

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?

Yes.

Older people are a diverse group of people and represent an important and growing section of our society.

The RQIA welcomes the intention to establish an Older People's Commissioner and agrees that the primary responsibility of the Older People's Commissioner should be to safeguard, represent and promote the rights, needs and interests of older people. An Older People's Commissioner would also assist in providing a focus on challenges arising from policy intentions across older people's services in Northern Ireland.

The RQIA would also refer to the work of the UN Expert Group Report of the meeting convened on the Rights of the Older Person, May 2009, in Bonn, which supported the concept of a Commissioner (referred to as 'Ombudsman' at the United Nations).

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 RQIA agrees that the Commissioner should refer to the UN Principles for Older People, when determining what the interests of older people are and when deciding if and how to exercise his / her functions in relation to older people.

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

The definition of the age boundary for the Older Peoples Commissioner should be 60 and over, as per the Welsh Commissioner, and as per the recommendation of the Deloitte Report (Section 6.4). The RQIA agrees with the intention that the Older People's Commissioner should, in certain circumstances, be able to act for and on behalf of person's aged 50 and over (Section 6.6). The determination of whether and when the exceptional circumstances rule is met should be a matter for the Commissioner to determine. The RQIA also welcomes the intention to keep the age range under review and, if necessary, to introduce legislation to change the threshold.

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)

Yes, as referenced in Question 3 above, where the issue raises the question of principle affecting persons aged 50 or over, and at the discretion of the Commissioner.

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 RQIA is mindful of the growth in the ageing population and would be concerned that extension of the age definition would run counter to the demographics and that individual alteration of thresholds would leave the office open to potential for criticism around arbitrariness.

However, the RQIA also welcomes the intention to keep the age range under review and, if necessary, to introduce legislation to change the threshold.

The OFMDFM should take account of the views of older people as a result of this consultation, in any final decision on this matter.

6. Do you think that the Commissioner should have a Principal Aim to safeguard and promote the interests of older people?

Yes.

The Commissioner should have a Principle Aim to safeguard and promote the rights of older people, and should have the power to make sure that older people are not discriminated against on the grounds of age and in the fields of, for example; public services, transport, housing, fuel, poverty, health and social care, goods and facilities.

The Commissioner's remit requires to be clearly defined in respect of the range and type of matters that the Commissioner has responsibility for. The RQIA is aware of the projected increase by 85% of the number of people aged 65 and over in the next 25 years. Issues such as combating poverty, challenging neglect, defeating ageism and preventing future deprivation are important areas of activity for the Older People's Commissioner, in improving the health and wellbeing of both today's and tomorrow's generations of older people.

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

Yes.

The RQIA agree with the concluding recommendations of the UN Expert Group on Older People, which met in Bonn in May 2009, that the Principle Aim should be "**The promotion and protection of all human rights and fundamental freedoms, including the right to development, is essential for the creation of an inclusive society for all ages in which older persons participate fully and without discrimination, and on the basis of equality... promoting the dignity of older persons**". The RQIA prefers this terminology to the terminology of 'interests', given the risk that promotion of 'interests' could lead to a lack of equality in the provision of services across Northern Ireland, between groups.

Further to the matters highlighted at 7 above, a framework of rights would better ensure a balance in relation to the differing interests of older persons, as there are competing interests in this sector e.g. gender and disability rights.

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

See responses in Questions 6 and Question 7 above, the duties described in Section 8.5 of the consultation document and the proposed general powers set out in Section 10.2 of the consultation document.

The Older People's Commissioner should be restricted to dealing with issues that impact on individuals who currently reside in Northern Ireland. They should not be responsible for pursuing matters on behalf of individuals who have left Northern Ireland to reside in other jurisdictions (Section 6.9).

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

Yes.

The office of the Commissioner for Older People should also have the same range of powers of entry and enforcement as the Children's Commissioner (ref Sections 8.2 , 11.2 and 11.14).

The Commissioner for Older People should also liaise with the Public Health Agency in discharging responsibility for developing a strategy for positive ageing in Northern Ireland, as per the responsibility of the Office of Older People in the Republic of Ireland.

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

The RQIA agrees that the Older People's Commissioner should have the duties described in Section 8.5 of the consultation document) and the proposed general powers set out in Section 10.2 The Commissioner should have the authority to call to account any public sector organisation which, in his or her opinion, is failing to adequately discharge its duties and responsibilities to older people (ref 10.1).

The RQIA also acknowledges the constraints surrounding the powers of mediation and arbitration and, in particular, the potential for conflict of interest (ref 10.7). However, the powers of mediation and arbitration may be important in certain circumstances, for example, where there is a dispute between family members as to the appropriate care for an older person who is deemed incapable. In such circumstances, the Older People's Commissioner may be able to intervene in a formal and constructive manner, in helping to resolve differences of opinion without compromise to the best interests of the older person.

The power and authority of the Office of Care and Protection and any other independent advocacy service that can be offered e.g. by the Patient Client Council to the older person, should also be considered in these circumstances.

