



# Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

## PART 6

### INVESTIGATIONS: SUPPLEMENTARY

#### *Consultation and co-operation*

#### **65 Consultation and co-operation with other ombudsmen**

- (1) This section applies if, in making a decision under section 3(5), 4(3)(a), 43(8), 44(4) (a) or in conducting an investigation under Part 3 or 5, the Ombudsman forms the opinion that a matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things)—
  - (a) the conduct of an investigation into the complaint, and
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
  - (a) conduct a joint investigation into the matter,
  - (b) prepare a joint report in relation to the investigation, and
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.

- (7) The ombudsmen referred to in subsection (1) are—
  - (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the [Housing Act 1996 \(c.52\)](#).
- (8) The Welsh Ministers may by regulations amend subsection (7) by—
  - (a) adding a person,
  - (b) omitting a person, or
  - (c) changing the description of a person.
- (9) Regulations under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.
- (10) No regulations are to be made under subsection (8) unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the Assembly.

## **66 Working jointly with specified persons**

- (1) This section applies if it appears to the Ombudsman that—
  - (a) there is a matter which the Ombudsman is entitled to investigate, and
  - (b) the matter is one which could also be the subject of an investigation by a person specified in subsection (2) (“specified person”).
- (2) The following are specified persons—
  - (a) the Children’s Commissioner for Wales;
  - (b) the Commissioner for Older People in Wales;
  - (c) the Future Generations Commissioner for Wales;
  - (d) the Welsh Language Commissioner;
  - (e) where the matter relates to health or social care, the Welsh Ministers.
- (3) Subject to subsection (4), where the Ombudsman considers it appropriate, the Ombudsman must—
  - (a) inform the relevant specified person about the matter, and
  - (b) consult the specified person in relation to it.
- (4) Where the Ombudsman investigates the matter under section 4 or 44, the Ombudsman must—
  - (a) inform the relevant specified person about the matter, and
  - (b) where the Ombudsman considers it appropriate, consult the specified person in relation to it.
- (5) Where the Ombudsman consults a specified person under this section, the Ombudsman and the specified person may—
  - (a) co-operate with each other in relation to the matter,
  - (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.

- (6) The Welsh Ministers may by regulations amend subsection (2) by—
  - (a) adding or removing a specified person to or from the list, or
  - (b) varying a reference to a type or description of specified person for the time being contained in that subsection.
- (7) No regulations are to be made under subsection (6) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

## **67 Working collaboratively with Commissioners**

- (1) This section applies if it appears to the Ombudsman that—
  - (a) a complaint, or
  - (b) a matter the Ombudsman is considering investigating under section 4 or 44, relates to or raises a matter which could be the subject of an investigation by the Children’s Commissioner for Wales, the Commissioner for Older People in Wales or the Welsh Language Commissioner (the “connected matter”).
- (2) If the Ombudsman considers it appropriate, the Ombudsman must inform the relevant Commissioner about the connected matter.
- (3) If the Ombudsman considers that the matter is a matter into which the Ombudsman is entitled to conduct an investigation (the “Ombudsman matter”), the Ombudsman must also, if the Ombudsman considers it appropriate—
  - (a) inform the relevant Commissioner about the Ombudsman’s proposals for conducting an investigation, and
  - (b) consult the relevant Commissioner about those proposals.
- (4) If the Ombudsman and the relevant Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may—
  - (a) co-operate with each other in the separate investigation of each of those matters,
  - (b) act together in the investigation of those matters, and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) If the Ombudsman considers—
  - (a) that the matter is not a matter into which the Ombudsman is entitled to conduct an investigation, and
  - (b) that it is appropriate to do so,the Ombudsman must inform the person who initiated the complaint (if any) about how to secure the referral of the connected matter to the relevant Commissioner.

## **68 Working with the Auditor General for Wales**

- (1) If the Ombudsman considers it appropriate, the Ombudsman must—
  - (a) inform the Auditor General for Wales about the Ombudsman’s proposals for conducting an investigation, and
  - (b) consult the Auditor General for Wales with regard to the most effective way of conducting an investigation.

