

Ombudsman

Northern Ireland



The Northern Ireland Ombudsman

A response to the Consultation Document &
Draft Bill, and Draft Integrated Impact
Assessment on a Commissioner for Older
People in Northern Ireland

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Section A:

Introduction and Background

Role of the Northern Ireland Ombudsman

The Northern Ireland Ombudsman (the Ombudsman) is the popular title for two offices, the Assembly Ombudsman for Northern Ireland and the Commissioner for Complaints for Northern Ireland. The Ombudsman investigates complaints about 'maladministration' arising from the actions or failure of government departments, their agencies, health trusts, and other public bodies such as the Housing Executive and local Councils. The Ombudsman's jurisdiction is wide and his oversight covers bodies whose expenditure, taken together, amounts to two thirds of the public purse.

The Ombudsman's Office was established in 1969 and was the second such office to be created in the United Kingdom. The Ombudsman enjoys a privileged constitutional position, with appointment and removal from Office requiring Royal approval. The Ombudsman's office is not a corporate body and the Ombudsman himself has legal status as a 'corporation sole'. He is also an officer of the Northern Ireland Assembly.

Maladministration is not defined and can cover a wide range of administrative failures such as bias, delay, unfairness or neglect by a public body.

The Ombudsman may be contacted as follows: by email to ombudsman@ni-ombudsman.org.uk; by fax to 9089 7787; or in writing to: The Ombudsman, Progressive House, Wellington Place, BELFAST, BT1 6HN.

Introduction

This paper records the views of the Northern Ireland Ombudsman in response to the consultation document entitled 'A Commissioner for Older People in Northern Ireland'. The Ombudsman welcomes the opportunity to contribute to the consultation process in relation to the proposals for the creation of a Commissioner for Older People in Northern Ireland (the Commissioner). In preparing this response the Ombudsman has considered the consultation process, the consultation document itself, draft Bill and the draft Integrated Impact Assessment. In addition, the Ombudsman has examined the extensive research on this proposal by way of background to the consultation documents and a list of references of the publications considered is attached.

The Ombudsman has followed closely the OFMDFM Committee discussions on the issue of the proposed draft legislation and has considered the views expressed in those debates and the evidence given by interested parties, notably the evidence of the Older Person's Advocate, Dame Joan Harbinson, on 16 September 2009 on the role, remit and powers of the Commissioner. The Ombudsman has examined the legislative frameworks of a range of regulatory bodies with advocacy and complaints handling functions across the United Kingdom. In addition, the recently adopted model of an Ombudsman for Older People for Wales has been examined in detail as well as the strategy of the Welsh Assembly Government informing this model.

The basic function of an *Ombudsman* is to investigate and report on complaints against public authorities¹. Therefore, in commenting on the role, function and remit of a Commissioner, the Ombudsman has focused particularly on the complaints handling and investigatory functions of the proposed models. Given the wide ranging experience developed by the Office over the forty years of its

¹ Extract from Speech by Professor Nikiforos Diamandouras, European Ombudsman, to the 34th Session of the Asser Colloquium on European Law, The Hague, 15 October 2004.

existence, the Ombudsman is well placed to comment on these particular aspects of the proposed models. The Ombudsman has examined closely the emerging model in Wales and notes the history of the development of a similar office in Scotland.

The Ombudsman supports the establishment of a Commissioner for Older People with the aim of providing a strong, independent voice for older persons. However, the Ombudsman is concerned that the proposal is premature and that progress on the Wales model and a fundamental review of the existing oversight and complaints handling landscape in Northern Ireland is needed. Such a review would inform where (if at all) the current system is failing to address the particular needs of older people. Post-review, informed decisions can be taken on how the key functions/roles of the Commissioner should be developed.

The Ombudsman has been provided with the policy proposals and a copy of the draft legislation that would enable the establishment of a Commissioner. Part 4 of the consultation document reprises the consultation questions that have also been detailed throughout the body of the document. However, the document also indicates that consultees are free to comment generally or to refer to any relevant issues which are not covered in the consultation document. It is this latter approach which has been adopted in developing this paper.

References in this paper to clauses (cl) and schedules (sch) are references to the draft Bill unless otherwise stated.

