

# Public Services Ombudsman (Wales) Act 2019

**2019 anaw 3**

## **PART 3**

### INVESTIGATIONS

#### *Power of investigation*

#### **3 Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint under this Part in respect of a matter if the complaint has been—
  - (a) duly made to the Ombudsman, or
  - (b) duly referred to the Ombudsman, andthe matter is one which the Ombudsman is entitled to investigate under sections 11 to 16.
- (2) A complaint is “duly made” to the Ombudsman if (but only if)—
  - (a) it is made by a person who is entitled under section 7 to make the complaint to the Ombudsman, and
  - (b) the requirements of section 8(1) are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
  - (a) it is referred to the Ombudsman by a listed authority, and
  - (b) the requirements of section 9(1) are met in respect of it.
- (4) The Ombudsman may investigate a complaint under this Part in respect of a matter even if the requirements of section 8(1) or (as the case may be) section 9(1)(b), (c) or (d) are not met in respect of the complaint, if—
  - (a) the matter is one which the Ombudsman is entitled to investigate under sections 11 to 16, and
  - (b) the Ombudsman thinks it reasonable to do so.

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- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).
- (6) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (5).
- (7) The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).

#### Commencement Information

**II** S. 3 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 4 Power to investigate on own initiative

- (1) The Ombudsman may investigate a matter under this Part, which the Ombudsman is entitled to investigate under sections 11 to 16, whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) Before the Ombudsman begins an investigation under this section, the Ombudsman must—
  - (a) have regard to the public interest in beginning an investigation,
  - (b) have a reasonable suspicion—
    - (i) that there is systemic maladministration, or
    - (ii) in a case where the matter is one which may be investigated by virtue of section 15(2), that systemic injustice has been sustained as a result of the exercise of professional judgement,
  - (c) consult such persons as the Ombudsman considers appropriate (but see section 66 for further duties around consultation), and
  - (d) have regard to the criteria for own initiative investigations published under section 5.
- (3) Subject to the other provisions of this section—
  - (a) it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section;
  - (b) the Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (3)(a).

#### Commencement Information

**I2** S. 4 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 5 Criteria for own initiative investigations

- (1) The Ombudsman must publish criteria to be used in determining whether to begin an investigation under section 4.
- (2) The Ombudsman must lay a draft of the first criteria before the Assembly.

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- (3) If, before the end of the 40 day period, the Assembly resolves not to approve the draft criteria, the Ombudsman must not publish the criteria in the form of the draft.
- (4) If no such resolution is made before the end of that period, the Ombudsman must publish the criteria in the form of the draft.
- (5) The 40 day period—
  - (a) begins on the day on which the draft is laid before the Assembly, and
  - (b) does not include any time during which the Assembly is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent new draft criteria from being laid before the Assembly.
- (7) Before laying the draft criteria before the Assembly, the Ombudsman must consult—
  - (a) the Welsh Ministers,
  - (b) the listed authorities in Schedule 3, and
  - (c) such other persons as the Ombudsman thinks appropriate.
- (8) The Ombudsman must, in preparing the draft criteria to be laid before the Assembly, have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The criteria come into force when they are published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the criteria.
- (11) If, in the opinion of the Ombudsman, revisions made under subsection (10) effect any material change to the criteria, the Ombudsman must lay a draft of those revisions before the Assembly.
- (12) Subsections (3) to (9) apply to draft revisions laid before the Assembly under subsection (11) as they apply to the first criteria.
- (13) The Welsh Ministers may by regulations amend the criteria published by the Ombudsman under this section by adding criteria, removing criteria or changing the criteria.
- (14) Where the Welsh Ministers make regulations under subsection (13), the Ombudsman must publish the criteria, as amended by the regulations, on the day the regulations come into force.
- (15) Before making regulations under subsection (13), the Welsh Ministers must consult—
  - (a) the Ombudsman,
  - (b) the listed authorities in Schedule 3, and
  - (c) such other persons as the Welsh Ministers think appropriate.
- (16) No regulations are to be made under subsection (13) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

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**Commencement Information**

**I3** S. 5 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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## 6 Alternative resolution of matters

- (1) The Ombudsman may take any action the Ombudsman thinks appropriate with a view to resolving a matter which the Ombudsman has power to investigate under this Part.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation.
- (3) Any action under this section must be taken in private.

### Commencement Information

**I4** S. 6 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## *Complaints*

## 7 Who can complain

- (1) The persons entitled to make a complaint to the Ombudsman under this Part are—
  - (a) a member of the public (in this Part referred to as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate under sections 11 to 16,
  - (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 such a person (for example because the person aggrieved 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” means any person other than a listed authority acting in its capacity as such.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint to the Ombudsman.

