



# Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

## PART 5

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

#### *Application of this Part*

#### **42 Matters to which this Part applies**

- (1) This Part applies to the following matters—
  - (a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;
  - (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;
  - (c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.
- (2) But this Part does not apply to—
  - (a) matters which may be investigated under Part 3, or
  - (b) matters described in Schedule 4.
- (3) The Welsh Ministers may by regulations amend Schedule 4 by—
  - (a) adding an entry,
  - (b) removing an entry, or
  - (c) changing an entry.
- (4) Before making regulations under subsection (3), the Welsh Ministers must consult the Ombudsman.

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- (5) No regulations are to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (6) For the meaning of the following terms see sections 62 to 64—
- “care home” (“*cartref gofal*”);
  - “care home provider” (“*darparwr cartref gofal*”);
  - “domiciliary care” (“*gofal cartref*”);
  - “domiciliary care provider” (“*darparwr gofal cartref*”);
  - “independent palliative care provider” (“*darparwr gofal lliniarol annibynnol*”);
  - “palliative care service” (“*gwasanaeth gofal lliniarol*”).

#### Commencement Information

**II** [S. 42](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### *Investigation of complaints*

## 43 Power to investigate complaints

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if the complaint has been—
- (a) duly made to the Ombudsman, or
  - (b) duly referred to the Ombudsman, and
- in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the investigation relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from—
- (a) the Welsh Ministers,
  - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42),
  - (c) an NHS Trust, or
  - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if)—
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman,
  - (b) before the complaint is made—
    - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
    - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
  - (c) the requirements of section 48(1) are met in respect of it.

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- (5) A complaint is “duly referred” to the Ombudsman if (but only if)—
  - (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman, and
  - (b) the requirements of section 49(1) are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 48(1) or section 49(1)(b), (c) or (d) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if—
  - (a) it relates to a matter to which this Part applies, and
  - (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation (but see section 48(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).
- (9) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn (but see section 48(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).

#### Commencement Information

**I2** [S. 43](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 44 Power to investigate on own initiative

- (1) The Ombudsman may investigate a matter to which this Part applies whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) But if the matter relates to an independent palliative care provider, the power in subsection (1) may only be used if the condition in section 43(2) is met.
- (3) 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 that there is systemic maladministration,
  - (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 45.
- (4) 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 (4)(a).

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#### Commencement Information

**I3** [S. 44](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 45 Criteria for own initiative investigations

- (1) The Ombudsman must publish criteria to be used in determining whether to begin an investigation under section 44.
- (2) The Ombudsman must lay a draft of the first criteria before the Assembly.
- (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 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.

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- (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**

**I4** [S. 45](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 46 Alternative resolution of matters

- (1) The Ombudsman may take any action the Ombudsman considers appropriate with a view to resolving a matter which the Ombudsman has the 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.

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**Commencement Information**

**I5** [S. 46](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 47 Who can complain

- (1) The persons entitled to make a complaint to the Ombudsman are—
  - (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
  - (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 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” does not include a person acting in the capacity of—
  - (a) a care home provider,
  - (b) a domiciliary care provider,
  - (c) an independent palliative care provider, or
  - (d) a listed authority.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

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**Commencement Information**

**I6** [S. 47](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

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#### **48 Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 43(4)(c) 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 before the end of the period of one year beginning with the day on which the person aggrieved first has 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 whether the requirements of subsection (1) are met in respect of a complaint.
- (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 43(1)(a) to begin an investigation into the matter alleged in the complaint;
  - (b) may use the power in section 44 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**

**I7** [S. 48](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

#### **49 Requirements: complaints referred to the Ombudsman**

- (1) The requirements mentioned in section 43(5)(b) are that the complaint—
  - (a) must have been made to the provider to whom it relates by a person who would have been entitled under section 47 to make the complaint to the Ombudsman;
  - (b) must have been made to the provider to whom it relates before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter;
  - (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 beginning with the day on which the complaint was made to the provider.
- (2) The Ombudsman must publish the guidance referred to in subsection (1)(c).

