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# Equality and Human Rights Bodies: Powers and Responsibilities

## 1 Introduction

This paper has been prepared in the context of the on-going reviews of arms-length bodies internally in the Office of the First Minister and Deputy First Minister and at the cross-departmental level by the Budget Review Group<sup>1</sup>. The Committee for the Office of the First Minister and Deputy First Minister has expressed interest in the depth and detail of a review of equality and human rights bodies in Northern Ireland<sup>2</sup>.

Building on previous research outlining models of equality and human rights institutions in Northern Ireland and other jurisdictions<sup>3</sup>, the paper briefly outlines the powers and responsibilities of the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, the Northern Ireland Ombudsman, the Northern Ireland Commission for Children and Young People, the Commission for Victims and Survivors and the Older People's Commissioner. There are many other bodies with

<sup>1</sup> Letter from the First Minister and deputy First Minister 15 June 2011 (Ref: COR/1127/11).

<sup>2</sup> Meetings of the Committee of the Office of the First Minister and Deputy First Minister 1 June, 15 June and 29 June 2011.

<sup>3</sup> See Research and Information Service Briefing Paper NIAR-325-011, *Equality and Human Rights Institutions*, 24 June 2011: <http://www.niassembly.gov.uk/researchandlibrary/2011/7611.pdf>.

roles and functions relevant to the protection of human rights and upholding standards of equality, such as regulatory and oversight bodies in a range of sectors. This paper focuses on relevant comparable commissions and ombudsman offices.

A brief comparison is made with corresponding equality and human rights bodies in the Republic of Ireland and Great Britain.

## 2 Human Rights and Equality Bodies in Northern Ireland

This section summarises the statutory powers and responsibilities of the human rights and equality bodies in Northern Ireland.

### **Northern Ireland Human Rights Commission**

The Human Rights Commission<sup>4</sup> was established in 1999 under Section 68 of the Northern Ireland Act 1998<sup>5</sup>. The Commission promotes human rights in Northern Ireland through reviewing legislation, Assembly bills and policy development, advising the Secretary of State and the Northern Ireland Executive of legislative and other measures to protect human rights and disseminating information in the form of research, reports and educational materials.

The Commission has powers to initiate or assist individuals in legal proceedings relating to human rights and conduct investigations. Failure to provide information or evidence requested in a notice by the Commission may constitute an offence and the Commission has the power to enter places of detention in the course of an investigation.

### **Equality Commission for Northern Ireland**

The Equality Commission<sup>6</sup> was established under Section 73 of the Northern Ireland Act 1998 to take over the functions previously exercised by:

- the Commission for Racial Equality for Northern Ireland
- the Equal Opportunities Commission for Northern Ireland
- the Fair Employment Commission and
- the Northern Ireland Disability Council

Part II of the Fair Employment and Treatment (Northern Ireland) Order 1998<sup>7</sup> sets out the duty of the Commission to<sup>8</sup>:

- a. Promote equality of opportunity in Northern Ireland
- b. Promote affirmative action
- c. Work for the elimination of unlawful discrimination and harassment
- d. To review and recommend changes to the Fair Employment and Treatment Order

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<sup>4</sup> Website of the Northern Ireland Human Rights Commission: <http://www.nihrc.org/>.

<sup>5</sup> Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/data.pdf>.

<sup>6</sup> Website of the Equality Commission for Northern Ireland: <http://www.equalityni.org/site/default.asp?secid=home>.

<sup>7</sup> Fair Employment and Treatment (Northern Ireland) Order 1998: <http://www.legislation.gov.uk/nisi/1998/3162/data.pdf>.

<sup>8</sup> FETO 1998 Section 7.

The Commission may advise government departments on matters relating to equality, disseminate information through research, reports and codes of practice and monitor social trends in equality. In relation to Section 75 of the Northern Ireland Act, the Commission reviews and monitors compliance by public bodies, including receiving complaints with regard to non-compliance.

The Commission has powers to investigate practices affecting equality of opportunity and obstruction of any such investigation or failure to provide information or evidence when given notice to do so equates to contempt of the High Court. However, requirements for subjects of investigations to rectify breaches of equality are enforceable through a variety of routes, such as the Fair Employment Tribunal<sup>9</sup>, industrial tribunals or county courts, depending on the legislation. In respect of Section 75 duties, the Commission is to refer breaches of the duty or unapproved equality schemes to the Secretary of State.

The Commission can give legal assistance and advice or procure legal representation for individuals bringing proceedings in relation to the enforcement of specified equality legislation.

### **Northern Ireland Ombudsman**

The Ombudsman's office<sup>10</sup>, originally established in 1969, encompasses the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints<sup>11</sup>.

The Ombudsman (Northern Ireland) Order 1996<sup>12</sup> sets out the following function for the Assembly Ombudsman<sup>13</sup>:

1. Investigation of complaints of injustice resulting from actions taken by a department or public body

The Commissioner for Complaints (Northern Ireland) Order 1996<sup>14</sup> sets out the following function for the Commissioner for Complaints<sup>15</sup>:

2. Investigation of complaints of injustice resulting from actions taken by a government agency<sup>16</sup>

The Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997<sup>17</sup> extends the bodies subject to investigation to providers of general health services.

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<sup>9</sup> Web pages of the Fair Employment Tribunal:

[http://www.employmenttribunalsni.co.uk/index/employment\\_tribunals/fair\\_employment\\_tribunal.htm](http://www.employmenttribunalsni.co.uk/index/employment_tribunals/fair_employment_tribunal.htm).

<sup>10</sup> See also Research and Library Service Briefing Note NIAR 426-10, *The Northern Ireland Ombudsman*, 9 September 2010: <http://www.niassembly.gov.uk/researchandlibrary/2010/17010.pdf>.

<sup>11</sup> Northern Ireland Ombudsman website: <http://www.ni-ombudsman.org.uk/>.

<sup>12</sup> Ombudsman (Northern Ireland) Order 1996: <http://www.legislation.gov.uk/nisi/1996/1298/data.pdf>.

