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Thursday, 7<sup>th</sup> January 2010

Dear Sir,

**Re: Alliance Party Response to Consultation on the Creation of a  
Commissioner for Older People.**

I am responding to the consultation on the creation of a Commissioner for Older People (CfOP) on behalf of the Alliance Party of Northern Ireland.

We are supportive of the creation of a Commissioner to deal specifically with issues relating to older people and welcome the opportunity to respond to the various issues raised by the proposal and related public consultation.

Firstly, regarding the issue of 'victim standing', we believe the Department needs to distinguish between victims for the purposes of the Human Rights Act (HRA) and victims for other purposes. It is clear from section 7 of the Northern Ireland Act 1998 that only Westminster can modify the HRA. Accordingly, it has been modified to allow the Northern Ireland Human Rights Commission and the GB's Equality and Human Rights Commission to take HRA cases on behalf of others, though to date the NIHRC has not yet done so.

However, if the Assembly wishes to empower the Commissioner to take non-HRA cases (e.g. discrimination cases) on other people's behalf, it is our understanding that it would have legislative competence to do so. The CfOP would also arguably have the power under the common law to take judicial review proceedings even though it was not itself 'victim' of the impugned decision (as do the Equality Commission for Northern Ireland and NIHRC already).

Given the wide remit of the NIHRC, it could be argued that there may be few issues affecting older people which could not be litigated by the NIHRC using its existing power of 'victim standing'; however, it is possible that for some issues, the NIHRC would not be considered as having a sufficient interest in the matter to qualify it to bring judicial review proceedings. It may also be the case that, given limited budgets, such cases may not be high enough priority in strategic terms to garner support. The proposed CfOP, given the specific nature of its remit, would not face such a

problem. One such example would be a decision by a Health and Social Care Trust to close a home for the elderly on supposedly on economic grounds.

Furthermore, the lack of 'victim standing' for the Northern Ireland Commissioner for Children and Young People (NICCY) has been raised both by the Commissioner and in independent reviews of the office as a gap which should be addressed. It would seem unwise to set up a second Commissioner without addressing this issue fully.

**Alliance would, therefore, be in favour of the proposed CfOP having 'victim standing' in legislation.**

Leading on from this issue, is that of overlapping competences between various public bodies and Commissions/ers. Whilst it is possible that the existing Commissions (Equality Commission and NIHRC) have in theory both the responsibility and the powers to act on behalf of older people in most areas, as noted above, it could be argued that they may not in all such cases be seen to have sufficient interest or indeed priority to justify their intervention. The creation of a specific CfOP would clearly address that gap and allow for a more focused approach to issues affecting older people.

There will, however, inevitably be overlapping competences and responsibilities between the various bodies. We believe that the creation of robust and detailed Memoranda of Understanding between them can address such issues and ensure clarity of role and function and avoid duplication.

**Alliance would support the creation of a separate Commissioner for Older People, and highlights the need for Memoranda of Understanding between the Commissioner and other human rights and equality bodies.**

The third issue on which we wish to make comment is the need for the proposed CfOP to be seen to be independent of government influence. In that regard, we believe that it may be preferable if the office were to be created as an office of the Assembly in the same way as the NI Ombudsman.

This would require that the budget for the office is approved by the Assembly directly and does not come out of any departmental block grant, and the salary of the office-holder would also be determined by the Assembly and not by a government department. In turn, the Commissioner would be answerable directly to the Assembly rather than to a single government department.

Such a structure creates a degree of independence for the CfOP which is required if the public is to have confidence that the sponsoring department, along with the rest of government, are themselves open to robust scrutiny by any Commissioner; indeed, the Joint Committee on Human Rights at Westminster, and the NIHRC itself, have argued that this should be the way the NIHRC is treated at Westminster.

The need for independence is also critical in terms of how any Commissioner should be appointed. The structures must give public confidence that the office-holder is not under any pressure from the appointing government department or that they may be less robust than necessary in their dealings with the department to secure a second term of office. The current proposal does not fully address that concern and should, therefore, be reviewed.

**Alliance would, therefore, wish that the Commissioner for Older People be created as an office of the Assembly and that the proposed appointment process be reconsidered to ensure the maximum independence of any Commissioner.**

I trust that these comments are helpful in the creation of this important post and the associated structures and legislation.

Yours Sincerely,

