



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.

*Listed authorities***Listed authorities**

12.—(1) Each of the authorities listed in Schedule 3 is a listed authority for the purposes of this Act.

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

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

(3) But an order under subsection (2) may not add an authority unless the authority—

- (a) exercises functions on behalf of the Crown,
- (b) is a body whose members, in whole or in part, are public appointees,
- (c) is substantially financed out of public funds, or
- (d) exercises functions conferred by a statutory provision.

(4) For the purposes of this section, a public appointee is a person appointed by—

- (a) the Crown,
- (b) a Minister,
- (c) a Minister of the Crown,
- (d) a Northern Ireland department,
- (e) a department of the Government of the United Kingdom,
- (f) the Assembly, or
- (g) the Assembly Commission.

(5) For the purposes of this section, a body is financed out of public funds if—

- (a) its expenses are defrayed out of moneys appropriated by Act of the Assembly,
- (b) its expenses are defrayed out of moneys appropriated by Act of Parliament,
- (c) its expenses are charged on and issued out of the Consolidated Fund, or
- (d) its expenses are charged on and issued out of the Consolidated Fund of the United Kingdom.

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

Meaning of action taken by a listed authority

13.—(1) For the purposes of this Act, action is taken by a listed authority if it is taken by—

- (a) that authority,
- (b) a member, officer or member of staff of the authority acting in the discharge of functions of the authority,
- (c) a person to whom the authority has delegated any function, in the discharge of that function,
- (d) any other person acting on behalf of the authority.

(2) In this Act references to action taken by a listed authority include a failure to act on the part of the authority; and such other expressions connoting action are to be construed accordingly.

*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.

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.

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).

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.

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,
- (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).

*Procedure for making complaint to the Ombudsman***Complaints handling procedure to be invoked and exhausted**

24.—(1) The Ombudsman may investigate a complaint under section 5 only if satisfied that the person aggrieved has invoked and exhausted the listed authority's complaints handling procedure.

(2) But the Ombudsman may investigate a complaint despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

Duty to inform person aggrieved about the Ombudsman

25.—(1) This section applies where a listed authority's complaints handling procedure is exhausted.

(2) The authority must, within 2 weeks of the day on which the complaints handling procedure is exhausted give the person aggrieved a written notice stating—

- (a) that the complaints handling procedure is exhausted, and
- (b) that the person aggrieved may, if dissatisfied, refer the complaint to the Ombudsman.

- (3) A notice under subsection (2) must—
- (a) inform the person aggrieved of the time limit for referring the complaint to the Ombudsman, and
 - (b) provide details of how to contact the Ombudsman.

Form and time limit for making complaint

26.—(1) The Ombudsman may specify—

- (a) the form in which complaints must be made, and
 - (b) any particulars which complaints must contain.
- (2) Where the complaints handling procedure has been exhausted, the complaint must be made to the Ombudsman within 6 months of the day that the notice under section 25 is sent.
- (3) Where the complaints handling procedure has not been exhausted but section 24(2) applies, the complaint must be made to the Ombudsman within 12 months of the day on which the person aggrieved first has notice of the matters alleged in the complaint.
- (4) But the Ombudsman may investigate a complaint, despite the requirements of subsections (1) to (3) not being met, if there are special circumstances which make it proper to do so.

Meaning of exhausting the complaints handling procedure

27. A complaints handling procedure is exhausted when—

- (a) a final decision is made on the complaint,
- (b) it is determined not to deal with the complaint, or
- (c) it is determined not to deal any further with the complaint.

Procedure for complaint referred to the Ombudsman

Procedure for complaint referred to the Ombudsman

28.—(1) Complaints referred to the Ombudsman must—

- (a) have been made to the listed authority within 12 months of the day on which the person aggrieved first had notice of the matters alleged in the complaint, and
 - (b) be referred to the Ombudsman within six months of the day on which the complaint was made to the listed authority.
- (2) But the Ombudsman may investigate a complaint, despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

*Procedure for own initiative investigations***Procedure for own initiative investigations**

29.—(1) Before commencing an investigation under section 8, the Ombudsman must—

- (a) prepare an investigation proposal, and
 - (b) submit that proposal to any listed authority which it is proposed be investigated.
- (2) The investigation proposal must set out—
- (a) the reasons for the proposed investigation, and
 - (b) how the criteria referred to in section 9 have been met.

