



# Public Services Ombudsman (Wales) Act 2005

## 2005 CHAPTER 10

### PART 2 **E+W**

#### INVESTIGATION OF COMPLAINTS

##### **Modifications etc. (not altering text)**

- C1** Pt. 2 applied (11.10.2005) by [The Public Services Ombudsman \(Wales\) Act 2005 \(Commencement No. 1 and Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/2800\)](#), [art. 6](#)

#### *Power of investigation*

### **2 Power of investigation** **E+W**

- (1) The Ombudsman may investigate a complaint in respect of a matter if—
  - (a) the complaint has been duly made or referred to him, and
  - (b) the matter is one which he is entitled to investigate under sections 7 to 11.
- (2) A complaint is “duly made” to the Ombudsman if (but only if)—
  - (a) it is made by a person who is entitled under section 4 to make the complaint to the Ombudsman, and
  - (b) the requirements of section 5 are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
  - (a) it is referred to him by a listed authority, and
  - (b) the requirements of section 6 are met in respect of it.
- (4) The Ombudsman may investigate a complaint in respect of a matter even if the requirements of section 5(1) or (as the case may be) section 6(1)(b) or (d) are not met in respect of the complaint, if—

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- (a) the matter is one which he is entitled to investigate under sections 7 to 11, and
  - (b) he thinks it reasonable to do so.
- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (6) The Ombudsman may take any action which he thinks may assist in making a decision under subsection (5).
- (7) The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn.

### 3 **Alternative resolution of complaints** E+W

- (1) The Ombudsman may take any action he thinks appropriate with a view to resolving a complaint which he has power to investigate under section 2.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

## *Complaints*

### 4 **Who can complain** E+W

- (1) The persons entitled to make a complaint to the Ombudsman are—
  - (a) a member of the public (in this Act referred to as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate under sections 7 to 11;
  - (b) a person authorised by the person aggrieved to act on his behalf;
  - (c) if the person aggrieved is not capable of authorising a person to act on his behalf (for example because he has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” means any person other than a listed authority acting in its capacity as such.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint to him.

### 5 **Requirements: complaints made to the Ombudsman** E+W

- (1) The requirements mentioned in section 2(2)(b) are that—
  - (a) the complaint must be made in writing;
  - (b) the complaint must be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint.
- (2) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

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## **6 Requirements: complaints referred to the Ombudsman** **E+W**

- (1) The requirements mentioned in section 2(3)(b) are that—
  - (a) the complaint must have been made to the listed authority by a person who would have been entitled under section 4 to make the complaint to the Ombudsman;
  - (b) the complaint must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint;
  - (c) the complaint must be referred to the Ombudsman in writing;
  - (d) the complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority.
- (2) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

### *Matters which may be investigated*

## **7 Matters which may be investigated** **E+W**

- (1) The matters which the Ombudsman is entitled to investigate are—
  - (a) alleged maladministration by a listed authority in connection with relevant action;
  - (b) an alleged failure in a relevant service provided by a listed authority;
  - (c) an alleged failure by a listed authority to provide a relevant service.
- (2) Subsection (1) is subject to sections 8 to 11.
- (3) Relevant action is—
  - (a) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service;
  - (b) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Assembly, action taken by the authority in the discharge of any of its functions;
  - (c) in the case of a listed authority which is a person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), action taken by the authority in the discharge of any of those functions;
  - (d) in the case of a listed authority which is a listed authority by virtue of an order under section 28(2) adding it to Schedule 3, action taken by the authority in the discharge of any of its specified functions;
  - (e) in any other case, action taken by the authority in the discharge of any of its administrative functions.
- (4) A relevant service is—
  - (a) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide;

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- (b) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide;
  - (c) in the case of a listed authority falling within subsection (3)(c), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned in that paragraph;
  - (d) in the case of a listed authority falling within subsection (3)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions;
  - (e) in any other case, any service which it was, at that time, the authority's function to provide.
- (5) For the purposes of subsections (3)(d) and (4)(d), a listed authority's specified functions are the functions specified in relation to the authority in an order under section 28(2) as falling within the Ombudsman's remit.
- (6) An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for the purposes of subsection (3) if—
- (a) the person was appointed by the authority, or
  - (b) the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise).