<sup>13</sup> Sections 8-11.

<sup>14</sup> Commissioner for Complaints (Northern Ireland) Order 1996: <http://www.legislation.gov.uk/nisi/1996/1297/made/data.pdf>.

<sup>15</sup> Sections 7-10.

<sup>16</sup> The government agencies are listed at Schedule 2.

The Ombudsman has the power to investigate complaints with the same powers to compel witnesses as the High Court. The functions and powers of the Ombudsman are currently under review<sup>18</sup>.

### **Northern Ireland Commissioner for Children and Young People**

The Commissioner for Children and Young People (Northern Ireland) Order 2003<sup>19</sup> established the office of the Northern Ireland Commissioner for Children and Young People (NICCY)<sup>20</sup> to safeguard and promote the rights and best interests of children and young people<sup>21</sup>.

The Commissioner has similar functions to the Human Rights Commission in respect of children's rights, in addition to which, advocacy, complaint and whistle-blowing arrangements of relevant authorities are to be reviewed and children and young people can be assisted or represented in complaints against relevant authorities. The Commissioner has the power to initiate or intervene in legal proceedings on matters relating to children's rights, can carry out investigations with the equivalent powers of the High Court and can enter any relevant premises in the course of such investigations. Individual cases can be considered.

A review of the Commissioner's office in 2006 recommends that the mandate be extended to private authorities and to all public authorities, including UK-wide authorities. In terms of powers, the report recommends a provision that account be taken of the UN Convention on the Rights of the Child in courts and that formal investigation powers extend to all areas of the Commissioner's investigation and complaint functions<sup>22</sup>.

A 2010 review re-affirmed the need for NICCY to remain an independent body in its current role. Recommendations included greater collaboration with other bodies and more shared resources, including co-location with the Equality Commission<sup>23</sup>.

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<sup>17</sup> Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997: <http://www.legislation.gov.uk/nisi/1997/1758/data.pdf>.

<sup>18</sup> See, for example, meetings of the Committee for the Office of the First Minister and Deputy First Minister 25 May, 1 June, 15 June, 22 June 2011: <http://www.niassembly.gov.uk/centre/2011mandate/centre-minutes.htm>. See also Research and Library Service Research Paper NIAR 145-11, *The Office of the Northern Ireland Ombudsman*, March 2011: <http://www.niassembly.gov.uk/researchandlibrary/2011/4311.pdf>.

<sup>19</sup> Commissioner for Children and Young People (Northern Ireland) Order 2003: [http://www.legislation.gov.uk/nisi/2003/439/pdfs/uksi\\_20030439\\_en.pdf](http://www.legislation.gov.uk/nisi/2003/439/pdfs/uksi_20030439_en.pdf).

<sup>20</sup> Website of the Northern Ireland Commissioner for Children and Young People: <http://www.niccy.org/>.

<sup>21</sup> See also Research and Library Services Research Paper 54/08, *The Children and Young Persons Commissioner for Northern Ireland*, 9 June 2008: <http://archive.niassembly.gov.uk/io/research/2008/5408.pdf>.

<sup>22</sup> Barry Fitzpatrick, *Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order 2003 – the review of the office of the Commissioner: Compatibility with Paris Principles*, 12 September 2006: [http://www.niccy.org/uploaded\\_docs/NICCY%20Legislation%20Review%20-%20Main%20Report.pdf](http://www.niccy.org/uploaded_docs/NICCY%20Legislation%20Review%20-%20Main%20Report.pdf).

<sup>23</sup> PricewaterhouseCoopers, *Review of the Northern Ireland Commissioner for Children and Young People*, November 2010: <http://www.ofmdfmi.gov.uk/niccy-review-2010.pdf>.

## Commission for Victims and Survivors

The Commission for Victims and Survivors (Northern Ireland) Act 2008<sup>24</sup> amended the previous legislation<sup>25</sup> to establish the Commission for Victims and Survivors<sup>26</sup>. Section 5 of the 2006 Order, as amended by the 2008 Act, states that the aim of the commission is to 'promote the interests of victims and survivors'.

There are no investigation or enforcement powers.

## Commissioner for Older People

The Commissioner for Older People (Northern Ireland) Act 2011<sup>27</sup> provides for the replacement of the Older People's Advocate<sup>28</sup> with a Commissioner, currently in the process of being appointed<sup>29</sup>. Section 2 of the Act sets out the principle aim of the Commissioner as to 'safeguard and promote the interests of older persons'.

The Commissioner has the same legal and investigatory powers as the Commissioner for Children and Young People.

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<sup>24</sup> Commission for Victims and Survivors (Northern Ireland) Act 2008:

[http://www.legislation.gov.uk/nia/2008/6/pdfs/nia\\_20080006\\_en.pdf](http://www.legislation.gov.uk/nia/2008/6/pdfs/nia_20080006_en.pdf).

<sup>25</sup> Section 4 of the Victims and Survivors (Northern Ireland) Order 2006 provided for a Commissioner, which has been amended to provide for a Commission: [http://www.legislation.gov.uk/nisi/2006/2953/pdfs/uksi\\_20062953\\_en.pdf](http://www.legislation.gov.uk/nisi/2006/2953/pdfs/uksi_20062953_en.pdf).

<sup>26</sup> Commission for Victims and Survivors website: <http://www.cvsni.org/>.

<sup>27</sup> Commissioner for Older People (Northern Ireland) Act 2011: <http://www.legislation.gov.uk/nia/2011/1/data.pdf>.

<sup>28</sup> Website of the Older People's Advocate: <http://www.olderpeoplesadvocateni.org/>.

<sup>29</sup> For background, see Research and Library Service Briefing Paper NIAR 341-10, *Reviewing the case for an Older People's Commissioner for Northern Ireland*, 8 September 2010 (<http://www.niassembly.gov.uk/researchandlibrary/2010/9310.pdf>) and Bill Paper NIAR 303-10, *The Commissioner for Older People Bill*, 16 June 2010 (<http://www.niassembly.gov.uk/researchandlibrary/2010/9410.pdf>).

