



2016 CHAPTER 4

**PART 4**

MISCELLANEOUS AND GENERAL

*Reports*

**Reports on investigations**

**43.—**(1) The Ombudsman must send a report of—

- (a) an investigation,
- (b) the reasons for discontinuing an investigation,
- (c) the reasons for not investigating a complaint,

as the case may be, to the persons referred to in subsection (2).

(2) Those persons are—

- (a) a person aggrieved,
- (b) the listed authority investigated, or which it was proposed be investigated,
- (c) any other person alleged to have taken the action to which a complaint relates, and
- (d) any other person that the Ombudsman considers appropriate.

(3) A report of the reasons for not investigating a complaint need only be sent to a person referred to in subsection (2)(b) or (c) if the Ombudsman considers it appropriate to do so.

(4) Where a report is to be sent to a person referred to in subsection (2)(c), the Ombudsman may determine to only send to that person the part of the report which relates to that person, if the Ombudsman considers it appropriate to do so.

### **Publication of reports on investigations in the public interest**

**44.**—(1) This section—

- (a) applies where the Ombudsman proposes to publish a report of a type referred to in section 43(1), but
- (b) does not apply in respect of an investigation conducted under section 8.

(2) The Ombudsman must give notice of this proposal to the persons referred to in section 43(2).

(3) The notice must set out why the Ombudsman believes it would be in the public interest to publish the report.

(4) The Ombudsman may publish the report if, after taking account of the interests of any person aggrieved and any other person considered appropriate, the Ombudsman considers it to be in the public interest to do so.

(5) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

### **Publication of reports on own initiative investigations**

**45.**—(1) The Ombudsman must publish a report of an investigation conducted under section 8.

(2) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

### **Reports to the Assembly**

**46.**—(1) The Ombudsman must lay before the Assembly annually a general report on the exercise of the Ombudsman's functions.

(2) If, after conducting an investigation (other than one under section 8) it appears to the Ombudsman that—

- (a) an injustice has been sustained by a person aggrieved, and
- (b) the injustice has not been, or will not be, remedied or adequately remedied,

the Ombudsman may lay before the Assembly a special report on the investigation.

(3) Where the Ombudsman has conducted an investigation under section 8, the Ombudsman must lay the report on that investigation before the Assembly.

(4) The Ombudsman may lay before the Assembly such other reports on the exercise of the Ombudsman's functions as the Ombudsman thinks fit.

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*Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman Act (Northern Ireland) 2016, PART 4. (See end of Document for details)*

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#### **Modifications etc. (not altering text)**

- C1** S. 46(1) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C2** S. 46(1) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C3** S. 46(4) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C4** S. 46(4) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

#### **Commencement Information**

- II** S. 46 wholly in operation at 1.4.2018; s. 46(1)(2)(4) in operation at 1.4.2016 see s. 64(1); s. 46(3) in operation at 1.4.2018 see s. 64(5)(g)

### **Reports and privileged information**

**47.—**(1) This section applies where the Ombudsman has obtained documents or evidence under section 31(1) by virtue of section 32(2).

- (2) A report made by the Ombudsman under sections 43 to 46—
- (a) may disclose that documents or evidence of this nature were obtained, but
  - (b) must not disclose the content of those documents or that evidence.

#### *Protection from defamation*

### **Privilege for certain publications**

**48.—**(1) For the purposes of the law of defamation, any publication to which this section applies is absolutely privileged.

- (2) This section applies to—
- (a) publication by the Ombudsman of a report under this Act,
  - (b) publication by the Ombudsman of any statement made in communication with any person, in connection with an investigation,
  - (c) publication by a person aggrieved, in the course of communication with the Ombudsman, of any statement made by the person aggrieved in connection with an investigation,

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(d) publication by the Ombudsman of any other matter in the discharge of the Ombudsman's functions under this Act.

(3) In this section "statement" has the meaning given in the Defamation Act 1996.