Summary of Ombudsman's Response

- The Ombudsman welcomes the opportunity to participate in the consultation on the establishment of an Older People's Commissioner for Northern Ireland.
- The Ombudsman supports the aim to provide a strong independent voice for older persons which will have their particular interests as its central purpose.
- The Ombudsman welcomes the proposal that the work of the Commissioner be guided by United Nations Principles for Older Persons.
- The Ombudsman endorses the view that older persons in a changing society require a 'champion' to promote and celebrate the diversity of experiences and skills that older persons bring to our society.
- The Ombudsman considers that given the changing demographics of Northern Ireland as highlighted in the Deloitte Report there is a need for a public appointed official to have an advocacy, educational and an advisory role so as to inform the wider public and also inform the public debate on the interests and needs of older people.
- The Ombudsman considers from his experience of investigating complaints of maladministration from older persons that there would be value in an older person's advocacy role to assist in bringing and making complaints to the whole range of existing regulators who deal with, but not exclusively, older persons.
- However, the Ombudsman strongly believes that a model that combines advocacy, championing, and education with investigatory powers is

inherently flawed. It is not equitable to combine the role of an advocate with a parallel and conflicting role to independently investigate specific cases.

- The Ombudsman considers that any publicly funded complaint handling body must meet the test of the British and Irish Ombudsman's Association (BIOA) Principles of Good Governance² and independence and impartiality are essential to this test. The appointment of the Commissioner and its linkage to an executive department would also clearly compromise and undermine the essential independence required for an investigatory role.
- The Ombudsman is concerned that adding a further element of regulation is confusing for individuals as well as contributing to the growing concern of public bodies who are already subjected to extensive scrutiny by a wide range of oversight and regulatory bodies across what is in relative terms a small jurisdiction.
- The Ombudsman is concerned about the cost of such regulation and of establishing and maintaining a Commissioner model which includes the proposed wide range of functions, particularly against a background of increasing constraint on public expenditure.
- The need for and future role of the Commissioner as envisaged in the consultation document must be considered in the broader context of a changing administrative justice and regulatory landscape. A fundamental review of that landscape in Northern Ireland is needed before creating another oversight body.

² BIOA – British and Irish Ombudsman's Association

- The Welsh model has much to commend it. The proposal for a Commissioner must be considered as part of a more comprehensive strategy for dealing with older persons interests.

Section B: Consultation Response

Additional Consultation Questions

- a. The consultation process being undertaken by OFMDFM covers both the policy proposals and the draft legislation to facilitate the creation of a post of Commissioner for Older People. At the outset, it is important to emphasise that the comment in this paper is premised on clear support for the creation of a strong independent voice in the form of a Commissioner for Older People. Where this proposal becomes more difficult is in the wide range of roles the consultation paper proposes for a future Commissioner. This section of the response examines the consultation document by focusing comment on the key areas where this Office has acknowledged expertise, in the area of providing recourse and remedy to aggrieved persons through effective complaint handling. But before moving to those central comments, it may be helpful to raise a number of initial points around the consultation document.

- b. The consultation document does set out in detail the background and context as well as the research that helped to inform the development of the consultation paper and draft bill. The purpose of the consultation process therefore is to gather a wide range of views on the proposed role/remit, functions and powers of an Office of a Commissioner for Older People. It is clear that the consultation responses will be considered with a view to informing decisions on any future Commissioner model. In the absence of an agreed model for such an office, it is premature to publish a draft bill based on a particular model derived from as yet untested conclusions. Further, the consultation proposals rely heavily on the Deloitte Report which was informed by a limited 'direct' consultation with 'older' persons and members of that sector. There is a danger of 'sectoral bias' by virtue of the

manner in which the direct consultation has been conducted with a series of roadshows for older people.

c. To address this weakness, it would be important to expand the consultation to include further questions that will inform the consultation process, and the ultimate decisions on the nature of the Commissioner model. These would include:

- **What is the clear purpose of the Commissioner?** – from the consultation document, in order to cover a wide range of different functions, a case is being made for a Commissioner who has a number of potentially conflicting roles. Examples include: simultaneously being an advocate for older people and complaint handler investigating complaints from older people; shaping and influencing government policy, whilst evaluating the performance and outcomes of the same policies. The Commissioner's sponsor is OFMDFM, which has the potential to create the perception of a Commissioner working with the department, yet also evaluating that same department's performance in delivering services across all Departments to support older people.
- **How clearly defined is the nature of the Commissioner's role, as currently proposed?** – the operational outworkings of such a role will conflict with the responsibilities of other oversight bodies, leading not only to potential confusion amongst public servants providing services to older persons, but also in the minds of these older citizens. Examples of such potential conflict could arise with bodies such as: the Equality Commission; the Information Commission; the Human Rights Commission; the Consumer Council; the Regulatory and Quality Improvement Authority; the Ombudsman and PSNI (as raised at the OFMDFM Committee discussions). Evidence given to the OFMDFM Committee also indicated an intention to provide the Commissioner with direct intervention powers across all sectors.

- **If the rights of older people are currently not being met, then which oversight bodies already in existence are failing to fulfil their statutory obligations to meet the interests of this important section of our population?** – if the answer to this question is that other oversight bodies are not meeting their objectives in this regard, then the logical first step is to identify the failures and address them, not necessarily to appoint an overarching Commissioner, which has the potential to add to the confusion for individual citizens, and increasingly for the bodies being scrutinised. A further complication is, in the event a number of bodies become involved in a case or cases, is deciding in such a circumstance which authority has primacy. If it is decided to appoint a Commissioner whose primary role is advocacy then such an Office can and should be to test whether those Offices set up to provide protection and support to older people are meeting that responsibility and to identify how, if there are failings, they can be addressed. The focus of the Commissioner's role should be older persons as a group or sector. Investigations of individual cases where there are already agencies to address issues such as equality, human rights and administrative failure must be dealt with within the existing regulatory framework. The Commissioner can refer an older person to existing bodies while continuing to support the complainant.
- **Before introducing another oversight office to Northern Ireland's already considerable public accountability framework, what will the explicit benefits be against the commitment of further public expenditure, at a time of very scarce public resources?** This question needs to be debated more fully given the government commitment not to create more unnecessary layers of public administration.

- d. In delivering effective outcomes for all public policy initiatives, it is important that all parts of a public administration system should be acting in concert with one another. If due consideration is not given to whether the different elements of a whole system are operating in a complementary manner, there is the potential for systemic dysfunction. A fundamental weakness of the present consultation is its lack of overall system awareness: there is considerable focus on roles for the Commissioner, without any detailed analysis of how it will interact with, and complement, the highly developed oversight system that is already in place. Memoranda of Understanding, while helpful, are no substitute for effective structures and clarity of roles, responsibilities and accountability from the outset.

- e. There is a risk with the current proposals of viewing our diverse population as a series of lobby and interest groups. This presents a dual risk of creating a sense of exclusion and discrimination on the part of any interest groups who do not have the benefit of their own statutory advocacy office, in parallel to the creation of a series of silos where the primacy of a group becomes more important than the interests of the community as a whole.

Independence

At the heart of the BIOA principles of good governance for Ombudsman's or any complaint handling scheme is the principle of independence³. This is essential to ensuring the office holder as an investigator is free from interference.

- a. It is proposed in the consultation document that the Commissioner for Older People take on the role as the 'strong, independent voice' of older people within the arrangements for delivering the Executive's Programme for Government. This role is to be welcomed but when combined with the wider functions proposed in the consultation document, will create conflict. Having an interventionist role in policy making and the setting of priorities for government department, agencies and public bodies as well as the private sector is incompatible with an oversight/advocacy role.
- b. Before examining the different aspects of the Commissioner's proposed powers, it is important to establish the basis of regulatory authority in wider society. As Trotter (2008)⁴ remarks, the basis for the regulation of many sectors of the economy and society has its origins in rules laid down by government that affects the activities of other agents in those settings: regulation takes many forms and the forms and types of response that regulatory authorities employ also differ. To take the Ombudsman as a comparator, given that this Office derives its authority from the legislature, the Ombudsman is independent of the Executive, in the local context, the Northern Ireland Executive. This is reflected in the Ombudsman's appointment through Royal Warrant, his tenure which is at the discretion of

³ BIOA Guide to Principles of Good Governance Pg 4.