### 3 Human Rights and Equality Bodies in the Republic of Ireland

This section summarises the statutory powers and responsibilities of the human rights and equality bodies in the Republic of Ireland in comparison with those of the equivalent Northern Ireland bodies.

#### **Irish Human Rights Commission**

The Irish Human Rights Commission<sup>30</sup> was established in 2003 by the Human Rights Commission Act 2000<sup>31</sup>, amended by the Human Rights Commission Act 2001<sup>32</sup>. The functions of the Commission, as defined in the 2000 Act, are equivalent to those of the Northern Ireland Human Rights Commission and the Irish Commission has similar legal, investigation and enforcement powers, failure to provide evidence or information for an inquiry resulting in liability to a fine or imprisonment following application to the Circuit Court.

#### **Equality Authority**

The Equality Authority<sup>33</sup> was established in 1999 under the Employment Equality Act 1998<sup>34</sup>, as amended<sup>35</sup>, replacing the Employment Equality Authority. The Equality Authority has the broad duties of<sup>36</sup>:

- a. Work towards the elimination of discrimination
- b. Promote equality of opportunity
- c. Review certain Acts concerning equality

The Authority can conduct inquiries with the same powers as a court of justice in requiring witnesses or evidence and can issue non-discrimination notices failure to comply with which constitutes an offence. Equality reviews can be carried out in respect of businesses of 50 or more employees, which can result in notices enforceable through the Circuit Court. Discrimination cases can also be referred to the Director of Equality Investigations<sup>37</sup>.

#### **Ombudsman Ireland**

The Ombudsman's office<sup>38</sup> was established by the Ombudsman Act 1980<sup>39</sup>. The functions of the Ombudsman are<sup>40</sup>:

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<sup>30</sup> Human Rights Commission website: <http://www.ihrc.ie/>.

<sup>31</sup> Human Rights Commission Act 2000: <http://www.irishstatutebook.ie/pdf/2000/en.act.2000.0009.pdf>.

<sup>32</sup> Human Rights Commission Act 2001: <http://www.irishstatutebook.ie/pdf/2001/en.act.2001.0035.pdf>.

<sup>33</sup> Equality Authority website: <http://www.equality.ie/>.

<sup>34</sup> Employment Equality Act 1998: <http://www.irishstatutebook.ie/pdf/1998/en.act.1998.0021.pdf>.

<sup>35</sup> By the Equal Status Act 2000 (<http://www.irishstatutebook.ie/pdf/2000/en.act.2000.0008.pdf>) and the Equality Act 2004 (<http://www.irishstatutebook.ie/pdf/2004/en.act.2004.0024.pdf>).

<sup>36</sup> Section 39 of the 1998 Act.

<sup>37</sup> The Office of the Director of Equality Investigations is currently known as the Equality Tribunal, website: <http://www.equalitytribunal.ie/Home1.html>.

<sup>38</sup> Website of the Ombudsman: <http://www.ombudsman.gov.ie/en/>.

1. Investigate complaints regarding treatment by a Department of State or specified body<sup>41</sup>
2. Initiate investigations regarding actions by a Department of State or specified body where this is warranted

The Ombudsman has the equivalent powers as the High Court to compel witnesses and bring evidence and obstruction constitutes contempt of court. The Ombudsman Ireland has the power to initiate investigations, whereas that for Northern Ireland can only investigate in respect of a complaint.

### **Ombudsman for Children**

The Ombudsman for Children's Office<sup>42</sup> was established by the Ombudsman for Children Act 2002<sup>43</sup>. The Ombudsman promotes the rights and welfare of children and advises on policy, including monitoring relevant legislation.

The Ombudsman has the power to investigate public bodies, schools or voluntary hospitals in relation to actions affecting children and has the same powers to compel witnesses and call evidence as the High Court. However, there are no enforcement powers or capacity to bring legal proceedings.

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<sup>39</sup> Ombudsman Act 1980: <http://www.irishstatutebook.ie/1980/en/act/pub/0026/print.html>. The Ombudsman (Amendment) Act 1984 permitted adjustments to the 1980 Act to be made by Government Order, which has been used to extend or restrict the remit of the Ombudsman in 1984 and 1985. The Ombudsman's office has also been affected by a range of other pieces of legislation, including the Finance Act 1981, data protection Act 1988, British-Irish Agreement Act 1999, Postal and telecommunications Services (Amendment) Act 1999, Ombudsman for Children Act 2002, Ombudsman (Defence Forces) Act 2004 and Disability Act 1995.

<sup>40</sup> Section 4 of the 1980 Act.

<sup>41</sup> Bodies subject to investigation are listed at Schedule 1 to the 1980 Act, exempted bodies at Schedule 2.

<sup>42</sup> Website of the Ombudsman for Children: <http://www.oco.ie/>.

<sup>43</sup> Ombudsman for Children Act 2002: <http://www.irishstatutebook.ie/pdf/2002/en.act.2002.0022.pdf>.



## 4 Human Rights and Equality Bodies in Great Britain

Equality and human rights institutions for Great Britain have different territorial remits, for example, the equality elements of the Equality and Human Rights Commission extends to all of Britain, but the human rights elements to England and Wales only, as Scotland has its own human rights body. Wales also has an Older People's Commissioner. This section summarises the statutory powers and responsibilities of the human rights and equality bodies in Great Britain and compares them with Northern Ireland.

### **Equality and Human Rights Commission**

Part I of the Equality Act 2006<sup>44</sup> established the Equality and Human Rights Commission<sup>45</sup>, amalgamating existing equality bodies and assuming human rights functions across England and Wales, excepting human rights matters relating to Scotland only. The functions of the Commission are amended by the Equality Act 2010<sup>46</sup>.

The Commission advises on and monitors equality and human rights legislation, disseminates information on equality and human rights and issues codes of practice regarding equality. In terms of statutory duty scrutiny, Section 31 of the 2006 Equality Act gave the Commission powers to carry out assessments of public bodies' adherence to equality requirements, however, Section 149 of the 2010 Equality Act created a similar duty on public bodies as Section 75 of the Northern Ireland Act and the Commission has a similar scrutiny role in relation to the Section 149 duty as the Equality Commission for Northern Ireland has for Section 75.

