



Northern Ireland
Assembly

**COMMITTEE
FOR THE OFFICE OF THE
FIRST MINISTER AND DEPUTY
FIRST MINISTER**

**OFFICIAL REPORT
(Hansard)**

**Commissioner for Older People's Draft
Legislation**

16 September 2009

NORTHERN IRELAND ASSEMBLY

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DEPUTY FIRST MINISTER**

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Members present for all or part of the proceedings:

Mr Danny Kennedy (Chairperson)
Mrs Naomi Long (Deputy Chairperson)
Ms Martina Anderson
Mr Alex Attwood
Mr Tom Elliott
Mr Barry McElduff
Mr Francie Molloy
Mr Stephen Moutray
Mr George Robinson
Mr Jim Shannon
Mr Jimmy Spratt

Witnesses:

Dame Joan Harbison () Older People's Advocate

The Chairperson (Mr Kennedy):

We again welcome Dame Joan Harbison to the Committee. Thank you for attending. We are considering the draft Commissioner for Older People Bill, on which the Committee was briefed by officials last Wednesday. We were advised that, although you, as advocate, had not had sight of the legislation, you were, perhaps, consulted to some degree. The Committee is, therefore, interested in your views and would like you to make your submission and to make yourself available for questions. The meeting will be recorded by Hansard.

Dame Joan Harbison (Older People's Advocate):

Thank you, Chairperson. I welcome this opportunity to speak to the Committee. I was an

interim measure, so to speak, before the proposed establishment of a commissioner for older people. One of my principal rules, as defined in December 2008, was to facilitate the public consultation on the proposed role, remit and powers of the older people's commissioner. I want to leave that bit for now about what I have been doing in the past nine months, but I will come back to it.

I do not want to take up too much of the Committee's time, but I will tell you a little bit about what I have been doing, and what the office has been doing, in the past nine months. I feel that our work has demonstrated the need for an older people's commissioner. What I have been trying to do — without any statutory powers, as the Committee will be aware — is to address matters of principle on issues that have been brought to me by individuals or the sector. Those issues have been very varied, and, for that reason, they have been very interesting. They have included transport issues: simple things such as the location of stops that are inconvenient for older people; the nature of the services supplied; accessibility; and the general timetabling of services.

The previous time that I appeared before the Committee, in February 2009, I talked about issues that were raised with me about the quality of social and nursing care.

Another issue that was raised with me concerned the quality of social care that is provided, how older people are looked after and how their dignity is respected. I have also had issues raised with me about access to services; for example, how older people get their shopping home from wherever they happen to buy it. I have been in communication with supermarkets on that issue. There is also the issue of the payment of bills, because, as we are all aware, many older people are frightened to use credit cards, and so on. I have also dealt with those issues.

I have no statutory powers, as I have already said. That means that I cannot carry out investigations. However, I have encouraged others to do so, where appropriate. I have also raised issues with relevant bodies without necessarily having carried out an investigation. That means that I have at least been assured that the proper complaints procedures were in place and adhered to, and that the delivery and quality of services are being suitably monitored by various bodies.

Issues that I have looked at are, for example, the location of health clinics and issues around transport and social security, and how older people are communicating with the Social Security Agency. As a result of some of the work that I have done — I could give the

Committee much more detail, but I think that this is sufficient for this purpose — we are having closed sessions with various agencies to focus on the provision of high-quality services for older people. We have established cross-agency groups to consider issues such as transport and community safety. As I understand it, the powers and remit that the commissioner will have are very much reflected in the work and issues that have been brought to the advocate's office in the past nine months.

I have worked very closely with the sector. I meet people in the sector regularly to discuss its priorities, and what it considers to be best practice in delivering those priorities. As an office, we try to operate very much on a no-surprises basis and to encourage the sharing of knowledge and expertise across the sector and agencies, and among the sector and agencies themselves. One of the most interesting aspects for me, as Older People's Advocate, is that I have been able to bring people together in a way that means that they can talk and exchange ideas. It was not that they did not before; it was just that there was not a mechanism for doing so. I think that the advocate's office had been very useful in that regard.

