



# Public Services Ombudsman (Wales) Act 2005

## 2005 CHAPTER 10

### [<sup>F1</sup>PART 2A

#### INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

#### *[<sup>F1</sup>Investigation procedure and evidence*

##### Textual Amendments

- F1** Pts. 2A, 2B inserted (1.11.2014) by [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), s. 199(2), [Sch. 3 para. 2](#) (with [Sch. 3 para. 3](#)); S.I. 2014/2718, art. 2(b)

### **34H Investigation procedure**

- (1) If the Ombudsman decides under section 34B(8) to conduct an investigation into a complaint, he or she must—
  - (a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, and
  - (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 the allegations relating to that person.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.
- (4) The Ombudsman may, among other things—
  - (a) make any inquiries which he or she thinks appropriate, and

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*Changes to legislation: There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, Cross Heading: Investigation procedure and evidence. (See end of Document for details)*

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- (b) determine whether any person may be represented in the investigation by an authorised person or another person.
- (5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (6) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
  - (a) sums in respect of the expenses properly incurred by them, and
  - (b) allowances to compensate for the loss of their time.
- (7) The Ombudsman may attach conditions to those payments.

### **34I Information, documents, evidence and facilities**

- (1) This section applies for the purposes of an investigation under this Part.
- (2) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) The Ombudsman has the same powers as the High Court in relation to—
  - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
  - (b) the production of documents.
- (4) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not to apply to the disclosure of information for the purposes of the investigation.

### **34J Obstruction and contempt**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he or she may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.

**Changes to legislation:** There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, Cross Heading: Investigation procedure and evidence. (See end of Document for details)

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- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.]

**Changes to legislation:**

There are currently no known outstanding effects for the Public Services Ombudsman (Wales) Act 2005, Cross Heading: Investigation procedure and evidence.