The Commission has the power to conduct inquiries which, if an unlawful act with regard to equality or human rights is indicated, can lead to an investigation. Failure to provide evidence for either inquiry or investigation constitutes an offence. An investigation may lead to a notice requiring action relating to an unlawful act, failure to comply with which constitutes an offence. A compliance notice in relation to a public sector duty is enforceable through a court.

The Commission may initiate judicial review proceedings or intervene in legal proceedings in the fields of both equality and human rights, but can only give legal assistance to individuals in relation to 'equality enactments'. This differs from Northern Ireland in that the Northern Ireland Human Rights Commission can give legal assistance to individuals in respect of human rights cases. The legislation does not mention entry into premises in relation to investigations of inquiries, whereas powers of entry to places of detention for investigations are specifically indicated in the legislation for the Northern Ireland Human Rights Commission.

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<sup>44</sup> Equality Act 2006: [http://www.legislation.gov.uk/ukpga/2006/3/pdfs/ukpga\\_20060003\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/3/pdfs/ukpga_20060003_en.pdf).

<sup>45</sup> Equality and Human Rights Commission: <http://www.equalityhumanrights.com/>.

<sup>46</sup> Equality Act 2010: [http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga\\_20100015\\_en.pdf](http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf).

## Scottish Human Rights Commission

The Commission<sup>47</sup> was established in 2008 by the Scottish Commission for Human Rights Act 2006<sup>48</sup>. The general duty of the Commission is to promote and encourage good practice in human rights<sup>49</sup>, which is undertaken through the dissemination of information, such as research, guidance or educational materials and the review of legislation and policy.

The Commission has the power to conduct inquiries, including enforcement of witness and evidence provision and entry into a place of detention through the Court of Session. While there is a power to intervene in civil proceedings, the Commission does not have the power to initiate a judicial review and is specifically prohibited from giving legal assistance to individuals<sup>50</sup>.

## Ombudsman Offices

There is a range of Ombudsman offices which are intended to protect the rights of people in the various jurisdictions of Great Britain. The main offices handling complaints against public bodies are summarised in this section.

### Parliamentary and Health Service Ombudsman

The Ombudsman's office<sup>51</sup> was originally established under the Parliamentary Commissioner Act 1967<sup>52</sup> to look into complaints about government departments and national public bodies, covering national and English bodies, Scottish and Welsh bodies being the responsibility of regional ombudsman offices. The Health Service Commissioners Act 1993<sup>53</sup> extended the office's remit to the National Health Service in England. Complaints are not made directly, but through a Member of Parliament.

### Scottish Public Services Ombudsman

The Scottish Public Services Ombudsman<sup>54</sup> was established by the Scottish Public Services Ombudsman Act 2002<sup>55</sup> to investigate complaints about public bodies. Unlike the English body, complaints do not have to be through a Member of Parliament.

### Public Services Ombudsman for Wales

The Ombudsman in Wales<sup>56</sup> was established by the Public Services Ombudsman (Wales) Act 2005<sup>57</sup> to investigate complaints about public bodies. The Ombudsman

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<sup>47</sup> Scottish Human Rights Commission website: <http://www.scottishhumanrights.com/>.

<sup>48</sup> Scottish Commission for Human Rights Act 2006: [http://www.legislation.gov.uk/asp/2006/16/pdfs/asp\\_20060016\\_en.pdf](http://www.legislation.gov.uk/asp/2006/16/pdfs/asp_20060016_en.pdf).

<sup>49</sup> Section 2 of the Act.

<sup>50</sup> Section 6.

<sup>51</sup> Ombudsman website: <http://www.ombudsman.org.uk/>.

<sup>52</sup> Parliamentary Commissioner Act 1967: [http://www.legislation.gov.uk/ukpga/1967/13/pdfs/ukpga\\_19670013\\_en.pdf](http://www.legislation.gov.uk/ukpga/1967/13/pdfs/ukpga_19670013_en.pdf).

<sup>53</sup> Health Service Commissioners Act 1993: [http://www.legislation.gov.uk/ukpga/1993/46/pdfs/ukpga\\_19930046\\_en.pdf](http://www.legislation.gov.uk/ukpga/1993/46/pdfs/ukpga_19930046_en.pdf).

<sup>54</sup> Scottish Public Services Ombudsman website: <http://www.spsso.org.uk/>.

<sup>55</sup> Scottish Public Services Ombudsman Act 2002: [http://www.legislation.gov.uk/asp/2002/11/pdfs/asp\\_20020011\\_en.pdf](http://www.legislation.gov.uk/asp/2002/11/pdfs/asp_20020011_en.pdf).

<sup>56</sup> Public Services Ombudsman for Wales website: <http://www.ombudsman-wales.org.uk/>.

<sup>57</sup> Public Services Ombudsman (Wales) act 2005: [http://www.legislation.gov.uk/ukpga/2005/10/pdfs/ukpga\\_20050010\\_en.pdf](http://www.legislation.gov.uk/ukpga/2005/10/pdfs/ukpga_20050010_en.pdf).

can also investigate claims that a member of a local authority has breached a code of conduct. As in Scotland, complaints can be made directly to the Ombudsman.

As with Northern Ireland, the ombudsman offices of Great Britain do not share the power of the Ombudsman Ireland to initiate an investigation where there is no initial complaint.

### **Children's Commissioners**

There are Children's Commissioners for England, Scotland and Wales. The Isle of Man considered a Commissioner in 2010, but this was not progressed, largely due to cost considerations<sup>58</sup>. This section summarises the Children's Commissioner offices.

#### Children's Commissioner for England

The Children's Commissioner for England<sup>59</sup> was established by Part 1 of the Children Act 2004<sup>60</sup>. The Commissioner's role is to represent the views of children, carry out research and advise the Secretary of State on the views and interests of children.

