



## 2016 CHAPTER 4

### PART 2 INVESTIGATIONS

#### *Power of investigation*

##### **Power to investigate complaints made by a person aggrieved**

5.—(1) The Ombudsman may investigate a complaint, made by a member of the public who claims to have sustained an injustice (in this Act referred to as “a person aggrieved”), if the requirements of this section are met.

(2) The complaint must relate to action taken by a listed authority (see sections 12 and 13).

(3) The complaint must relate to a matter which can be investigated (see sections 14 to 23).

(4) The procedural requirements of sections 24 to 27 must have been followed.

(5) In this section “member of the public” means any individual or any incorporated or unincorporated body other than—

- (a) a listed authority acting in its capacity as such, or
- (b) a member or officer, at the time of the action complained of and acting in that capacity, of the listed authority against which the complaint is made.

##### **Power to investigate complaints referred by a listed authority**

6.—(1) The Ombudsman may investigate a complaint referred by a listed authority if the requirements of this section are met.

- (2) The complaint must have been made to the listed authority by a person aggrieved.
- (3) The listed authority must have been unable to resolve the complaint.
- (4) The complaint must relate to action taken by the listed authority (see sections 12 and 13).
- (5) The complaint must relate to a matter which can be investigated (see sections 14 to 23).
- (6) The procedural requirements of section 28 must have been followed.

### **Acting on behalf of a person aggrieved**

- 7.—(1) A member of the Assembly may act on behalf of a person aggrieved if authorised to act by the person.
- (2) The following may act on behalf of a person aggrieved who has died, or is unable for any reason to act—
  - (a) a member of the Assembly,
  - (b) a personal representative,
  - (c) a family member, or
  - (d) any other person the Ombudsman considers appropriate.
- (3) Any other person may act on behalf of a person aggrieved if—
  - (a) that person is authorised in writing to act by the person aggrieved, and
  - (b) the Ombudsman considers that person appropriate.
- (4) In the case of a complaint referred by a listed authority to the Ombudsman, the requirement in subsection (2) and (3) that the Ombudsman considers a person appropriate has no effect.
- (5) Where, under this section, another person acts on behalf of a person aggrieved, references in any other provision of this Act to a person aggrieved are to be construed as including that other person.

### **Power to investigate on own initiative**

- 8.—(1) The Ombudsman may investigate a matter in respect of which—
  - (a) no complaint has been made, or
  - (b) one or more complaints have been made (even if these complaints do not satisfy the requirements set out in sections 24 to 27),
- if the requirements of this section are met.
- (2) The matter must relate to action taken by one or more listed authorities (see sections 12 and 13).
- (3) The matter must be one which can be investigated (see sections 14 to 23).

- (4) The Ombudsman must have a reasonable suspicion—
  - (a) that there is systemic maladministration, or
  - (b) in a case where the matter is one which falls to be investigated under section 15(2)(b), 16(2)(b) or 17(2)(b), that systemic injustice has been sustained as a result of the exercise of professional judgement.
- (5) The procedural requirements of section 29 must have been followed.
- (6) The matter may relate to action taken before as well as after the day this section comes into operation.

### **Criteria for own initiative investigations**

- 9.**—(1) The Ombudsman must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 8.
- (2) The Ombudsman must publish and have regard to these criteria.

### **Alternative resolution of complaints**

- 10.**—(1) The Ombudsman may take any action which the Ombudsman considers appropriate with a view to resolving a complaint which could be investigated under section 5 or 6.
- (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.

### **Purposes of investigation**

- 11.** The purposes of an investigation are—
- (a) to ascertain if—
    - (i) the matter properly warrants investigation, and
    - (ii) the allegations contained in a complaint are in substance true,
  - (b) where it appears to the Ombudsman to be desirable, to bring about a settlement, including by recommending that—
    - (i) action be taken by the person aggrieved or listed authority, or
    - (ii) the listed authority make a payment to the person aggrieved, and
  - (c) in the case of an investigation under—
    - (i) section 8(4)(a), to ascertain if there is systemic maladministration,
    - (ii) section 8(4)(b), to ascertain if there is systemic injustice.