

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)

Yes. There should be a Commissioner for Older People. The Commissioner should have the fullest range of duties and powers. We need a commissioner to:

- Prioritise older people's issues helping ensure that their rights are respected and fulfilled
- Promote and safeguard the rights and dignity of older people;
- Advance equality for and challenge discrimination against older people; and empower and enable the voice of older people in NI
- Provide an expert to assist older people in taking legal action over alleged breaches of rights

Whilst there are other Commissions, no one body has a specific strategic and holistic overview. There remains a need to prioritise older people's issues and act with urgency in cases of need.

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?

Yes. The Commissioner should take account of the United Nations Principles for Older Persons in her/his actions. Moreover the Commissioner should be empowered to ensure that relevant authorities take account of the UN Principles.

There should be a Preamble to the legislation that would

- (1) draw together the relevant legal architecture and principles applying to older people.
- (2) provide a comprehensive framework for the remit of the Commissioner.
- (3) reduce the potential of burdening Relevant Authorities and
- (4) raise awareness of the role of the Commissioner among the general public.

The legislation should provide for creating a panel of older people to:

- (1) act as a mechanism for the user community to advise as to what older people's interests are and
- (2) influence the focus of the Commissioners work.

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

Given the projected population demographics, 60+ is the appropriate age for the main focus of the Commissioner's work. See answer below also.

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)

In certain circumstances, the Commissioner should have discretion to act in the interests of older people age 50+. For example in the case of members of the traveller community and people with a learning disability as the life expectancy for these groups are lower than average. It is important however that, discretion to act should include, but not be limited to, exceptional circumstances and questions of principle. There should be a provision for representatives of older people to approach the Commissioner on behalf of an older person. Furthermore, where the Commissioner is pursuing a case on behalf of an older person and the older person dies before the conclusion of the proceedings, a personal representative of the older person should be allowed the opportunity to see the case through to its conclusion.

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)

The age range should be kept under review with this proviso: the age range for the Commissioner's oversight may be lowered to 50+ but should not be increased beyond 60+.

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)

The legislation should encompass a Principal Aim. The Principal Aim should encompass an extensive interlocking set of principles that together provides both vision and bedrock for the Commissioner's office.

For example, the Principal Aim should be to: *Promote the interests of older people, safeguard their rights, advance equality and challenge discrimination against older people; enable and empower the voice of older people.* See earlier answers to Questions 1 and 2.

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)

The Commissioner's paramount consideration must be older people and their needs and interests. Every older person must be accorded their rights, dignity and respect.

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

Please refer to answers under Questions 2 and 6 where we speak about a Preamble and a more comprehensive interlocking Principal Aim.

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

Please refer to answers under Questions 2, 6 and 7. These recommendations provide a strong framework in which 'interests' would be interpreted. The framework should permit wide interpretation to include 'needs' and 'rights'.

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

The duties listed are suitable for a Commissioner for Older People, including the outreach elements of the duties concerning access, communication and fostering participation. Relationship building will be essential in terms of gathering information and evidence reflective of older people's needs and interests to inform policy inputs. The Commissioner has an important role in advising Ministers and MLAs.

The consultation document comments that the duties '*help to ensure that the Commissioner act at all times with the interests of older people at the forefront of his/her decision making processes and that those decisions bring about a positive outcome for older people*'. To ensure that older people are at the centre of thinking all the time in carrying out the duties and that there is a positive outcome depends not just on the Commissioner's decisions, promotion and encouragement, but also upon the Commissioner's authority to act and to call to account.

The point is made in the consultation document that the proposed Northern Ireland model imposes a stronger set of duties than elsewhere. However, Northern Ireland will also have the largest population of older people. Furthermore, there currently exists a danger of falling behind on our equality legislation given that the Equality Bill currently before Parliament extends only to England, Scotland and Wales. These facts should provide the incentive to break new ground.

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

The Commissioner should have a duty to liaise regularly with the age sector. There should also be a duty to cooperate with other Commissions as appropriate through Memoranda of Understanding.

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)

There must be synergy between the variety of bodies operating in the equality, rights, protection and oversight field. It would be wrong to restrict the Commissioner's role to one of ensuring that other Commissions understand and co-ordinate their functions and identify gaps (9.4).

The Commissioner must have the power to cooperate with other bodies. There should be a statutory requirement on bodies with common interests to collaborate. This should be outlined in Memoranda of Understanding between agencies to strengthen strategic collaboration. An independent legal duty would serve better than intervention and control by the sponsor department through the Management Statement.

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

The Commissioner should have powers of information, research and publication, offering advice and guidance; as well as representation and recommendation. The strength of the Commissioner's authority and consequently the status of her/his recommendations must be ensured. Persuasion is an important tool, but the Commissioner needs to be able to issue guidance that must be adhered to.