The Commissioner can carry out an inquiry and issue recommendations, with powers to enter premises and call evidence, requiring bodies subject of recommendations what action is to be taken to meet those recommendations. Inquiries cannot be carried out in respect of an individual child unless requested to do so by the Secretary of State. Powers are therefore significantly less than those of the Northern Ireland Commissioner.

#### Scotland's Commissioner for Children and Young People

The Commissioner's office<sup>61</sup> was established by the Commissioner for Children and Young People (Scotland) Act 2003<sup>62</sup>. As with the equivalent for England, the Commissioner can carry out investigations into service providers and require witnesses to provide evidence or documents, but cannot investigate a case of an individual child or a reserved matter. A report of an investigation with recommendations is laid before Parliament and there are no enforcement mechanisms.

#### Children's Commissioner for Wales

The Children's Commissioner for Wales<sup>63</sup> was established by Part V of the Care Standards Act 2000, amended by the Children's Commissioner for Wales Act 2001<sup>64</sup>. The Commissioner can review services for children, assist children in making a complaint and can conduct investigations with the same powers as the High Court and

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<sup>58</sup> See Isle of Man Government Department of Education and Children *Summary of Responses to the Consultation on the Children Bill 2010*: <http://www.gov.im/lib/docs/education/consultations/summaryofresponsesstochildrenbil.pdf>.

<sup>59</sup> Children's Commissioner for England website: <http://www.childrenscommissioner.gov.uk/>.

<sup>60</sup> Children Act 2004: [http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga\\_20040031\\_en.pdf](http://www.legislation.gov.uk/ukpga/2004/31/pdfs/ukpga_20040031_en.pdf).

<sup>61</sup> Scotland's Commissioner for Children and Young People website: <http://www.sccyp.org.uk/>.

<sup>62</sup> Commissioner for Children and Young People (Scotland) Act 2003: [http://www.legislation.gov.uk/asp/2003/17/pdfs/asp\\_20030017\\_en.pdf](http://www.legislation.gov.uk/asp/2003/17/pdfs/asp_20030017_en.pdf).

<sup>63</sup> Children's Commissioner for Wales website: <http://www.childcom.org.uk/>.

<sup>64</sup> Children's Commissioner for Wales Act 2001: [http://www.legislation.gov.uk/ukpga/2001/18/pdfs/ukpga\\_20010018\\_en.pdf](http://www.legislation.gov.uk/ukpga/2001/18/pdfs/ukpga_20010018_en.pdf).

obstructing such an investigation can constitute an offence. Unlike in England and Scotland, individual cases can be considered, as is the case in Northern Ireland and the Republic of Ireland.

### **Older People's Commissioner for Wales**

Wales has an Older People's Commissioner<sup>65</sup>, established by the Commissioner for Older People (Wales) Act 2006<sup>66</sup>. The powers of the Commissioner are similar to those of the Children's Commissioner for Wales, comprising review of services, assistance in making complaints and the conduct of investigations. The Commissioner has less power than the Northern Ireland equivalent, not having the right to bring legal proceedings.

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<sup>65</sup> Older People's Commissioner for Wales website: <http://www.olderpeoplewales.com/en/splash.aspx>.

<sup>66</sup> Commissioner for Older People (Wales) Act 2006:  
[http://www.legislation.gov.uk/ukpga/2006/30/pdfs/ukpga\\_20060030\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/30/pdfs/ukpga_20060030_en.pdf).

## 5 Comparative Analysis

The following table summarises the comparative powers of the various bodies discussed above:

	<i>Northern Ireland</i>	<i>Republic of Ireland</i>	<i>Great Britain</i>		
			<i>England</i>	<i>Wales</i>	<i>Scotland</i>
<b>Equality</b>	Equality Commission for NI	Equality Authority	Equality and Human Rights Commission		
<b>Human Rights</b>	NI Human Rights Commission	Human Rights Commission	Equality and Human Rights Commission		Scottish Human Rights Commission
<b>Ombudsman</b>	NI Ombudsman	Ombudsman Ireland	Parliamentary Ombudsman	Public Services Ombudsman for Wales	Scottish Public Services Ombudsman
<b>Children</b>	NICCY	Ombudsman for Children	Children's Commissioner for England	Children's Commissioner for Wales	SCCYP
<b>Older People</b>	Commission for Older People			Older People's Commissioner for Wales	
<b>Victims</b>	CVSNI				

Key:



Statutory Duty Scrutiny, Legal Powers and Investigation



Legal Powers and Investigation



Investigation only



No formal powers

The following sections discuss the comparative powers and functions of equality and human rights bodies in Northern Ireland, the Republic of Ireland and Great Britain. Each of the bodies is a product of the particular histories of the jurisdictions in which they operate and therefore have different features particular to the needs in the contexts in which they were created.

## Equality Bodies

European Union Council Directives<sup>67</sup> require Member States to have equality bodies that carry out the following<sup>68</sup>:

- Provide independent assistance to victims of discrimination in pursuing their complaints about discrimination
- Conduct independent surveys concerning discrimination
- Publish independent reports and make recommendations on any issue relating to such discrimination

These minimum standards are applied to varying degrees across the EU, but the key element in the roles of equality bodies is that they provide an independent service.

The Equality Commission shares with the Equality and Human Rights Commission in Great Britain the powers to investigate allegations of discrimination and to give legal assistance to individuals, as well as having a statutory scrutiny role under Section 75 of the Northern Ireland Act 1998 and Section 149 of the Equality Act 2010 respectively. The Equality Authority in the Republic of Ireland has a similar level of powers, but no statutory role for the scrutiny of public bodies. However, the Equality Authority has the power to bring cases in its own right, whereas the Equality Commission can assist an individual to bring a case.

The Equality Commission's position is complex. The powers and duties of the Commission are derived from a mixture of legislation from the 1970's to the present and the powers relating to each individual equality ground differ. These include the following:

- Fair Employment and Treatment (Northern Ireland) Order 1998<sup>69</sup>
- Race Relations (Northern Ireland) Order 1997<sup>70</sup>
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003<sup>71</sup>

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<sup>67</sup> Article 13 of Council Directive 2000/43/EC, Article 12 of Council Directive 2004/113/EC and Article 12 of Directive 2006/54/EC of the European Parliament and of the Council have the same wording with regard to equality bodies.