## 8 Exclusion: matters not relating to Wales **E+W**

- (1) The Ombudsman may not investigate a matter arising in connection with the discharge by a listed authority of any of the authority's functions otherwise than in relation to Wales.
- (2) Subsection (1) does not apply in relation to the Assembly.
- (3) To the extent that a function of a listed authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for the purposes of subsection (1) as discharged in relation to Wales.

## 9 Exclusion: other remedies **E+W**

- (1) The Ombudsman may not investigate a matter if the person aggrieved has or had—
- (a) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative,
  - (b) a right of appeal to a Minister of the Crown or the Assembly, or
  - (c) a remedy by way of proceedings in a court of law.
- (2) But subsection (1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy.
- (3) The Ombudsman may investigate a matter only if he is satisfied that—
- (a) the matter has been brought to the attention of the listed authority to which it relates by or on behalf of the person aggrieved, and
  - (b) the authority has been given a reasonable opportunity to investigate and respond to it.

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- (4) But subsection (3) does not prevent the Ombudsman from investigating a matter if he is satisfied that it is reasonable in the particular circumstances for him to investigate the matter despite the fact that the requirements of that subsection have not been met.

## 10 Other excluded matters **E+W**

- (1) The Ombudsman may not investigate a matter specified in Schedule 2.
- (2) The Assembly may by order amend Schedule 2 by—
- (a) adding an entry;
  - (b) removing an entry;
  - (c) changing an entry.
- (3) Before making an order under subsection (2), the Assembly must consult the Ombudsman.
- (4) Subsection (1) does not prevent the Ombudsman from investigating action of a listed authority in operating a procedure established to examine complaints or review decisions.

## 11 Decisions taken without maladministration **E+W**

- (1) The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.
- (2) Subsection (1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care.

*Decisions not to investigate etc.*

## 12 Decisions not to investigate or to discontinue investigation **E+W**

- (1) If the Ombudsman decides under section 2(5)—
- (a) not to begin an investigation into a complaint in respect of a listed authority, or
  - (b) to discontinue such an investigation,
- he must prepare a statement of the reasons for his decision.
- (2) The Ombudsman must send a copy of the statement to—
- (a) the person who made the complaint, and
  - (b) the listed authority.
- (3) The Ombudsman may send a copy of the statement to any other persons he thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.
- (5) The Ombudsman may supply a copy of a statement published under subsection (4), or any part of such a statement, to any person who requests it.

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- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
- (7) If a statement prepared under subsection (1)—
- (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the statement,
- that information must not be included in a version of the statement sent to a person under subsection (2) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the statement if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement.
- (9) If the Ombudsman would otherwise send a copy of a statement (or part of a statement) to the Assembly under subsection (2), (3) or (5), he must send the copy to the Assembly First Secretary instead.

### *Investigation procedure and evidence*

## 13 Investigation procedure E+W

- (1) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, he must—
- (a) give the listed authority an opportunity to comment on any allegations contained in the complaint;
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is to be such as the Ombudsman thinks appropriate in the circumstances of the case.
- (4) In particular, the Ombudsman may—
- (a) make such inquiries as he thinks appropriate;
  - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (5) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
- (a) such sums as he may determine in respect of expenses properly incurred by them, and
  - (b) such allowances as he may determine by way of compensation for the loss of their time,
- subject to such conditions as he may determine.
- (6) The conduct of an investigation in respect of a listed authority does not affect—

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- (a) the validity of any action taken by the listed authority, or
- (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

#### **14 Information, documents, evidence and facilities** **E+W**

- (1) For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to do so.
- (2) For the purposes of an investigation the Ombudsman has the same powers as the High Court in respect of—
  - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
  - (b) the production of documents.
- (3) For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to provide any facility he may reasonably require.
- (4) Subject to subsection (6), no person is to be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
- (5) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or rule of law, is to apply to the disclosure of information for the purposes of an investigation.
- (6) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

#### **15 Obstruction and contempt** **E+W**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) But the condition in subsection (2) is not met in relation to a person merely because he has taken action such as is mentioned in section 13(6).
- (4) If the Ombudsman issues a certificate under subsection (1), the High Court may inquire into the matter.
- (5) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with him in any manner in which it could have dealt with him if he had committed contempt in relation to the High Court.



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### *Reports of investigations*

## **16 Reports of investigations E+W**

(1) The Ombudsman must, after conducting an investigation into a complaint in respect of a listed authority—

- (a) prepare a report on his findings, and
- (b) send a copy of the report to all the appropriate persons.

