

Consultation to establish an Office of a Commissioner for Older People

Response of the Northern Ireland Branch of the National Federation of Royal Mail and BT Pensioners to the Consultation Document.

1. The National Federation of Royal Mail and BT Pensioners is the largest occupational pensioner organisation in the UK with over 100k members. The NI Branch, who are making this submission, look after the interests of its 1400 members in Northern Ireland. The NI Branch has an Executive Committee of 14 and, the Regional Organiser, who is directly responsible for lobbying and campaigning on behalf of the NI Membership, reports to the Executive Committee. Plenary meetings of the branch are held quarterly and EC meet four times annually and, on an ad hoc basis, as issues/decisions demand. The Federation is a member of Age Sector Platform.
2. I outline the Northern Ireland Branch response to the consultation document:
 - 2.1 The Federation is strongly of the view, and agrees with the Deloitte conclusion, that there should be a Commissioner for Older People in Northern Ireland. The Commissioner must
 - have the power to act independent of Government and public authorities;
 - have the power to conduct formal investigations, issue directives and carry out reviews to ensure that there has been compliance with recommendations;
 - have powers to issue a sanction on organisations to secure compliance by providers of goods and services;
 - have the capacity to undertake casework and take case/s to determine a point in law for the betterment of all older people;
 - have the right to mediate on issue of contention between service providers and older people;
 - have “victim status”;
 - have the power to commission and publish research on issues affecting older people to stimulate debate on these issues and develop solutions;
 - seek the opinions of older people, take their views into account and, where appropriate, communicate the views to the legislators and/or other public bodies; and
 - have the power to initiate arbitration in appropriate cases.
 - 2.2 UN Principals : The Federation believes that the Commissioner should take account of the UN Principles for Older People in his/her actions. Additionally the Commissioner should have the necessary power to direct that ‘relevant authorities’ take account of the UN Principles.
 - 2.3 Interest’s of Older people:
 - to have the resources to live in comfort free from poverty in all its forms;
 - to be able to live free from crime and fear of crime;
 - to have the support not to feel isolated from the community;
 - to be seen as valued members of society and recognised for their contribution to the community;

- to be treated equitably in the provision health care, social services and goods and services;
- to retain and improve the benefits and concessions for older people that are already in place;
- to have the right to be have their voice heard and to have the right of proportionate representation on appointed public bodies;
- not to be burdened with regressive local taxation

2.4 Principal Aim: The legislation should include a Principal Aim and suggest it should be “*to promote the interests of older people, safeguard their rights, enhance equality in the provision of goods and services, challenge age discrimination against older people and ensure that the voice of older people is heard and considered by decision makers in Government*”

2.5 Age Range: The Federation believes that 60+ should be the focus for the Commissioner. We would not be averse to lowering the reference to 50+ but would be opposed to an increase above 60+.

2.6 Duties: The Federation agree the list of duties at 8.5;

2.7 Other duties for the Commissioner: the Commissioner should have a duty to consult regularly with the Age Sector.

2.8 Powers: the Federation considers that the powers of the Commissioner require to be strengthened to ensure that recommendations and guidance arising from a formal investigation **must** be adhered to.

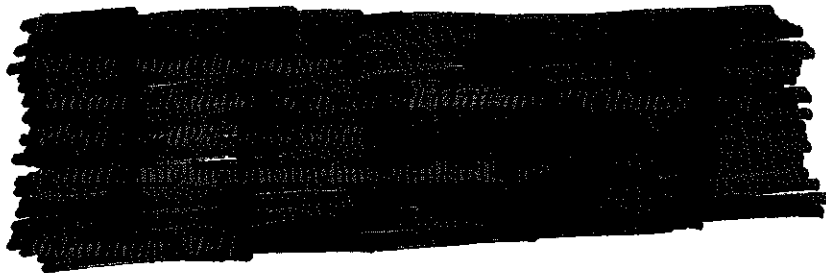
2.9 Implementation of Commissioner’s Recommendations: Whilst ‘naming and shaming’ or referring the formal report to the Assembly is a substantial persuasive option, the Federation does feel that there must a punitive sanction available to the Commissioner if the ‘persuasive option’ is not successful in having the recommendation or guidance introduced.

2.10 Commissioner not acting where an existing organisation has the power to act: Generally the Federation accepts this with one exception. Where an existing organisation decides not to act because of ‘budgetary’ constraints or because of a decision that the anticipated cost of an action does not justify them proceeding, the Commissioner should have the power to proceed if the principle at issue has a wider impact on older people’s rights. (The example I would cite to support our position was the decision of the Equality Commission, who, at a late stage, reversed their original decision to process to litigation an equality case for Free Travel for women aged 60 on the grounds of cost).

2.11 Organisations (Annex 6) The Federation agrees the list at annex 6 but suggest adding Translink and Community Transport Companies;

2.12 Commissioner’s power/relevant authorities: The Federation considers that the most appropriate is Option 3;

- 2.13 Victim Standing: Whilst we note the comment at 12.4, the Federation is of the view that the Commissioner should have 'Victim Standing';
- 2.14 Issues Commissioner/Speak about: The Federation is of the view that the Commissioner should have the power to speak about any issues affecting older people. In relation to 'Westminster' issues, the Commissioner should be able to speak about their impact on older people in Northern Ireland;
- 2.15 Recruitment Process: The Federation is of the view that representatives of the Age Sector, after being given the necessary and appropriate training, should be involved in the recruitment/selection process for the Commissioner;
- 2.16 Appointment Term: The Federation agrees with proposed term in paragraph 14.15;



Initial Views on “Residual Clauses” and Sanctions Papers

General

NICCY and OPC are an amalgam of the Ombud and advocacy models.

