



## 2016 CHAPTER 4

### PART 2

#### INVESTIGATIONS

##### *Matters which may be investigated*

##### **Matters which may be investigated: general**

**14.—(1)** The Ombudsman may investigate alleged maladministration through action taken in the exercise of administrative functions by a listed authority.

- (2) This section does not apply to—
- (a) health and social care bodies,
  - (b) general health care providers,
  - (c) independent providers,
  - (d) the universities referred to in section 18.

##### **Modifications etc. (not altering text)**

- C1** S. 14(2)(a) modified (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(c), [Sch. 2 para. 9\(c\)](#); S.R. 2022/102, art. 2(c)

##### **Commencement Information**

- I1** S. 14 wholly in operation at 1.10.2016; s. 14(1)(2)(a)-(c) in operation at 1.4.2016 see s. 64(1); s. 14(2)(d) in operation at 1.10.2016 see s. 64(3)(a)

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**Changes to legislation:** There are currently no known outstanding effects for the Public Services Ombudsman Act (Northern Ireland) 2016, Cross Heading: Matters which may be investigated. (See end of Document for details)

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### **Matters which may be investigated: health and social care bodies**

**15.—**(1) This section applies where a listed authority is a health and social care body.

(2) The Ombudsman may investigate—

- (a) alleged maladministration through action taken in the exercise of administrative functions by the health and social care body,
- (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care.

#### **Modifications etc. (not altering text)**

- C2** S. 15(1) modified (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(c), [Sch. 2 para. 9\(c\)](#); S.R. 2022/102, art. 2(c)

### **Matters which may be investigated: general health care providers**

**16.—**(1) This section applies where a listed authority is a general health care provider.

(2) The Ombudsman may investigate—

- (a) alleged maladministration through action taken in the exercise of administrative functions by the general health care provider in connection with general health care services,
- (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement in connection with general health care services.

(3) In this Act, a general health care provider is—

- (a) an individual undertaking to provide primary medical services or general dental services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972,
- (b) a person undertaking to provide general ophthalmic services or pharmaceutical services under Part 6 of that Order, or
- (c) an individual performing primary medical services or personal dental services in accordance with arrangements made under Article 15B of that Order (except as employees of, or otherwise on behalf of, a health and social care body or an independent provider).

(4) In this Act, general health care services are the services mentioned in subsection (3).

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**Matters which may be investigated: independent providers of health and social care**

**17.—**(1) This section applies where the listed authority is an independent provider of health and social care.

(2) The Ombudsman may investigate—

- (a) alleged maladministration through action taken in the exercise of administrative functions by the independent provider in connection with an arrangement with a health and social care body or a general health care provider to provide a service,
- (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care under that arrangement.

(3) In this Act, an independent provider of health and social care is a person—

- (a) providing services (of any kind) under an arrangement with a health and social care body or a general health care provider, and
- (b) who is not a health and social care body or a general health care provider.

**Matters which may be investigated: universities**

**18.—**(1) This section applies where the listed authority is—

- (a) The Queen's University of Belfast,
- (b) University of Ulster.

(2) The Ombudsman may investigate alleged maladministration through action taken by a university in the exercise of administrative functions, in respect of students enrolled in courses provided or validated by the university.

(3) Where the investigation is under section 5 or 6, the complaint must have been made by a student, or a person who has been a student.

(4) But the Ombudsman has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.

(5) If the Ombudsman has jurisdiction in respect of a complaint, the visitor of a university has no jurisdiction in respect of that complaint.

(6) Where, before this section has come into operation, a complaint has been made to the visitor but has not been resolved by the visitor, the visitor has jurisdiction to deal with that complaint as if the other provisions of this section had not come into operation.

(7) In this Act, references to a university include references to a constituent college, school or hall or other institution of a university.

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### **Administrative functions of staff of tribunals**

**19.—**(1) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned by the Department of Justice to serve as a member of the administrative staff of any court or tribunal are to be taken to be administrative functions of that Department.

(2) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned to serve as a member of the administrative staff of a tribunal listed in Schedule 4—

- (a) by a listed authority, or
- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of a listed authority,

are to be taken to be administrative functions of that listed authority.

(3) The Office of the First Minister and deputy First Minister may by order amend Schedule 4 by—

- (a) adding or omitting an entry, or
- (b) altering its description.

(4) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

### **Exclusion: public sector employment**

**20** The Ombudsman must not investigate action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to—

- (a) service in any office or employment under a listed authority,
- (b) service in any office or employment under the Crown,
- (c) service—

- (i) in any office or employment; or
  - (ii) under any contract for services,

in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in a listed authority.

### **Exclusion: other remedies available**

**21.—**(1) The Ombudsman must not investigate—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative,

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- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.
- (2) But this is subject to—
  - (a) section 78 of the Northern Ireland Act 1998 (investigations involving discrimination or making oaths or declarations), and
  - (b) subsection (3).
- (3) The Ombudsman may investigate—
  - (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in subsection (1), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort to or have resorted to it, or
  - (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in subsection (1)(a), if the person aggrieved complains that the injustice sustained remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

#### **Other excluded matters**

**22.—**(1) The Ombudsman must not investigate any actions or matters that are described in Schedule 5 otherwise than as authorised by paragraph 4(2) of that Schedule.

(2) The Office of the First Minister and deputy First Minister may by order amend Schedule 5 so as to exclude from the provisions of that Schedule any action or matter that is described in that order.

(3) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

#### **Decisions taken without maladministration**

**23.—**(1) Nothing in this Act authorises the Ombudsman to question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.

- (2) But this is subject to—
  - (a) section 15(2)(b),
  - (b) section 16(2)(b), and
  - (c) section 17(2)(b).

**Changes to legislation:**

There are currently no known outstanding effects for the Public Services Ombudsman Act (Northern Ireland) 2016, Cross Heading: Matters which may be investigated.