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- (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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**Commencement Information**

**18** [S. 49](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 50 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.

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**Commencement Information**

**19** [S. 50](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### *Decisions not to investigate etc*

## 51 Decisions not to investigate complaints or to discontinue investigations

- (1) If the Ombudsman—
- (a) decides not to begin an investigation, or to discontinue an investigation, into a matter under section 43(8), or
  - (b) where the Ombudsman has consulted a person under section 44(3)(c), decides not to begin an investigation, or to discontinue an investigation, into a matter under section 44(4)(a),
- the Ombudsman must prepare a statement of the reasons for that 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 provider to whom the matter relates.
- (3) The Ombudsman may also 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 that it would be in the public interest to do so.
- (5) The Ombudsman may supply a copy of the published statement, or part of that 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) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4)—
- (a) the name of a person other than the provider to whom the matter relates;

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- (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement.
- (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

#### **Commencement Information**

**I10** [S. 51](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### *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,
 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).



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- (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

**III** [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.

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- (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 apply to the disclosure of information for the purposes of the investigation.

#### **Commencement Information**

**I12** [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.

#### **Commencement Information**

**I13** [S. 54](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### *Reports about investigations*

## **55 Investigation reports**

- (1) This section applies to investigations under this Part unless section 58 applies.
- (2) The Ombudsman must, after conducting an investigation into a matter to which this Part applies—
  - (a) prepare a report on the findings of the investigation (“an investigation report”), and

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- (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are—
  - (a) if the investigation relates to a complaint, the person who made the complaint,
  - (b) the provider to whom 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 relation to the matter in a negative way, and
  - (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman may publish 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 that it would be in the public interest to do so.
- (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).
- (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5)—
  - (a) the name of a person other than the provider to whom the investigation relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

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#### Commencement Information

**I14** [S. 55](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 56 Further publicity for investigation reports

- (1) The Ombudsman may arrange for a notice about an investigation report to be published—
  - (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example—
  - (a) provide a summary of the Ombudsman's findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and

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- (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether it is appropriate to make arrangements under subsection (1), 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**

**I15** [S. 56](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### **57 Action following receipt of investigation reports**

- (1) This section applies where the Ombudsman has concluded in an investigation report that any person has sustained injustice or hardship as a result of the matter investigated.
- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of—
  - (a) the action the provider has taken or proposes to take in response to the report, and
  - (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means—
  - (a) the period of one month beginning on the date on which the provider receives the report, or
  - (b) a longer period specified by the Ombudsman in writing (if any).

#### **Commencement Information**

**I16** [S. 57](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### **58 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part—
  - (a) the Ombudsman concludes that no person has sustained, or is likely to sustain, injustice or hardship as a result of the matter investigated, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 55 to 57 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part—
  - (a) the Ombudsman concludes that any person has sustained, or is likely to sustain, injustice or hardship as a result of the matter investigated,

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- (b) the provider to whom the investigation relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 55 to 57 to apply.
- (3) In subsection (2)(b) “the permitted period” means—
  - (a) a period agreed between the Ombudsman and the provider 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, a period specified by the Ombudsman in writing.
- (4) The Ombudsman may decide to prepare a report on the Ombudsman's findings under this section, rather than under section 55; and if the Ombudsman decides to do so, sections 55 to 57 do not apply.
- (5) If a report is prepared under this section, the Ombudsman—
  - (a) must send a copy of the report to—
    - (i) if the investigation relates to a complaint, the person who made the complaint;
    - (ii) the provider to whom the report relates, and
  - (b) may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons 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 a part of that 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) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6)—
  - (a) the name of a person other than the provider to whom the investigation relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

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#### Commencement Information