On balance, particularly given the time pressure, safer to retain rather than unpick. Could review in time.

Need to factor in likely need for further consultation. It is important to bear in mind that if there is a *fundamental difference* between the current proposals consulted on and those which are then adopted, there would be a need to re-consult. There was held to be a fundamental difference in the *Christian Institute* case because it was stated in the consultation document that Ministers were:

“...minded to accept that it is not appropriate to legislate for harassment within these Regulations. We feel that the future Single Equality Bill will provide a more appropriate vehicle to consider harassment in terms of goods, facilities and services and allow more time to deal with the complex arguments that have been put forward. We would, however, welcome respondents’ views on whether they feel harassment should be included now and their reasons for doing so.”

Issues of divergence from NICCY with some of the options discussed would need to be fully considered and the risk of challenge measured, if NICCY was not also changed.

Seek OLC views.

Sanctions Paper

Could distinguish the work of the Commissioner as a single “group”-focussed body from the “issue”- focussed bodies with perhaps stronger sanctions eg HSE, ECNI etc. The former may have more overlap with the latter and the latter may have more specific rules, requirements and standards, with lend themselves better to more particular sanctions, eg fines.

Para 1:

Suggest that “enforcement” and “sanctions” should not be used interchangeably as they are in this paragraph.

Enforcement: powers at the disposal of the Cmmr that could be used to support the implementation other duties and powers

Sanctions: penalties that the Cmmr could apply to ensure compliance with its recommendations, thereby completing enforcement

Would page 9 detail be better on page 4?

Para 10:

Serious omissions of the specific formal powers set out in clause 16 and 17: powers equivalent to High Court to call for persons and papers; powers of entry, interviewing and inspection; and clause 18: obstruction and contempt. Also, should refer to the open register in clause 15 and the similarity to the Welsh provisions on recommendation and report (Regulation 15 of the 2007 Regulations).

Para 13

Can the Ombudsman approach really be described as “informal”?

Para 20

Are the powers of RQIA not stronger than as described? (as per page 16 of the “residual clauses” paper)

Para 22, Option 1 (see also para 10 above):

Needs to capture the powers in clauses 16, 17 and 18.

It may be possible that a recommendation could include a request for the relevant authority to reimburse and older person whose *interests had been infringed* but not for *maladministration* (that is the role of the Ombudsman). If this is possible, however, it is not enforceable. Neither is a recommendation by the Ombudsman, though the complainant can seek to have the Ombudsman’s recommendation for compensation enforced in Court.

Option 2:

It is likely that a proposal to place such a duty on relevant authorities would require further consultation and also consideration of the position in relation to NICCY.

Option 3:

It is likely that a proposal to place such a duty on relevant authorities would require further consultation and also consideration of the position in relation to NICCY. Further, this would be moving the Commissioner in the direction of a “quasi-judicial” role. There is provision in FETO for ECNI to impose fines non-compliance with the requirements in relation to monitoring returns but there are clear and specific duties on those potentially liable to fines. This is not likely to be the case in relation to OPC; also, this is likely to increase overlap with other regulatory bodies.

Option 5:

It is likely that a proposal to place such a duty on relevant authorities would require further consultation and also consideration of the position in relation to NICCY. This would be a new and powerful provision.

“Residual Clauses” Paper

Accepted logic of some “residual clauses”:

Good reasons for the clauses, particularly when the body is established to serve a category of the population rather than to tackle a subject area or issue.

***Ironically, the residual clauses force the Commissioner to focus on what actually are the interests of older people and thereby to align its role to the UNPoPs and its principal aim in upholding them.**

ie The more the matter concerns the *interests* of older people the higher the likelihood that there will be no other body taking or likely to take action. Also, where there is overlap or uncertainty, the older person will still have a choice of the most appropriate body, backed up the assessment of those bodies, underpinned by MoUs.

Page 15:

It is correct to state that, as drafted, clauses 5(4) and 6(3) of the draft Bill provides that the Commissioner will not be able to review the operation of inspection arrangements unless satisfied that there is no other body or person with statutory power to review those arrangements. It might be helpful to set out the definition of “inspection arrangements” as per clause 5 (1) (c), to convey a sense of what these actually involve.

Page 16:

Consistency and clarity better in this area; the relevant inspection bodies are likely to be working to specific standards

Page 19:

A similar outcome could be achieved by means but would not have the force of law.

Page 20, 23-24:

Think you deal with this well in the yellow-highlighted paragraph.

8(3)(b) better examples may be CfCO 1996, 9(5)(a) or FETO art 79 (national security); there may be very good reasons why OPC should not then be able to step in – check too with Sharon

Page 27:

Similar to point on page 19 above.

Page 31:

OLC

In addition:-

Page 1, para 2:

“minimal or” no duplication

“minimal or no conflict between the Commissioner’s roles in relation to legal proceedings and investigatory action (as per last sub-para of para 3, page 3).

Page para 5.2:

pressure from and/or legal action by NICCY to review and amend their legislation in a similar way

Page 6 and 46, “Wales, regulation 9(b)”:

Regulation 9(b) of *The Commissioner for Older People in Wales in Regulations 2007* (SI 2007/398) deals with the circumstances in which the Commissioner may make an examination of an individual case. Regulation 9(b) states only that the Commissioner must consider that the representation raises a question of principle which has a more general application or relevance to the interests of older people in Wales than in the particular case concerned. Regulation 9(c) requires the Commissioner to take into account whether the issues involved in the case have been or are being formally considered in any way by other persons and if they have not or are not whether, in the Commissioner's opinion, they are more suitable for consideration by other persons.

Page 47, Ombudsman issues – email - Welsh joint working:

See 16(4) and 17(8)