



Scottish Public Services Ombudsman Act 2002

2002 asp 11

Investigations by the Ombudsman

7 Matters which may be investigated: restrictions

- (1) The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.
- (2) Subsection (1) does not apply to the merits of a decision taken by or on behalf of a health service body, a family health service provider or an independent provider to the extent that the decision was taken in consequence of the exercise of clinical judgement.
- [^{F1}(2A) Subsection (1) does not apply to the merits of a decision taken by or on behalf of a listed authority to the extent that the decision was taken in exercise of a function conferred by or under Part 4 or 5 of the 2014 Act.
- (2B) The Ombudsman is not entitled to investigate action taken in the exercise of a function conferred by or under Part 4 or 5 of the 2014 Act if the exercise of the function was not a matter which could have been the subject of a complaint under an order under section 30 or 43 of that Act in force at the time of the action.]
- [^{F2}(2C) Subsection (1) does not apply to the merits of a decision taken by or on behalf of a person mentioned in subsection (2D) in pursuance of a social work function to the extent that the decision was taken in consequence of the exercise of the professional judgment of the social worker or other person discharging the function.
- (2D) The persons are—
 - (a) a local authority, or
 - (b) the holder of an office established by or under any enactment to which appointments are made by a local authority.
- (2E) In subsection (2C), “social work function” means a function conferred by or under—
 - (a) the Social Work (Scotland) Act 1968,
 - (b) an enactment mentioned in section 5(1B) of that Act, or

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- (c) an enactment listed in the schedule to the Public Bodies (Joint Working) (Scotland) Act 2014.]
- (3) The Ombudsman must not investigate action taken by or on behalf of a member of the Scottish Executive unless the action was taken in the exercise of functions conferred on the Scottish Ministers or of functions conferred on the First Minister alone.
- (4) For the purposes of subsection (3), functions conferred on the Scottish Ministers include functions exercised by them on behalf of a Minister of the Crown or government department by virtue of section 93 (agency arrangements) of the Scotland Act 1998 (c.46).
- (5) The Ombudsman must not investigate action taken—
- (a) by or on behalf of a listed authority which is a cross-border public authority, or
 - (b) by a member of the administrative staff of any tribunal specified in schedule 3 which is a cross-border public authority,
- unless the action taken concerned Scotland and did not relate to reserved matters.
- (6) The Ombudsman must not investigate action taken by or on behalf of an independent provider unless the action—
- (a) was taken in relation to, or
 - (b) consisted of a failure in, or to provide,
- a service which the independent provider was providing, or which it was the independent provider's function to provide, under arrangements with a health service body or a family health service provider.
- ^{F3}(6A)
- [^{F4}(6B) The Ombudsman must not investigate action taken by or on behalf of the Statistics Board in the exercise of any of its functions unless the function is being exercised only in relation to Scottish devolved statistics (within the meaning of section 66 of the Statistics and Registration Service Act 2007).]
- [^{F5}(6C) The Ombudsman must not investigate action taken by or on behalf of the Committee on Climate Change in the exercise in or as regards Scotland of any function to the extent that the function is not exercisable within devolved competence (within the meaning of section 54 of the Scotland Act 1998).]
- [^{F6}(6D) The Ombudsman must not investigate action taken by or on behalf of the Electoral Commission unless the action taken concerned local government elections in Scotland.]
- (7) The Ombudsman must not investigate action taken by or on behalf of a person who is a listed authority by virtue of an Order in Council referred to in subsection (4) of section 3 unless the action was taken in the exercise of the functions of a public nature which are specified in the Order in Council in pursuance of paragraph (b) of that subsection.
- (8) The Ombudsman must not investigate any matter in respect of which the person aggrieved has or had—
- (a) a right of appeal to a Minister of the Crown or the Scottish Ministers,
 - (b) a right of appeal, reference or review to or before any tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative, or
 - (c) a remedy by way of proceedings in any court of law,

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unless the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to the right or remedy.

(9) Subsection (10) applies where a matter in respect of which a complaint is made under this Act—

- (a) is a matter in respect of which a complaint can be made, or a review can be requested, by the person aggrieved under a procedure operated by any listed authority (whether or not the listed authority in relation to whom the complaint under this Act is made), and
- (b) is not a matter of the kind mentioned in subsection (8) or paragraph 12 of schedule 4.

(10) In such a case, the Ombudsman must not investigate the matter unless the Ombudsman is satisfied that—

- (a) the other procedure has been invoked and exhausted, or
- (b) in the particular circumstances it is not reasonable to expect the procedure to be invoked or, as the case may be, exhausted.

Annotations:

Amendments (Textual)

- F1** S. 7(2A)(2B) inserted (31.8.2016) by [The Children and Young People \(Scotland\) Act 2014 \(Part 4 and Part 5 Complaints\) Order 2016 \(S.S.I. 2016/152\)](#), arts. 1(1), **9(2)**
- F2** S. 7(2C)-(2E) inserted (1.4.2017) by [The Public Services Reform \(Social Work Complaints Procedure\) \(Scotland\) Order 2016 \(S.S.I. 2016/157\)](#), arts. 1, **3**
- F3** S. 7(6A) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 7 para. 14**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F4** S. 7(6B) inserted (1.4.2008) by [Statistics and Registration Service Act 2007 \(c. 18\)](#), **ss. 63(5)**, 74(1); S.I. 2008/839, art. 2
- F5** S. 7(6C) inserted (26.11.2008) by [Climate Change Act 2008 \(c. 27\)](#), s. 100(1), **Sch. 1 para. 34(2)**
- F6** S. 7(6D) inserted (29.6.2011) by [Local Electoral Administration \(Scotland\) Act 2011 \(asp 10\)](#), **ss. 18(a)**, 21(1); S.S.I. 2011/277, art. 2(b)

Modifications etc. (not altering text)

- C1** S. 7(5) modified by 2001 c. 12, s. 2A(e) (as inserted (30.6.2006 for S. and 6.7.2006 for E.W.) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), s. 178(6)(b), **Sch. 15 para. 3**; S.S.I. 2006/381, art. 2(a)(i)(b)(i))
- C2** S. 7(6D) restricted (18.12.2013) by [Scottish Independence Referendum Act 2013 \(asp 14\)](#), **ss. 30**, 36

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