



Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

PART 5 **E+W**

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

Investigation of complaints

43 **Power to investigate complaints** **E+W**

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if the complaint has been—
 - (a) duly made to the Ombudsman, or
 - (b) duly referred to the Ombudsman, andin the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the investigation relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from—
 - (a) the Welsh Ministers,
 - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42),
 - (c) an NHS Trust, or
 - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if)—
 - (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman,

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- (b) before the complaint is made—
 - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
 - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
 - (c) the requirements of section 48(1) are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if)—
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman, and
 - (b) the requirements of section 49(1) are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 48(1) or section 49(1)(b), (c) or (d) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if—
- (a) it relates to a matter to which this Part applies, and
 - (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation (but see section 48(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).
- (9) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn (but see section 48(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).

Commencement Information

II S. 43 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

44 Power to investigate on own initiative E+W

- (1) The Ombudsman may investigate a matter to which this Part applies whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) But if the matter relates to an independent palliative care provider, the power in subsection (1) may only be used if the condition in section 43(2) is met.
- (3) Before the Ombudsman begins an investigation under this section, the Ombudsman must—
 - (a) have regard to the public interest in beginning an investigation,
 - (b) have a reasonable suspicion that there is systemic maladministration,
 - (c) consult such persons as the Ombudsman considers appropriate (but see section 66 for further duties around consultation), and

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- (d) have regard to the criteria for own initiative investigations published under section 45.
- (4) Subject to the other provisions of this section—
 - (a) it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section;
 - (b) the Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (4)(a).

Commencement Information

I2 S. 44 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

45 Criteria for own initiative investigations **E+W**

- (1) The Ombudsman must publish criteria to be used in determining whether to begin an investigation under section 44.
- (2) The Ombudsman must lay a draft of the first criteria before the Assembly.
- (3) If, before the end of the 40 day period, the Assembly resolves not to approve the draft criteria, the Ombudsman must not publish the criteria in the form of the draft.
- (4) If no such resolution is made before the end of that period, the Ombudsman must publish the criteria in the form of the draft.
- (5) The 40 day period—
 - (a) begins on the day on which the draft is laid before the Assembly, and
 - (b) does not include any time during which the Assembly is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent new draft criteria from being laid before the Assembly.
- (7) Before laying the draft criteria before the Assembly, the Ombudsman must consult—
 - (a) the Welsh Ministers,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Ombudsman thinks appropriate.
- (8) The Ombudsman must, in preparing the draft criteria to be laid before the Assembly, have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The criteria come into force when they are published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the criteria.
- (11) If, in the opinion of the Ombudsman, revisions made under subsection (10) effect any material change to the criteria, the Ombudsman must lay a draft of those revisions before the Assembly.
- (12) Subsections (3) to (9) apply to draft revisions laid before the Assembly under subsection (11) as they apply to the first criteria.
- (13) The Welsh Ministers may by regulations amend criteria published by the Ombudsman under this section by adding criteria, removing criteria or changing the criteria.

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- (14) Where the Welsh Ministers make regulations under subsection (13), the Ombudsman must publish the criteria, as amended by the regulations, on the day the regulations come into force.
- (15) Before making regulations under subsection (13), the Welsh Ministers must consult—
- (a) the Ombudsman,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Welsh Ministers think appropriate.
- (16) No regulations are to be made under subsection (13) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

Commencement Information

I3 S. 45 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

46 Alternative resolution of matters E+W

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

Commencement Information

I4 S. 46 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

47 Who can complain E+W

- (1) The persons entitled to make a complaint to the Ombudsman are—
- (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
 - (b) a person authorised in writing by the person aggrieved to act on that person's behalf, or
 - (c) if the person aggrieved is not capable of authorising such a person (for example because the person 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” does not include a person acting in the capacity of—
- (a) a care home provider,
 - (b) a domiciliary care provider,
 - (c) an independent palliative care provider, or
 - (d) a listed authority.

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- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

Commencement Information

I5 S. 47 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

48 Requirements: complaints made to the Ombudsman **E+W**

- (1) The requirements mentioned in section 43(4)(c) are that the complaint must—
- (a) be in a form specified by the Ombudsman in guidance;
 - (b) contain such information as specified by the Ombudsman in guidance;
 - (c) be made before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter alleged in the complaint.
- (2) The Ombudsman must publish the guidance referred to in subsection (1).
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.
- (4) If a complaint which meets the requirements of subsection (1) is made other than in writing, the Ombudsman must—
- (a) explain to the person who made the complaint that a complaint has been duly made under this Act and the implications of making such a complaint, and
 - (b) ask the person whether the person wishes the complaint to continue to be treated as a complaint that has been duly made.
- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman—
- (a) must not use the power in section 43(1)(a) to begin an investigation into the matter alleged in the complaint;
 - (b) may use the power in section 44 to investigate the matter alleged in the complaint.
- (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether the person wishes the complaint to be confirmed in writing.
- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.

Commencement Information

I6 S. 48 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

49 Requirements: complaints referred to the Ombudsman **E+W**

- (1) The requirements mentioned in section 43(5)(b) are that the complaint—
- (a) must have been made to the provider to whom it relates by a person who would have been entitled under section 47 to make the complaint to the Ombudsman;

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- (b) must have been made to the provider to whom it relates before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter;
 - (c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;
 - (d) must be referred to the Ombudsman before the end of the period of one year beginning with the day on which the complaint was made to the provider.
- (2) The Ombudsman must publish the guidance referred to in subsection (1)(c).
- (3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

Commencement Information

I7 [S. 49](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

50 **Records of complaints** **E+W**

The Ombudsman must maintain a register of every complaint made or referred to the Ombudsman in respect of a matter which the Ombudsman is entitled to investigate under this Part.

Commencement Information

I8 [S. 50](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

Changes to legislation:

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

- Act modified by [2023 asc 3 Sch. 2 para. 6](#)
- Act modified by [2023 asc 3 Sch. 12 para. 7\(2\)](#)

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

- s. 65(7)(f) inserted by [2022 c. 30 Sch. 10 para. 6\(2\)\(a\)](#) (Welsh language text)
- s. 65(7)(f) inserted by [2022 c. 30 Sch. 10 para. 6\(2\)\(b\)](#) (English language text)