



Scottish Public Services Ombudsman Act 2002

2002 asp 11

Investigations by the Ombudsman

7 Matters which may be investigated: restrictions

- (1) The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.
- (2) Subsection (1) does not apply to the merits of a decision taken by or on behalf of a health service body, a family health service provider or an independent provider to the extent that the decision was taken in consequence of the exercise of clinical judgement.
- (3) The Ombudsman must not investigate action taken by or on behalf of a member of the Scottish Executive unless the action was taken in the exercise of functions conferred on the Scottish Ministers or of functions conferred on the First Minister alone.
- (4) For the purposes of subsection (3), functions conferred on the Scottish Ministers include functions exercised by them on behalf of a Minister of the Crown or government department by virtue of section 93 (agency arrangements) of the Scotland Act 1998 (c. 46).
- (5) The Ombudsman must not investigate action taken—
 - (a) by or on behalf of a listed authority which is a cross-border public authority, or
 - (b) by a member of the administrative staff of any tribunal specified in schedule 3 which is a cross-border public authority,unless the action taken concerned Scotland and did not relate to reserved matters.
- (6) The Ombudsman must not investigate action taken by or on behalf of an independent provider unless the action—
 - (a) was taken in relation to, or
 - (b) consisted of a failure in, or to provide,a service which the independent provider was providing, or which it was the independent provider's function to provide, under arrangements with a health service body or a family health service provider.

Status: This is the original version (as it was originally enacted).

- (7) The Ombudsman must not investigate action taken by or on behalf of a person who is a listed authority by virtue of an Order in Council referred to in subsection (4) of section 3 unless the action was taken in the exercise of the functions of a public nature which are specified in the Order in Council in pursuance of paragraph (b) of that subsection.
- (8) The Ombudsman must not investigate any matter in respect of which the person aggrieved has or had—
- (a) a right of appeal to a Minister of the Crown or the Scottish Ministers,
 - (b) a right of appeal, reference or review to or before any tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative, or
 - (c) a remedy by way of proceedings in any court of law,
- unless the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to the right or remedy.
- (9) Subsection (10) applies where a matter in respect of which a complaint is made under this Act—
- (a) is a matter in respect of which a complaint can be made, or a review can be requested, by the person aggrieved under a procedure operated by any listed authority (whether or not the listed authority in relation to whom the complaint under this Act is made), and
 - (b) is not a matter of the kind mentioned in subsection (8) or paragraph 12 of schedule 4.
- (10) In such a case, the Ombudsman must not investigate the matter unless the Ombudsman is satisfied that—
- (a) the other procedure has been invoked and exhausted, or
 - (b) in the particular circumstances it is not reasonable to expect the procedure to be invoked or, as the case may be, exhausted.