This is subject to section 21.

(2) The appropriate persons are—

- (a) the person who made the complaint;
- (b) the listed authority;
- (c) any other person who is alleged in the complaint to have taken or authorised the action complained of;
- (d) if the listed authority is a family health service provider in Wales—
  - (i) any Local Health Board with whom the authority had, at the time of the action which is the subject of the complaint, entered into a contract to provide the family health services which are under investigation;
  - (ii) any person to whom the authority had, at that time, undertaken to provide those services;
  - (iii) any person with whom the authority had, at that time, made arrangements for the provision of those services;
- (e) if the listed authority is an independent provider in Wales—
  - (i) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the complaint, made arrangements for the provision of the services under investigation;
  - (ii) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services;
- (f) the Assembly First Secretary (unless the listed authority is itself the Assembly or is a local authority in Wales).

(3) The Ombudsman may send a copy of the report to any other persons he thinks appropriate.

(4) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.

(5) The Ombudsman may supply a copy of a report published under subsection (4), or any part of such a report, to any person who requests it.

(6) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (5).

(7) If a report prepared under this section—

- (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or



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- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,  
that information must not be included in a version of the report sent to a person under subsection (1)(b) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.
- (9) If the Ombudsman would otherwise send a copy of a report (or part of a report) to the Assembly under subsection (1)(b), (3) or (5), he must send the copy to the Assembly First Secretary instead.

## 17 Publicising reports **E+W**

- (1) If an investigation is conducted in respect of a listed authority and the authority receives a copy of a report under section 16(1)(b), the authority must make copies of that version of the report available for a period of at least three weeks—
  - (a) at one or more of the authority's offices, and
  - (b) if the authority has a website, on the website.
- (2) Throughout that period of three weeks, any person may—
  - (a) inspect the copy of the report at the office or offices concerned at any reasonable time without payment;
  - (b) make a copy of the report or any part of it at any reasonable time without payment;
  - (c) require the authority to supply him with a copy of the report or any part of it, on payment of a reasonable sum if requested;
  - (d) if the authority has a website, view the copy of the report on the website without payment.
- (3) Not later than two weeks after the copy of the report is received by the listed authority it must ensure that a notice is published in a newspaper circulating in the part of Wales in which the matter which is the subject of the report arose.
- (4) The notice must specify—
  - (a) the date on which the period of three weeks referred to in subsection (1) will begin,
  - (b) the office or offices at which a copy of the report can be inspected, and
  - (c) the address of the authority's website (if any).
- (5) The Ombudsman may give directions to listed authorities with regard to the discharge of their functions under this section.
- (6) Directions under subsection (5) may relate—
  - (a) to a particular listed authority in respect of a particular report, or
  - (b) generally to the discharge of functions under this section by all or any listed authorities.
- (7) A person commits an offence if—

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- (a) he wilfully obstructs a person in the exercise of a right conferred by subsection (2)(a), (b) or (d), or
  - (b) he refuses to comply with a requirement under subsection (2)(c).
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) The Ombudsman may direct that subsections (1) to (4) are not to apply in relation to a particular report.
- (10) In deciding whether to give a direction under subsection (9), the Ombudsman must take into account—
- (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other persons he thinks appropriate.

## 18 Publicising reports: health care providers **E+W**

- (1) If an investigation is conducted in respect of a listed authority which is a family health service provider in Wales, section 17 has effect with the modifications specified in subsections (2) to (4).
- (2) For subsection (1) substitute—
- “(1) A person who has received a copy of a report under section 16 by virtue of section 16(2)(d) must make copies of the report available for a period of at least three weeks—
- (a) at one or more of the person's offices, and
  - (b) if the person has a website, on the website.”
- (3) The references to the listed authority are to be taken to be references to that person.
- (4) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.
- (5) If an investigation is conducted in respect of a listed authority which is an independent provider in Wales, section 17 has effect with the modifications specified in subsections (6) to (8).
- (6) For subsection (1) substitute—
- “(1) A person who has received a copy of a report under section 16 by virtue of section 16(2)(e) must make copies of the report available for a period of at least three weeks—
- (a) at one or more of the person's offices, and
  - (b) if the person has a website, on the website.”
- (7) The references to the listed authority are to be taken to be references to that person.
- (8) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.