'Informal' investigation, as the general power of investigation is referred to in the consultation document, can be swifter and less costly than other routes, but should not be used as an alternative to, formal investigation. The Commissioner should be expected to review the balance between formal and informal investigation and the purposes for which each has been deployed as part of her/his duty to keep the effectiveness of the legislation under review.

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?

(1) The extent of, and limitations to, the proposed powers are matters of grave concern that must be addressed and strengthened.

(2) The duty to cooperate with other Commissions should be strengthened by power to collaborate.

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?

Powers of mediation and arbitration are needed because they would provide a speedier route for resolving issues. However, the Commissioner will have a legal obligation to act in the interests of the older person and hence is not legally considered to be a neutral party. As formal processes of mediation and arbitration require a neutral party, the Commissioner should have the power to initiate them in the ways listed under a, b & c of the question.

Mediation and arbitration processes will provide a greater range of opportunity to take action. As the Commissioner will operate with a limited fund, the capacity to take cases through the courts will also be limited. Accordingly, such additional processes are appropriate to bring about a desired outcome more quickly and at less cost (therefore making best use of the funding available), and where it is a suitable choice of the older person.

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)

The proposed limitations to the Commissioner's powers to circumstances where no-one else has the legal power to review the arrangements are unacceptable. The Commissioner's focus is on older people when deciding to act, while strategic decisions of other bodies may be informed by other priorities. Similar powers held by existing bodies need not mean duplication if there are effective Memoranda of Understanding in place and a duty to cooperate between and among relevant bodies. Placing such a limitation on the Commissioners powers would potentially lead to unnecessary delays while assistance is sought elsewhere, and is accordingly inappropriate.

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)

The proviso contained in the draft Bill; that these powers are exercisable only where it appears that no other person or body is likely to assist or act is unacceptable.

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?

The section of the consultation document covering formal investigation, and referring to formal and informal investigations in Para 11.12, is confusing. The difficulties really lie with what is proposed in the legislation. There are distinctions between different investigation powers and limitations to many of the Commissioner's powers (in the areas of reviews, complaints, casework e.g. where the Commissioner is only able to operate where there is a point of principle or where there is no other route of review, complaint or assistance). The bill as currently drafted does not meet the standard of the Paris Principles given the range of limitations on the Commissioner's powers. These constraints should be lifted in the interests of providing best value and the best outcomes for older people.

The Commissioner should be given full powers, not just residual powers, in the operation of her/his critical functions. Overlap in powers between the Commissioner and other bodies could be effectively managed by way of

appropriate statutory Memoranda of Understanding between appropriate bodies.

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 powers proposed for the Commissioner where a relevant authority does not follow her/his recommendations cannot be regarded as 'quite considerable'. Relying on the practice of 'naming and shaming' through publicising the fact that an organisation is not following best practice, or even sending the report to the Assembly or the Secretary of State, is inadequate as sanction. Stronger powers of sanction are needed in order to force change when services do not meet an acceptable standard. For example, in serious cases the Commissioner should have the power to issue notices of requirement to comply with their recommendations. This might include requiring a body to take certain steps to improve practice or following the Commissioner's Guidance (e.g. on procedures for closing, moving or amalgamating services) within a specific timeframe. Penalties should be applied for non-compliance or regular breaches of good practice, such as financial penalties or exclusion from tender lists. Stronger powers of sanction for the Commissioner must be included in the Bill to create the required incentive to improve poor practice. The powers of compliance that the Commissioner has at their disposal should be no less than those of the Equality Commission.

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?

See a number of points already stated under Q18. The Commissioner will not have the authority to press other bodies to take action in relation to older people's issues when the priorities of the other body dictate something different. For example, the situation may arise where an available power is not applied for the benefit of older people and its non-application is justified by reference to other competing demands or an alternative strategy adopted by the particular body. To prevent this from happening, similar powers can be held by a number of bodies with attention to avoiding duplication in day to day operations through clear and effective Memoranda of Understanding.

21. Do you think that the list of organisations at Annex 6 should be included as relevant authorities?

Note that the Victim's Commission will be added, also all new bodies resulting from the Review of Public Administration (health, education, local government and respective changes in public bodies) will be included; also the Northern Ireland Human Rights Commission.

The legislation should also cover all public, private and voluntary organisations responsible in any way for the health and social care of older people. The proposals fail to go far enough in extending legislation to independent bodies if the Commissioner's powers will cover only older people whose care costs are being met out of the public purse. All bodies providing residential care for older people on a public, private or voluntary basis should fall under the same obligations and these obligations should be applicable to all residents. Moreover, the list should be subject to regular review to ensure that any emerging structure deemed to be a relevant authority is included.