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

No.

The RQIA consider that the duties set out in the consultation document are comprehensive.

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)

Yes.

We agree that the Older People's Commissioner should develop a Memorandum of Understanding with regulatory bodies and organisations, where there are areas of mutual interest or concern (ref 9.5) to avoid confusion or duplication of effort. The Older People's Commissioner will need to work collaboratively with other bodies which have powers of investigation in certain matters e.g. NI Commissioner for Complaints (NI Ombudsman) PSNI, Health and Social Care Trusts, Coroner, RQIA etc.

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

The RQIA agrees with the general powers proposed for the Commissioner and would emphasise the need to communicate with other relevant stakeholders in respect of;

- a) issuing guidance on Best Practice, in relation to the issues affecting older people;
- b) agreeing and producing relevant areas for research concerning the interests of older people; and
- c) in making representations or recommendations to any body or person concerning the interests of older people.

The Older People's Commissioner should have the power to conduct informal investigations for the purpose of his / her functions, as long as it does not compromise or interfere with the statutory responsibilities of other public bodies.

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?

The Older People's Commissioner should work in partnership with public sector organisations which provide services to older people.

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?

- a) Discussion around financial support for mediation and arbitration within the gambit of proposed powers, risks undue influence of regulatory bodies who would then, in effect be lobbied by one person because of their age, potentially against the interests of another younger person, or another older person, not supported by the Ombudsman. In essence, there is concern that where another body is empowered to act the Ombudsman could use other powers to 'force the hand of that agency in a way which would not be compliant with the principle of equality. The UN proposed free legal aid as a specific recommendation to ensure the protection of rights of older persons, thereby utilising existing mechanisms rather than requiring this group to in essence 'compete against each other' for limited funding through an Ombudsman.

-
- b) The Older People's Commissioner could signpost older people to relevant organisations who could assist in providing appropriate mediation / arbitration services. For example, CAB and other bodies e.g. Patient Client Council and other agencies can be approached to secure advocacy and mediation services for older people, as an alternative in terms of resolving disputes by local resolution.
- c) The RQIA acknowledges the constraints surrounding the powers of mediation and arbitration and, in particular, the potential for conflict of interest (ref 10.7). However, the powers of mediation and arbitration may be important in certain circumstances, for example, where there is a dispute between family members as to the appropriate care for an older person who is deemed incapable. In such circumstances the Older People's Commissioner may be able to intervene in a formal and constructive manner in helping to resolve differences of opinion without compromise to the best interests 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 Commissioner's powers of review of advocacy, complaint, inspection and whistle-blowing are set out in Section 11.5 of the consultation document. The RQIA would agree strongly with the principles set out in Section 11.24 of the consultation document.

The description in Section 11.22 of the role of the RQIA in the investigation of complaints is that which existed prior to 1 April 2009. Responsibility for complaint investigation and resolution now rests with the service provider and with the HSC trusts. However the principle is important and it is worth reiterating that the Commissioner does not duplicate services that existing organisations already provide (ref 11.22).

It is important to recognise the powers and duties of the Regulation Quality Improvement Authority (RQIA) with regard to the inspection of health and social care services as defined in the Health and Personal Social Services (Quality Improvement and Regulation) (Northern Ireland) Order 2003. The RQIA has a specific statutory responsibility to inspect services provided to older people in registered residential and nursing homes and organisations providing day care and domiciliary services to older people. It is important that the Older People's Commissioner does not have powers which would duplicate the role and responsibilities of existing regulators. In that regard Paragraph 11.7 is particularly important.

Currently, complaints not resolved at local level in health and social care, or indeed complaints against the RQIA, are forwarded to the Parliamentary Ombudsman, and this fits with the understanding of 'Ombudsman'; receiving complaints against government agencies, acting on their own motion to investigate, making recommendations for corrective action and issuing reports.

There needs to be a clear statement as to the extent and limitations of the Older People's Commissioner's powers of investigation of particular complaints of maladministration. The section on complaints and formal investigations (11.9 - 11.14 refer). This needs to include reference as to how and in which circumstances the Older People's Commissioner should interface with the NI Ombudsman, who may have precedence in specific investigations.

The Older People's Commissioner will need to work collaboratively with other bodies which have powers of investigation in certain matters e.g. NI Commissioner for Complaints (NI Ombudsman) PSNI, Health and Social Care Trusts, Coroner, RQIA. This emphasises the importance of developing Memoranda of Understanding with organisations, or information sharing protocols, where there are areas of mutual interest or concern (ref 9.5).

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 Commissioner should be able to offer advice and guidance, and signpost older people to alternative, relevant and appropriate sources of support, to assist them to make their complaint to the relevant Authority.

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 Older People's Commissioner should have the authority to call to account any public independent sector organisation which, in his or her opinion, is failing to adequately discharge its duties and responsibilities to older people (ref 10.1).

