



Public Services Ombudsman (Wales) Act 2005

2005 CHAPTER 10

PART 2

INVESTIGATION OF COMPLAINTS

Matters which may be investigated

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- (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;
 - (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

- (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

- (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.
- (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

- (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

- (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.