<sup>68</sup> While these Directives refer to discrimination on the grounds of racial or ethnic origin and sex, discussions are under way in the EU institutions for a Directive for such bodies to cover all the areas of discrimination protected by EU law. See Research and Library Services Briefing Paper NIAR 419-11 *The EU 'Horizontal Directive'*, August 2011 (forthcoming).

<sup>69</sup> Fair Employment and Treatment Order 1998: <http://www.legislation.gov.uk/nisi/1998/3162/made/data.pdf>.

<sup>70</sup> Race Relations (Northern Ireland) Order 1997: <http://www.legislation.gov.uk/nisi/1997/869/made/data.pdf>.

- Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006<sup>72</sup>
- Equality (Disability, etc.)(Northern Ireland) Order 2000<sup>73</sup>
- Special Educational Needs and Disability (Northern Ireland) Order 2005<sup>74</sup>
- Disability Discrimination (Northern Ireland) Order 2006<sup>75</sup>
- Sex Discrimination (Northern Ireland) Order 1976<sup>76</sup>
- Employment Equality (Age) (Northern Ireland) Regulations 2006<sup>77</sup>
- Northern Ireland Act 1998<sup>78</sup>

The effect of this is twofold. Firstly, the Commission cannot investigate combinations of equality grounds, such as both race and gender in the same process, and has to invoke separate pieces of legislation in separate processes to apply different grounds to the same case. Secondly, the powers the Commission can wield differ according to equality grounds, for example, the Commission has a range of powers in relation to racial discrimination, such as issuing codes of practice, assisting complainants, enforcement measures, formal investigations and grant-giving, whereas in respect of age or sexual orientation in employment, the Commission may only disseminate information, issue codes of practice and assist complainants.

In contrast, the Equality Act 2010 in Great Britain has harmonised many of the equality grounds, enabling the Equality and Human Rights Commission a degree of consistency and flexibility in the use of its powers, although the notion of multiple discrimination introduced by the 2010 Act has not been implemented. Likewise, the Equal Status Acts 2000-2004 in the Republic of Ireland have also harmonised many equality grounds.

There are similar contrasts in other parts of the European Union. For example, in France the Haute Autorité de Lutte contre les Discriminations et pour l'Égalité<sup>79</sup> (High Commission against Discrimination and for Equality) deals with equality across the grounds of sex, age, disability, race and ethnic origin, political opinion, religion and belief, sexual orientation, civil status, trade union membership, actual or assumed group membership, physical appearance, health condition, surname, genetic

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<sup>71</sup> Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003: [http://www.legislation.gov.uk/nisr/2003/497/pdfs/nisr\\_20030497\\_en.pdf](http://www.legislation.gov.uk/nisr/2003/497/pdfs/nisr_20030497_en.pdf).

<sup>72</sup> Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006: [http://www.legislation.gov.uk/nisr/2006/439/pdfs/nisr\\_20060439\\_en.pdf](http://www.legislation.gov.uk/nisr/2006/439/pdfs/nisr_20060439_en.pdf).

<sup>73</sup> Equality (Disability, etc.)(Northern Ireland) Order 2000: <http://www.legislation.gov.uk/nisi/2000/1110/made/data.pdf>.

<sup>74</sup> Special Educational Needs and Disability (Northern Ireland) Order 2005: [http://www.legislation.gov.uk/nisi/2005/1117/pdfs/uksi\\_20051117\\_en.pdf](http://www.legislation.gov.uk/nisi/2005/1117/pdfs/uksi_20051117_en.pdf).

<sup>75</sup> Disability Discrimination (Northern Ireland) Order 2006: [http://www.legislation.gov.uk/nisi/2006/312/pdfs/uksi\\_20060312\\_en.pdf](http://www.legislation.gov.uk/nisi/2006/312/pdfs/uksi_20060312_en.pdf).

<sup>76</sup> Sex Discrimination (Northern Ireland) Order 1976: <http://www.legislation.gov.uk/nisi/1976/1042/data.pdf>.

<sup>77</sup> Employment Equality (Age) (Northern Ireland) Regulations 2006: [http://www.legislation.gov.uk/nisr/2006/261/pdfs/nisr\\_20060261\\_en.pdf](http://www.legislation.gov.uk/nisr/2006/261/pdfs/nisr_20060261_en.pdf).

<sup>78</sup> Northern Ireland Act 1998: <http://www.legislation.gov.uk/ukpga/1998/47/data.pdf>.

<sup>79</sup> HALDE website: <http://www.halde.fr/>.

characteristics, way of life and pregnancy. The Commission can investigate, formulate cases, arrange mediation, pass cases to the appropriate authorities for prosecution, give advice and issue recommendations to public bodies.

However, the equality legislation in France is diverse in a similar manner to that of Northern Ireland, although the powers of the Commission are more uniform in respect of different equality grounds. The equality and rights landscape in France is in transition, as the Commission is to merge with the offices of the ombudsman (Médiateur de la République)<sup>80</sup>, the children's commissioner (Défenseur des Enfants)<sup>81</sup> and the security ethics commissioner (Commission Nationale de la Déontologie de la Sécurité)<sup>82</sup> to form the Défenseur des Droits (Defender of Rights)<sup>83</sup>, retaining powers of investigation, case-building, mediation, enforcement and referral for prosecution under its founding legislation<sup>84</sup>. The human rights body, the Commission Nationale Consultative des Droits de l'Homme<sup>85</sup>, remains independent.

In Germany, the powers of the Antidiskriminierungsstelle des Bundes (Federal Anti-Discrimination Agency)<sup>86</sup> are harmonized across equality grounds by the 2006 Equal Treatment Law<sup>87</sup>, although protections are limited to those laid down in the relevant EU Directives: racial or ethnic origin, sex, religion or belief, disability, age or sexual identity.