All the work that I have done, both meeting with the sector and going out pretty extensively around the countryside to talk to older people and to the people who deliver services for older people, has given me a considerable understanding. I came into the job thinking that I knew a great deal about the subject, but I discovered that I only knew the 10% of the iceberg that was above the water. The rest was all underneath. It has been a very interesting exercise, and I hope that some of the work that the advocate's office has done will be of considerable value to the commission when it is created.

In reporting to the Office of the First Minister and deputy First Minister (OFMDFM), we work to a monthly action plan, which is monitored weekly. The action plan forms the basis of the information and advice that I provide quarterly to the OFMDFM Ministers. We have also been involved in the cross-sector advisory forum subgroup that was established by the junior Ministers in OFMDFM to examine how to address the hardships that the current financial climate has created. I sit on the hardship, poverty, debt and energy subgroup, which is a cross-agency, cross-utilities, cross-departmental group, and on which I represent older people's interests and concerns.

My primary function when I was appointed as the Older People's Advocate was to facilitate the public consultation on the role, remit and powers of a commissioner for older people, as outlined in the draft legislation. We are working on the programme of consultation, which we will implement when a decision is taken on the draft legislation and

its accompanying consultation document is issued.

At present, our thinking is that we will concentrate the meetings on the legislation into around 10 days. The meetings will be held in different locations and at different times of the day to allow the widest possible coverage, and to make it easy for people to have access to and to participate in the process. We have been liaising closely with the sector, because it wishes to carry out its own consultations, and we do not want to clash with it. We have also been working closely with the legislative team in OFMDFM, which, as the Chairperson said, has briefed me on the draft Bill and the areas on which we might be consulted.

We have also established a website, which we update every two to three weeks, and a newsletter. I have brought some copies of it with me for those of you who have not seen it. The newsletter and the website will be used to ensure that older people are kept well informed on the consultation process and about when the Executive take the decision to put the legislation out for consultation.

We are conscious of the fact that a consultation can place a heavy burden on individuals and on the voluntary and community sector in general. We will try to make the process as user-friendly as possible. We are aware that there will be some areas of interest in the consultation document that are not in the draft Bill. That is because we want to hear what the sector, older people and, indeed, all groups with an interest in the legislation have to say. It is important to remember that the consultation will not solely involve older people. Ultimately, all of us will get to that stage at some point, and there will be considerable interest in the legislation from people other than those who fall naturally into the category of older people.

The Chairperson:

OK. Thank you very much indeed. That was very helpful, Dame Joan. I want to ask you about your insight into the background briefing that you were given. There was general agreement around the table when we last spoke to you, on Wednesday 25 February 2009, about your role as older people's advocate that the commissioner for older people should have teeth. Are you satisfied, on what you have gleaned, that the person who will serve as the commissioner for older people will have teeth, metaphorically speaking?

Dame Joan Harbison:

As far as I understand, some aspects of that will fall within the ambit of the consultation document rather than the draft Bill. At this stage, I would not want to pre-empt the consultation process, but I maintain my position that it will be important for the new

commissioner, where he or she is involved in promoting the rights and interests of older people, to have some methodology for ensuring that any recommendations that may arise from any work that they carry out is put into action.

Mr Elliott:

Thank you for the presentation. During the time that you have spent meeting groups and individuals, has anything been highlighted to you that may prove to be difficult for the commissioner for older people or result in conflict?

Dame Joan Harbison:

Among the sector, and certainly among all the groups that I have spoken to, there is universal enthusiasm about the role of the commissioner. I think that there was some confusion about my appointment. Many people thought that I was the commissioner, and I had much explaining to do to make it clear that I was not the commissioner but part of an interim strategy for dealing with what was regarded as a void. However, as far as I can see, there is universal support and enthusiasm for the establishment of a commissioner's post. As people have not fully seen the draft Bill or the consultation document, it is very difficult for them to say what is or is not in it. Many people have very hazy ideas about what the legislation will actually look like. Sharing that information and explaining it to people will be a very interesting exercise.