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## 19 Action following receipt of a report **E+W**

- (1) This section applies if, in a report under section 16 of an investigation in respect of a listed authority, the Ombudsman concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated.
- (2) The listed authority must consider the report and notify the Ombudsman before the end of the permitted period of—
  - (a) the action it has taken or proposes to take in response to it, and
  - (b) the period before the end of which it proposes to have taken that action (if it has not already done so).
- (3) The permitted period is—
  - (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) any longer period specified by the Ombudsman in writing.

PROSPECTIVE

## 20 Non-action following receipt of a report **E+W**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a listed authority, he may issue a certificate to that effect to the High Court.
- (2) The condition is that the listed authority has wilfully disregarded his report without lawful excuse.

## 21 Reports: alternative procedure **E+W**

- (1) This section applies if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority—
  - (a) he concludes that the person aggrieved has not sustained injustice or hardship in consequence of the matter investigated, and
  - (b) he is satisfied that the public interest does not require sections 16 to 19 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority—
  - (a) he concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated,
  - (b) the listed authority agrees to implement, before the end of the permitted period, any recommendations he makes, and
  - (c) he is satisfied that the public interest does not require sections 16 to 19 to apply.
- (3) The permitted period is—
  - (a) a period agreed between the Ombudsman, the listed authority and the person who made the complaint, or
  - (b) if the Ombudsman thinks that no such agreement can be reached, the period specified by him in writing.

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- (4) The Ombudsman may decide to prepare a report on his findings under this section instead of under section 16.
- (5) If the Ombudsman decides to prepare a report under this section—
  - (a) sections 16 to 19 do not apply;
  - (b) he must send a copy of the report to—
    - (i) the person who made the complaint;
    - (ii) the listed authority;
  - (c) he may send a copy of the report to any other persons he thinks appropriate.
- (6) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or any part of such a report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) If a report prepared under this section—
  - (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,

that information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6), subject to subsection (10).
- (10) Subsection (9) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.
- (11) If the Ombudsman would otherwise send a copy of a report (or part of a report) to the Assembly under subsection (5) or (7), he must send the copy to the Assembly First Secretary instead.

### *Special reports*

## 22 Special reports **E+W**

- (1) The Ombudsman may prepare a report under this section (a “special report”) if subsection (2), (4) or (6) applies.
- (2) This subsection applies if, in a report under section 16, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated and—
  - (a) the Ombudsman has not received the notification required under section 19 before the end of the period permitted under that section,
  - (b) he has received that notification but he is not satisfied with—
    - (i) the action which the listed authority has taken or proposes to take, or

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- (ii) the period before the end of which it proposes to have taken that action, or
  - (c) he has received that notification but he is not satisfied that the listed authority has, before the end of the permitted period, taken the action it proposed to take.
- (3) The permitted period for the purposes of subsection (2)(c) is—
  - (a) the period referred to in section 19(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (4) This subsection applies if the Ombudsman—
  - (a) has prepared a report under section 21 by virtue of subsection (2) of that section, and
  - (b) is not satisfied that the listed authority has implemented his recommendations before the end of the permitted period.
- (5) The permitted period for the purposes of subsection (4)(b) is—
  - (a) the period referred to in section 21(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (6) This subsection applies if—
  - (a) a complaint in respect of a listed authority has been resolved under section 3,
  - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter which is the subject of the complaint,
  - (c) the listed authority has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the listed authority has taken that action before the end of the permitted period.
- (7) The permitted period for the purposes of subsection (6)(d) is—
  - (a) the period referred to in subsection (6)(c), or
  - (b) any longer period specified by the Ombudsman in writing.
- (8) A special report must—
  - (a) set out the facts on the basis of which subsection (2), (4) or (6) applies, and
  - (b) make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken—
    - (i) to remedy the injustice or hardship to the person aggrieved, and
    - (ii) to prevent similar injustice or hardship being caused in the future.
- (9) The Ombudsman must send a copy of a special report—
  - (a) if the special report is prepared because subsection (2) applies, to each person to whom a copy of the report under section 16 was sent under section 16(1)(b);
  - (b) if the special report is prepared because subsection (4) or (6) applies, to the person who made the complaint and the listed authority.
- (10) The Ombudsman may send a copy of a special report to any other persons he thinks appropriate.