### Commencement Information

**I5** S. 7 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 8 Requirements: complaints made to the Ombudsman

- (1) The requirements mentioned in section 3(2)(b) are that the complaint must—
  - (a) be in a form specified by the Ombudsman in guidance;
  - (b) contain such information as specified by the Ombudsman in guidance;
  - (c) be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matter alleged in the complaint.
- (2) The Ombudsman must publish the guidance referred to in subsection (1).
- (3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

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- (4) If a complaint which meets the requirements of subsection (1) is made other than in writing, the Ombudsman must—
  - (a) explain to the person who made the complaint that a complaint has been duly made under this Act and the implications of making such a complaint, and
  - (b) ask the person whether the person wishes the complaint to continue to be treated as a complaint that has been duly made.
- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman—
  - (a) must not use the power in section 3(1)(a) to begin an investigation into the matter alleged in the complaint;
  - (b) may use the power in section 4 to investigate the matter alleged in the complaint.
- (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether the person wishes the complaint to be confirmed in writing.
- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.

#### Commencement Information

**I6** S. 8 in force at 23.7.2019 by [S.I. 2019/1096, reg. 2](#)

## 9 Requirements: complaints referred to the Ombudsman

- (1) The requirements mentioned in section 3(3)(b) are that the complaint—
  - (a) must have been made to the listed authority by a person who would have been entitled under section 7 to make the complaint to the Ombudsman;
  - (b) must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint;
  - (c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;
  - (d) must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority.
- (2) The Ombudsman must publish the guidance referred to in subsection (1)(c).
- (3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

#### Commencement Information

**I7** S. 9 in force at 23.7.2019 by [S.I. 2019/1096, reg. 2](#)

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## 10 Records of complaints

The Ombudsman must maintain a register of every complaint made or referred to the Ombudsman in respect of a matter which the Ombudsman is entitled to investigate under this Part.

### Commencement Information

**18** [S. 10](#) in force at 23.7.2019 by [S.I. 2019/1096, reg. 2](#)

### *Matters which may be investigated*

## 11 Matters which may be investigated

- (1) The matters which the Ombudsman is entitled to investigate under this Part are—
  - (a) alleged maladministration by a listed authority in connection with relevant action;
  - (b) an alleged failure in a relevant service provided by a listed authority;
  - (c) an alleged failure by a listed authority to provide a relevant service.
- (2) The matters may relate to action taken before or after this Act receives Royal Assent.
- (3) Subsection (1) is subject to sections 12 to 15.
- (4) Relevant action is—
  - (a) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service;
  - (b) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions;
  - (c) in the case of a listed authority which is a person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), action taken by the authority in the discharge of any of those functions;
  - (d) in the case of a listed authority which is a listed authority by virtue of regulations under section 31(2) adding it to Schedule 3, action taken by the authority in the discharge of any of its specified functions;
  - (e) in any other case, action taken by the authority in the discharge of any of its administrative functions.
- (5) A relevant service is—
  - (a) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the investigation, entered into a contract, undertaken, or made arrangements, to provide;
  - (b) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide;

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- (c) in the case of a listed authority falling within subsection (4)(c), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned in that subsection;
  - (d) in the case of a listed authority falling within subsection (4)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions;
  - (e) in any other case, any service which it was, at that time, the authority's function to provide.
- (6) For the purposes of subsections (4)(d) and (5)(d), a listed authority's specified functions are the functions specified in relation to the authority in regulations under section 31(2) as falling within the Ombudsman's remit.
- (7) An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for the purposes of subsection (4) if—
- (a) the person was appointed by the authority, or
  - (b) the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise).

#### Commencement Information

**I9** S. 11 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 12 Exclusion: matters not relating to Wales

- (1) The Ombudsman may not investigate a matter arising in connection with the discharge or provision by a listed authority of any of the authority's functions or services otherwise than in relation to Wales.
- (2) Subsection (1) does not apply in relation to the Welsh Government.
- (3) To the extent that a function of a listed authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for the purposes of subsection (1) as discharged in relation to Wales.

#### Commencement Information

**I10** S. 12 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 13 Exclusion: other remedies

- (1) The Ombudsman may not investigate a matter under section 3 if the person aggrieved has or had—
  - (a) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative,
  - (b) a right of appeal to a Minister of the Crown, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or
  - (c) a remedy by way of proceedings in a court of law.