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*Status: This is the original version (as it was originally enacted).*

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- (2) If the Ombudsman consults the Auditor General for Wales under this section, the Ombudsman and the Auditor General for Wales may—
- (a) co-operate with each other in relation to the matter to which the investigation relates,
  - (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.

### *Disclosure*

## **69 Disclosure of information**

- (1) The information to which this section applies is—
- (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions—
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation,
    - (iii) in resolving a matter under section 6 or 46, or
    - (iv) in connection with a notification received under section 26 or 57;
  - (b) information obtained from an ombudsman mentioned in section 65(7) by virtue of any provision of section 65 or a corresponding provision in an enactment relating to any of those ombudsmen;
  - (c) information obtained from a specified person in section 66(2) by virtue of any provision of section 66 or 67 or a corresponding provision in an enactment relating to any of those specified persons;
  - (d) information obtained from the Auditor General for Wales by virtue of section 68 of this Act or section 29A of the [Public Audit \(Wales\) Act 2013](#) (anaw 3);
  - (e) information obtained from the Information Commissioner by virtue of section 76 of the [Freedom of Information Act 2000](#) (c.36) (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - (c) for the purpose of any function of the Auditor General for Wales;
  - (d) for the purposes of resolving a complaint under section 6 or 46;
  - (e) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (f) for the purposes of any provision of section 65, 66, 67 or 68;
  - (g) for the purposes of proceedings for—
    - (i) an offence under the [Official Secrets Acts 1911](#) (c.28) to 1989 (c.6) alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation;

- (h) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (g);
  - (i) for the purpose of proceedings under section 20 or 54;
  - (j) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (k) in the case of information to which subsection (3) applies, to the Information Commissioner;
  - (l) for the purposes of the Ombudsman's functions under Chapters 3 and 4 of Part 3 of the [Local Government Act 2000 \(c.22\)](#).
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
  - (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (6).
- (4) The enactments are—
  - (a) sections 142 to 154, 160 to 164 or 174 to 176 of, or Schedule 15 to, the [Data Protection Act 2018 \(c.12\)](#) (certain provisions relating to enforcement);
  - (b) section 48 of the [Freedom of Information Act 2000 \(c.36\)](#) (practice recommendations);
  - (c) Part 4 of that Act.
- (5) Subsection (4)(a) has effect as if the matters to which it refers include a matter in respect of which the Information Commissioner could exercise a power conferred by a provision of Part 5 of the [Data Protection Act 1998 \(c.29\)](#), as it has effect by virtue of Schedule 20 to the [Data Protection Act 2018 \(c.12\)](#).
- (6) The offences are those under—
  - (a) a provision of the [Data Protection Act 2018 \(c.12\)](#) other than paragraph 15 of Schedule 15 to that Act (obstruction of execution of warrant etc);
  - (b) section 77 of the [Freedom of Information Act 2000 \(c.36\)](#) (offence of altering etc records with intent to prevent disclosure).
- (7) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

## **70 Disclosure prejudicial to safety of State or contrary to public interest**

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
  - (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions to disclose to any person or for any purpose

any document or information, or class of document or information, specified in the notice.

## **71 Protection from defamation claims**

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
  - (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (b) the publication of a matter by a person in the discharge of functions under—
    - (i) section 24;
    - (ii) section 24 as modified by section 25;
    - (iii) sections 24 and 25 as they apply to special reports (see section 29(6));
  - (c) the publication of a matter in connection with a complaint or an investigation, in communications between—
    - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
    - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (d) the publication of a matter in connection with a complaint or an investigation, in communications between—
    - (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
    - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (e) the publication of a matter in connection with a complaint or an investigation, in communications between a person and an Assembly member;
  - (f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—
    - (i) the person, and
    - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions.
- (2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.
- (3) In this section, reference to matters in connection with an investigation include matters in connection with the Ombudsman's decision whether to investigate or not.