⁴ Trotter, S (2008) "*Regulation*" in Kuper, A and Kuper, J (Editors) (2008) *The Social Science Encyclopedia*, London: Routledge.

the Queen, funding arrangements and overall accountability. The Ombudsman acts as an officer of the Assembly and is independent of the bodies that he investigates. The Ombudsman operates alongside the Comptroller and Auditor General in support of the Assembly to demonstrate and achieve functional and political independence from Government Departments, their agencies and public bodies who are in the Ombudsman's jurisdiction. However, as proposed, the Commissioner would not have the requisite degree of independence from OFMDFM to be viewed as independent of the agency they serve and may investigate.

- c. It is noteworthy that the Ombudsman, however, has a general jurisdiction across and over government departments and public bodies that is broadly defined and not restricted to one agency or one particular type of grievance/complaint. Ombudsmen with a broadly defined, general jurisdiction are not as vulnerable to pressure or influence as those with jurisdiction over only one agency or one group of particular complaints, who can be open to 'service/sector capture' or because of constant interaction vulnerable to a criticism of over-familiarity with the sector covered by their jurisdiction. Therefore, given the lack of independence, there will be a potential for significant compromise and challenge to the Commissioner by those who do not believe they will receive a fair and balanced investigation from an office holder whose primary purpose is to be a strong voice for older people.
- d. The proposal is for a Commissioner to be appointed by the First and deputy First Minister acting jointly (cl 1(2)). He or she will in effect be what is known as an 'Executive Regulator'. This link to the Executive compromises the *independence* of the office holder. Schedule 1 of the draft Bill sets out in detail the status, general powers and terms of office of the Commissioner. The proposed Commissioner will be a 'corporation sole'. This is a privileged position similar to that enjoyed currently by the Ombudsman and Comptroller and Auditor General. This status is afforded only to officers

appointed to the legislature to underpin their independence. In this instance, there is a contradiction between the proposed status of the Commissioner and the fact he/she will be appointed and funded by OFMDFM who in turn have the power to remove him/her from office. The links with an Executive are strong.

- e. The proposed Commissioner for Older People as an 'executive regulator' cannot meet the essential BIOA criteria for this form of complaint handling scheme of 'independence'. Therefore there are clear difficulties in the Commissioner having an investigatory or complaint handling function because of the absence of this essential independence, which would clearly arise if the proposals as currently described in the consultation paper are implemented without change.
- f. It is proposed that the appointment of the Commissioner will be made by the First and deputy First Minister's Office after taking account of the views of persons aged 60 or over in accordance with arrangements by the Office (cl 1(3)). This arrangement undermines the independence of the office holder. The appointment process will include the views of persons over 60. This clause does not reflect the fact that the Commissioner may at his or her discretion consider matters concerning persons aged 50 or over. This poses a further question about the proposed appointment process as to why it is subject only to the views of persons aged 60 or over.
- g. Cl 2(1) sets out the principal aim of the Commissioner in exercising his functions under the Act which is to 'safeguard and promote the interests of older people'. This fundamental aim is to be welcomed and the creation of a Commissioner for such purposes is a positive development. The need for an office with advocacy, promotional and education roles has been as described in the Deloitte Review. No corresponding need for a Commissioner with a complaints handling role has been set out in the Review. However, the draft legislation is, as already indicated, fundamentally inconsistent, because such an objective is at odds with the

extent of the proposed investigatory function. This investigation of individual complaint calls for investigation of the performance of 'relevant authorities' in their interactions with older people. There is an inconsistent approach in proposing a Commissioner whose object is to promote the interests of older persons while also fulfilling the role of 'executive regulator' with responsibility to investigate complaints from them.

- h. The consultation document requires that the Commissioner will refer to the United Nations Principles for Older People when determining what the interests of older people are and when deciding how to exercise his/her functions. Again, this emphasises that the interests of older people must have precedence over all others. This general approach is welcomed but in practice, for instance in the healthcare sector, where need is infinite and resources are finite, does this mean that in investigating a complaint about health, the Commissioner is drawn to find in favour of the older person over the younger person where there is an inevitable competition for finite resources? This issue does not appear to have been considered fully in the Draft Sustainable Development Assessment nor in the Consultation Document.