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- (2) But subsection (1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy.
- (3) The Ombudsman may investigate a matter under section 3 only if the Ombudsman is satisfied that—
  - (a) the matter has been brought to the attention of the listed authority to which the matter relates by or on behalf of the person aggrieved, and
  - (b) the authority has been given a reasonable opportunity to investigate and respond to it.
- (4) But subsection (3) does not prevent the Ombudsman from investigating a matter if the Ombudsman is satisfied that it is reasonable in the particular circumstances for the Ombudsman to investigate the matter despite the fact that the requirements of that subsection have not been met.

#### Commencement Information

**III** [S. 13](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 14 Other excluded matters

- (1) The Ombudsman may not investigate under this Part a matter specified in Schedule 2.
- (2) The Welsh Ministers may by regulations amend Schedule 2 by—
  - (a) adding an entry;
  - (b) removing an entry;
  - (c) changing an entry.
- (3) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman.
- (4) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (5) Subsection (1) does not prevent the Ombudsman from investigating action of a listed authority in operating a procedure established to examine complaints or review decisions.

#### Commencement Information

**III** [S. 14](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 15 Decisions taken without maladministration

- (1) The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.
- (2) Subsection (1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to

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the Ombudsman to be exercisable in connection with the provision of health or social care.

#### Commencement Information

I13 S. 15 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### *Ancillary investigations*

## 16 Power to investigate other health-related services

- (1) This section applies where—
  - (a) the Ombudsman has power under this Part to investigate—
    - (i) alleged maladministration by a relevant listed authority in connection with relevant action taken by the authority in relation to a person,
    - (ii) an alleged failure in a relevant service provided to a person by a relevant listed authority, or
    - (iii) an alleged failure by a relevant listed authority to provide a relevant service to a person, and
  - (b) a health-related service which is not a relevant service has also been provided to the person.
- (2) If the Ombudsman considers that the alleged maladministration or failure cannot be investigated effectively or completely without also investigating the health-related service mentioned in subsection (1)(b), the Ombudsman may investigate that service as part of the investigation in respect of the relevant listed authority.
- (3) If the Ombudsman does so, any reference to a listed authority in section 17, 18, 23(2)(b) or (7)(a), 27, 28(4)(b), (6)(c), (6)(d) or (9)(b)(ii) or 29(4)(a) includes, in addition, a reference to the person who provided the health-related service mentioned in subsection (1)(b).
- (4) In this section—

“health-related service” (“*gwasanaeth sy'n gysylltiedig ag iechyd*”) includes—

  - (a) any medical, dental, ophthalmic, nursing, midwifery or pharmaceutical service, and
  - (b) any other service which is provided in connection with a person's physical or mental health,

other than a special procedure performed under the authority of a special procedure licence (within the meaning of Part 4 of the Public Health (Wales) Act 2017 (anaw 2);

“relevant action” (“*camau gweithredu perthnasol*”) has the meaning given in section 11(4);

“relevant listed authority” (“*awdurdod rhestredig perthnasol*”) means—

  - (a) the Board of Community Health Councils in Wales;
  - (b) a Local Health Board;
  - (c) an NHS Trust managing a hospital or other establishment or facility in Wales;

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- (d) a Special Health Authority not discharging functions only or mainly in England;
  - (e) a Community Health Council;
  - (f) an independent provider in Wales;
  - (g) a family health service provider in Wales;
  - (h) a person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health Standards) Act 2003 (c.43);
  - (i) the Welsh Health Specialised Services Committee;
- “relevant service” (“*gwasanaeth perthnasol*”) has the meaning in section 11(5).

(5) This section does not affect the Ombudsman's power under section 19.

#### Commencement Information

**I14** S. 16 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### *Decisions not to investigate etc*

## 17 Decisions not to investigate or to discontinue investigation

- (1) If the Ombudsman —
- (a) decides not to begin an investigation, or to discontinue an investigation, into a matter under section 3(5), or
  - (b) where the Ombudsman has consulted a person under section 4(2)(c), decides not to begin an investigation, or to discontinue an investigation, into a matter under section 4(3)(a),
- the Ombudsman must prepare a statement of the reasons for the decision.
- (2) The Ombudsman must send a copy of the statement to—
- (a) any person who made a complaint to the Ombudsman in respect of the matter, and
  - (b) the listed authority to which the matter relates.
- (3) The Ombudsman may send a copy of the statement to any other persons the Ombudsman thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (5) The Ombudsman may supply a copy of a statement published under subsection (4), or any part of such a statement, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
- (7) If a statement prepared under subsection (1)—
- (a) mentions the name of any person other than the listed authority to which the matter relates, or

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- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement,  
that information must not be included in a version of the statement sent to a person under subsection (2) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the statement if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement.