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

Translink; community transport providers; Healthy Living Centres; housing associations; organisations running relevant community services; utility providers; and the Post Office. Furthermore, NICE and the UK departments and their arms-length bodies responsible for pensions, tax and benefits should be included. We appreciate that these are not bodies under the authority of the Assembly – however, we note the proposal to include the Northern Ireland Office and the Pensions Ombudsman. The Commissioner's general powers should include investigating unfair rules on insurance as refusal of insurance cover can prevent older people from accessing opportunities.

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

A two-tier system of safeguarding the interests of older people especially with respect to residential care is unacceptable. Older people and their families often struggle to meet the costs of care; families can find it difficult to manage their working life, family and childcare responsibilities as well as ensuring that their older relative is receiving proper care and attention. The Commissioner for Older People is a public service that should be available to all older people, especially to those who are in residential care. Since the legislation proposes to include independent bodies in any event, it is equally valid to propose that all residential, health and social care services for older people are a public or social service and therefore a public function and that no distinction should be made on the basis of the source of funding. Other bodies are included because they offer services that are of an essential or social nature to older people.

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?

Option Three The reasons for this are given in response to Q23. At present older people who pay for their own care are at a distinct disadvantage and should be afforded the same security as their publicly funded counterparts.

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

The legislation should include the power to add further bodies at a later date, in order to cover new bodies or existing bodies that were missed at the outset.

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)

We agree that the Commissioner should be able to take or support legal cases, including providing financial support. The Commissioner should have full powers to bring, assist in or intervene in a court case, act as an expert witness or 'friend of court'. The proposal to limit the Commissioner's right to grant assistance where another body also has a remit is not acceptable. The method for managing overlap in powers is through the effective operation of clear Memoranda of Understanding.

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?

The Commissioner should have 'victim standing' to be able to take cases in her/his own name. Victim standing is a particularly pertinent power for an older people's Commissioner given that older people are among the least likely to be willing or able to enter into a legal process even when necessary. Note the potential efficacy of victim standing in terms of providing a framework to address cases where many are affected by an issue. In effect, furnishing the Commissioner with victim standing would potentially deliver a cost effective approach to pursuing cases. Furthermore, the question of Assembly competence to enable this should not be a determining factor. The power should be included in appropriate Westminster legislation.

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

The Commissioner should be empowered to speak out about any issues affecting older people and should actively seek out the opinions of older people to inform the issues that they will speak out about. In terms of relevant bodies and including bodies governed by Westminster, the Commissioner should be able to speak out about their policies and their impact on older people in Northern Ireland.

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

The Commissioner should be a full-time paid post.

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

The Commissioner should be appointed jointly by the First Minister and deputy First Minister. It would be desirable for the Assembly as a whole to approve the appointment – as is the case for the Scottish Human Rights Commissioner as regards the Scottish Parliament.

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

Yes, as in the case of the Older People's Commissioner in Wales. Older people's involvement in all stages of the selection process is essential. Recruitment training should be provided to the older people involved to enable them to fully participate in an informed manner.

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

See the Welsh approach of including a legal requirement that older people should be involved in the appointment. As mentioned above, it is important that older people are involved at all stages of the recruitment including; the development of the job specification and selection criteria, the scrutiny of applications and as members of the interview panel. Training and guidance in all stages of the recruitment process will be essential. The Age Sector might be asked to act as a channel for involving older people in the recruitment process, either nominating representatives (as a Northern Ireland-wide representative body) or facilitating a mechanism to recruit older people to the selection process. A shortlist and recommendation should be presented to the First and deputy First Minister for approval before the appointment is made.

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

The Commissioner should serve a term of four years, renewable once.

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

The Commissioner should be eligible for reappointment for one further term of four years. The maximum period of service would be eight years.

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)

The Commissioner should be an independent body funded by but independent from OFMDFM.

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)

The Commissioner is created first and foremost as a body accountable to the Assembly. He or she should be like an Ombudsman – not accountable to any particular government department but to the legislature. The Commissioner must be independent. Oversight by any department could potentially compromise this.

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)

Giving audience to older people should be a central focus for the Commissioner. The Commissioner should facilitate an older people's panel such as is the case with NICCY. Further to this, in general there should be regular consultation between the Commissioner and older people on her/his priorities and feedback on progress and results. The Commissioner should adopt a pro-active approach to developing engagement and participation practice in relation to informing and consulting older people. Particular consideration needs to be given to developing methods to involve those considered to be hard to reach including those in residential care and older people with dementia. The Commissioner should also have a duty, reflected in her/his job description, to liaise regularly with the age sector and established older people's groups.

