombudsman</u>:
 - a) will tell the relevant Approved Regulator;
 - b) will tell the complainant that the Approved Regulator has been told;
 - c) may require that <u>Approved Regulator</u> to tell the <u>ombudsman</u> what action it will take; and
 - d) may report any failure by that <u>Approved Regulator</u> to the Legal Services Board.⁸⁴
- 5.60 If an <u>ombudsman</u> considers that an authorised person has failed to cooperate with the <u>ombudsman service</u>, the <u>ombudsman</u>:
 - a) will tell the relevant Approved Regulator;
 - b) may require that <u>Approved Regulator</u> to tell the <u>ombudsman</u> what action it will take; and
 - c) may report any failure by that <u>Approved Regulator</u> to the Legal Services Board.⁸⁵
- 5.61 An <u>ombudsman</u>, the <u>ombudsman service</u> and members of its staff will disclose to a <u>Approved Regulator</u> any information that it requests in order to investigate alleged misconduct or to fulfil its regulatory functions, so far as an <u>ombudsman</u> considers that the information:
 - a) is reasonably required by the Approved Regulator; and
 - b) has regard to any right of privacy of any complainant involved.86

6 Case fees payable by authorised persons

- 6.1 No case fee is payable for the first [*number*] in-jurisdiction <u>complaints</u> against an authorised person closed during the <u>ombudsman service</u>'s financial year.
- 6.2 A case fee of *[£amount]* is payable by the <u>authorised person</u> for every additional in-jurisdiction <u>complaint</u> closed unless:
 - a) the complaint was:
 - abandoned or withdrawn; or
 - settled, resolved or determined in favour of the authorised person; and
 - b) the <u>ombudsman</u> is satisfied that the <u>authorised person</u> took all reasonable steps, under his/her complaints procedures, to try to resolve the <u>complaint</u>.
- 6.3 The remaining costs of running the <u>ombudsman service</u> are covered by a levy on <u>Approved Regulators</u> by the Legal Services Board.⁸⁷
- 6.4 There is no charge to complainants.

End notes

- 1 This book is limited to complaint-handling. It does not cover the OLC's governance or complaint-prevention role.
- 2 Section 112.
- 3 Section 145.
- 4 We have sought to use a draft definition that is sufficient to distinguish complaints about service from those which relate solely to professional misconduct.
- 5 Sections 12 and 129.
- 6 This section covers the equivalent practitioners before the commencement of the Act.
- 7 Sections 133(8) and 147(7).
- 8 Some accountancy bodies have applied to become regulators for probate services, and will be added if and when appropriate.
- 9 Section 122(5).
- 10 Section 134
- 11 Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).
- 12 Section 128(7).
- 13 Section 128(3).
- 14 The Lord Chancellor can include others under section 130.
- 15 Section 132(4).
- 16 To save their having to take out a grant of representation if one is not otherwise required.
- 17 Section 128(5).
- 18 The Lord Chancellor can exclude others under section 130.
- 19 Section 133(1).
- 20 Section 128(1) part.
- 21 Section 131(1).
- 22 Section 131(2) and (3).
- 23 Section 128(1) part.
- 24 Section 125(2).
- 25 Section 128(4).
- 26 The Lord Chancellor can include others under section 130.
- 27 Section 132(1).
- 28 Section 132(2).
- 29 Section 132(3)
- 30 Section 127(1).
- 31 OLC scheme rules may (but do not have to) exclude specified complaints. Bearing in mind the restrictions already imposed by the Act, and the discretion to dismiss complaints without consideration of their merits in chapter 5, the OLC has not yet identified any classes of complaint that it should exclude absolutely. For example, where a complaint is about professional negligence or judgement, the OLC will consider (on a case-by-case basis) whether the issue is one that the OLC can deal with or whether the issue would be better dealt with in court.
- 32 Section 145.
- 33 Section 126(1).
- 34 Section 126(3).
- 35 For consultation.
- 36 Section 133(2)(b)
- 37 Section 133(1).
- 38 This gives the Ombudsman service the right to require a complaint form, but does not oblige it to do so.
- 39 To make it clear that the Ombudsman service does not have to communicate with each partner individually.
- 40 Section 135.
- 41 Section 135.
- 42 Section 133(3)(a).

- 43 Where a complaint is about professional negligence or judgement, the OLC will consider (on a case-by-case basis) whether the issue is one that the OLC can deal with or whether the issue would be better dealt with in court.
- 44 For example, a French client wishes to complain about advice on French law given in France by a French lawyer who is also qualified in England and Wales.
- 45 Paragraph 5.9 only applies if the legal practitioner so requests. The idea is that, in suitable cases, the legal practitioner can have his/her day in court, provided the complainant's legal costs are met. It is based on a similar provision in the rules of the Financial Ombudsman Service. In other circumstances, an Ombudsman cannot force a legal practitioner to pay the complainant's costs of going to court.
- 46 Section 133(3)(b).
- 47 Section 135.
- 48 Schedule 15, paragraph 18.
- 49 Where it is apparent that the complaint was made against the wrong legal practitioner.
- 50 Where it is apparent that another legal practitioner was also involved. Section 133(3)(c).
- 51 There need to be separate determinations because of the £30,000 limit.
- 52 Section 135.
- 53 To ensure legal practitioners are not discouraged from saying 'sorry'.
- 54 Sections 133(5) and 147(6).
- 55 Including, but not limited to, information which is "restricted information" under section 151.
- 56 Section 133(3)(e).
- 57 Section 147(1) and (3).
- 58 Section 147(2) and (4).
- 59 Section 147(5).
- 60 Section 148.
- 61 Section 149.
- 62 The OLC does not propose to exercise the power in section 133(3)(g) enabling it to make a rule about the OLC awarding expenses in connection with attending a hearing.
- 63 Section 137(1)
- 64 Section 133(3)(f).
- 65 Section 137(2).
- 66 Section 137(4)(b).
- 67 Section 133(3)(h).
- 68 The OLC does not propose to exercise the power under section 133(3)(i) to make a rule requiring any party who has behaved unreasonably to pay costs to the Ombudsman service.
- 69 Section 137(2)(b)(ii).
- 70 Section 137(4)(b).
- 71 Section 137(4).
- 72 Section 138(1) and (2). The Lord Chancellor can increase the limit under section 139.
- 73 Section 138(3).
- 74 Section 140(1) and (2).
- 75 Section 140(3).
- 76 Section 140(4).
- 77 Section 140(5) and (6).
- 78 Section 140(7) and (8).
- 79 Section 140(7).
- 80 Section 150.
- 81 Section 141.
- 82 Section 141(5).
- 83 Section 142.
- 84 Section 143.
- 85 Section 146.
- 86 Section 144(1).
- 87 Sections 173 and 174.

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