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)

In cases where a relevant authority does not follow the Commissioner's recommendations the Commissioner should have the power to refer the matter to a higher authority, and ultimately to the Minister with responsibility for the organisation concerned.

In some cases the NI Ombudsman will recommend that an organisation which has been found to have been negligent in an investigation of a complaint of maladministration makes amends by issuing a formal apology and, in some cases, by paying a limited form of compensation (usually to cover any costs or losses incurred by a third party as a result of the maladministration). Such powers might also be usefully extended to the Older Person's Commissioner (ref 11.21).

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?

If other bodies exist who have the power to act, this should be considered in all cases and we agree with the reasons set out in 11.23 and 11.29.

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)

Yes.

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

This appears to be a very comprehensive list.

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

N/A

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?

The most appropriate is the advocacy arrangements organisations have in place to make sure there is someone who will represent the interests of older people and / or the procedures that give older people advice and support to express their views to the organisation.

Nine out of ten care homes are within the private or charitable sector but, as the law stands, the scope of the Human Rights Act does not directly extend to these residents. This means that residents of independently run care homes who experience human rights abuses, cannot use the Human Rights Act to challenge the care home provider. Option 3 should be considered as this will provide a legal remedy to older people in private and voluntary sector homes, to ensure care home providers comply with the Human Rights Act. This currently is a loophole in the law.

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

No.

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)

Given the equality groups under s 75 and the non discrimination duties under the Human Rights Act, the RQIA would urge caution in any decision about this matter and is concerned that without similar champions for all groups, and given the issues around securing legal aid, that the litigation function for the Commissioner has the potential to raise arguments around inequality.

The RQIA would refer to the published opinions of the Expert Group of the UN who, in May 2009, differentiated between the roles of the Ombudsman / Commissioner and the National Human Rights Commission. The Expert Group create a demarcation of roles which could work in Northern Ireland and would arguably avoid the difficulties around the definition of 'victim' and the issue of 'standing' (to bring a case). This matter has been raised in other judicial hearings i.e. Children's Commissioner who was challenged about not being a victim in the case of the physical chastisement of children argument.

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 Older People's Commissioner's responsibilities should not compromise or interfere with the statutory responsibilities of other independent regulators including, for example, the Equality Commission, Human Rights Commission, NI Commissioner for Complaints or the RQIA (ref 9.1).

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

This section refers mainly to the additional powers in respect of non devolved areas.

The Commissioner's remit requires to be clearly defined in respect of the range and type of matters referred to in this chapter.

The Older People's Commissioner should be restricted to dealing with issues that impact on individuals who currently reside in Northern Ireland. They should not be responsible for pursuing matters on behalf of individuals who have left Northern Ireland to reside in other jurisdictions (Section 6.9).

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

Yes, commensurate with the offices of NICCY, the Welsh OPC and the Children's Commissioner for Wales.

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

The Public Appointments Office, in accordance with the Code of Practice and Public Appointments, with selection on the basis of merit, under fair and open competition and subject to independent scrutiny by the Commissioner for Public Appointments.

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

Yes.

Older people should be actively involved to enhance the selection of an Older People's Commissioner.

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

This should be taken forward by the OFMDFM on an operational level, in consultation with the Public Appointments Office, by ensuring that a representative sample of expressions of interest from a selection of relevant older peoples' interest groups are involved in the selection process.

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

Four years with the option of seeking re-appointment for a further four years.

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

Yes, subject to satisfactory performance review.

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)

Yes, sponsored by First Minister and Deputy First Minister, and mirroring the provisions in legislation for NICCY.

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)

Yes.

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 and this should be subject to wide ranging consultation with a range of stakeholders or by the creation of an Older People's Stakeholder Panel.

The RQIA welcomes the review of the OFMDFM publication "Ageing in an Inclusive Society" and to re-establish the Older People's Advisory Committee. This Committee could work effectively with the Older People's Commissioner in identifying issues of a discriminatory nature which need to be addressed on behalf of older people.

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

Yes.

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

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

As referenced in Question 37.

40. The Age Sector Report ² 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)

Yes. All departments and public sector independent bodies responsible for providing services for older people should identify a lead champion responsible for older people's issues.

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

This will help ensure that coherence in planning, developing and review of the critical issues for older people across all relevant Departments, groups and agencies.

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)

Yes.

Complaints provide a valuable source of feedback on how a public office is performing and in identifying any potential weaknesses. The Older People's Commissioner should be added to Schedule 2 of the Commissioner for Complaints Order, as this should be required by legislation.

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

Yes, in consultation with other relevant bodies who have an interest in such matters.

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

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.**
- B. Every 4 years.**
- C. Every 5 years.**

At such a time as the Commissioner thinks fit but not earlier than three years after the making of the previous report.

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

Annual accounts and satisfactory reviews of performance by sponsor Department, with evidence of making a difference through the use of a 'joined up approach' to oversight of older person's issues within the jurisdiction, and which adds value to the services currently provided by other agencies.

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)

Yes.

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