Mr Elliott:

The reason that I asked is that, for various reasons, I have met a few older people's groups in the past year, and I have always raised the issue of the possible establishment of a commissioner's post, and asked how they would feel about that. On one or two occasions, the question of what the commissioner will really do has arisen. Will he or she be in conflict with other organisations? How will the commissioner work with the Equality Commission, which obviously has responsibility for section 75? Will there be some confusion on that? Finally, a question that comes up almost all the time is whether the creation of a commissioner's post will drain resources away from older people's organisations?

Dame Joan Harbison:

The question of resources will always be there. There is a great deal of anxiety in the sector over resources that are allocated by statutory agencies, especially given the financial climate in which we are all operating. There is a realisation in the sector that the finances available to deliver many initiatives may not be as great as they have been in the past. Older groups within the older group have a stoic acceptance of that. Many of them were raising their

families in the 1940s and 1950s, and they have not forgotten what it was like then. Many of them are still very frugal, and they do not necessarily expect everything to be handed to them on a plate, and that is quite interesting. The generation that is coming behind may think quite differently. My feeling is that all older people feel that there is a role for an older people's commissioner in supporting and promoting their rights and interests.

Mr Elliott, on your concerns, and those that have been expressed to you, about the Equality Commission, that is one aspect of the draft legislation that should be considered very carefully, in order to ensure that there is no overlap with any of the Equality Commission's powers. I am quite certain that the legislation will be carefully drafted to define where one's role starts and the other's finishes.

As well as the legislation's doing that, which I am sure that it will, the Equality Commission is well used to working with memorandums of understanding with other bodies that have equality interests, and I am sure that the commissioner for older people will have memorandums of understanding with various bodies, including the Equality Commission and the Human Rights Commission. Therefore, it will be quite clear to everybody [*Inaudible.*].

Mr Spratt:

Thank you, Dame Joan, for your presentation. Are you satisfied with what the legislation will allow you to do? For example, do you have any problems with the formality of investigations, exclusions or legal assistance?

Dame Joan Harbison:

Remember that I have not seen the draft legislation in detail; I have only been briefed on it. Nevertheless, that is one area in which [*Inaudible.*] to be scrutinised very carefully. I notice that the areas [*Inaudible.*] I would have investigative powers, and also where there are exclusions to any investigative powers that the commissioner would have. I would be interested to hear, and I am certain that the sector will have clear views, about those powers and the way in which they will be used. I look forward to facilitating the debate on their use.

Mr Spratt:

In the past, there have been some fairly high-profile cases concerning the quality of care in some homes. There have been instances of whistle-blowing, from which pretty serious soundings have been taken on whether to pursue criminal proceedings for assaults that have occurred. If you were investigating a case in which there was even a hint of criminal activity, I assume that you would be happy enough to immediately call in the Police Service?

Dame Joan Harbison:

[Inaudible.] investigate that very quickly.

Mr Spratt:

Would you be happy if that were to be included in the legislation? In the past, ombudsmen and commissioners have meddled in stuff that the police should have been investigating. In my view, the sooner that the Police Service is involved in such a situation the better.

Dame Joan Harbison:

In principle, I agree. When we see the legislation, we will need to ensure that the public look carefully at it to ensure that it sits comfortably with the part of the *[Inaudible.]* that is quite clear about what point the *[Inaudible.]* become involved in any situation. *[Inaudible.]* but I definitely would not want the commissioner to be involved in anything like that.

Mr Shannon:

I am sorry for not being here for all of your presentation. Mr Elliott asked you about resources, and you outlined people's responses.

Having spoken to people over the summer, Mr Elliott asked a question to do with resources, and each of us regularly speaks to people on that basis.

Is there an expectation of greater delivery through the commissioner even if the resources are not there in the way in which they have been in the past? In other words, will people be disappointed? Is it a case of money, benefits, legislation, or, as I suspect, equality?

Dame Joan Harbison:

As far as the commissioner is concerned, there are different resource issues. Obviously, there is an issue over what resources will be necessary to ensure that the role and remit of the commissioner is able to be fulfilled. That comes back to some of the issues that have been suggested around the table. We need to be very careful that there is no duplication of effort, and that is where a memorandum of understanding, working with our partners will be very important to ensure that there is no waste of resources through repetition.

