



Submission on

**An Older Person's Commissioner
for Northern Ireland**

January 2010

1.0 Introduction

UNISON is Northern Ireland's leading trade union, representing nearly 40,000 workers in the essential public services on which older people rely. These include health; social services; education; local government; private companies providing public services; and the community and voluntary sector.

It is older people in NI who will bear the brunt of proposed cuts in critical public services over the coming years. Together with our very active UNISON NI Retired Members Committee and our allies in the equality and human rights sectors we work to raise awareness, influence decision makers and tackle the inequalities facing older people on issues such as:

- Pensioner poverty;
- Health inequalities and age discrimination; and
- Isolation and mobility

We believe that retired and working people have shared interests including obtaining decent incomes in older age, a universal health service and the creation of an equal, just and inclusive society.

It is this context and towards this aim that UNISON supports the creation of an Older People's Commissioner who will champion the rights of older people in our society.

However, the Commissioner will only be an effective voice for change if he/she has the fullest range of duties and powers possible, including the power to assist older people in taking legal action over alleged breaches of rights; and powers to conduct formal investigations, issue directives and demand immediate compliance across the public, private and voluntary sectors.

Only with these powers will the Commissioner be able to promote equality and safeguard the rights and dignity of older people here.

2.0 The United Nations Principles for Older Persons - Independence, Participation, Care, Self-fulfilment, and Dignity.

Whenever the Commissioner is deciding how to act and deciding what constitutes the interests of older people, it is essential that he/she take account not only of the UN Principles for Older Persons but other relevant equality and human rights standards and existing (and future) legislation or policies relevant to their work. The Commissioner should also have the duty to ensure that relevant authorities also take account of these.

Standards, policy and legislation relevant to older people include the UN Paris Principles; the EU Employment Framework Directive; the European Charter of Fundamental Rights; the Human Rights Act 1998; Section 75 of the Northern Ireland Act 1998; the Employment Equality (Age) Regulations (Northern Ireland) 2006; as well as any future NI Bill of Rights. The Commissioners responsibilities and remit in this regard should be outlined in a preamble to the legislation. We would also support the creation of an advisory panel of older people to influence the focus of the Commissioners work.

3.0 Age range for Commissioner's oversight

We agree that whilst the Commissioner should focus on the people aged 60 years and over, he/she should have the discretion to provide services to people aged 50 years and over in special circumstances. We believes that the age

range for the Commissioner's oversight should never be increased beyond 60 years of age but could be lowered to 50 years and over on review.

4.0 The Commissioner - Principle aim, paramount consideration, roles functions and duties

In the context of the principles and standards detailed in section 2.0 in this submission, the principle aim of the Commissioner must go beyond 'safeguarding and promoting' the interests of older people to encompass a requirement to promote equality and human rights, tackle inequalities, and ensure inclusion and empowerment.

When dealing with the case of a particular older person, the Commissioner should have as a paramount consideration the needs and interests of that older person

To ensure that this principle aim and paramount consideration are consistent, it is essential that the Commissioner's powers are as extensive as possible including the ability to challenge and overthrow statutory provisions that conflict with them.

The 'interests' of older people should be interpreted widely to include their 'needs' and 'rights'.

Whilst the duties proposed in Chapter 8, Paragraph 8.5 are suitable for a Commissioner for Older People they will only be effective in making change if the Commissioner has the power to act and to call relevant authorities to account.

5.0 The Commissioner and other organisations

As detailed below we are opposed to restricting the Commissioner's operations to circumstances where no-one else has the legal power to act.

The Commissioner must have the power to cooperate with other bodies and those bodies must have a statutory duty to co-operate fully with the Commission. It is insufficient that the Commissioner's role be restricted to merely ensuring that other Commissions 'understand and 'co-ordinate' their functions and identify gaps.

6.0 Powers of the Commissioner

The Bill as currently drafted places unjustifiable limits on the Commissioners powers that will undermine both the Paris Principles and the impact the Commission will have on the lives of older people.

It is essential that the Commissioner be given full powers, not just residual powers, in the operation of her/his critical functions. In particular, it is essential that the Commissioner has strong powers of formal investigation, including powers equivalent to those of a High Court to call for documents and witnesses etc. The power of 'informal' investigation referred to in the consultation document should not be used as an alternative to formal investigation. This section of the bill is very confusing due to the placing of limits on the powers of the Commissioner in areas such as reviews, casework etc.

Given the unwillingness of many older people to enter legal proceedings and as an essential part of its proactive litigation strategy it is essential that the Commissioner should have 'victim standing', and be able to take cases in her/his own name as well as 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'. There should be no limit on the Commissioner's right to grant assistance where another body also has a remit. Clear Memoranda of Understanding should manage any overlap in powers.

Strong powers of information, research and publication; advice and guidance; representation and recommendation are essential

In relation to disputes the Commissioner should have powers to support arrangements for mediation/arbitration services to be made available, particularly when the case does not meet the criteria of the Commission's strategic litigation policy. Such a policy is essential when considering what cases meet the Commission's strategic priorities.

We oppose the proposed limitations to the Commissioner's powers to review the advocacy, complaint, inspection and whistle-blowing arrangements in general and individual cases. Limiting powers to those circumstances where no-one else has the legal power to review them will lead to unnecessary delays. Concerns over duplication should be overcome by ensuring that effective Memoranda of Understanding are in place.

The power of the Commissioner to provide assistance – support, guidance and/or funds – to an older person with a complaint against a relevant authority should be absolute and not exercisable only where it appears that no other person or body is likely to assist or act.

The powers of the Commission where a relevant authority does not follow her/his recommendations are much too weak. It is essential that the Commissioner should be able to issue notices of requirement to comply with their recommendations, and apply penalties for non-compliance or regular breaches of good practice.

The Commissioner should have the power to speak out about any issues affecting older people and about the policies of all relevant bodies.

7.0 List of relevant authorities at Annex 6

All public sector organisations and private and voluntary organisations responsible in any way for the health and social care of older people should be fully covered by the Commissioner's formal and specific powers. The list should be subject to regular review. In addition to those authorities listed in Annex 6 this would also include public, private and voluntary service providers in education, transport; housing, the utilities and the Post Office. Whilst not under the authority of the Assembly it should also include UK departments and their arms-length bodies responsible for pensions, tax and benefits.

6.0 Other issues

We believe that Commissioner should be a full-time paid post; should serve a term of four years, renewable once; should be appointed jointly by the First Minister and deputy First Minister, and approved by the Assembly. There should be a legal requirement that older people be involved in all stages of the recruitment and selection process

The Commissioner should be an independent body funded by but independent from OFMdFM and accountable to the assembly

To achieve accountability older people should be consulted and informed about the priorities of the Commissioner and what the Commissioner does.

The Commissioner should have an active relationship with, but be demonstrably independent from, stakeholder organisations.

We agree with recommendations from the Age Sector Platform 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”.

The Commission must have a strong and effective complaints procedure

The Commissioner should be able to recommend the legislation should be changed following review.

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