#### Commencement Information

**I15** S. 17 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### *Investigation procedure and evidence*

## **18 Investigation procedure**

- (1) If the Ombudsman conducts an investigation under section 3, the Ombudsman must—
- (a) give the listed authority to which the investigation relates 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.
- (2) If the Ombudsman conducts an investigation under section 4, the Ombudsman must—
- (a) prepare an investigation proposal, and
  - (b) submit the investigation proposal to—
    - (i) the listed authority being investigated, and
    - (ii) any person, other than the listed authority, who is identified in the investigation proposal in a negative way.
- (3) But if—
- (a) the Ombudsman has begun to investigate a matter under section 3 or 4 (in either case, “the original investigation”), and
  - (b) the Ombudsman has begun another investigation into a matter (“the related investigation”) under section 4 that relates to the original investigation,
- subsection (2) does not apply to the related investigation.
- (4) An investigation relates to an original investigation if the matter investigated in the related investigation has a substantial connection with the matter investigated in the original investigation.
- (5) Where the Ombudsman prepares an investigation proposal in relation to a matter, the Ombudsman must—
- (a) give the listed authority being investigated an opportunity to comment on the investigation proposal;
  - (b) give any person, other than the listed authority, who is identified in the investigation proposal in a negative way, an opportunity to comment on the

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- investigation proposal (as far as the investigation proposal relates to that person).
- (6) Where the Ombudsman has begun a related investigation into a matter and no investigation proposal is prepared by virtue of subsection (3), the Ombudsman must—
- (a) give the listed authority an opportunity to comment on the related investigation;
  - (b) give any person, other than the listed authority, who is identified by the Ombudsman in relation to the related investigation in a negative way, an opportunity to comment on the related investigation (as far as the related investigation relates to that person).
- (7) An investigation proposal must set out—
- (a) the reasons for the investigation, and
  - (b) how the criteria published under section 5 have been met.
- (8) An investigation must be conducted in private.
- (9) Subject to the other provisions of this section, the procedure for conducting an investigation under section 3 or 4 is to be such as the Ombudsman thinks appropriate in the circumstances of the case.
- (10) In particular, the Ombudsman may—
- (a) make such inquiries as the Ombudsman thinks appropriate;
  - (b) determine whether any person may be represented in the investigation by an authorised person or otherwise.
- (11) In subsection (10) “authorised person” means a person who, for the purposes of the Legal Services Act 2007 (c.29), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (12) The Ombudsman may pay to any person who attends or supplies information for the purposes of the investigation—
- (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by the person, and
  - (b) such allowances as the Ombudsman may determine by way of compensation for the loss of the person's time,
- subject to such conditions as the Ombudsman may determine.
- (13) The Ombudsman must publish the procedure that the Ombudsman will follow when conducting an investigation under section 3 or 4.
- (14) 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.

#### Commencement Information

**I16** S. 18 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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## 19 Information, documents, evidence and facilities

- (1) This section applies in relation to investigations conducted under this Part.
- (2) For the purposes of an investigation the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.
- (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 and 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 the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (7), no person is to be compelled for the purposes of an investigation to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or rule of law, is to apply to the disclosure of information for the purposes of an investigation.
- (7) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

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### Commencement Information

I17 S. 19 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 20 Obstruction and contempt

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) But the condition in subsection (2) is not met in relation to a person merely because the person has taken action such as is mentioned in section 18(14).
- (4) If the Ombudsman issues a certificate under subsection (1), the High Court may inquire into the matter.
- (5) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with the person in any manner in which it could have if the person had committed contempt in relation to the High Court.

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### Commencement Information