**I17** [S. 58](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

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### *Special reports*

## **59 Circumstances in which special reports may be prepared**

- (1) The Ombudsman may prepare a special report under section 60 if case 1, 2 or 3 applies.
- (2) Case 1 applies if—
  - (a) the Ombudsman has concluded in an investigation report that any person has sustained, or is likely to sustain, injustice or hardship as a result of the matter investigated, and
  - (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that—
  - (a) the Ombudsman has not received the notification required under section 57 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 provider has taken or proposes to take, or
    - (ii) the period before the end of which the provider proposes to have taken that action;
  - (c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.
- (4) In subsection (3)(c) “the permitted period” means—
  - (a) the period referred to in section 57(2)(b), or
  - (b) a longer period specified by the Ombudsman in writing (if any).
- (5) Case 2 applies if—
  - (a) the Ombudsman has prepared a report under section 58 by virtue of subsection (2) of that section, and
  - (b) the Ombudsman is not satisfied that the provider has implemented the Ombudsman's recommendations before the end of the permitted period.
- (6) In subsection (5)(b) “the permitted period” means—
  - (a) the period referred to in section 58(2)(b), or
  - (b) a longer period specified by the Ombudsman in writing (if any).
- (7) Case 3 applies if—
  - (a) a matter (which the Ombudsman is entitled to investigate) in respect of a provider 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 as a result of the matter,
  - (c) the provider has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.
- (8) In subsection (7)(d) “the permitted period” means—
  - (a) the period referred to in subsection (7)(c), or
  - (b) a longer period specified by the Ombudsman in writing (if any).

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### Commencement Information

**I18** [S. 59](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## 60 Special reports

- (1) A special report must—
  - (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 59 applies), and
  - (b) make such recommendations as the Ombudsman thinks fit as 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.
- (2) If the special report is prepared because case 1 of section 59 applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 55 report was sent under section 55(2)(b).
- (3) If the special report is prepared because case 2 or 3 of section 59 applies, the Ombudsman must send a copy of the report to—
  - (a) if the investigation relates to a complaint, the person who made the complaint;
  - (b) the provider to whom the report relates.
- (4) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5)—
  - (a) the name of any person other than the provider in respect of whom the report was made;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

### Commencement Information

**I19** [S. 60](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)



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## 61 Further publicity for special reports

- (1) The Ombudsman may arrange for a notice about a special report to be published—
  - (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example—
  - (a) provide a summary of the Ombudsman's findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether to make arrangements under subsection (1), 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 person the Ombudsman thinks appropriate.

### Commencement Information

**I20** S. 61 in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

## *Interpretation*

## 62 Meaning of “care home” and “care home provider”

- (1) This section applies for the purposes of this Act.
- (2) “Care home” means premises at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), is provided wholly or mainly to persons aged 18 or over.
- (3) “Care home provider” means a person who is a service provider of a care home service within the meaning of Part 1 of that Act where the service is provided wholly or mainly to persons aged 18 or over.
- (4) Action is to be treated as action taken by a care home provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a care home provider if—
  - (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or care in a care home in Wales for an individual because of the individual's vulnerability or need, and



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- (b) the action is taken by or on behalf of the other person in carrying out the arrangement.
- (6) “Care” has the same meaning as in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

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#### Commencement Information

**I21** [S. 62](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### 63 Meaning of “domiciliary care” and “domiciliary care provider”

- (1) This section applies for the purposes of this Act.
- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who—
  - (a) carries on the activity otherwise than in partnership with others,
  - (b) is not employed by a body corporate or unincorporated association to carry it on,
  - (c) does not employ any other person to carry out the activity, and
  - (d) provides or arranges the provision of domiciliary care to fewer than four persons.
- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a domiciliary care provider if—
  - (a) that provider provides domiciliary care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

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#### Commencement Information

**I22** [S. 63](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

### 64 Meaning of “palliative care service” and “independent palliative care provider”

- (1) This section applies for the purposes of this Act.
- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who—
  - (a) provides a palliative care service, and

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- (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by—
  - (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if—
  - (a) that provider provides palliative care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

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**Commencement Information**

**I23** [S. 64](#) 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)