I have absolutely no doubt that if the squeeze continues, which, I think, it will, it may affect some aspects of the delivery of service in other areas. There is no doubt that the commissioner may be involved, in some way or another, in making recommendations. We

need to ensure that, whatever happens, and whoever is appointed, recommendations are fair and reasonable for older people and for those who deliver the services.

Mr Shannon:

In my interactions with senior citizens in my own area, in almost every case, the key issue for them is benefits: home heating; paying the bills; and so on. I know that a critical role of the Department for Social Development is to do with pension advisers. It is very fortunate that, in my area, the adviser is a smashing guy who is great when it comes to helping out. Do you see benefits as the key issue for older people?

Dame Joan Harbison:

Anything that I do is a very important issue for older people. However, because there is likely to be a greater proportion of older people living with very strained means, the issue of benefits is huge. I am in no doubt that there will be a role for the commissioner in making representations on that, and that there will be a very important role for the commissioner to play around the uptake of benefits. It is an important issue, and there is a number of ongoing efforts to try to raise the uptake of benefits.

I am aware that some support has been given by the Atlantic Philanthropies to encourage older people to access the benefits to which they are entitled. However, as I understand it, in order for that funding to continue, there needs to be more input from those who are providing the benefits. It has to be their priority that benefits are taken up and not left sitting or not acquired. There is no doubt that it would be a great benefit to many older people if they took up the benefits to which they are entitled. However, there are myriad reasons why that is not the case.

Mr McElduff:

I am very interested in your reference to the people who provide benefits.

Far too much emphasis is placed, and money spent, on detecting fraud, rather than on promoting benefits take-up. Jim mentioned a couple of issues that he in his constituency. One example is the way in which NI Water issues people's bills. It uses harsh language to instruct them to pay up before a certain deadline. Perhaps, in some circumstances, the bill should be contested, or there has been a leak. Perhaps, the customer is an older person who is terribly anxious because he or she cannot pay.

The Chairperson:

I accept the point that you make. I will not prevent you from making it.

Mr McElduff:

Do you, therefore, support me in making it?

The Chairperson:

Yes, I do. However, I want to draw people's attention to the draft legislation that we are considering. I would be grateful if we could focus on that.

Mr McElduff:

I understand your point. *[Inaudible.]*

Mr Shannon:

[Inaudible.]

The Chairperson:

You feel *[Inaudible.]*.

Mr McElduff:

I do. I also know an auld woman from Eskragh *[Inaudible.]*.

Mr Shannon:

A distinguished lady *[Inaudible.]*.

Mr McElduff:

During the past while, in your travels and work, were there aspects on which you would have liked to have shone the light of investigation?

Dame Joan Harbison:

Oh yes.

Mr McElduff:

Would you care to share your thoughts with us?

Mr Shannon:

Would one of those be water?

Dame Joan Harbison:

I believe that investigative powers are important. I have been hugely grateful for and impressed by agencies' willingness, regardless of whether they deal with utilities, health and social care, or whatever — even private agencies, such as BT — to discuss older people's difficulties with paying their bills or the way in which bills are issued.

We will not spend time, as it were, on the commissioner's part in that. I have been addressing those issues. I have no doubt that the commissioner will need to continue to address them. In some instances, it would be helpful for me to be able to investigate, because that would give me powers to publish and to demonstrate that there is a need, which, at present, I cannot. I can intervene on matters of principle. I only ever intercede on matters of principle with all those agencies. Many of them, without the need for an investigation, have been willing to take up issues that I have raised and do something about them. As yet, not all of the issues have been resolved. However, many agencies are aware of them and are working on them.

Mrs Long:

I apologise that I was not present during your presentation. I hope that I do not, for that reason, repeat issues that you have already clarified. I have two questions. In your experience and role as Older People's Advocate, do you believe that you need a specific power — people talk about resources — to deliver your role effectively, as opposed to that of a commissioner, whose role would be to serve older people? Do you prioritise a specific power?

My second question relates to the debate on whether an older people's commissioner should have victim standing and, therefore, be able to pursue a case in the absence of an older person who is willing to pursue a case on a point of law.