**I18** S. 20 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 21 Obstruction and contempt: costs recovery

- (1) This section applies where—
  - (a) the Ombudsman investigates a health-related service as part of an investigation in respect of a relevant listed authority under section 16(2), and
  - (b) the Ombudsman is satisfied that the condition in subsection (2) is met.
- (2) The condition is that the provider of the health-related service (“the provider”)—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to the investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) The condition in subsection (2) is not met in relation to a provider merely because the provider has taken action of the kind mentioned in section 18(14)(b).
- (4) The Ombudsman may serve a notice (a “costs recovery notice”) on the provider requiring the provider to pay the Ombudsman costs incurred by the Ombudsman as a result of the obstruction or act mentioned in subsection (2).
- (5) The costs referred to in subsection (4) may include (but are not limited to) the costs of obtaining expert advice (including legal advice).
- (6) A costs recovery notice must—
  - (a) set out the basis on which the notice is issued, including details of the obstruction or act which, in the opinion of the Ombudsman, meets the condition in subsection (2),
  - (b) specify the amount that must be paid to the Ombudsman, together with a detailed breakdown of the amount,
  - (c) specify—
    - (i) the date by which payment must be made, and
    - (ii) how payment may be made, and
  - (d) explain the right of appeal in subsection (9).
- (7) The payment date specified under subsection (6)(c) must be at least 28 days later than the date on which the costs recovery notice is served on the provider.
- (8) The provider must pay the Ombudsman the amount specified in the costs recovery notice by the date specified in that notice (but this is subject to the remaining provisions of this section).
- (9) The provider may appeal to the magistrates' court against a costs recovery notice within 21 days beginning with the date on which the notice is served on the provider; and where the provider does so, subsection (8) does not apply (but see subsections (15) and (16)).
- (10) An appeal is to be by way of a complaint for an order that the notice be quashed or varied, and in accordance with the Magistrates' Court Act 1980 (c.43).

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- (11) For the purpose of the time limit for making an appeal, the making of a complaint is to be treated as the making of an appeal.
- (12) The grounds for appeal are that the Ombudsman's decision to issue the costs recovery notice was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unreasonable for any reason.
- (13) On appeal, the magistrates' court may—
  - (a) confirm, quash or vary the costs recovery notice, and
  - (b) make such order as to costs as it thinks fit.
- (14) Where, on appeal, the magistrates' court quashes or varies the costs recovery notice, it may order the Ombudsman to compensate the provider for loss suffered as a result of the service of the notice.
- (15) Where, on appeal, the magistrates' court confirms the costs recovery notice (with or without variation), the provider must pay the amount payable by virtue of the notice within 28 days beginning with the date on which the appeal is finally determined.
- (16) Where an appeal made under this section is withdrawn, the provider must pay the amount specified in the costs recovery notice within 28 days beginning with the date on which the appeal is withdrawn.
- (17) An amount payable under this section is recoverable summarily as a civil debt.
- (18) In this section, “health-related service” has the same meaning as in section 16.

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**Commencement Information**

**I19** S. 21 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 22 Serving a costs recovery notice

- (1) This section applies to the service of a costs recovery notice under section 21.
- (2) The costs recovery notice may be served on a person—
  - (a) by being delivered personally to the person,
  - (b) by leaving it at the person's proper address,
  - (c) by being sent by post to the person's proper address, or
  - (d) where subsection (3) applies, by sending it electronically to an address provided for that purpose.
- (3) This subsection applies where the person to whom the costs recovery notice is to be issued has agreed in writing that it may be sent electronically.
- (4) For the purposes of subsection (2)(a), a costs recovery notice may be delivered personally to a body corporate by giving it to the secretary or clerk of that body.
- (5) Where the Ombudsman serves a costs recovery notice in the manner mentioned in subsection (2)(b), the costs recovery notice is to be treated as having been received at the time it was left at the person's proper address unless the contrary is shown.

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- (6) For the purposes of subsections (2)(b) and (c), the proper address of a person is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body;
  - (b) in the case of a person acting in their capacity as a partner in a partnership, the address of the principal office of the partnership;
  - (c) in any other case, the last known address of the person.
- (7) Where the Ombudsman serves a costs recovery notice in the manner mentioned in subsection (2)(c) by sending it to an address in the United Kingdom, the costs recovery notice is to be treated as having been received 48 hours after it is sent unless the contrary is shown.
- (8) Where the Ombudsman serves a costs recovery notice in the manner mentioned in subsection (2)(d), the costs recovery notice is to be treated as having been received 48 hours after it is sent unless the contrary is shown.

#### Commencement Information

**I20** S. 22 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### *Reports of investigations*

## 23 Reports of investigations

- (1) The Ombudsman must, after conducting an investigation—
- (a) prepare a report on the Ombudsman's findings, and
  - (b) send a copy of the report to the persons listed in subsection (2), but this is subject to section 27.
- (2) The persons referred to in subsection (1)(b) are—
- (a) if the investigation relates to a complaint, the person who made the complaint;
  - (b) the listed authority to which the report relates;
  - (c) any other person who is alleged in the complaint (if any) to have taken or authorised the action complained of or is identified in the report by the Ombudsman in a negative way;
  - (d) if the listed authority is a family health service provider in Wales—
    - (i) any Local Health Board with whom the authority had, at the time of the action which is the subject of the investigation, entered into a contract to provide the family health services which are under investigation;
    - (ii) any person to whom the authority had, at that time, undertaken to provide those services;
    - (iii) any person with whom the authority had, at that time, made arrangements for the provision of those services;
  - (e) if the listed authority is an independent provider in Wales—
    - (i) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the investigation, made arrangements for the provision of the services under investigation;