### Human rights bodies

Human rights institutions have the responsibility of safeguarding standards set down in international treaty. In Northern Ireland, there are international rights that are guaranteed as part of the UK commitment to international treaty standards, but also the Northern Ireland Act states that the Northern Ireland Assembly may not legislate in contradiction to the European Convention on Human Rights (ECHR), that Assembly Standing Orders should make provision for Bills to be referred to the Northern Ireland Human Rights Commission for compatibility with the Convention and that Ministers may not perform any functions contrary to the Convention<sup>88</sup>.

Human rights institutions are accredited by the United Nations according to a set of principles set down in 1993 (the Paris Principles)<sup>89</sup> that include the following:

- Competence to promote and protect human rights
- As broad a mandate as possible

<sup>80</sup> Médiateur de la République website: <http://www.mediateur-republique.fr/>.

<sup>81</sup> Défenseur des Enfants website: [http://www.defenseurdesenfants.fr/accueil\\_old.php](http://www.defenseurdesenfants.fr/accueil_old.php).

<sup>82</sup> Website of the Commission Nationale de la Déontologie de la Sécurité: <http://www.cnads.fr/>.

<sup>83</sup> The website of the new Défenseur des Droits will be: <http://www.defenseurdesdroits.fr/>.

<sup>84</sup> Loi Organique No 2011-333 du 29 Mars 2011 relative au Défenseur des Droits:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023781167&dateTexte=&categorieLien=id>.

<sup>85</sup> Website of the Commission Nationale Consultative des Droits de l'Homme <http://www.cncdh.fr/>.

<sup>86</sup> Website of the Antidiskriminierungsstelle des Bundes: [http://www.antidiskriminierungsstelle.de/DE/Home/home\\_node.html](http://www.antidiskriminierungsstelle.de/DE/Home/home_node.html).

<sup>87</sup> Allgemeines Gleichbehandlungsgesetz 2006: <http://www.gesetze-im-internet.de/bundesrecht/agg/gesamt.pdf>.

<sup>88</sup> Northern Ireland Act 1998 Sections 6(2)(c), 13(4)(b) and 24(1)(a).

<sup>89</sup> Principles relating to the Status of National Institutions (The Paris Principles):

<http://www2.ohchr.org/english/law/parisprinciples.htm>.



- Pluralist representation
- Specific responsibilities relating to the promotion and protection of human rights
- Financial independence
- Political independence
- Free consideration of any questions falling within the institution's competence

The key elements of the Principles are financial and political independence to carry out the functions of a human rights institution. In the absence of such principles for equality bodies, they too seek to adhere to the Paris Principles.

The Northern Ireland Human Rights Commission has similar legal and investigative powers to the Irish Human Rights Commission, but the equivalent body in Scotland and the human rights functions of the Equality and Human Rights Commission have less scope, having investigative powers only.

The ombudsman offices across Northern Ireland, the Republic of Ireland and Great Britain have broadly similar powers, having the power to investigate complaints against a range of public bodies. However, the Ombudsman Ireland, unlike the others, can initiate an investigation even in the absence of a complaint. The Parliamentary Ombudsman in England can only hear complaints through an MP.

The Northern Ireland Commissioner for Children and Young People (NICCY) enjoys greater powers than the Irish, English, Welsh and Scottish equivalents, which have investigative powers only, lacking NICCY's powers of legal intervention. The English and Scottish commissioners cannot take cases in respect of an individual child. The legislation for the Commissioner for Older People is modelled on that of NICCY, so has greater powers than the equivalent in Wales.

The Commission for Victims and Survivors has no formal powers.

## **Roles**

The Northern Ireland bodies discussed above have separate and distinct roles, but their roles also interlock and overlap<sup>90</sup>. For example, the Equality Commission focuses on the monitoring and enforcement of existing domestic anti-discrimination legislation in relation to age, religion, race, sexual orientation, disability and sex. The Commissions which advocate for specific groups, i.e. for children and young people, victims and survivors and older people, aim to support their designated groups in all areas of their lives, but these concerns also fall within the remit of the Equality Commission when matters arise relating to discrimination as defined in legislation.

Likewise, for the Human Rights Commission, international human rights standards can be evoked in a range of areas, including the rights of children and young people, of

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<sup>90</sup> See Appendix 2.

older people or of victims and survivors of the conflict. Similarly, the rights of women, people with different sexual identities, people from different ethnic backgrounds, people of different religions and people with disabilities intersect with the anti-discrimination work of the Equality Commission.

Where responsibilities meet, memoranda of understanding are generally in place to prevent duplication of roles and where appropriate, individuals can be referred to the body of most relevance to their circumstances. For example, the Human Rights Commission and the Equality Commission has a memorandum of understanding containing a procedure for a mutual referral process<sup>91</sup>:

*When an individual, or his or her representative, contacts the Northern Ireland Human Rights Commission with a complaint relating to alleged discrimination which apparently falls within the remit of the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission will refer the individual as quickly as possible to the Equality Commission. Likewise, when an individual, or his or her representative, contacts the Equality Commission for Northern Ireland with a complaint relating to an alleged human rights abuse which apparently does not fall within the remit of the Equality Commission, the Equality Commission will refer the individual as quickly as possible to the Northern Ireland Human Rights Commission.*

The two Commissions also work together on a range of issues, for example as the Joint Mechanism for promoting and monitoring the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in Northern Ireland<sup>92</sup>.

Similarly, the Equality Commission has memoranda of understanding with other bodies such as NICCY, the Labour Relations Agency<sup>93</sup> and the Community Relations Council<sup>94</sup>. The co-location of the Older People's Advocate with the Equality Commission facilitates co-operation between the bodies, which creates a context for continued co-operation with the incoming Commissioner for Older People, for example, while the Equality Commission has responsibility for ensuring age discrimination in employment legislation is applied, the Advocate or incoming Commissioner acts in the interests of older people in a wider advocacy role that is beyond the statutory remit of the Equality Commission.

