Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

PART 5

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

Investigation procedure and evidence

52 Investigation procedure

(1) If the Ombudsman conducts an investigation under section 43, the Ombudsman must—

(a) give the provider to whom the investigation relates an opportunity to comment on the investigation, and

(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 the allegations relating to that person.

(2) If the Ombudsman conducts an investigation under section 44, the Ombudsman must—

(a) prepare an investigation proposal, and

(b) submit the investigation proposal to—

(i) the provider being investigated, and

(ii) any person, other than the provider, 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 43 or 44 (in either case, “the original investigation”), and

(b) the Ombudsman has begun another investigation into a matter (“the related investigation”) under section 44 that relates to the original investigation,

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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 provider being investigated an opportunity to comment on the investigation proposal;

(b) give any person, other than the provider, who is identified in the investigation proposal in a negative way, an opportunity to comment on the 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 provider an opportunity to comment on the related investigation;

(b) give any person, other than the provider, 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 45 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 43 or 44 is that which the Ombudsman thinks appropriate in the circumstances of the case.

(10) The Ombudsman may, among other things—

(a) make any inquiries which the Ombudsman thinks appropriate, and

(b) determine whether any person may be represented in the investigation by an authorised person or another person.

(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) sums in respect of the expenses properly incurred by them, and

(b) allowances to compensate for the loss of their time.

(13) The Ombudsman may attach conditions to those payments.

(14) The Ombudsman must publish the procedure that the Ombudsman will follow when conducting an investigation under section 43 or 44.

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Commencement Information

I1 S. 52 in force at 23.7.2019 by S.I. 2019/1096, **reg. 2**

53 Information, documents, evidence and facilities

(1) This section applies for the purposes of an investigation under this Part.

(2) 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) The Ombudsman has the same powers as the High Court in relation to—

(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) 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 (6), no person may be compelled 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) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

(7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not to apply to the disclosure of information for the purposes of the investigation.

Commencement Information

I2 S. 53 in force at 23.7.2019 by S.I. 2019/1096, **reg. 2**

54 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) If the Ombudsman issues a certificate, the High Court may inquire into the matter.

(4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

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Commencement Information

I3 S. 54 in force at 23.7.2019 by S.I. 2019/1096, **reg. 2**

Changes to legislation:
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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)