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- (ii) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services;
  - (f) the First Minister for Wales (unless the listed authority is itself the Welsh Government or is a local authority in Wales).
- (3) The Ombudsman may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (4) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (5) The Ombudsman may supply a copy of a report published under subsection (4), or any part of such a report, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (5).
- (7) If a report prepared under this section—
  - (a) mentions the name of any person other than the listed authority in respect of which the report was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,that information must not be included in a version of the report sent to a person under subsection (1)(b) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

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**Commencement Information**

**I21** S. 23 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 24 Publicising reports

- (1) If a listed authority receives a copy of a report under section 23(1)(b), the authority must make copies of that version of the report available for a period of at least three weeks—
  - (a) at one or more of the authority's offices, and
  - (b) if the authority has a website, on the website.
- (2) Throughout that period of three weeks, any person may—
  - (a) inspect the copy of the report at the office or offices concerned at any reasonable time without payment;
  - (b) make a copy of the report or any part of it at any reasonable time without payment;

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- (c) require the listed authority to supply the person with a copy of the report or any part of it, on payment of a reasonable sum if requested;
  - (d) view the copy of the report on the website (if any) without payment.
- (3) Not later than two weeks after the copy of the report is received, the listed authority must ensure that a notice is published in a newspaper circulating in the part of Wales in which the matter which is the subject of the report arose.
- (4) The notice must specify—
- (a) the date on which the period of three weeks referred to in subsection (1) will begin,
  - (b) the office or offices at which a copy of the report can be inspected, and
  - (c) the address of the authority's website (if any).
- (5) The Ombudsman may give directions to listed authorities with regard to the discharge of their functions under this section.
- (6) Directions under subsection (5) may relate—
- (a) to a particular listed authority in respect of a particular report, or
  - (b) generally to the discharge of functions under this section by all or any listed authorities.
- (7) A person commits an offence if—
- (a) the person wilfully obstructs a person in the exercise of a right conferred by subsection (2)(a), (b) or (d), or
  - (b) the person refuses to comply with a requirement under subsection (2)(c).
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) The Ombudsman may direct that subsections (1) to (4) are not to apply in relation to a particular report.
- (10) In deciding whether to give a direction under subsection (9), the Ombudsman must take into account—
- (a) the public interest,
  - (b) the interests of the person aggrieved (if any), and
  - (c) the interests of any other persons the Ombudsman thinks appropriate.

#### Commencement Information

I22 S. 24 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 25 Publicising reports: health care providers

- (1) If an investigation is conducted in respect of a listed authority which is a family health service provider in Wales, section 24 has effect with the modifications specified in subsections (2) to (4).
- (2) For subsection (1) substitute—

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- “(1) A person who has received a copy of a report under section 23 by virtue of section 23(2)(d) must make copies of the report available for a period of at least three weeks—
- (a) at one or more of the person's offices, and
  - (b) if the person has a website, on the website.”
- (3) The references to the listed authority are to be taken to be references to that person.
- (4) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.
- (5) If an investigation is conducted in respect of a listed authority which is an independent provider in Wales, section 24 has effect with the modifications specified in subsections (6) to (8).
- (6) For subsection (1) substitute—
- “(1) A person who has received a copy of a report under section 23 by virtue of section 23(2)(e) must make copies of the report available for a period of at least three weeks—
- (a) at one or more of the person's offices, and
  - (b) if the person has a website, on the website.”
- (7) The references to the listed authority are to be taken to be references to that person.
- (8) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.

**Commencement Information**

**I23** S. 25 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**26 Action following receipt of a report**

- (1) This section applies if, in a report under section 23 of an investigation in respect of a listed authority, the Ombudsman concludes that any person has sustained, or is likely to sustain, injustice or hardship in consequence of the matter investigated.
- (2) The listed authority must consider the report and notify the Ombudsman before the end of the permitted period of—
- (a) the action it has taken or proposes to take in response to it, and
  - (b) the period before the end of which it proposes to have taken that action (if it has not already done so).
- (3) The permitted period is—
- (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) any longer period specified by the Ombudsman in writing.

