



**Response by the Northern
Ireland Council for Ethnic
Minorities (NICEM) to the
OFMDFM Consultation, 'A
Commissioner for Older
People in Northern Ireland'**

January 2010

Introduction

NICEM is an independent non-governmental organisation monitoring racism and racial inequality in Northern Ireland. As an umbrella organisation we represent the interests of black and minority ethnic groups in Northern Ireland. Currently we have 29 affiliated black and minority ethnic groups as our full members; this composition is representative of the majority of black and ethnic minority communities in Northern Ireland.

In this context, NICEM is making a relatively brief response to this consultation. We have had the benefit of having sight of 'A Commissioner for Older People in Northern Ireland A Report and Recommendations from the Age Sector' (February 2009) and the CAJ response to this consultation and are in broad agreement with the approaches taken there.

Our response is set out on the questionnaire provided and we have focused on the most relevant issues from NICEM's point of view.

A Commissioner for Older People in Northern Ireland

a strong independent voice for older people

Questionnaire

1. Do you agree with the need for a Commissioner for Older People?

(See Chapter 1, Paragraph 1.4 and Chapter 2)

NICEM is strongly in favour of a Commissioner for Older People (COPNI). While other bodies, such as the Equality Commission (ECNI), do valuable work for older people in relation to discrimination and inequality, it is necessary to have a body which takes a holistic and strategic view of all aspects of the rights and interests of older people.

2. The United Nations Principles for Older Persons are set out in full at Annex 1 of this document. They are: Independence, Participation, Care, Self-fulfilment, and Dignity. (See Chapter 3, Paragraph 3.2).

Do you think the Commissioner should take account of the UN Principles for Older Persons whenever he or she is deciding:

- a. How to act?
- b. What constitutes the interests of older people?

NICEM agrees that the COPNI should have regard to the UN Principles for Older People.

This is a weaker human rights instrument than the UN Convention on the Rights of the Child and other UN and European instruments. Nonetheless, NICEM wishes to see an explicit statement in the Act that the courts will take the COPNI's duty in relation to the UN Principles in any judicial proceedings in which it is involved.

NICEM considers that on no account should the powers of the COPNI be weaker than those of the Children's Commissioner (NICCY). NICCY must "safeguard and promote the *rights* and best interests of children and young persons". Although the UN Principles is not a rights-based instrument, there are many other sources of the rights of older people.

We consider that there should be explicit reference to human rights instruments, particularly, from our viewpoint, the UN Convention on the Elimination of Racial Discrimination, so that the rights and interests of minority ethnic older people can be protected by the COPNI. So also, as emphasised by the CAJ, section 75 of the NI Act 1998 is a vital tool in the promotion of equality of opportunity for older people and should also receive explicit reference.

NICEM is of the view that the COPNI, as with NICCY, the COPNI should be recognised as part of the infrastructure of Human Rights Institutions (HRIs) in NI and the UK. As such, NICEM is insistent that there should be explicit reference in the Act to the UN Paris Principles on HRIs.

3. What age range do you think the Commissioner should mainly cover?

NICEM agrees with the Age Sector that 60 should be the threshold for the age groups within the COPNI's remit.

4. Do you think that the Commissioner should be able to provide his or her services to people aged 50 years and over in certain circumstances? (see Chapter 6, Paragraph 6.6)

To act strategically, the COPNI will have to establish priorities and focus on areas of greatest need. However, there will be situations in which a matter of principle is at stake in relation to those who are 50+ and the COPNI should have discretion to act in these cases.

5. Do you think that the age range of the people that the Commissioner caters for should be able to be changed? (see Chapter 6, Paragraph 6.8)

6. Do you think that the Commissioner should have a Principal Aim to safeguard and promote the interests of older people? (see Chapter 7, Paragraph 7.1)

As stated above, NICEM is strongly of the view that the Principal Aim should be to safeguard the *rights* and interests of older people.

7. When dealing with the case of a particular older person, do you think that the Commissioner should have as a paramount consideration the interests of that older person? (see Chapter 7, Paragraph 7.1)

NICEM has reservations on this point. If the COPNI is to be a strategic body, and not just an Advocate/Ombudsman type body, it has to consider the rights and interests of categories of older people. For example, the ECNI assists cases on the basis of their more general strategic importance. Therefore, although the rights and interests of a particular older person are an important consideration, they cannot be paramount.

8. Do you have any other suggestions about what the Principal Aim and Paramount Consideration should be?

9. Do you think the Commissioner's role and functions should be based on the interests of older people? (Chapter 7, Paragraph 7.4)

The COPNI's role and functions should be based on the rights and interests of older people and the sources of these rights should be articulated in the Act so that both the COPNI and the courts can be guided by them.

10. Do you agree that the duties proposed (listed in Chapter 8, Paragraph 8.5) are suitable for a Commissioner for Older People?

