



Response to consultation on Draft Bill for a Commissioner for Older People in Northern Ireland

Our reference: Cons - 1104

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1.0 Background to NICVA

- 1.1 NICVA (the Northern Ireland Council for Voluntary Action) is the umbrella body for the voluntary and community sector in Northern Ireland. It provides over 1,000 members with information, advice, training and support services on a wide range of issues, together with representation for the sector as a whole.
- 1.2 NICVA works to achieve progressive social change, based on equality and equity, working through a community development approach, to empower local communities to pursue their own needs and agendas.

2.0 Comments

- 2.1 NICVA welcomes the opportunity to respond to this consultation and keenly welcomes the establishment of a Commissioner for Older People in Northern Ireland. NICVA agrees with the Age Sector in that the appointment of an Older People's Commissioner with effective powers, will be an important step towards realising the aspirations of older people in Northern Ireland. Moreover having an Older Peoples Commissioner will prioritise older people's issues and assist in the amelioration of inherent barriers to older people's full participation and inclusion within society. We will not comment individually on each recommendation, but make specific comments about some of the key issues.

3.0 Independence and Accountability (Assembly v OFMdFM)

- 3.1 The practical arrangements for establishing the office for the Commissioner for Older People and appointing a Commissioner are extremely important as the balance has to be achieved between independence, autonomy, accountability and propriety in executing their duties in making use of tax payers money.
- 3.2 An effective Old Peoples Commissioner must have the necessary trust and power to advocate. Furthermore given older peoples increasing reliance on public services as they get older, the OPC must be independent for any department or body that it

might have to challenge as not adhering to appropriate standards for older people.

- 3.3 The optimum arrangement is for the Commissioner to be independent from any department, therefore the establishment of the OPC as an NDPB with accountability to OFMdFM is not necessarily the most appropriate arrangement. However being directly accountable to the Assembly also raises issues around should they have the power to review the actions of the Assembly. Whatever form of legal structure is adopted the independence of the office must be assured, also the ability of the commissioner having the power to take a case to court if relevant.
- 3.4 The Older Peoples Commissioner should have parity of status with other commissions. The post should be established on a statutory basis, with appointment for a fixed term. The post should be a full-time post, serviced by sufficient financial and staffing resources and an office with the power to set its own agenda and determine priorities.

4.0 Memoranda of Understanding / Protocols (In Legislation)

- 4.1 NICVA supports the position that there needs to be synergy between the variety of bodies operating in the equality, rights, protection and oversight field, however that an Older People's Commissioner should not just fill the gaps in existing provision or rely on other bodies to act. Keeping in mind that there is not a guarantee that older peoples issues may not fit with other commissions priorities or budgets, the Older People's Commissioner should have all necessary powers to enable them to take a considered view across the full range of issues and act strategically. Therefore the Older People's Commissioner should have equal status and a constructive relationship with other bodies, consulting with them on strategic priorities.
- 4.2 We agree that the Commissioner should have the power to cooperate with other bodies and recommend that there is a statutory requirement on bodies with common interests to collaborate. This should be outlined in Memoranda of Understanding between agencies and would be strengthened if underpinned by specific legal duty to consult and power to cooperate. The Memoranda of Understanding should be comprehensive and robust and address the boundary overlaps and enable the sharing of activity and resources.

5.0 The Commissioners Specific and Formal Powers and Relevant Authorities

- 5.1 NICVA strongly agrees that the Commissioner should have specific powers to review the advocacy, complaint inspection and whistle-blowing arrangements in general and individual cases. We support the Age Sector who propose that the Older People's Commissioner should have a wide range of duties and powers to cover communication, participation and engagement; research, education awareness raising and advocacy. That the Commissioner should have a wide powers of investigation that would include the power to enter premises, require disclosure of documents and require people to give evidence.
- 5.2 We consider it to be problematic to restrict the Commissioner powers to circumstances to where no-other commissioner has the legal power to review arrangements, as we believe that other commissioners focus, priorities, budgets might not be aligned to those of older people. We propose that cooperation can be achieved through the introduction of an effective Memoranda of Understanding support by specific legal duty.
- 5.3 NICVA supports the age sector who propose that 'the bill as currently drafted does not meet the standards of the Paris Principles given the range of limitations on the Commissioner's powers and call for the constrains to be lifted in the interests of providing best value and best outcomes for older people.'

6.0 Mediation and Arbitration

- 6.1 NICVA agrees that the Commissioners obligation to act in the interests of older people would not be conducive within the neutral position required to act in a formal mediation or arbitration role. Nevertheless, NICVA propose that the Commissioner should have the power to support the functions listed in question 15a,b,c, including the ability to provide financial assistance towards the cost of mediation, the Commissioner holding and register of mediation/arbitration services and holding the power to "make arrangements" to outsource services. This will ensure that issues are addressed through mediation, and onto arbitration if necessary in a timely fashion,
- 6.2 The time taken in resolving issues, disputes for older people is often a critical factor, and it would be envisaged that the presence of powers of mediation and arbitration would enable greater choice of action for the Commissioner and would offer the potential to provide speedier resolutions.

- 6.3 NICVA supports the Age Sectors proposal that the Commission should have a 'strategic litigation policy' to ensure that all presenting cases are considered on equal grounds before a decision is made as to whether or not to take a case through the courts. The Commissioner's decision on which pathway to follow will be informed by the importance of a particular case to the Commissions strategic priorities, the circumstances and the preference of the individual concerned.

7.0 Sanctions

- 7.1 NICVA welcomes the proposals that authorities will be required to respond in a timely fashion to the Commissioner's investigations and that their responses may be made public. However it is felt that this is not sufficient sanctions to force change when services do not meet acceptable standard. NICVA support the Age Sectors call for stronger powers of sanction and that the Commissioner should have powers of compliance comparable to that of other Commissioners.
- 7.2 The Commissioner should be given a range of enforcement pathways enabling swifter outcomes for example; the commissioner producing guidance, code of practice, citizen petitioning for older people. In serious cases the Commissioner should have the power to issue notices of requirement to comply with their recommendations. Penalties can be applied for non-compliance, or regular breaches of good practice, such as financial penalties or exclusion from tender lists. Caution should be used when using penalties as the ability to buy out of a Legal Retirement should not be the outcome.

8.0 Victim Standing

- 8.1 Given that older people are among the least likely to be willing to enter into a legal process of address that the framework of 'victim standing or Appellant Standing' has the potential to offer efficiency and timely outcomes. NICVA supports the Age Sector poison that the Commissioner should have 'Appellant Standing' status to be able to take cases in her/his own name. We urge that ways in which this can be achieved have to be considered.
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