## 23 Special reports: supplementary **E+W**

- (1) The Ombudsman may—

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- (a) publish a special report;
  - (b) supply a copy of the published report or any part of it to any person who requests it.
- (2) The Ombudsman may charge a reasonable fee for supplying a copy of a report (or part of a report) under subsection (1)(b).
- (3) The listed authority in respect of which a special report is made must reimburse the Ombudsman for the cost of publishing a special report if requested to do so by the Ombudsman.
- (4) If a special report—
- (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,
- that information must not be included in a version of the report sent to a person under section 22(9) or (10) or published under subsection (1) of this section, subject to subsection (5).
- (5) Subsection (4) does not apply in relation to a version of the special report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the special report.
- (6) If the Ombudsman would otherwise send a copy of a special report (or part of a special report) to the Assembly under section 22(9) or (10) or subsection (1) of this section, he must send the copy to the Assembly First Secretary instead.
- (7) Sections 17 and 18 (publicising reports under section 16) apply in relation to a special report as they apply in relation to a report under section 16.

## **24 Special reports relating to the Assembly** E+W

- (1) This section applies if a special report is made in a case where the complaint was made in respect of the Assembly.
- (2) The Assembly First Secretary must—
- (a) lay a copy of the report before the Assembly, and
  - (b) unless action to the satisfaction of the Ombudsman has been taken or proposed, give the Assembly notice of his intention to move that the Assembly resolve to approve the recommendations contained in it.
- (3) The standing orders of the Assembly must make provision for any motion of which notice has been given pursuant to subsection (2) to be moved as soon as is reasonably practicable, unless action to the satisfaction of the Ombudsman has been taken or proposed.

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### Consultation and co-operation

## 25 Consultation and co-operation with other ombudsmen **E+W**

- (1) This section applies if, in making a decision under section 2(5) or conducting an investigation, the Ombudsman forms the opinion that any matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to any matter the subject of the complaint or investigation, including in particular—
  - (a) the conduct of an investigation into the complaint;
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
  - (a) conduct a joint investigation into the matter;
  - (b) prepare a joint report in relation to the investigation;
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are—
  - (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996 (c. 52);
  - (f) the Children's Commissioner for Wales.
- (8) The Assembly may by order amend subsection (7) by—
  - (a) adding a person;
  - (b) omitting a person;
  - (c) changing the description of a person.
- (9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the Assembly to have functions relating to the investigation of complaints.

#### Commencement Information

- II** S. 25 wholly in force at 1.4.2006; s. 25 not in force at Royal Assent see s. 40; s. 25(7)-(9) in force for certain purposes at 12.10.2005 and s. 25 wholly in force at 1.4.2006 by [S.I. 2005/2800](#), [arts. 3\(a\), 5\(1\)\(3\)](#), [Sch. 1 Pt. 1](#)



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## [<sup>F1</sup>25A Working jointly with the Commissioner for Older People in Wales **E+W**

- (1) This section applies where it appears to the Ombudsman that—
  - (a) there is a complaint in respect of a matter which he is entitled to investigate; and
  - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales (the ‘Commissioner’).
- (2) Where the Ombudsman considers it appropriate, he must—
  - (a) inform the Commissioner about the matter; and
  - (b) consult him in relation to it.
- (3) Where the Ombudsman consults the Commissioner under this section, he and the Commissioner may—
  - (a) co-operate with each other in relation to the matter;
  - (b) conduct a joint investigation into the matter;
  - (c) prepare and publish a joint report in relation to the investigation.

### Textual Amendments

- F1** Ss. 25A, 25B inserted (14.10.2006) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 2\(2\)](#); [S.I. 2006/2699](#), [art. 2](#)

## 25B Working collaboratively with the Commissioner for Older People in Wales **E+W**

- (1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner (the ‘connected matter’).
- (2) Where the Ombudsman considers it appropriate, he must inform the Commissioner about the connected matter.
- (3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he is entitled to conduct an investigation himself (‘the ombudsman matter’), he must also if he considers it appropriate—
  - (a) inform the Commissioner about the Ombudsman's proposals for conducting an investigation into the complaint; and
  - (b) consult the Commissioner about those proposals.
- (4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the ombudsman matter and the connected matter they may—
  - (a) co-operate with each other in the separate investigation of each of those matters;
  - (b) act together in the investigation of those matters; and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) Where the Ombudsman considers—
  - (a) that the complaint does not relate to or raise a matter into which he is entitled to conduct an investigation himself, and
  - (b) that it is appropriate to do so,

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he must inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

(6) In this section ‘Commissioner’ has the meaning given in section 25A.]