*Conduct of investigations***Investigation procedure**

30.—(1) It is for the Ombudsman—

- (a) to decide whether to begin, continue or discontinue an investigation,
 - (b) to determine if the requirements of sections 5, 6 or 8 have been met.
- (2) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.
- (3) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any allegations contained in the complaint,
 - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- (4) If the Ombudsman conducts an investigation into a listed authority under section 8, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any evidence of systemic maladministration or systemic injustice, as the case may be,
 - (b) give any person who appears to have taken part in or authorised systemic maladministration or systemic injustice, as the case may be, an opportunity to comment on any evidence of that.
- (5) An investigation must be conducted in private.
- (6) Subject to subsections (3) to (5), the procedure for conducting an investigation is to be such as the Ombudsman considers appropriate in the circumstances of the case.

- (7) In particular the Ombudsman may—
 - (a) make such inquiries as are appropriate, and
 - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (8) The Ombudsman may pay to a person aggrieved and to any other person who attends or provides information for the purposes of an investigation—
 - (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by them,
 - (b) such allowances as the Ombudsman may determine by way of compensation for the loss of their time.
- (9) In exercising powers under subsection (8), the Ombudsman must have regard to the desirability of keeping the sums and allowances payable broadly in line with those payable in respect of persons attending, or providing information to, a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative.
- (10) The conduct of an investigation in respect of a listed authority does not affect—
 - (a) the validity of any action taken by the listed authority, or
 - (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

Information, documents, evidence and facilities

- 31.—**(1) For the purposes of an investigation, the Ombudsman may require the listed authority being investigated and any of the persons mentioned in subsection (2) to provide information or produce documents relevant to the investigation.
- (2) Those persons are—
 - (a) any member, officer or member of staff of the listed authority, and
 - (b) any other person, who in the Ombudsman's opinion is able to provide this information or produce these documents.
 - (3) For the purposes of an investigation, the Ombudsman has the same powers as the High Court in respect of—
 - (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and
 - (b) the production of documents.
 - (4) For the purposes of an investigation, the Ombudsman may require a person who is able to provide information or produce a document relevant to the investigation, to provide any facility the Ombudsman may reasonably require.

(5) Subject to section 32(1) and (2), no person is compelled, for the purposes of an investigation, to give any evidence or produce any document which that person could not be compelled to give or to produce in civil proceedings in the High Court.

Privileged and confidential information

32.—(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in the service of the Crown, whether imposed by any statutory provision or any rule of law, applies to the disclosure of information for the purposes of an investigation.

(2) A listed authority is not entitled in relation to any investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) No person is or may be required or authorised by virtue of this Act to provide any information or answer any question relating to proceedings of the Executive Committee of the Assembly or of a sub-committee of that Committee, or to produce so much of any document as relates to such proceedings.

(4) For the purpose of subsection (3) a certificate issued by the secretary of the Executive Committee of the Assembly with the approval of the First Minister and deputy First Minister acting jointly and certifying that any information, question, document or part of a document relates to any proceedings mentioned in that subsection is conclusive.

Obstruction and contempt

33.—(1) If any person without lawful excuse—

- (a) obstructs the Ombudsman, any member of staff of the Ombudsman or any person authorised in accordance with paragraph 14(2) of Schedule 1 in the performance of functions under this Act, or
- (b) is guilty of any act in relation to an investigation under this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Ombudsman may certify the offence to the High Court.

(2) Where an offence is certified under this section, the High Court may inquire into the matter and, after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
- (b) any statement that may be offered in defence,

may deal with the person charged with the offence in any manner in which the court could deal with the person if the person had committed the like offence in relation to the court.

(3) This section does not apply to the taking of any action mentioned in section 30(10).