Therefore, is there a key power that you believe would be useful to you, if you like, as the Older People's Advocate, and that should be part of the commissioner's remit? From your experience, do you believe that the commissioner should have victim standing?

Dame Joan Harbison:

From the briefings that I have had, nothing is immediately obvious as needing to be covered either in the legislation or in the consultation document. I will take those roles together, as I believe they should be. I have already said that I regard powers of investigation as being

important.

Victim standing is an important debate to be had. However, I do not want, at this stage, to pre-empt the consultation on that. I want to be able to go out to consultation with the draft Bill and the consultation document and have a free and open discussion with people in and beyond the sector about its importance, when and how it would be used and whether it should be included in the Bill. I do not want to state a position until I have had the opportunity to consult.

Mr Attwood:

I am curious as to why you have not had sight of the draft legislation and policy.

Dame Joan Harbison:

As I understand it, the Bill is being processed.

Mr Attwood:

I appreciate that, but you said that, so far, you have received only a briefing.

Dame Joan Harbison:

Yes, although it was a highly detailed briefing.

Mr Attwood:

There may be an explanation for what I am about to say, but I am sure that you are aware, Dame Joan, that other elements in the sector have had sight, in confidence, of the draft legislation and policy.

Dame Joan Harbison:

I was not aware of that.

Mr Attwood:

Well, they did, and they have confirmed to the Committee that, following an initial briefing, they had sight of the draft legislation and policy.

Mr Spratt:

Who confirmed that?

The Chairperson:

You may wish to clarify that, Alex.

Mr Attwood:

The briefing paper that the Committee received today from Age Concern Help the Aged confirms what I said:

“Following the initial briefing, the project partners were given copies of the draft legislation and policy (in confidence)”.

The paper goes on to give a synopsis of their views.

I find it somewhat of a tension that you have not had the benefit of seeing that documentation, Dame Joan.

Dame Joan Harbison:

I have had a briefing and, as far as I was concerned *[Inaudible.]* I do not feel at any disadvantage. However, I feel at a slight disadvantage at not having seen the consultation document. However, I am aware of the issues that will appear in it.

Mr Attwood:

I accept that you do not feel at a disadvantage. However, I think that you are, so let us explore that point. You said that, during your briefing, when it came to the powers of the older people’s commissioner, nothing immediately occurred to you as requiring adjustment. Last week, the Committee received a briefing in which it was stated that the powers of review, complaint and formal investigation would extend only to public bodies and not to the private and voluntary sectors. When I said to the NIO official that that meant that three out of 10 people who came knocking on the commission’s door would be turned away because it would not have those powers, the official did not deny that. Is that not something that must be rectified immediately?

Dame Joan Harbison:

I agree totally that there is an issue. As I understand it *[Inaudible.]* the consultation document.

Mr Attwood:

I agree. However, you said that, based on your briefing, nothing immediate occurred to you.

Dame Joan Harbison:

[Inaudible.] might be included. If that is the case, there is a way around it.

Mr Attwood:

However, you do not think that it should be included.

The Chairperson:

To be fair, I refer members to correspondence that was tabled at last week's meeting. The penultimate paragraph of a letter from the First Minister and the deputy First Minister, dated 2 September 2009, states:

“As before, we are providing these papers to the Committee ‘in-confidence’ as they have not yet been shared with other Departments, the sector or the Advocate.”

I note that the briefing from Age Concern Help the Aged Northern Ireland suggests otherwise.

Mr Attwood:

I note that point. However, if the documentation should have been shared with anyone, Dame Joan, it should have been shared with you. I do not understand why that did not happen. It is helpful that you said that there is a way around the issue of the sectors over which the commission should have powers.

Dame Joan Harbison:

I absolutely agree. It is important that we have that debate and ensure that some people are not left outside the loop.

Mr Attwood:

That is an important principle, and I welcome your comments. I hope that OFMDFM is listening. You know that — *[Interruption.]*

The Chairperson:

Order.

Mr Attwood:

From your previous experience in the Equality Commission, you know how vital full powers of enforcement and penalty can be. In my view, the high watermark was in the days of the Fair Employment Commission; those powers have not been used fully under the terms of the Equality Commission. That aside, do you agree with the principle that giving the largest powers of enforcement and penalty to a commission is necessary to create a new culture and

discipline in any sector, including the older person's sector?