#### Textual Amendments

**F1** Ss. 25A, 25B inserted (14.10.2006) by **Commissioner for Older People (Wales) Act 2006 (c. 30)**, ss. 22, 23, **Sch. 4 para. 2(2)**; S.I. 2006/2699, **art. 2**

### Disclosure

## 26 Disclosure of information **E+W**

- (1) The information to which this section applies is—
- (a) information obtained by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions—
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation, or
    - (iii) in resolving a complaint under section 3;
  - (b) information obtained from an ombudsman mentioned in section 25(7) by virtue of any provision of section 25 or a corresponding provision in an enactment relating to any of those ombudsmen;
  - [<sup>F2</sup>(ba) information obtained from the Commissioner for Older People in Wales by virtue of any provision of section 25A or 25B of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006;]
  - (c) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c. 36) (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - (c) for the purposes of resolving a complaint under section 3;
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (e) for the purposes of any provision of section 25 [<sup>F3</sup>, 25A or 25B];
  - (f) for the purposes of proceedings for—
    - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed by the Ombudsman, a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions;
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
  - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
  - (h) for the purposes of proceedings under section 15 (obstruction and contempt);

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- (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are—
- (a) Part 5 of the Data Protection Act 1998 (c. 29) (enforcement);
  - (b) section 48 of the Freedom of Information Act 2000 (c. 36) (practice recommendations);
  - (c) Part 4 of that Act (enforcement).
- (5) The offences are those under—
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by him as mentioned in subsection (1)(a) or (b).

#### Textual Amendments

- F2** S. 26(1)(ba) inserted (14.10.2006) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 2\(3\)\(a\)](#); S.I. 2006/2699, [art. 2](#)
- F3** Words in s. 26(2)(e) inserted (14.10.2006) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 2\(3\)\(b\)](#); S.I. 2006/2699, [art. 2](#)

#### Modifications etc. (not altering text)

- C2** S. 26 excluded by [Local Government Act 1974 \(c. 7\)](#), s. 34M(7)(d) (as inserted (1.10.2010) by [Health Act 2009 \(c. 21\)](#), ss. 35, 40, [Sch. 5 para. 2](#); S.I. 2010/1863, [art. 2](#))
- C3** S. 26(2) applied (with modifications) (1.4.2006) by [The Public Services Ombudsman for Wales \(Standards Investigations\) Order 2006 \(S.I. 2006/949\)](#), [art. 4](#), Sch. 3

## 27 Disclosure prejudicial to safety of State or contrary to public interest E+W

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,
- that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of his staff or another person

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acting on his behalf or assisting him in the discharge of any of his functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

#### *Listed authorities*

### **28** **Listed authorities** **E+W**

- (1) The persons specified in Schedule 3 are listed authorities for the purposes of this Act.
- (2) The Assembly may by order amend Schedule 3 by—
  - (a) adding a person;
  - (b) omitting a person;
  - (c) changing the description of a person.
- (3) An order under subsection (2) adding a person to Schedule 3 may provide for this Act to apply to the person with the modifications specified in the order.
- (4) Before making an order under subsection (2), the Assembly must consult the Ombudsman and any other persons it thinks appropriate.
- (5) Sections 29 and 30 contain further restrictions on the power in subsection (2).

### **29** **Restrictions on power to amend Schedule 3** **E+W**

- (1) An order under section 28(2) may not omit the Assembly from Schedule 3.
- (2) An order under section 28(2) may add a person to Schedule 3 only if—
  - (a) the person has functions dischargeable in relation to Wales or a part of Wales (whether or not the functions are also dischargeable otherwise than in relation to Wales),
  - (b) all or some of the person's functions are in a field in which the Assembly has functions, and
  - (c) the person falls within subsection (3), (4) or (5).
- (3) A person falls within this subsection if—
  - (a) it is a body established by or under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, a government department, the Assembly or another listed authority,
  - (b) it is a body wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown, a government department, the Assembly or another listed authority, and
  - (c) at least half of its expenditure on the discharge of its functions in relation to Wales is met directly from payments made by the Assembly or other listed authorities.
- (4) A person falls within this subsection if—
  - (a) it is a body established by or under an enactment, and
  - (b) it has power to issue a precept or a levy.
- (5) A person falls within this subsection if—
  - (a) it appears to the Assembly that the person discharges functions of a public nature, and

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- (b) at least half of the person's expenditure on the discharge of those functions in relation to Wales is met directly or indirectly from payments by the Assembly or other listed authorities.
- (6) An order under section 28(2) may not add to Schedule 3—
- (a) a Special Health Authority discharging functions only or mainly in England;
  - (b) a person who carries on under national ownership an industry or undertaking or part of an industry or undertaking.