Regulatory Landscape

Clauses 3 – 19 of the Bill provide for an extensive list of proposed duties and powers for a Commissioner for Older People. These duties include promotional, advisory, educational, legal and investigatory functions and powers which are to be exercised in the interests of older people, both generally and individually. The detail of these duties can be found in the draft Bill and need not be repeated here. However, they raise significant issues regarding the workings of the existing mechanisms of oversight of Northern Ireland public sector bodies. These are conflicting. For instance:

- Under Clause 3(1) the Commissioner must promote an awareness of matters relating to the interests of older people and the need to safeguard those interests;
- Clause 7(1) enables the Commissioner to provide assistance [including financial] to an older person in making a complaint to a relevant authority.⁵;
- Clause 7(2) provides for an advocacy role in making such complaints; and
- Clause 8 provides the Commissioner with power to investigate complaints about 'relevant authorities'.

The latter are the same bodies falling within the Ombudsman's jurisdiction but extend to the Ombudsman himself and other non-devolved regulators (Parliamentary and Health Service Ombudsman and the Information Commissioner). The Ombudsman considers conflicting mandates cannot be undertaken 'properly' and 'effectively' by the same officer/Office. How is such an Office to prioritise such functions in an era of scarce resources?

The wide ranging functions and duties of the Commissioner will operate in an already crowded regulatory and judicial landscape in a jurisdiction with a population of only 1.7 million. For instance, the Equality Commission has a duty to deal with complaints arising from a failure by public bodies to implement the Section 75 duty in respect of nine protected groups, one of which is 'older people'. This overlap and duplication is confusing for the individual and will contribute to the increasing level of 'accountability fatigue' that is already being complained of by public bodies. In turn, public bodies subject to scrutiny by so many regulators and oversight bodies are already asking who has primacy or must all be given equal priority? One further question arises – is it reasonable to give priority to all such functions in the present economic climate?

⁵ A relevant authority is a body listed in the Ombudsman's legislation or in Schedule 3 of their Bill and includes the Ombudsman.

The Ombudsman's role in handling complaints of maladministration based on the model of an office of last resort has not been fully considered in the proposed model. The Ombudsman is subject only to the scrutiny of the Courts in the exercise of his functions. The proposed inclusion of his office as a 'relevant authority' in the draft Bill is inconsistent with the principle of 'last resort'. The Ombudsman is the final arbiter for resolving disputes between complainants and public bodies. His role is unique within the architecture of accountability in Northern Ireland. A review of the landscape of administrative justice in Northern Ireland is currently being considered. It may be appropriate to await developments in the wider regulatory and judicial field before giving further consideration to a Commissioner for Older People with such wide ranging functions and powers.

Enforcement Powers and Recommendations

The Ombudsman has already contributed to the consultation process when asked for his experience of the use of recommendations. The Ombudsman considers that formal enforcement powers are not necessary to achieve a satisfactory outcome in relation to a complaint. The power to make recommendations is highly effective in any complaint handling model as it allows the body complained of to take responsibility for correcting any failures.

Accountability Fatigue

- a. One of the striking aspects of the architecture of accountability in Northern Ireland is that it has been significantly developed in recent years. These developments recognise that as society changes so too must the institutions which exist to serve it – responding to changing demographics, changing levels of expectation among users of both private and public sectors. In Northern Ireland, as elsewhere, there is now a formidable architecture of regulation and oversight across the whole range of public and private services.
- b. Consequently, complexity of accountability arrangements presents its own potential risks: the challenge of affordability and the risk of ‘accountability fatigue’. The latter has the potential to have a debilitating effect on public services. The oversight arrangements for Northern Ireland public sector bodies already occupy a very crowded landscape for a modest jurisdiction. A public body can find itself dealing with any combination of the already detailed regulatory and oversight bodies at the one time.
- c. Each oversight body has to recognise that its requirements for information or the demands of investigations have to be accommodated by an individual public body alongside the wide range of service delivery priorities and performance targets it is required to achieve. There is unquestionably a real problem of ‘accountability fatigue’ among staff who have to lead service delivery at a time of reducing resources, increasing public expectations, while at the same time responding to the requirements of regulatory and oversight bodies. This situation will be exacerbated by a lack of clarity about the roles and functions of oversight bodies that as a result could also be perceived to be competing with each other, both for scarce resources and primacy across an increasingly complex oversight landscape.