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

Yes.

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

It is important for the Commissioner to give careful consideration to the views of older people – whether consulting on issues, responding to complaints or in general networking. This could readily be achieved by engaging with existing networks, age sector groups and older people generally through a wide reaching communications strategy that offers awareness raising and promotion of the offices functions, opportunities to engage and various feedback mechanisms. The Commissioner must also give consideration to the views of those against whom complaints are made. S/he must operate a transparently fair process in undertaking reviews and investigations, S/he must be free and seen to be free to come to decisions based on a her/his independent judgement informed by the principle underpinning the office – that of promoting and safeguarding the interests and rights of older people generally. If an older people's panel is established as suggested in response to question 37, members could have a role in advising the Commissioner in this respect.

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)

Such champions should be motivated people in a position of influence within their department/agency. It would be inspiring for older people if a nominated Minister was the lead champion, co-chairing an inter-departmental group, or interagency group of public sector representatives, with the Commissioner. The Commissioner might foster joint activities involving the public sector champions and an age sector stakeholder group.

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

There is a distinct need to change the way older people are viewed in our society. Encouraging the appointment of such champions in departments, local government and across the public sector has the potential to raise consciousness about older people and could help deliver the culture change that is desperately needed as our population ages. Older people should be enabled to contribute to our society as fully as possible for as long as possible and they should have the security that when support is needed everything possible will be done to provide that support. An infrastructure of champions could help make this vision a reality by providing a prevailing user focussed "lens" to policy and service development processes.

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)

The Commission should have a procedure whereby complaints can be investigated. This should be provided for in the founding legislation. The Commissioner should be added to the list of bodies in respect of which complaints can be considered by the Assembly Ombudsman acting as the Commissioner for Complaints

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

Yes. A duty should be placed on the Commissioner to keep the legislation under review and the first review should be as soon as is practical after the second anniversary of the legislation, as was the case for the NI Human Rights Commission. Reviews should happen at regular intervals, as in the following proposed amendment '*thereafter at such time as the Commissioner sees fit, not being earlier than three nor more than five years after the making of the last previous report.*' The Commissioner should have the power to recommend changes to the legislation where s/he feels this is required. The Commissioner should make her/his recommendation to the First and deputy First Ministers and to the Assembly.

44. If you answered yes to Question 43 how often do you think the Commissioner should be required to examine the legislation? (See Chapter 14, Paragraph 14.28)

A. Every 3 years. B. Every 4 years. C. Every 5 years.

The Commissioner should review the legislation for the first time when the legislation reaches its second anniversary. This would help ensure that the Commissioner gets up and running quickly and is focussed on delivery. Thereafter, it should be reviewed every 3-5 years and as suggested in response to question 43.

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

The Commissioner will as a matter of integrity ensure the proper, economic, effective and efficient use of resources and employ principles of best value in their practice. Value for money can be formally demonstrated through benchmarking, performance indicators, audit, and management practices. The Older People's Commissioner for Northern Ireland has the potential to create value because this office would have unique qualities that no existing body has. It should have the capacity to prioritise older people's issues, to place a sense of urgency upon finding solutions to the problems faced by our citizens as they age, consequently has the potential not only to improve services but to ensure that resources are targeted to best effect. A Commissioner needs to be able to act and secure responses and compliance relatively quickly. To demonstrate optimum value for money a Commissioner must have effective and efficient powers. Strong powers to investigate and require compliance can be a very efficient and effective way to achieve change. Mediation and arbitration are likely to be cost effective means of getting results. Victim standing also has the potential to deliver cost effective outcomes as mentioned previously. Memoranda of Understanding and regular engagement between Commissions, including the Commissioner for Older People, would assist both collective strategic work and clear assignment of roles and tasks as appropriate. A duty to cooperate with other Commissions accompanied by a power to collaborate could help to demonstrate value for money. The Commissioner should have full powers, not limited by the fact that some pre-existing Commissions may already have similar powers. The interplay between the range of full powers under the strategic vision of the Commissioner is the most efficient and effective way to promote and safeguard the interests and rights of older people. Improved cooperation and collaboration, with Memoranda of Understanding ensuring duplication is avoided and enabling best value for money.

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)

The Commissioner could save money by sharing services and should do so where possible and appropriate. This might include any operations which do not require specific expertise on ageing such as audit and payroll arrangements, personnel/human resources expertise, IT support, estate management, etc. However, in the interests of building expertise and delivering continuity, 'front of house' interfacing functions should remain exclusive and the office should have a clearly defined, separate identity, particularly if accommodation is shared. It is most important that available resources are directed towards the financial and staffing requirements needed to deliver the remit of this office.