Dame Joan Harbison:

That will be a difficult part of the consultation process. I realise that from my experience with the Equality Commission and my experience in other public bodies. Even under section 75, if we complete an investigation and make recommendations, how do we ensure that those recommendations are carried out? That is very important.

Mr Attwood:

I still want to hear whether you think that maximum powers of enforcement and penalty are important.

You referred to duplication of resources. Given your current role, do you accept that there will be times when urgency and the priority of the older person's need is such that the new body must have the ability to move in order to represent and defend the interests of that older person? Regardless of other bodies' memorandums of understanding, will there not be times and places where the urgency and priority of the issue means that the commissioner must have the ability to move? Memorandums of understanding must be drafted to be consistent with that principle.

Dame Joan Harbison:

The way in which to deal with that is to ensure that it is reflected in the memorandums of understanding, so [*Inaudible.*] degree of urgency. I accept your point; there is a degree of urgency on many issues that involve older people. [*Inaudible.*] That could be handled in the memorandums of understanding, but it is important to remember to include it. However, I cannot imagine that that will be forgotten.

Mr Spratt:

I want to comment on Mr Attwood's point about the briefing paper from Age Concern Help the Aged and Age Sector Platform. They have been provided with the briefing paper, as the Committee was, in confidence. It is disgraceful that a briefing paper is now floating around. I ask the Committee to write formally to OFMDFM and enclose a copy of the paper.

Mrs Long:

The issue is not necessarily about the briefing paper, because they have not exposed the details of the consultation, and, therefore, they have maintained confidence. If a selection of groups was given that paper in confidence, why was the Older People's Advocate not

included? I would work on the assumption that it is reasonable for her to receive a copy in confidence.

Dame Joan Harbison:

To be fair, there was some discussion, and I felt that if the draft Bill had not been through the Committee or the Executive, it would be regarded as still being at that level. Honestly, I am not sure that I would have wanted to see it. We got a blow-by-blow account of what was in it just last week.

I respect this Committee and the Executive, and I respect their right to conduct debates in confidence and in the way in which they want to have them. I am just saying that I was not pushing [*Inaudible.*].

The Chairperson:

I hear what Committee members and Dame Joan are saying. We need to pursue both the Department and Age Concern Help the Aged for further clarification on those issues. That is how I propose to do it.

Mr Attwood:

The issue is not about Age Concern Help the Aged or Age Sector Platform getting information. What OFMDFM did was quite appropriate, and I have no issue with that. However, it seems appropriate to share the documentation with the advocate, not least because, she did give evidence that nothing immediate occurred to her on the basis of a briefing. Had you got a copy of the draft legislation, Dame Joan, I think that you would be saying something different to us today. It does not matter whether you were asked whether you wanted a copy of the draft legislation, you should have got it, as it would have helped you and helped us.

Dame Joan Harbison:

Having said that, I do not want anyone feeling that I am facilitating the consultation with preconceived ideas —

The Chairperson:

Or predetermined doubts?

Dame Joan Harbison:

Yes. I am not facilitating the consultation with preconceived ideas of what I think should be

in the draft Bill, and I am not saying that the consultation document should look at the gaps. It is very important that the process be inclusive. Something that I have been stressing to the sector is that the consultation is for everybody, not just for older people. It is important that we remember that.

The Chairperson:

OK. Dame Joan, thank you very much for your attendance and your answers. We will have ongoing contact with you when the legislation is introduced.

Dame Joan Harbison:

With your permission, Chairperson, I want to know whether any members are in receipt of our newsletter, but I did bring some copies of it with me, in case anybody —

The Chairperson:

Some may qualify automatically to receive it.

Mr Shannon:

I think that Mr Spratt is on that mailing list.

Mr Attwood:

Declare an interest.

Dame Joan Harbison:

I appreciate that some people have it, but some people [*Inaudible.*]. If members wish to receive the newsletter, they can get in touch with the office at the address supplied. It will keep you informed of what we are doing.

The Chairperson:

Thank you.