- d. Importantly, 'accountability fatigue' can adversely affect two distinct groups. The first, as already indicated, are those public services that are subject to oversight and regulation - low morale can develop in that they come to believe no matter how hard they try, they are always going to be the subject of criticism from some quarter, that there will always be an oversight body describing the glass as 'half empty'. This type of experience also has the potential to create a deep cynicism among professionals and administrators; in the longer term, this may well be counter to the public interest. Organisations have a finite supply of energy – physical, intellectual and emotional – and there is a risk that significant energy being invested in providing a response to individual regulators and oversight bodies, as well as giving account, leaves limited energy for the core purpose of delivering, and providing, high quality public services. An awareness of the potential for 'accountability fatigue' is something that government must be alert to. There is a need to take seriously those who provide public services and who voice concerns about the danger of 'excessive accountability', which they perceive as nothing other than unproductive bureaucracy.
- e. The second group for whom 'accountability fatigue' has become an issue is the general public itself. A general public who often admit to being confused and frustrated at the myriad organisations and offices that have been established to investigate their concerns – so complex in fact that they struggle to identify to which, if any, they should bring those concerns. A general public who increasingly are posing the question – how affordable is this system of oversight and advocacy at a time when public expenditure is contracting, especially when it now seems all public services will be reduced to meet the challenge of restoring the public finances?
- f. A further question that the consultation paper fails to address is that the creation of an Older Persons Commissioner alongside the Children and Young People's Commissioner does mean that there are a number of

groups who may also argue that their particular needs and interests are being ignored. The Integrated Impact Assessment does not consider other sectors; is there a need for a Commissioner for Disabilities in the age group 18-50 (one assumes the Children's Commissioner will advocate for young people with disabilities and the Older Persons Commissioner will advocate/investigate for people with disabilities that are over 50)? A case could then be made for a Commissioner for people with mental health illness who it is asserted also require specific and specialised advocacy. All of this demonstrates how a system can fracture and separate with each new initiative without a careful and regular scoping of the landscape of advocacy and a strategic review, that regularly projects five and ten years forward to examine how systems should evolve and whether they continue to be fit for purpose.

Alternative Approaches

Finally, there needs to be careful consideration of other models. The approach adopted in the Republic of Ireland is noted, where a Minister for Older People has been appointed, extending the remit of one of the current ministerial portfolios. Such a solution would mean that issues of concern to older people could be raised by the Older Person's Advocate acting as a ministerial adviser, with the Minister providing political leadership at minimal additional, incremental cost, as well as having direct access into the Executive itself. In other devolved jurisdictions, different approaches to considering this issue have been adopted. In Scotland a Bill to establish an older person's office did not proceed in April 2007; it is noteworthy that the 2004 paper by Alex Neill proposing an Older Person's Commissioner for Scotland did not include complaint handling powers.⁶

⁶ Commissioner for Older People (Scotland) Bill para 2.3

In the Republic of Ireland, in response to the economic situation, the overall landscape of oversight is to be reviewed.

An advisory group was set up in 2002 to consider the needs of older people in Wales. The group prepared a report 'When I'm 64.....and more' which provided a comprehensive, challenging and dynamic framework for progress. The work of this group informed the development by the Welsh Assembly of a 10 year strategy for Older People in Wales published in 2003.

The Strategy for Older People in Wales was launched to support the public and independent sectors to develop policies and plans that would address the needs of an ageing population. It recognised the importance of mainstreaming older people's issues through a 'joined up' approach to implementation.

Jane Hutt AM, Minister for Health and Social Services Welsh Assembly Government, stated in her introduction to the document,

All of this work must of course build on the achievements and good practice already in place and not "re-invent" the wheel where it is already working well enough.

The Minister also established an Older People's National Partnership Forum to drive forward the Welsh Strategy.

As part of the important implementation architecture developed by the Welsh Assembly, a Minister was appointed with specific responsibility for older people leading the Strategy in the Welsh Assembly. Their role is to ensure that Cabinet decisions are implemented. The Welsh Cabinet also approved an agenda for change which encompasses the mainstreaming of the Strategy for Older People - its aims and objectives and underlying values must be taken into account by all Assembly Government and local authority departments. The appointment of a Commissioner for Older People in Wales was only made by the Assembly in 2008 some 5 years after the Strategy for older people had been introduced. In

this regard Wales has led the way in being the first administration in Europe to appoint a Commissioner exclusively for Older Persons.

