

# **PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 2: Investigation of Complaints**

##### **Complaints**

##### ***Section 4: Who can complain***

24. **Section 4(1)(a)** maintains the current position that a member of the public (the “person aggrieved”) is only entitled to complain to the Ombudsman if he or she claims to have sustained injustice or hardship as a result of maladministration or service failure (as the case may be). It is not only individuals who can complain to the Ombudsman. So, for example, companies or other corporate bodies could complain to the Ombudsman. Listed authorities acting in their capacity as listed authorities cannot complain to the Ombudsman (section 4(2)).

##### ***Section 5: Requirements: complaints made to the Ombudsman***

25. Complaints to the Ombudsman must, generally, be made in writing (which would include by electronic means) (section 5(1)(a)). However, under section 2(4) the Ombudsman may decide to accept a complaint otherwise than in writing if he/she thinks it is reasonable to do so. For example, if the person aggrieved has a disability which makes it difficult for that person to make his or her complaint in writing, the Ombudsman has discretion to decide whether to accept an oral complaint instead.
26. **Section 5(1)(b)** provides that the time-limit for making a complaint to the Ombudsman is one year from the day that the person aggrieved first has notice of the matters complained about. Again, under section 2(4), the Ombudsman has discretion to consider a complaint made outside that time limit if he/she considers that in the circumstances of the case it is reasonable to do so. The Assembly has a power to make regulations modifying the application of the Act to former family health service providers in Wales, former independent providers in Wales and former social landlords in Wales (section 42). It is anticipated that this power may be used to vary, for example, the time-limit in respect of which complaints about the actions of such persons/bodies must be made to the Ombudsman.
27. Subject to the particular express requirements in the Act it is for the Ombudsman to decide his own procedures and, in particular, section 5(2) provides that it is for the Ombudsman to decide whether the requirements of section 5 have been met in a particular case.

**Section 6: Requirements: complaints referred to the Ombudsman**

28. This section provides that a listed authority can refer a complaint made to it to the Ombudsman but only if it is made by a person who would have been entitled to make that complaint directly to the Ombudsman. The complaint must also have been made to the authority within a year from the day that the person aggrieved first had notice of the matter complained of. Any such referral must be in writing and the referral must occur before the end of one year beginning on the day on which the complaint was made to the listed authority. Under section 2(4) the Ombudsman may, for the purposes of accepting a referred complaint, disregard either (or both) of those time-limits (as described above) if he/she considers that it is reasonable to do so.