



Northern Ireland
Assembly

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

**OFFICIAL REPORT
(Hansard)**

Commissioner for Older People Bill

15 September 2010

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)
Dr Stephen Farry (Deputy Chairperson)
Ms Martina Anderson
Mr Allan Bresland
Mr Trevor Clarke
Mr Tom Elliott
Mrs Dolores Kelly
Mr Jimmy Spratt

Witnesses:

Ms Jane Corderoy)
Mr Chris McCafferty) Office of the First Minister and deputy First Minister
Mr Stephen Orr)

The Chairperson (Mr Kennedy):

Welcome back to the Committee. Thank you for your attendance today to give advice on the potential gaps in investigatory powers in the Bill. The session is being recorded by Hansard for inclusion in our report.

Ms Jane Corderoy (Office of the First Minister and deputy First Minister):

Thank you for inviting us here today. I should like to introduce my colleagues Stephen Orr and Christopher McCafferty from the Bill team. We are here to address the specific issues raised by

the Committee at last week's session. If the Chairperson is content, we would like first to address the question of gaps in investigative powers as identified by the Department and what the Commissioner for Older People could investigate. We have prepared a paper for the Committee on that, and I apologise for not getting it to members earlier.

Following last week's discussion, we felt that the Committee would appreciate factual and real-life examples as well as hypothetical cases and those that we had identified through the policy development. To that end, we have had input from several organisations of where they have experienced gaps in provision that could be addressed by the establishment of a Commissioner for Older People. That has taken some time, but we are very grateful to those organisations, including the Law Centre, Citizens Advice, Advice NI, the Centre for Ageing Research and Development in Ireland, Age NI, the Older People's Advocate, the Regulation and Quality Improvement Authority (RQIA) and the British Association of Counselling and Psychotherapy, as well as others that supplied real-life examples. We will speak to the paper, and are happy to take questions on any of the points made and examples provided.

Our counterparts in the Welsh Assembly Government looked at the issue a number of years ago. The key gap identified in provision, which it is envisaged the commissioner will fill, is that of an organisation to provide a unique and exclusive focus on the rights and interests of older people. No single organisation has the range of powers and functions that are proposed for the commissioner. The commissioner will bring together in one place expertise and a focus on improving the lives of older people in society; will be able to guide them through complex complaint mechanisms; will be able to advocate on their behalf; and, where necessary, will investigate issues that do not fall to other statutory bodies.

In our paper, Committee members will see evidence that there are still areas that directly affect the lives of older people where no statutory organisation has the power to act or where a public body has the power to act, but, for strategic or budgetary reasons, chooses not to.

Gaps exist in a number of areas. There is currently no legislation that covers discrimination in the provision of goods, facilities and services on the grounds of age. The Equality Commission has no statutory powers to act on behalf of anyone who is subjected to such discrimination, including older people, but the Commissioner for Older People could look into such cases based on older people's interests, investigate them as required and making recommendations on future

conduct.

Much has been made of the Northern Ireland Ombudsman's reach. However, that does not take account of the fact that the ombudsman can look only at injustice as a result of maladministration. He cannot instigate investigations into systemic failures in, for example, dignity and respect in nursing, care or transport. The Commissioner for Older People role is designed to be proactive and preventative. It will be empowered to assess problems and act to resolve them before they impact adversely on older people.

The Human Rights Commission can look only at areas that the Human Rights Act 1998 reaches. It is our understanding that that does not currently include self- and privately funded older people in private and voluntary sector nursing homes. However, the Commissioner for Older People will be able to investigate activity at all nursing and residential care homes, including those in the private and voluntary sector. Again, that addresses a unique niche that is currently unfilled.

Those brief examples demonstrate that the Commissioner for Older People will provide a unique service alongside other existing statutory organisations. The commissioner's role and functions will not impact on those organisations or the proper exercise of their statutory functions; rather it will complement them, filling in gaps in their ability to deal effectively with older people's issues that are complex and, often, time-critical.

The fundamental reason why a commissioner is needed is to concentrate in a holistic and strategic manner on older people's rights and interests. The commissioner will be unique in that no existing organisation has the remit to address the wider impact on older people, inform systemic improvements and influence the wider social policy agenda.