Yes, so long as they are at least equivalent to those of NICCY.

11. Are there any other duties not included that you believe it would be essential for the Commissioner to carry out?

12. Do you think the Commissioner should have memoranda of understanding or working protocols with other organisations? (see Chapter 9, Paragraph 9.4 – 9.6)

NICEM is strongly in favour of memoranda of understanding with other inspection and human rights and equality bodies. In line with the Enhanced Model, proposed by the Age Sector, NICEM is totally opposed to a 'residual' approach towards the COPNI's powers. The COPNI must have the breadth of powers enjoyed by the ECNI and NIHRC. It must be free to adopt a holistic and strategic approach to the rights and interests of older people. It cannot have any restraints on the scope of the powers which contravene the UN Paris Principles.

That said, commonsense memoranda of understanding with other relevant bodies are entirely sensible.

13. Do you agree with the general powers proposed for the Commissioner? (see Chapter 10, Paragraph 10.2) If not, please explain.

NICEM is of the view that the COPNI should have powers of investigations across the full range of its remit

14. Are there any other general powers that you think the Commissioner would need? That is, do you think that there is anything else the Commissioner would need to be able to do?

15. Due to the potential for a conflict of interest (see Chapter 10, Paragraph 10.7) we are not currently proposing that the Commissioner should have powers of mediation or arbitration, however we are interested in your views on the following potential options:

- a) **If it is possible, should the Commissioner be able to provide financial assistance towards the cost of mediation in a dispute involving an older person?**

- b) Should the Commissioner hold a register of mediation/arbitration services and be able to direct older people to these services?**
- c) Do you think the Commissioner should have the power to “make arrangements” with any other person to provide mediation/arbitration services in relation to disputes involving older people?**

Finally, in what circumstances do you think that mediation or arbitration would be appropriate?

NICEM approves of facilities for mediation and arbitration but not conducted by the COPNI itself. NICEM is acutely aware of overreaching powers for one body which would compromise its core functions and powers. The COPNI could have the power to “make arrangements” but no more.

16. Do you agree that the Commissioner should have the specific powers to review in general and individual cases, the advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities? (See Chapter 11, Paragraph 11.5)

NICEM agrees that the powers of the COPNI should at least complement those of NICCY. In accordance with the Enhanced Model, NICEM strongly supports the expansion of the remit of the COPNI (& NICCY) beyond ‘relevant authorities’ to include community and faith-based organisations and major private sector employers and service providers.

17. Do you agree that the Commissioner should be able to provide assistance (e.g. offer support, guidance and/or funds) to an older person with their complaint against a relevant authority? (See Chapter 11, Paragraph 11.8)

NICEM agrees with this but is totally opposed, on the basis of the Enhanced Model, to any ‘residuary’ powers imposed on the COPNI whereby its powers are constrained by the potential remit of other bodies.

18. In relation to relevant authorities, do you think there are any other formal or specific powers (in addition to those outlined in Chapter 11, Paragraphs 11.5 – 11.14) that the Commissioner would need?

19. What do you think the Commissioner should be able to do if a relevant authority (see Annex 6) does not follow the Commissioner's recommendations? (See Chapter 11, Paragraphs 11.16 – 11.21)

The COPNI needs all the necessary powers of the ECNI and the NIHRC, consistent with the UN Paris Principles, to require all bodies within its remit to follow its recommendations.

20. In Chapter 11, Paragraph 11.23 we set out the reasons why the Commissioner should not act in any case where an existing organisation already has the power to act. What do you think about this?

NICEM is totally opposed to this 'residuary' approach. It prevents the COPNI from acting as a holistic, strategic body in defence of the rights and interests of older people. It is also inconsistent with the UN Paris Principles. It is essential that the COPNI (& NICCY, as in its submissions to the UN Committee on the Rights of the Child) has the power to act across the scope of its remit.

21. Do you think that the list of organisations at Annex 6 should be included as relevant authorities? (Chapter 11, Paragraph 11.30 – 11.31)

NICEM feels strongly that voluntary (including faith-based) bodies and private bodies which are contracted to provide public services must be within the remit of the COPNI. NICEM also considers that such bodies, where their activities have a significant impact on the rights and interests of older people, should also be included.

22. Are there any other organisations that you believe should be included in Annex 6 as relevant authorities?

23. If you answer yes to question 22, can you explain why they should be included?

24. Of the three potential options, outlined in Chapter 11, Paragraph 11.39, regarding the extent of the Commissioner's powers in relation to relevant authorities, which do you consider to be the most appropriate and why?

We refer to response to Q21.

25. Do you have any other suggestions in relation to question 24.

26. Do you agree that the Commissioner should be able to take or support legal cases? (support includes providing financial support)
(See Chapter 12, Paragraph 12.1)

Yes.