Section C: Conclusions

Conclusion and Moving Forward

From the analysis in this paper, the Ombudsman considers that further consideration is needed before reaching final conclusions on the role and functions of a Commissioner for Older People. If this is not undertaken, there is a real risk of failing to meet the stated purpose for the Commissioner - 'the creation of a strong independent voice for older people'. A champion for older persons is needed but providing for a combined advocate, educator, investigator and regulator will create conflicting roles. Finally, without robust testing of the purpose, structure and the nature of the role of the Commissioner, there is a possibility of elevating the rights of older people above the rights of other citizens, leading to far reaching implications for equality and equity over time for all who live in Northern Ireland.

The Ombudsman considers that the experience of the Wales Model requires further consideration before creating a similar model in Northern Ireland. It is early days for the Welsh Commissioner. The advocacy/promotional and complaints/investigations model in Wales followed an extensive consultation process and strategy. This informed the decision to appoint a Minister and subsequently a Commissioner in April 2008. The Welsh Assembly has yet to evaluate this model.

In reviewing the proposal for the creation of a Commissioner for Northern Ireland I note the experience of the Welsh Assembly provides an important insight into the systematic approach to planning ahead for an ageing population and the role of a Commissioner for Older People in these developments. It also provides a roadmap to the development of the implementation architecture to support such a strategy. This approach will also create the opportunity to undertake the review of the regulatory and oversight architecture which is necessary to inform where

adjustment and change is needed. This would enable the design of the Commissioner for Older People to be integrated effectively into wider oversight architecture.

It is essential that in taking this important proposal forward that the role, functions, responsibilities and accountability of the proposed Commissioner is thought through, that clarity is achieved and the impact of the post on behalf of older people is optimised.

REFERENCES

- Age Sector Platform., 2009. *A Commissioner for Older People in Northern Ireland: A Report and Recommendations from the Age Sector*. pp.1-43
- British and Ombudsman Association., 2009. *Guide to principles of good governance*. British and Irish Ombudsman Association
- Cabinet Office., 2009. *Ombudsman Schemes – Guidance for Departments*. pp.1-10. London: HMSO
- Cabinet Office., 1997. *The Ombudsman in Your Files*. pp.1-27 London: HMSO
- *Commissioner for Older People (Wales) Act 2006*. London: HMSO
- Deloitte MCS Limited., 2008. *Examining the Case for a Commissioner for Older People*. Office of First Minister and Deputy First Minister, pp.1-56
- Fitzpatrick B., 2008. *The Possible Remit and Powers of the Independent Commissioner for Older People in Northern Ireland 2008*. Research conducted by Barry Fitzpatrick Consulting for Age Concern and Help the Aged NI, pp-1-55
- Kirkham, R., Thompson, B., and Buck, T., 2009. *Putting the Ombudsman into Constitutional Context*. Parliamentary Affairs 2009 62(4):600-617; doi:10.1093/pa/gsp024, pp.1-18
- Neil, A., Member of the Scottish Parliament., 2004. *Commissioner for Older People (Scotland) Bill*. Consultation Paper,
- Northern Ireland Assembly, Committee for the Office of the First Minister and Deputy First Minister., 2009. *Older People's Commission*. Official Report (Hansard), pp1-10
- Northern Ireland Assembly., 2009. *Examining the Case for a Commissioner for Older People in Northern Ireland*. Briefing Note: 72/09, pp-1-12
- Older People's Commission for Wales., 2009. *Interim Strategic Plan 2009-2010*. pp. 1-11
- Scottish Public Services Ombudsman., 2007. *Better Complaint Handling – A Response to: The Report of the Independent Review of regulation, audit,*

inspection and complaints handling of public services in Scotland (the 'Crerar Report'), published September 2007.

- *The Commissioner for Children and Young People (Northern Ireland) Order 2003. London: HMSO*
- *The Commissioner for Complaints (Northern Ireland) Order 1996 as amended by The Commissioner for Complaints (Northern Ireland) Order 1997. London: HMSO*
- *The Commissioner for Older People in Wales Regulations 2007. London: HMSO*
- *The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003. London: HMSO*
- *The Northern Ireland Act 1998. London: HMSO*
- *The Ombudsman (Northern Ireland) Order 1996. London: HMSO*