As we said last week, it is important to reiterate that the commissioner's formal investigatory powers are reserve powers. They are to be deployed only in strategic and exceptional circumstances. The commissioner will have a wide range of powers to be deployed in the interest of older people, including promotional, advisory, advocacy, research, educational, communication and outreach powers as well as investigatory powers.

Investigatory powers are reserved to be used exceptionally for critical strategic matters that

affect older people's lives. However, it is important to plan on the basis that when a dedicated commissioner becomes active and identifies issues of strategic importance to older people, he or she has the power and authority to challenge and investigate, leading to changes in policy and improvement in services for older people.

In the paper, we have identified several areas where the commissioner could take action on behalf of older people, including, if necessary, using his or her investigative powers. In the first few pages, we have listed around 30 examples. They fall into three main categories. The first category covers those issues where only the Commissioner for Older People could act — those issue where there is currently a gap. They include looking at isolation among older people and how Government policy responds and whether services are provided in the best way; the dignity of older people in residential nursing and hospital care; issues of hygiene, bullying and neglect; how older people are treated and respected; arbitrary age-based barriers to provision of some services to older people; the issue of top-up fees and direct payments for privately organised care; and the example outlined on provision of policies that relate to palliative and end-of-life care for older people.

The second category covers those matters where an organisation can act, but for some reason does not. That is where the commissioner can bring pressure to bear on an existing oversight body or can work collaboratively with it on issues that affect older people's interests and rights. Those include possible financial abuse of older people; transport issues and the patchy provision of rural and community transport; long-term planning of housing; older people's access to training and apprenticeship opportunities; and malnutrition of older people in hospital, which was mentioned last week. Although all of those issues are relevant now, we know that the proportion of older people in society, many of whom are vulnerable, is increasing. Today, 17% of the population is of pensionable age. By 2041, that will have doubled to 34%.

The third category covers those issues that have been brought to our attention which cut across so many bodies that no one body deals with them. This is the area where the commissioner will add the greatest value through his or her strategic and holistic focus on older people's interests and rights. Examples of that in the paper include difficulties that face older people when trying to access counselling and psychological services; pension issues and benefit uptake among older people; and bringing focus to the need to fund dementia research.

Mr Stephen Orr (Office of the First Minister and deputy First Minister):

Direct payment for social care is an initiative that is being promoted in health where a trust is making arrangements for an older person who needs help, such as meals on wheels services, respite care or a temporary stay in a nursing or residential care home. Instead of the trust's providing the service, the older person or a member of their family can, through the direct payment scheme, be given the money to purchase the service directly.

That is a positive development that enables older people and members of their families to take greater control and be empowered in dealing with the services they need. However, it means that, effectively, the older people are largely opting out of state provision, because the types of service that may be provided may not be covered by any regulatory body, or the individuals may not be covered by any regulatory body such as the RQIA. There is a gap there and, if a problem arises, what oversight body will take responsibility for dealing with it? We think that the commissioner will be well placed to examine that issue, to identify problems or the extent of problems, and to come up with proposals and recommendations on how to address them.

Mr Chris McCafferty (Office of the First Minister and deputy First Minister):

There is no public body to address the issue of proactively identifying isolated members of the older community, rural and urban. That has given rise to voluntary befriending organisations, for example, voluntary organisations that phone every day to check on the well-being of older people who they believe are isolated. Anecdotal evidence coming out of those voluntary groups suggests that there are many older people whose issues are not being addressed.

Although many public organisations do good work when they encounter isolated older people, such as social care teams, which are a source of referral for the voluntary groups, nobody is actively seeking out isolated older people. Through outreach and voluntary networking, the Commissioner for Older People will be well placed to measure the extent of that problem, develop recommendations and solutions, and take them to the heart of government.

That, in many ways, leads me on to a similar issue, which is financial abuse. Recent Citizens Advice figures advise that there has been a 108% rise in doorstep loans. Those are products that are typically targeted at vulnerable older people who will be at home during the day. These are perfectly legal organisations, and they do nothing wrong in offering doorstep loans. However, anecdotal advice again suggests that older people are receiving small loans while on low income

with tight margins. A £300 doorstep loan typically attracts a 400% APR. That can lead vulnerable older people into debt.

I emphasise that these are perfectly legal lenders, but the outworking of that for vulnerable older people is debt and depression, which can lead to malnutrition. Again, the Commissioner for Older People could investigate the practices of legal doorstep lenders with a view to measuring the extent of the problem, developing solutions, and, again, taking that to the heart of government.