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<sup>91</sup> Memorandum of Understanding between the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland, first adopted 23 October 2000, amended 5 March 2002 and 28 May 2008, p.3.

<sup>92</sup> Northern Ireland Human Rights Commission web pages for the UNCRPD:  
[http://www.nihrc.org/index.php?option=com\\_content&task=view&id=99&Itemid=107](http://www.nihrc.org/index.php?option=com_content&task=view&id=99&Itemid=107).

<sup>93</sup> The Labour Relations Agency provides a labour relations service, including promoting good practice in applying employment policy and mediation in disputes, which requires de-confliction with the duties of the Equality Commission in relation to cases involving issues relating to discrimination in employment. LRA website: <http://www.lra.org.uk/>.

<sup>94</sup> The Equality Commission's remit includes scrutiny of the duty of public bodies to promote good relations between communities under Section 75(2) of the Northern Ireland Act 1998, which intersects with the wider role of the Community Relations Council in the promotion of good relations in Northern Ireland. Community Relations Council website: <http://www.community-relations.org.uk/>.

The shared services project to bring NICCY and the Commissioner for Victims and Survivors into the Equality Commission building to join the Commissioner for Older People, as well as cutting costs through sharing resources, will also further facilitate inter-body co-operation.

The Human Rights Commission also has memoranda of understanding with the Northern Ireland Ombudsman, the Police Ombudsman and the Prisoner Ombudsman, as well as the Northern Ireland Courts Service, Police Service for Northern Ireland and the Northern Ireland Office, to set the parameters of mutual roles in the protection of human rights. Such relationships are described by the Commission thus<sup>95</sup>:

*The Commission avoids duplication of work with other oversight and regulatory bodies through Memoranda of Understanding, other protocols and regular formal and informal contact. The Commission bases its work on the international human rights standards and therefore brings a new perspective to situations, matters and institutions already investigated by bodies with a different focus.*

The Commission tends to intervene where there are systemic human rights issues that are cross-cutting or extend beyond the remit of a single body. The Commission also works beyond the jurisdiction of the devolved administration on common issues with the other commissions in Great Britain and the Republic of Ireland.

When a complaint is received by the Northern Ireland Ombudsman, which investigates allegations of maladministration in public bodies, a validation procedure is carried out and if appropriate, the complainant is signposted to another organisation better placed to deal with the complaint<sup>96</sup>. While in some cases this may involve referral, in others there may be co-operation where two remits meet<sup>97</sup>:

*The Ombudsman and the Northern Ireland Human Rights Commission are each committed to the development of a positive and constructive working relationship between the two organisations. They consider that an independent investigations system for complaints against public sector organisations and the protection of human rights are inextricably linked, that progress is required in both areas in Northern Ireland and that a culture of human rights and accountability needs to be developed in Northern Ireland. While they are aware that there are many issues on which the two organisations will each want to take a position and undertake substantive work, they pledge to co-operate with each other in deciding how such work*

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<sup>95</sup> Northern Ireland Human Rights Commission, *Review of NIHRC Powers under Section 69 Northern Ireland Act 1998 (as amended)*, 30 July 2009, paragraph 5.

<sup>96</sup> See Research and Library Service Research Paper NIAR 145-11, *The Office of the Northern Ireland Ombudsman*, March 2011, p.10: <http://www.niassembly.gov.uk/researchandlibrary/2011/4311.pdf>.

<sup>97</sup> Memorandum of Understanding between (1) the Northern Ireland Human Rights Commission and (2) the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints, 30 September 2003, p.1.

*should be undertaken so that unnecessary duplication of effort and waste of public money can be avoided.*

The dovetailing of the roles and responsibilities of the various bodies assists in closing gaps that may exist in the protection of individuals on equality or human rights grounds. Arrangements for co-operation and referral can be effective mechanisms in ensuring there is no duplication of effort and resources, provided they are rigorously applied.

### **The Landscape of Equality and Human Rights Bodies**

The picture of varied equality and human rights bodies in Northern Ireland and elsewhere can appear complex, however each has developed with a specific role to play, whether from an outside requirement, such as the United Nations or the European Union, national developments, such as the evolution of equality legislation in the UK since the 1970's, or local reference points resulting from the transition from conflict in Northern Ireland.

In addition, certain groups within society have been deemed to require additional protection beyond the existing rights structure through an advocate, such as for children, victims of the conflict and older people. It must also be borne in mind that there are regulatory and ombudsman bodies to protect the rights of people in particular industries or using certain services<sup>98</sup>. These have not been included in this paper, but still intersect with the work of the institutions discussed above.

The following table briefly summarises these roles:

<b><i>Role</i></b>	<b><i>Body in Northern Ireland</i></b>	<b><i>Comment</i></b>
International human rights	Northern Ireland Human Rights Commission	UN accreditation according to the Paris Principles 1993  International human rights treaty reference points

<sup>98</sup> For example, the Regulation and Quality Improvement Authority (RQIA) is the independent health and social care body for Northern Ireland, website: <http://www.rqia.org.uk/home/index.cfm>.

Equality	Equality Commission for Northern Ireland	EU Directives 2000/43/EC, 2004/113/EC, 2006/54/EC  Powers derived from domestic equality legislation  Some states (such as Finland) have separate institutions for different equality grounds, such as gender and race, others (such as the UK) have merged human rights and equality bodies
Complaints about public bodies	Northern Ireland Ombudsman	In many states the Ombudsman is also the national human rights institution
Constitutional rights watchdog	The UK does not have a written constitution, but a Bill of Rights for Northern Ireland may require an equivalent body	In many states the Ombudsman covers domestic and international rights, other states having a specific body to protect constitution rights, such as the French Médiateur de la République
Security watchdog	Police Ombudsman  Prisons Ombudsman	In France these roles are combined with others in a Security Ethics Commissioner, the Commission Nationale de la Déontologie de la Sécurité
Advocacy	Northern Ireland Commissioner for Children and Young People  Commission for Victims and Survivors  Commissioner for Older People	Children's commissioners are common elsewhere, for older people rare (such as in Wales) and for victims of conflict apparently unique