27. As explained in Chapter 12, Paragraph 12.4, it is very unlikely that the Assembly will be able to give the Commissioner "victim standing" for Human Rights cases. What is your view of the Commissioner having "victim standing", that is being able to take Human Rights cases in his or her own name?

NICEM accepts this but the COPNI should have standing to bring cases in its own name in cases within its remit.

28. Regarding Chapter 13, what are the main issues that you think the Commissioner should be able to speak out about?

29. Do you agree that the Commissioner should be a full-time paid post?

Yes

30. Who should be responsible for appointing a Commissioner for Older People? (See Chapter 14, Paragraph 14.6)

The Assembly, in accordance with UN Paris Principles.

31. Should older people have a role in the recruitment/selection process for a Commissioner? (See Chapter 14, Paragraph 14.7 – 14.8)

NICCY has a Youth Form which participates in recruitment processes and the COOPNI should have complementary processes

32. If you answered yes to question 31, how should it be done? (see Chapter 14, Paragraph 14.7 – 14.11)

33. How long should the term of appointment for the Commissioner be? (See Chapter 14, Paragraph 14.15)

5 years, renewable for a second term.

34. Should the Commissioner be eligible for reappointment? (See Chapter 14, Paragraph 14.15).

35. Do you agree with the proposal that the Older People's Commissioner should be an independent body sponsored (including funded) by OFMDFM? (See Chapter 14, Paragraph 14.16)

In accordance with the UN Paris Principles, the COPNI (& NICCY) must be totally independent of any Government department. It must be answerable to

the Assembly (like the Local Ombudsman) and the Scottish Children's Commissioner.

36. Do you agree that the Commissioner should be accountable to the Department /body that provides his or her funding (i.e. OFMDFM)? (By accountable we mean report on his or her actions and how the Commissioner's office allocates and spends his or her budget). (See Chapter 14, Paragraph 14.17 – 14.20)

See response to Q35.

37. To achieve accountability of the Commissioner to older people, do you think that older people should be consulted (and informed) about the priorities of the Commissioner and what the Commissioner does?

(See Chapter 14, Paragraph 14.21 – 14.22)

Yes.

38. The Age Sector Report¹ recommended that the, "Commissioner should have an active relationship with, but be demonstrably independent from, stakeholder organisations." Do you agree with this statement?

Completely. As a major human rights and equality NGO, NICEM totally agrees with this.

39. If you answered yes to question 38, how do you think this should be achieved?

¹ *'A Commissioner for Older People in Northern Ireland -: A Report and Recommendations from the Age Sector'*, February 2009. Recommendation 9 (page 18).

40. The Age Sector Report² recommended that there should be “an infrastructure of champions in government and across the public sector, with visible leadership demonstrated at Ministerial level, to work with” the Commissioner “in promoting and protecting older people”. Do you agree with this recommendation? (Chapter 14, Paragraph 14.23)

NICEM is not opposed to this but the COPNI must have a strong, autonomous remit and a mature relationship with both public bodies and the community and voluntary sector.

41. If you answered yes to question 40 – how do you think they will improve the lives of older people?

NICEM is totally committed to the mainstreaming of the rights and interests of older people. Genuine ‘champions’ in public bodies would be a valuable contribution but we are sceptical about their effectiveness.

42. It is good practice for every organisation providing services to the public to have a complaints procedure. Do you think the Commissioner should have one? (See Chapter 14, Paragraph 14.24- 14.26)

Of course.

² *A Commissioner for Older People in Northern Ireland -: A Report and Recommendations from the Age Sector*, February 2009. Recommendation 8 (page 18).

43. Do you agree that the Commissioner should be able to recommend the legislation should be changed? (See Chapter, Paragraph 14.27)

Of course.

44. If you answered yes to Question 40, how often do you think the Commissioner should be required to examine the legislation? (See Chapter 14, Paragraph 14.28)

A. Every 3 years.

45. How can the Older People's Commissioner demonstrate value for money? (See Chapter 15, Paragraph 15.6 – 15.7)

NICEM respects notions of 'value for money'. We operate within the Logic Framework under our Atlantic funding. But we are sceptical about all-embracing 'measurability'. Many of the achievements of the COPNI will not be 'tangible' and the Office must have the freedom to act in the best interests of older people without draconian limitations which deter it from significant initiatives.

46. Do you agree that, where possible, the Commissioner should share back office services (e.g. administrative costs or accommodation) with other Commissions to help to save public money? (See Chapter 15, Paragraph 15.8 – 15.10)

NICEM is not opposed to these possibilities being explored.

Impact Assessments

Finally, further to these proposals a Draft Integrated Impact Assessment has been completed. A summary is attached at Annex 2 and the full assessment is available on request or on our website at:

www.ofmdfmi.gov.uk/index/equality/age. We would be very grateful for your views on this material.

NICEM has not had the opportunity to examine this but will make an informal response in due course.