The commissioner might also use the results of an investigation to expose the damaging effects on older people of such doorstep loans. Anecdotal evidence suggests that older people are signing up to such loans when there is very little discussion over ability to pay them. Older people are also reluctant to declare a health state that would debar them from a loan. Those loans are typically dealt with by doorstep representatives, so in the process of trying to complain about that the first port of call is the doorstep lenders themselves. That is very difficult for older people, and is an area in which the commissioner could intervene. There is nobody else dealing with that type of work.

Mr Orr:

The next issue that I would like to touch on is end-of-life care. Studies show that the majority of older people prefer to die at home surrounded by their families. However, over half of all deaths of older people occur in hospital. The Department of Health is developing a strategy in that area. We feel that the Commissioner for Older People, whose legislation and powers will be grounded in the UN Principles for Older Persons, which include care, self-fulfilment and, most importantly in this context, dignity, will be very well placed to examine issues concerned with older people's dignity and respect in the provision of palliative care in their homes. The commissioner could undertake an investigation across the different types of providing bodies where other bodies do not have the powers to act. The commissioner, focusing on the rights and interests of older people, could act in combination with the RQIA, with its focus on standards of care delivery, to get a better result for older people and to enable those who wish to end their lives at home to do so, with the appropriate palliative care.

The next issue that I would like to touch on is long-term housing planning and how that affects older people. The Older People's Advocate has brought that issue to our attention on a number of

occasions, but does not have the statutory powers to investigate such issues. The particular issue arises in relation to regeneration areas. The Older People's Advocate has had a number of older people affected by such schemes. They have found that the balance of housing provision in the area that is being planned for is largely geared towards younger people with families, and that older people's needs, particularly the need for houses that are capable of being adapted to meet their needs so that they can spend as much of their lives as possible in their own homes, are not being met. For example, the provision of bungalows does not tend to be taken fully into account. There is an issue about the extent to which older people's issues are being taken into account when regeneration area projects are being taken forward.

We think that the commissioner will be uniquely placed to take account of the issues of older people and, if necessary or appropriate, to carry out investigation on this issue, to monitor and negotiate, to ensure that there is a balance of housing provision between younger people with families and older people in the area. Many of those people will have lived in the area for a very long time and will have made their own adaptations to their houses as far as they have been able to. The commissioner could use investigative powers to examine the policies and identify whether they have considered fully the interests and rights of older people.

The last example that I would like to talk about is benefit uptake. The particular context for that is the level of poverty among pensioners. The 2008-09 figures indicate that 31% of pensioners in Northern Ireland are living in poverty. That figure has been rising over the years, but the trend in the UK as a whole is downward. Therefore, there is an immediate issue as to what the causes are and whether the commissioner could investigate that. Taking the figures as they stand, a research organisation has advised us that it estimates that up to 40% of older people are not even applying for the pension benefit top-ups, such as pension credit. They are a very vulnerable group, and they are not even getting some of the money to which they are entitled.

The Social Security Agency has commissioned Citizens Advice to do some work on increasing benefit uptake. That is a limited, time-bound project. It is an ongoing long-term issue, and we think that the commissioner will have the authority and the legal powers that no other organisation has in that area, given that the commissioner will have a legal duty in the Bill to have outreach programmes for older people, to help identify older people who are living in isolation, and to make services available to older people in areas where they live. The commissioner could investigate that issue, bring together other organisations involved, and

develop an action plan to ensure that that vulnerable group of people get all the advice, assistance and money to which they are entitled.

The Chairperson:

Thank you for those examples. It is helpful for people in the Public Gallery to get a sense of the type of powers and cases. Of course, Hansard are here to record it as well. Members have a couple of questions, after which I need to speak to you about another couple of issues.

Mr Elliott:

Mr Orr mentioned benefit uptake and said that work is ongoing with Citizens Advice. What will the commissioner do in that respect? We know that there is a lack of benefit uptake throughout the community in many areas, not just among older people. How could the commissioner concentrate on developing that?

My second issue is about the Presbyterian Mutual Society (PMS). I would really love to hear how the commissioner could have been of benefit on that issue. A lot of older people have made smaller contributions, and they will be hit hardest.