**Commencement Information**

**I24** S. 26 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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## 27 Reports: alternative procedure

- (1) This section applies if, after the Ombudsman has conducted an investigation—
  - (a) the Ombudsman concludes that no person has sustained, or is likely to sustain, injustice or hardship in consequence of the matter investigated, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 23 to 26 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation—
  - (a) the Ombudsman concludes that any person has sustained, or is likely to sustain, injustice or hardship in consequence of the matter investigated,
  - (b) the listed authority to which the investigation relates agrees to implement, before the end of the permitted period, any recommendations the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 23 to 26 to apply.
- (3) The permitted period is—
  - (a) a period agreed between the Ombudsman and the listed authority and, if the investigation relates to a complaint, the person who made the complaint, or
  - (b) if the Ombudsman thinks that no such agreement can be reached, the period specified by the Ombudsman in writing.
- (4) The Ombudsman may decide to prepare a report on the Ombudsman's findings under this section instead of under section 23.
- (5) If the Ombudsman decides to prepare a report under this section—
  - (a) sections 23 to 26 do not apply;
  - (b) the Ombudsman must send a copy of the report to—
    - (i) if the investigation relates to a complaint, the person who made the complaint;
    - (ii) the listed authority in respect of which the report was made;
  - (c) the Ombudsman may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or any part of such a report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) If a report prepared under this section—
  - (a) mentions the name of any person other than the listed authority in respect of which the report was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

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that information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6), subject to subsection (10).

- (10) Subsection (9) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

#### Commencement Information

I25 S. 27 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### *Special reports*

## 28 Special reports

- (1) The Ombudsman may prepare a report under this section (a “special report”) if subsection (2), (4) or (6) applies.
- (2) This subsection applies if, in a report under section 23, the Ombudsman has concluded that any person has sustained, or is likely to sustain, injustice or hardship in consequence of the matter investigated, and—
- (a) the Ombudsman has not received the notification required under section 26 before the end of the period permitted under that section,
  - (b) the Ombudsman has received that notification but is not satisfied with—
    - (i) the action which the listed authority has taken or proposes to take, or
    - (ii) the period before the end of which it proposes to have taken that action, or
  - (c) the Ombudsman has received that notification but is not satisfied that the listed authority has, before the end of the permitted period, taken the action it proposed to take.
- (3) The permitted period for the purposes of subsection (2)(c) is—
- (a) the period referred to in section 26(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (4) This subsection applies if the Ombudsman—
- (a) has prepared a report under section 27(2), and
  - (b) is not satisfied that the listed authority has implemented the Ombudsman's recommendations before the end of the permitted period.
- (5) The permitted period for the purposes of subsection (4)(b) is—
- (a) the period referred to in section 27(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (6) This subsection applies if—
- (a) a matter which the Ombudsman is entitled to investigate has been resolved,
  - (b) in resolving the matter, the Ombudsman has concluded that any person has sustained, or is likely to sustain, injustice or hardship in consequence of the matter,

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- (c) the listed authority has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the listed authority has taken that action before the end of the permitted period.
- (7) The permitted period for the purposes of subsection (6)(d) is—
- (a) the period referred to in subsection (6)(c), or
  - (b) any longer period specified by the Ombudsman in writing.
- (8) A special report must—
- (a) set out the facts on the basis of which subsection (2), (4) or (6) applies, and
  - (b) make such recommendations as the Ombudsman thinks fit with respect to the action which, in the Ombudsman's opinion, should be taken—
    - (i) to remedy or prevent the injustice or hardship to the person, and
    - (ii) to prevent similar injustice or hardship being caused to any person in the future.
- (9) The Ombudsman must send a copy of a special report—
- (a) if the special report is prepared because subsection (2) applies, to each person to whom a copy of the report under section 23 was sent under section 23(1)(b);
  - (b) if the special report is prepared because subsection (4) or (6) applies—
    - (i) to the person who made the complaint, if the investigation relates to a complaint;
    - (ii) to the listed authority in respect of which the report was made.
- (10) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.

#### Commencement Information

**I26** S. 28 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

## 29 Special reports: supplementary

- (1) The Ombudsman may—
- (a) publish a special report made under section 28;
  - (b) supply a copy of the published report or any part of it to any person who requests it.
- (2) The Ombudsman may charge a reasonable fee for supplying a copy of a report (or part of a report) under subsection (1)(b).
- (3) The listed authority in respect of which a special report is made must reimburse the Ombudsman for the cost of publishing a special report if requested to do so by the Ombudsman.
- (4) If a special report—
- (a) mentions the name of any person other than the listed authority in respect of which the report was made, or

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- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report, that information must not be included in a version of the report sent to a person under section 28(9) or (10) or published under subsection (1) of this section, subject to subsection (5).
- (5) Subsection (4) does not apply in relation to a version of the special report if, after taking account of the interests of any person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the special report.
- (6) Sections 24 and 25 (publicising reports under section 23) apply in relation to a special report under section 28 as they apply in relation to a report under section 23.

