



# Public Services Ombudsman (Wales) Act 2005

## 2005 CHAPTER 10

### [<sup>F1</sup>PART 2A

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

#### *[<sup>F1</sup>Investigation of complaints*

##### Textual Amendments

- F1** Pts. 2A, 2B inserted (1.11.2014) by [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), s. 199(2), [Sch. 3 para. 2](#) (with [Sch. 3 para. 3](#)); S.I. 2014/2718, art. 2(b)

### **34B Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if—
  - (a) the complaint has been duly made or referred to the Ombudsman, and
  - (b) in 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 complaint 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) an NHS Trust, or

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*Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, Cross Heading: Investigation of complaints. (See end of Document for details)*

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- (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 34D to make a complaint to the Ombudsman,
  - (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 34E 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 34D to make a complaint to the Ombudsman, and
  - (b) the requirements of section 34F 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 34E or section 34F(1)(a)(ii) or (b)(ii) 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.
- (9) The Ombudsman may take any action which he or she 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.

### **34C Alternative resolution of complaints**

- (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.
- (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.

### **34D Who can complain**

- (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,

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- (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 a person to act on his or her behalf (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 his or her capacity as—
- (a) a care home provider,
  - (b) a domiciliary care provider,
  - (c) an independent palliative care provider, or
  - (d) a listed authority.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

### **34E Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made—
- (a) in writing, and
  - (b) before the end of the permitted period.
- (2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) “the permitted period” means—
- (a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and
  - (b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

### **34F Requirements: complaints referred to the Ombudsman**

- (1) The requirements mentioned in section 34B(5)(b) are that the complaint—
- (a) must have been made to the provider to whom it relates—
    - (i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and
    - (ii) before the end of the permitted period (within the meaning given by section 34E(2)), and
  - (b) must be referred to the Ombudsman—
    - (i) in writing, and
    - (ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.]

**Changes to legislation:**

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