The Chairperson:

I declare an interest; I have a modest amount in the Presbyterian Mutual Society.

Mr Elliott:

Yes, but you do not come under the remit of the Commissioner for Older People.

The Chairperson:

I am glad that that remark has been recorded by Hansard. *[Laughter.]*

Ms M Anderson:

You would do anything for a vote. *[Laughter.]*

Mr T Clarke:

I also declare an interest in the Presbyterian Mutual Society.

Mr Elliott:

The final issue is housing. It is something that I am well aware of, and I do some work on housing for older people because I feel that there are gaps in that provision. Is there no other way for that to be progressed through the Northern Ireland Housing Executive, particularly in relation to equality impact assessments? Surely, one area that equality impact assessments look at is older people. I suppose that that is relevant to a number of other sectors.

Mr Orr:

The feedback that we are getting suggests that there is an absence of knowledge about the extent of the problem on benefit uptake. The first thing that the commissioner should do is attempt to carry out research to find out the extent of that difficulty here and work with existing organisations to come up with an action plan to address it. I do not know the potential outcomes off the top of my head. However, there is an issue of information and how it should be addressed. The commissioner could target that issue for investigation.

Mr Elliott asked about the Presbyterian Mutual Society. Our reference to that was in response to the question that was raised in the debate during the Bill's Second Stage on whether the commissioner could have got involved in that issue. We were just confirming that there is nothing in the legislation to prevent the commissioner from intervening in such a case.

The Chairperson:

Can you explain a bit more the type of role that the commissioner could have played on that issue? What approach would the commissioner, had he or she been in place, have adopted?

Mr Orr:

The commissioner would have, largely, had a role to speak as an advocate for older people who were affected by the issue. The Bill gives the commissioner the power to make representations and recommendations to any body or person on any issue that affects the interests of older people. We think that that directly empowers the commissioner to deal with issues that affect older people.

Mr Elliott:

The commissioner does not need investigative powers to do that.

Mr Orr:

No, not if the issue is one in which advocacy is appropriate.

Ms Corderoy:

As we said previously, we believe that, in exceptional circumstances, the commissioner needs to have formal investigatory powers when the commissioner is the only body that can act. We imagine that, although the commissioner could, in most cases, use formal investigatory powers, they will probably want to carry out the advocacy role first to try to resolve the issue without using those powers. However, those powers are available if resolution of the problem is not forthcoming.

The Chairperson:

Those powers would, presumably, have been used at the resolution. Unfortunately, PMS is not yet resolved. However, assuming that the commissioner had been in place, would his or her role have been one of advocacy on behalf of savers, rather than an investigative role into the structure of the PMS and how it carried out its work?

Ms Corderoy:

In that particular case the commissioner would be another voice to give another focus and to represent older people specifically. That is what we imagine.

Mr Orr:

On housing planning, the feedback that the Older People's Advocate is getting is that there are ongoing issues. We envisage that the commissioner will work with the Housing Executive on that matter. However, as Ms Corderoy indicated, some of the issues coming up are in areas where there is already a body that has some responsibility but that, for a long period of time, the issue has not been effectively addressed. That is the feedback that older people are giving the advocate. We think that there is a role for the commissioner to take, given that they will have the lead responsibility for older people's issues in relation to housing planning.

Ms M Anderson:

Thank you for that very helpful presentation. It satisfied completely any concerns that I had about any of the information that we had before us in which the gaps were not flagged up in the manner that you did today. I thank you for that. I almost feel that we have put you through a lot

of work on issues that many of us around the table should know more about. We do know more about those issues, because we are experiencing them. My office — and, I am sure, every other MLA's office — is inundated with issues around domiciliary care and bed blocking. I know families who are trying to get their loved one out of hospital to bring them home, but who cannot get a domiciliary care package.

We have heard concerns about the duplication of services and we know that there are bodies out there. We carried out a child poverty inquiry, and at times the issues spilled over. At the time, Jimmy was very concerned — not because of his age, I must add — about poverty and deprivation for older people. Yet despite the bodies that are out there, we have concerning levels of poverty and deprivation in the North.