**Modifications etc. (not altering text)**

- C5** S. 48 applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(1)(6) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C6** S. 48 applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(6) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

*Disclosure*

**Disclosure of information**

**49.—**(1) The information to which this section applies is—

- (a) information obtained by the Ombudsman—
- (i) in deciding whether to begin an investigation,
  - (ii) in the course of an investigation,
  - (iii) in resolving a complaint under section 10,
- (b) information obtained by the Ombudsman which is obtained from a person mentioned in section 51(4),
- (c) information obtained by the Ombudsman which is obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (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 purposes of resolving a complaint under section 10,
- (d) for the purposes of a statement or report made in relation to a complaint or investigation,
- (e) for the purposes of any provision of section 51,
- (f) for the purposes of proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,

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- (g) for the purposes of proceedings for 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 (f) and (g),
  - (i) for the purposes of proceedings under section 33 or sections 54 and 55,
  - (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.
- (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 (5).
- (4) The enactments are—
- [<sup>F1</sup>(a) sections 142 to 154, 160 to 164 and 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018 (certain provisions relating to enforcement),]
  - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations),
  - (c) Part 4 of that Act (enforcement).
- [<sup>F2</sup>(5) The offences are those under—
- (a) any provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (powers of entry and inspection: offences),
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).]
- (6) 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).
- [<sup>F3</sup>(7) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

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#### Textual Amendments

- F1** S. 49(4)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 204(2)** (with ss. 117, 209, 210, Sch. 20 para. 47(1)); S.I. 2018/625, reg. 2(1)(g)
- F2** S. 49(5) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 204(3)** (with ss. 117, 209, 210, Sch. 20 para. 47(2)); S.I. 2018/625, reg. 2(1)(g)

- F3** S. 49(7) inserted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 204(4)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

**Modifications etc. (not altering text)**

- C7** S. 49 applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(1)(7) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))
- C8** S. 49 applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(7)(a) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))
- C9** S. 49 applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(7)(b)(c)(d) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))

**Disclosure contrary to public interest**

**50.—(1)** A person to whom subsection (2) applies may give written 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 that person, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to public safety or otherwise contrary to the public interest.

(2) This subsection applies to—

- (a) the First Minister and deputy First Minister acting jointly,
- (b) a Northern Ireland Minister, and
- (c) the Secretary of State.

(3) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

(4) The Ombudsman and the Secretary of State must enter into, and may from time to time revise, a memorandum of understanding concerning the exercise of their functions in relation to this section.

(5) The Ombudsman must lay before the Assembly a copy of this memorandum and any revisions to it.

*Consultation and co-operation with other ombudsmen*

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

**51.—**(1) This section applies if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsman forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4).

(2) The Ombudsman must consult that person about the matter.

(3) The Ombudsman may co-operate with that person, including co-operation—

- (a) by way of disclosure of information relating to the complaint or investigation,
- (b) in the conduct of the investigation,
- (c) in the form, content and publication of a report.

(4) The persons referred to in subsection (1) are—

- (a) the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967,
- (b) the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002,
- (c) the Commissioner for Children and Young People for Northern Ireland under the Commissioner for Children and Young People (Northern Ireland) Order 2003,
- (d) the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,
- (e) the Commissioner for Older People for Northern Ireland under the Commissioner for Older People Act (Northern Ireland) 2011,
- (f) the Equality Commission for Northern Ireland under the Northern Ireland Act 1998,
- (g) the Northern Ireland Human Rights Commission under the Northern Ireland Act 1998,
- (h) the Ombudsman in the Republic of Ireland, in respect of complaints about or investigations into an implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies,
- (i) a local government auditor within the meaning of Article 4 of the Local Government (Northern Ireland) Order 2005,
- (j) the Comptroller and Auditor General, and

- (k) the Health and Social Care Regulation and Quality Improvement Authority under the Health and Social Care (Reform) Act (Northern Ireland) 2009.

### *Court proceedings*

#### **Application to county court by person aggrieved**

**52.**—(1) This section applies where, following a complaint under section 5 or 6, the Ombudsman reports that—

- (a) the requirements of section 5 or 6 (as the case may be) have been satisfied, and
- (b) the person aggrieved has sustained an injustice.

