



2016 CHAPTER 4

PART 2

INVESTIGATIONS

Conduct of investigations

Investigation procedure

- 30.**—(1) It is for the Ombudsman—
- (a) to decide whether to begin, continue or discontinue an investigation,
 - (b) to determine if the requirements of sections 5, 6 or 8 have been met.
- (2) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.
- (3) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any allegations contained in the complaint,
 - (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 any allegations relating to that person.
- (4) If the Ombudsman conducts an investigation into a listed authority under section 8, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any evidence of systemic maladministration or systemic injustice, as the case may be,

- (b) give any person who appears to have taken part in or authorised systemic maladministration or systemic injustice, as the case may be, an opportunity to comment on any evidence of that.
- (5) An investigation must be conducted in private.
- (6) Subject to subsections (3) to (5), the procedure for conducting an investigation is to be such as the Ombudsman considers appropriate in the circumstances of the case.
- (7) In particular the Ombudsman may—
 - (a) make such inquiries as are appropriate, and
 - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (8) The Ombudsman may pay to a person aggrieved and to any other person who attends or provides information for the purposes of an investigation—
 - (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by them,
 - (b) such allowances as the Ombudsman may determine by way of compensation for the loss of their time.
- (9) In exercising powers under subsection (8), the Ombudsman must have regard to the desirability of keeping the sums and allowances payable broadly in line with those payable in respect of persons attending, or providing information to, a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative.
- (10) The conduct of an investigation in respect of a listed authority does not affect—
 - (a) the validity of any action taken by the listed authority, or
 - (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

Information, documents, evidence and facilities

31.—(1) For the purposes of an investigation, the Ombudsman may require the listed authority being investigated and any of the persons mentioned in subsection (2) to provide information or produce documents relevant to the investigation.

- (2) Those persons are—
 - (a) any member, officer or member of staff of the listed authority, and
 - (b) any other person, who in the Ombudsman's opinion is able to provide this information or produce these documents.
- (3) For the purposes of an investigation, the Ombudsman has the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and
- (b) the production of documents.

(4) For the purposes of an investigation, the Ombudsman may require a person who is able to provide information or produce a document relevant to the investigation, to provide any facility the Ombudsman may reasonably require.

(5) Subject to section 32(1) and (2), no person is compelled, for the purposes of an investigation, to give any evidence or produce any document which that person could not be compelled to give or to produce in civil proceedings in the High Court.

Privileged and confidential information

32.—(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in the service of the Crown, whether imposed by any statutory provision or any rule of law, applies to the disclosure of information for the purposes of an investigation.

(2) A listed authority is not entitled in relation to any investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) No person is or may be required or authorised by virtue of this Act to provide any information or answer any question relating to proceedings of the Executive Committee of the Assembly or of a sub-committee of that Committee, or to produce so much of any document as relates to such proceedings.

(4) For the purpose of subsection (3) a certificate issued by the secretary of the Executive Committee of the Assembly with the approval of the First Minister and deputy First Minister acting jointly and certifying that any information, question, document or part of a document relates to any proceedings mentioned in that subsection is conclusive.

Obstruction and contempt

33.—(1) If any person without lawful excuse—

- (a) obstructs the Ombudsman, any member of staff of the Ombudsman or any person authorised in accordance with paragraph 14(2) of Schedule 1 in the performance of functions under this Act, or
- (b) is guilty of any act in relation to an investigation under this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Ombudsman may certify the offence to the High Court.

(2) Where an offence is certified under this section, the High Court may inquire into the matter and, after hearing—

(a) any witnesses who may be produced against or on behalf of the person charged with the offence, and

(b) any statement that may be offered in defence,

may deal with the person charged with the offence in any manner in which the court could deal with the person if the person had committed the like offence in relation to the court.

(3) This section does not apply to the taking of any action mentioned in section 30(10).