I want to comment rather than ask questions, because I have been pressing and pursuing the people who have been in front of us giving evidence to try to bridge the gaps in our minds. Having been presented with evidence by others, we were concerned about duplication and whether we were in danger of establishing another quango. For example, all of us, as MLAs, are pursuing different bodies to try to get housing adaptations or bungalows. Whatever is supposed to happen around regeneration, we know that the reality on the ground is that is not happening. Therefore, I thank you for presenting us with this evidence, which, in my mind, has assured me that there is definitely a need for a Commissioner for Older People.

I say that as someone whose mother has had Alzheimer's for 11 years. You talked about domiciliary care, and it will be essential for the commissioner to look at whether older people and their carers receive the emotional and physical support that they need to reduce and enhance the quality of their lives. I speak for a family who are doing their very, very best for my mother, but, apart from supporting each other, that support is just not there for us. I want to thank you for presenting that evidence today.

Mrs D Kelly:

One of the important points jumping out of all this afternoon's presentations on the Commissioner for Older People is the difference between the advocacy power and the investigative power. Really and truly, that difference is critical. If we are to make a real difference to older people's lives, we need to enable the commissioner to have investigative powers, because all of us should be advocates, and, in many instances, we are. As somebody who

used to work in social services, in different professions, I think that the professional caseworkers should also be advocates for older people's personal care and needs. However, they get caught up in the service delivery. It would be interesting to hear from some of the professional bodies that regulate professional registration about whether they are living up to the role.

There are two points that you used as examples. There is a list of them, although you have not highlighted them in speaking to the report. One was the issue of transport and the provision of passes at age 60 as opposed to 65. That was brought to the attention of the Equality Commission in 2001. You also raised the point about employment and learning. Both cases had merit in terms of the Equality Commission leading the charge, but it appears from your presentation that the Equality Commission did not take those forward. That is a concern. It is all very well having the power, but one needs the resources to act. What I have picked up is that the Equality Commission had the wherewithal, that there was a case to answer, but that it was not taken up. I want your thoughts on that.

Citizens Advice has stated that no one is picking up on the financial activity abuse and the legal doorstep lender loans, while the Financial Services Authority has a role. Surely we should bring that to the attention of the First Minister and deputy First Minister. They should write to the Financial Services Authority to highlight that very case. It is too important an issue to drop at this stage.

Ms Corderoy:

The transport example that you cited was supplied to us by the age sector. I am not sure why the Equality Commission did not pursue it. We understand that it was not part of its strategic aim, which falls into the second category. Perhaps resources were constrained or it had a different focus at that time. That matter was resolved, but other issues of transport, and rural transport in particular, were raised throughout the public consultation. I am sure that you know the phrase "We have a bus pass, but there are no buses."

Mrs D Kelly:

As someone who lives in a rural area, I am very well aware of the inequalities in access to public transport.

Ms Corderoy:

That is certainly something that the Commissioner for Older People could examine and, if required, formally investigate. The Commissioner for Older People could draw more attention to that issue and feed the findings into planning and service provision.

Mrs D Kelly:

With respect, we all know the issue. It has been highlighted time and time again, whether through Noble indicators or stats from the Northern Ireland Statistics and Research Agency, but it is a case of doing something about it. There is a difference between highlighting what we already know and being able to do something about it. People, including me, do not just want another person who will tell them what is wrong. They want to hear how the system will be fixed and what enforceable powers the commissioner will have.

Mr Orr:

I am afraid that I am not aware of the Equality Commission's reasons for not getting more involved in the employment and learning issue. The junior Minister has asked the Older People's Advocate to take the issue forward, with the involvement of the Minister for Employment and Learning.

Mrs D Kelly:

My general point is that it is all very well knowing the problem, but we need a means of fixing it within the legislation.

Also, I am aware that there are a number of people in the Public Gallery, and I am sure that it is quite hard for them to hear. The microphones might pick up proceedings for the Hansard report, but they do not actually amplify our voices, not that some of us need that.

Mr Spratt:

I will not go over all the points, many of which we deal with day and daily. However, there are some interesting issues around regeneration and housing. That is not just about the Housing Executive but housing associations as well. That really needs to be addressed. Isolation is not just a rural problem; it is a big problem in the cities as well. It feeds into community safety and all the rest of it in terms of older people. When I went around during the election campaign, I met older people who had their doors chained at 5.00 pm. Isolation is a major problem all over the

place, although, in the city, people may not face the transport element in respect of the availability of bus services and all the rest of it.