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**Commencement Information**

**I27** S. 29 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**30 Special reports relating to the Welsh Government and the National Assembly for Wales Commission**

- (1) This section applies if a special report is made in a case where the investigation was made in respect of the Welsh Government or the National Assembly for Wales Commission.
- (2) The relevant person must lay a copy of the report before the Assembly.
- (3) In subsection (2) “the relevant person” means—
  - (a) if the investigation was made in respect of the Welsh Government, the First Minister for Wales, and
  - (b) if the investigation was made in respect of the National Assembly for Wales Commission, a member of that Commission.

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**Commencement Information**

**I28** S. 30 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

*Listed authorities*

**31 Listed authorities**

- (1) The persons specified in Schedule 3 are listed authorities for the purposes of this Act.
- (2) The Welsh Ministers may by regulations amend Schedule 3 by—
  - (a) adding a person,
  - (b) omitting a person, or
  - (c) changing the description of a person.
- (3) Regulations under subsection (2) adding a person to Schedule 3 may provide for this Act to apply to the person with the modifications specified in the regulations.

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- (4) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate.
- (5) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (6) Sections 32 and 33 contain further restrictions on the power in subsection (2).

**Commencement Information**

**I29** S. 31 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**32 Restrictions on power to amend Schedule 3**

- (1) Regulations under section 31(2) may not omit the Welsh Government or the National Assembly for Wales Commission from Schedule 3.
- (2) Regulations under section 31(2) may add a person to Schedule 3 only if the provision made by the regulations would be within the legislative competence of the Assembly.

**Commencement Information**

**I30** S. 32 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**33 Provisions in regulations adding persons to Schedule 3**

If the Welsh Ministers propose to make regulations under section 31(2) adding a person to Schedule 3, they must also specify in the regulations—

- (a) whether all or only some of the person's functions are to fall within the remit of the Ombudsman under this Part;
- (b) if only some of the person's functions are to fall within the remit of the Ombudsman under this Part, which those functions are.

**Commencement Information**

**I31** S. 33 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**34 Power to issue guidance**

- (1) The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as the Ombudsman thinks appropriate.
- (2) Before issuing guidance under this section the Ombudsman must consult such listed authorities, or persons appearing to the Ombudsman to represent them, as the Ombudsman thinks appropriate.
- (3) If guidance issued under this section is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions.

**Changes to legislation:** Public Services Ombudsman (Wales) Act 2019, PART 3 is up to date with all changes known to be in force on or before 24 July 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) In conducting an investigation in respect of a listed authority, the Ombudsman may have regard to the extent to which the authority has complied with any guidance issued under this section which is applicable to the authority.
- (5) The Ombudsman may publish any guidance issued under this section in any manner that the Ombudsman thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report.
- (6) Guidance issued under this section may contain different provision for different purposes.
- (7) Subject to subsection (8), guidance issued under this section must not—
  - (a) mention the name of any person other than the listed authorities to which it is applicable or a listed authority which has been investigated under this Part, or
  - (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the guidance.
- (8) Subsection (7) does not apply if, after taking account of the interests of any persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance.

**Commencement Information**

**I32** S. 34 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

*Compensation*

**35 Compensation for the person aggrieved**

- (1) This section applies if—
  - (a) a complaint in respect of a matter is made or referred to the Ombudsman, and
  - (b) the complaint is one which the Ombudsman has power to investigate under this Part.
- (2) The listed authority in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint.
- (3) It is immaterial for the purposes of this section that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint.
- (4) The power in subsection (2) does not affect any other power of the listed authority to make the payment or provide the benefit.

**Commencement Information**

**I33** S. 35 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**Changes to legislation:**

Public Services Ombudsman (Wales) Act 2019, PART 3 is up to date with all changes known to be in force on or before 24 July 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16(4)(a) omitted by [2020 asc 1 Sch. 3 para. 17\(2\)\(a\)](#)
- s. 16(4)(e) omitted by [2020 asc 1 Sch. 3 para. 17\(2\)\(b\)](#)
- s. 16(4)(ia) inserted by [2020 asc 1 Sch. 3 para. 17\(2\)\(c\)](#)