(2) The person aggrieved may apply to the county court for relief under section 53.

(3) The application must be made in accordance with county court rules and upon notice to the listed authority.

#### **Relief granted by county court**

**53.**—(1) Following an application under section 52, the county court may award damages to be paid by the listed authority concerned to the person aggrieved.

(2) Damages must be of an amount which the court thinks just in all the circumstances to compensate the person for any loss or injury which the person may have suffered on account of—

- (a) expenses reasonably incurred by the person in connection with the injustice, and
- (b) the person's loss of opportunity of acquiring the benefit which the person might reasonably be expected to have had but for the injustice.

(3) In calculating the amount of damages to be awarded by virtue of subsection (2)(b) the court must apply the same rule concerning the duty of a person to mitigate loss as applies in relation to damages recoverable at common law.

(4) Where it appears to the court that justice could only be done to the person by directing the listed authority to take, or refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable to do so, make an order containing such a direction.

(5) Where an order under subsection (4) is duly served on the listed authority, disobedience to that order by that authority or any member or officer of that authority may be treated as contempt of court to which Article 55 of the County Courts (Northern Ireland) Order 1980 applies.

(6) Without prejudice to Articles 61 and 65 of that Order, the listed authority or the person aggrieved may, if dissatisfied with an order of the court under this section, appeal from that order as if it had been made in the exercise of the jurisdiction conferred by Part 3 of that Order and the appeal were brought under Article 60 of that Order.

(7) The powers conferred on the court by this section may be exercised notwithstanding anything to the contrary in any statutory provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

### **Application to High Court by Attorney General**

**54.—**(1) This section applies where the Ombudsman is of the opinion, following an investigation, that—

- (a) there is systemic maladministration in a listed authority, and
- (b) that systemic maladministration is likely to continue unless the High Court grants relief under section 55.

(2) This section also applies where the Ombudsman is of the opinion, following an investigation carried out in accordance with section 15(2)(b), 16(2)(b), or 17(2)(b), that—

- (a) systemic injustice has been sustained as a result of the exercise of professional judgement, and
- (b) that systemic injustice is likely to continue unless the High Court grants relief under section 55.

(3) The Attorney General for Northern Ireland may, at the request of the Ombudsman, apply to the High Court for relief under section 55.

### **Relief granted by High Court**

**55.—**(1) This section applies where the High Court is satisfied as to the matters mentioned in section 54(1) or (2).

(2) The court may grant such mandatory or other injunction or such declaration or other relief as appears to it to be proper in all the circumstances.

(3) Without prejudice to the generality of the foregoing, the court may grant an injunction restraining the listed authority, or any member or officer of the listed authority, from engaging in, or permitting others to engage in—

- (a) the systemic maladministration (in the case of an application in respect of section 54(1)), or
- (b) the professional judgement causing the systemic injustice (in the case of an application in respect of section 54(2)).

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(4) The court may, in determining whether the matters mentioned in section 54(1) or (2) are satisfied, take into account not only the matters investigated by the Ombudsman under section 5, 6 or 8, but also any other matters which appear to the court to be relevant.

#### **Court proceedings and privileged information**

**56** Documents or evidence obtained by the Ombudsman under section 31(1) by virtue of section 32(2) for the purposes of an investigation are not admissible for the purposes of any proceedings under sections 52 to 55.

#### **Supplementary provision in relation to court proceedings**

**57.—(1)** For the purposes of any proceedings under sections 52 to 55—

- (a) a report of the Ombudsman relating to an investigation is to be accepted as evidence of the facts stated within it, unless the contrary is proven, and
- (b) the authenticity of the report may be proved by production of a certificate of its authenticity signed by the Ombudsman.

(2) Nothing in sections 52 to 55 affects the right to bring any proceedings, whether civil or criminal, which may be brought otherwise than under those sections.

**Changes to legislation:**

There are currently no known outstanding effects for the Public Services Ombudsman Act (Northern Ireland) 2016, PART 4.