### 30 Provisions in orders adding persons to Schedule 3 **E+W**

- (1) If the Assembly proposes to make an order under section 28(2) adding a person to Schedule 3, it must also specify in the order—
- (a) whether all or only some of the person's functions are to fall within the remit of the Ombudsman under this Part;
  - (b) if only some of the person's functions are to fall within the remit of the Ombudsman under this Part, which those functions are.
- (2) If the person is to be added to Schedule 3 on the basis that the person falls within section 29(3) or (4), the order may specify a function under subsection (1) only if the function is in a field in which the Assembly has functions.
- (3) If the person is to be added to Schedule 3 on the basis that the person falls within section 29(5), the order may specify a function under subsection (1) only if—
- (a) the function is in a field in which the Assembly has functions, and
  - (b) the function appears to the Assembly to be a function of a public nature.
- (4) The order may specify all a person's functions under subsection (1) only if all the person's functions satisfy the requirements of subsection (2) or (as the case may be) subsection (3).

#### *Miscellaneous*

### 31 Power to issue guidance **E+W**

- (1) The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as he thinks appropriate.
- (2) Before issuing guidance under this section the Ombudsman must consult such listed authorities, or persons appearing to him to represent them, as he thinks appropriate.
- (3) If guidance issued under this section is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions.
- (4) In conducting an investigation in respect of a listed authority, the Ombudsman may have regard to the extent to which the authority has complied with any guidance issued under this section which is applicable to the authority.
- (5) The Ombudsman may publish any guidance issued under this section in any manner that he thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report.
- (6) Guidance issued under this section may contain different provision for different purposes.

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- (7) Subject to subsection (8), guidance issued under this section must not—
- (a) mention the name of any person other than the listed authorities to which it is applicable or a listed authority in respect of which a complaint has been made or referred to the Ombudsman under this Act, or
  - (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the guidance.
- (8) Subsection (7) does not apply if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance.

### 32 Protection from defamation claims **E+W**

For the purposes of the law of defamation, the following are absolutely privileged—

- (a) the publication of a matter by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions, in the discharge of any of the Ombudsman's functions under this Act;
- (b) the publication of a matter by a person in the discharge of functions under section 17;
- (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Part, in communications between—
  - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
  - (ii) the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions;
- (d) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Part, in communications between a person and an Assembly member;
- (e) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Part, in communications between the person and the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions.

### 33 Publicity for complaints procedures **E+W**

- (1) A listed authority must take reasonable steps to provide information to the public about—
- (a) the right to make a complaint to the Ombudsman in respect of the authority,
  - (b) the right of the authority to refer a complaint to the Ombudsman,
  - (c) the time limits for making and referring complaints to the Ombudsman, and
  - (d) how to contact the Ombudsman.
- (2) In particular, information about the matters specified in subsection (1) must be included in or provided with—

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- (a) any document published by the listed authority which contains information about—
    - (i) relevant services provided by the authority to members of the public, or
    - (ii) the procedures of the authority for dealing with complaints, and
  - (b) any document issued by the listed authority in responding to a complaint made to it by a person who might be entitled to make the complaint to the Ombudsman.
- (3) The Ombudsman may issue guidance to listed authorities with respect to the discharge of their functions under this section.
- (4) A listed authority must have regard to guidance given by the Ombudsman under subsection (3).
- (5) “Relevant service” has the meaning given in section 7.

### **34 Compensation for the person aggrieved** E+W

- (1) This section applies if—
- (a) a complaint in respect of a matter is made or referred to the Ombudsman, and
  - (b) the complaint is one which the Ombudsman has power to investigate under section 2.
- (2) The listed authority in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint.
- (3) It is immaterial for the purposes of this section that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint.
- (4) The power in subsection (2) does not affect any other power of the listed authority to make the payment or provide the benefit.



**Status:**

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**Changes to legislation:**

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