



# Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

## PART 4

### LISTED AUTHORITIES: COMPLAINTS-HANDLING PROCEDURES

#### **36 Complaints-handling: statement of principles**

- (1) The Ombudsman must publish a statement of principles concerning complaints-handling procedures of listed authorities.
- (2) A listed authority must—
  - (a) have a complaints-handling procedure, and
  - (b) ensure that any such procedure complies with the statement of principles.
- (3) The Ombudsman must lay a draft of the first statement of principles before the Assembly.
- (4) If, before the end of the 40 day period, the Assembly resolves not to approve the draft, the Ombudsman must not publish the statement of principles in the form of the draft.
- (5) If no such resolution is made before the end of that period, the Ombudsman must publish the statement of principles in the form of the draft.
- (6) 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.
- (7) Subsection (4) does not prevent a new draft statement of principles from being laid before the Assembly.
- (8) Before laying a draft statement of principles before the Assembly, the Ombudsman must consult—

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- (a) the Welsh Ministers, and
  - (b) such listed authorities and other persons as the Ombudsman thinks appropriate.
- (9) The Ombudsman must, in preparing the draft statement of principles to be laid before the Assembly, have regard to any representations made during the consultation mentioned in subsection (8).
- (10) The statement of principles comes into force when it is published by the Ombudsman.
- (11) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (12) If, in the opinion of the Ombudsman, revisions made under subsection (11) effect any material change to the statement of principles, the Ombudsman must lay a draft of those revisions before the Assembly.
- (13) Subsections (4) to (10) apply to draft revisions laid before the Assembly under subsection (12) as they apply to the first statement of principles.
- (14) In this section and sections 37 to 40, “complaints-handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one the Ombudsman is entitled to investigate under Part 3.

**Commencement Information**

**II** S. 36 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

**37 Model complaints-handling procedures**

- (1) The Ombudsman may publish model complaints-handling procedures for listed authorities.
- (2) A model complaints-handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) A model CHP may not, in its application to a listed authority—
  - (a) impose a duty on the listed authority if the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty;
  - (b) be inconsistent with any enactment (including any code, guidance, scheme or other document made under any enactment) that applies to the listed authority.
- (6) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so—
  - (a) subsection (5) applies, and
  - (b) before re-publishing any model CHP, the Ombudsman must notify such listed authorities or groups of listed authorities as the Ombudsman thinks fit of any revisions to the model CHP.

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- (7) Where a model CHP is revised and re-published by virtue of subsection (6), section 38 has effect with the following modifications—
- (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
  - (b) any other reference to a model CHP is to the model CHP as revised and re-published, and
  - (c) in subsection (3) of that section, reference to receiving notice of the specification under subsection (1) of that section is a reference to receiving notice of the revision under subsection (6)(b) of this section.
- (8) The Ombudsman may withdraw any model CHP at any time.
- (9) Where the Ombudsman withdraws a model CHP under subsection (8)—
- (a) the Ombudsman must, before withdrawing the model CHP, notify each listed authority to which the model CHP is relevant that the model CHP will be withdrawn and when the withdrawal will happen, and
  - (b) on the day the model CHP is withdrawn—
    - (i) any specification under section 38(1) in relation to the withdrawn model CHP ceases to have effect, and
    - (ii) the duty in section 38(3) ceases to apply to a listed authority notified under subsection (9)(a), in so far as the duty arises in relation to the withdrawn model CHP.

#### Commencement Information

**I2** S. 37 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### 38 Model complaints-handling procedures: specification of listed authorities

- (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints-handling procedure which complies with the model CHP for the purposes of the specification.
- (3) Where subsection (2) applies, the listed authority must submit its complaints-handling procedure to the Ombudsman, having taken account of the relevant model CHP, within six months beginning with the day the listed authority receives notice of the specification under subsection (1).
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- (5) The Ombudsman may revoke any specification under subsection (1) at any time.
- (6) Where the Ombudsman revokes a specification under subsection (5)—
- (a) the Ombudsman must, before revoking the specification, notify each listed authority to which the specification applies that the specification will be revoked and when the revocation will happen, and

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- (b) on the day the specification is revoked—
  - (i) the specification ceases to have effect, and
  - (ii) the duty in subsection (3) ceases to apply to a listed authority notified under subsection (6)(a), in so far as the duty arises in relation to the revoked specification.

#### Commencement Information

**I3** S. 38 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### 39 Declarations of non-compliance

- (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 38(1), the Ombudsman may declare that the complaints-handling procedure of the authority does not comply with the model CHP.
- (2) Where there is no specification under section 38(1) in relation to a listed authority the Ombudsman may declare that the complaints-handling procedure of the authority does not comply with the statement of principles.
- (3) The Ombudsman must publish a declaration under subsection (1) or (2) on the Ombudsman's website.
- (4) Before publishing a declaration under subsection (3), the Ombudsman must notify the listed authority to which the declaration relates—
  - (a) that the Ombudsman will make a declaration, including the Ombudsman's reasons for making the declaration;
  - (b) of any modifications to the complaints-handling procedure that would result in the declaration being withdrawn.
- (5) Where a declaration is made under subsection (1) or (2), the listed authority must revise its complaints-handling procedure and submit it to the Ombudsman, having taken account of the reasons given under subsection (4)(a) and any modifications specified in subsection (4)(b), within two months beginning with the day the declaration is published under subsection (3).
- (6) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.
- (7) Where the Ombudsman withdraws a declaration under subsection (6)—
  - (a) the Ombudsman must immediately—
    - (i) notify the listed authority to which the declaration relates that the declaration has been withdrawn, including the reasons why the declaration has been withdrawn, and
    - (ii) update the declaration published under subsection (3) to reflect that the declaration has been withdrawn, including the reasons why the declaration has been withdrawn;
  - (b) the duty in subsection (5) ceases to apply to the listed authority, in so far as the duty arises in relation to the withdrawn declaration, as soon as the Ombudsman withdraws the declaration.

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#### Commencement Information

**I4** S. 39 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### 40 Submission of complaints-handling procedure: general

- (1) A listed authority must submit its complaints-handling procedure to the Ombudsman if the Ombudsman so directs; and must do so within three months beginning with the day the listed authority receives the Ombudsman's direction or such other period as the Ombudsman may direct.
- (2) The time limits in sections 38(3) and 39(5) are subject to any time limits that apply in a direction given under subsection (1).
- (3) When a listed authority has submitted its complaints-handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may request; and must do so within such period as the Ombudsman directs.

#### Commencement Information

**I5** S. 40 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

### 41 Complaints-handling procedures: promotion of best practice etc

- (1) The Ombudsman must—
  - (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
  - (b) promote best practice in relation to such complaints-handling, and
  - (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints-handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) But the Ombudsman may not require a listed authority to co-operate under subsection (2)—
  - (a) if the listed authority lacks the necessary powers (other than by virtue of this Act) to co-operate under subsection (2);
  - (b) if co-operating under subsection (2) requires the listed authority to act inconsistently with any enactment (including any code, guidance, scheme or other document made under any enactment) that applies to the listed authority.

#### Commencement Information

**I6** S. 41 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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

- Act modified by [2023 asc 3 Sch. 2 para. 6](#)
- Act modified by [2023 asc 3 Sch. 12 para. 7\(2\)](#)

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

- s. 65(7)(f) inserted by [2022 c. 30 Sch. 10 para. 6\(2\)\(a\)](#) (Welsh language text)
- s. 65(7)(f) inserted by [2022 c. 30 Sch. 10 para. 6\(2\)\(b\)](#) (English language text)