



Public Services Ombudsman (Wales) Act 2005

2005 CHAPTER 10

[^{F1}PART 2B

INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

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)

Consultation and co-operation

34U Consultation and co-operation with other ombudsmen

- (1) This section applies if, in making a decision under section 2(5) or 34B(8) or conducting an investigation under Part 2 or 2A, the Ombudsman forms the opinion that a 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 a matter which is the subject of the complaint or investigation, including (among other things)—
 - (a) the conduct of an investigation into the complaint, and
 - (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—

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B. (See end of Document for details)

- (a) conduct a joint investigation into the matter,
 - (b) prepare a joint report in relation to the investigation, and
 - (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;
 - (f) the Children's Commissioner for Wales.
- (8) The Welsh Ministers may by order amend subsection (7) by—
- (a) adding a person,
 - (b) omitting a person, or
 - (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 Welsh Ministers to have functions relating to the investigation of complaints.
- (10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Assembly.

34V Working jointly with other Commissioners

- (1) This section applies where it appears to the Ombudsman that—
- (a) there is a complaint in respect of a matter which he or she 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 or the Welsh Language Commissioner.
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner)—
- (a) inform the Commissioner about the matter, and
 - (b) consult him or her in relation to it.
- (3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner may—
- (a) co-operate with each other in relation to the matter,
 - (b) conduct a joint investigation into the matter, and
 - (c) prepare and publish a joint report in relation to the investigation.

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B. (See end of Document for details)

34W Working collaboratively with other Commissioners

- (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 for Older People in Wales or the Welsh Language Commissioner (“the connected matter”).
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) 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 or she is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she 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 or she is entitled to conduct an investigation, and
 - (b) that it is appropriate to do so,the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

Disclosure

34X Disclosure of information

- (1) The information to which this section applies is—
 - (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her 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 or 34C;
 - (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B. (See end of Document for details)

- (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);
 - (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
 - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (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 or 34C;
 - (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 34U, 34V or 34W;
 - (f) for the purposes of proceedings for—
 - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her 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 purpose of proceedings under section 15 or 34J;
 - (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—
- [^{F2}(a) sections 142 to 154, 160 to 164 or 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018 (certain provisions relating to enforcement);]
 - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
 - (c) Part 4 of that Act.
- [^{F3}(5) The offences are those under—
- (a) a provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (obstruction of execution of warrant etc);

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B. (See end of Document for details)

- (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 that person as mentioned in subsection (1)(a) or (b).

Textual Amendments

- F2** S. 34X(4)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 109(2) (with ss. 117, 209, 210, Sch. 20 para. 47(1)); S.I. 2018/625, reg. 2(1)(g)
- F3** S. 34X(5) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 109(3) (with ss. 117, 209, 210, Sch. 20 para. 47(2)); S.I. 2018/625, reg. 2(1)(g)

34Y Disclosure prejudicial to safety of State or contrary to public interest

- (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 the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

34Z Protection from defamation claims

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (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 Act, 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 the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—

Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B. (See end of Document for details)

- (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
 - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (e) the publication of a 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 Act, in communications between a person and an Assembly member;
 - (f) the publication of a 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 Act, in communications between—
 - (i) the person, and
 - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions.
- (2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.]

Changes to legislation:

There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, PART 2B.