The one thing that really concerns me is malnutrition. My wife has been ill, so I have been in and out of hospital over the past number of weeks. I have been horrified to see older folks in the wards with food that is just brought and set down. I cannot believe that somebody is not dealing with that here and now. I think that you said that there was no other body with investigative powers. Surely to goodness there must be. Food is just set there and, if it is not eaten, somebody takes it away again. There is no encouragement. In fact, I saw a nurse encourage an older person to eat more and to take something else. She just ordered a drink of juice or something, but the nurse brought her soup and something else and she took it without any problem. However, that seems to be the exception rather than the rule. I cannot believe that there is nobody else in the Health Service who investigates that. If not, there is a serious problem, and I think that all of us around the table realise that that is the case. Dolores hit the nail on the head: we need to fix the problem, not just have somebody to tell us that those things are happening.

When we get an older person through the door, we make sure that they are getting all of their benefits. We call it an MOT. It is not until that happens, that somebody comes in about something else, and we run a check. Older people do not claim their benefits. Sometimes, they do not even realise that they are entitled to benefits. They may not have asked for anything before in their lives, and there may be benefits that they do not realise they can get. They are delighted when somebody points them in the right direction. However, as Dolores said, there is no joined-up thinking among healthcare professionals in relation to reporting or passing on information; there are reams of paper every time. All of that needs to be addressed as well. The Departments need to address that among themselves. Let us get to that as well, in terms of seeing how we can join up. OFMDFM needs to co-ordinate that with all of the Departments because it is a big issue, particularly for older people.

Mr T Clarke:

If the benefits issue is taken to its conclusion, we are talking about appointing a commissioner to address the problems of which everyone is aware. Taking something as simple as that, the Department for Social Development (DSD) holds all of the details, including financial, of everybody who is registered, so why is it not an automatic entitlement? Why do people have to claim at all? If somebody has certain needs and is entitled to a particular benefit, they should not

have to ask for it. We do not need a commissioner to tell us that. It is a problem, and DSD has even put out statements that people do not claim benefits. When it wants to claw back benefits, it can do that, but it never seems willing to give money to older people or whoever may be entitled. We do not need somebody to tell us about or fix problems of which we are aware already. There are a lot of internal problems in various Departments. People should look at those now because they are being dismissive if they are not aware already that the problem exists.

Ms M Anderson:

I agree with all that Trevor said, and everybody has recounted similar stories. We all know about the problems. However, when we go out the door, we will be dealing with whatever issue is brought immediately to our attention. The thing about this is that we know that the problem is there, whether it has been on the radio, in the papers or people engaging with us. We know that all these problems are here, and we know the difficulties. Having a commissioner would focus the Assembly. It could get the action that we need around the outcomes, and we would then be able to measure them, as opposed to someone saying that maybe some programme would deal with an issue. None of us really has the time to focus on one issue, but the commissioner will assist us by paying more attention to a problem and giving it more time. That is not to say that we are neglectful, it is just that other demands land on our table. Of all the sessions today, this one has really nailed the need for a Commissioner for Older People.

The Chairperson:

We would do well to make the point that, as Trevor Clarke said, there are departmental responsibilities.

Ms M Anderson:

Of course.

The Chairperson:

Those should be kicking in already, rather than simply waiting for the appointment of a new commissioner. That is a well-made point.

OK. You have heard the comments, and thank you for that presentation. Last week the Committee raised an issue about a possible clause in relation to criminal acts. We have taken our own legal advice on that and reflected on it. Essentially it was that it would be possible to insert a

clause, but that a clause is not absolutely necessary given that the legislation already deals with that particular issue — or rather, a principle in law deals with that issue. Do you have any comment on that?

Ms Corderoy:

We sent a letter to the Committee Clerk on Friday. Our Ministers had, like the Committee, taken legal advice and were of the view that it can and should be dealt with administratively in the same way as it is dealt with in Wales and by the Children’s Commissioner here — through training, staff guidance, a staff handbook and that sort of thing.

The Chairperson:

Are members content with that information?

Members indicated assent.

The Chairperson:

OK. We will move on to consider any amendments that members may wish to propose.

Ms Anderson:

What paper are we on now?

The Chairperson:

We are going to go through the Bill. Can we clarify that no member is going to raise amendments or separate clauses? If so, we will now carry out the detailed clause-by-clause scrutiny of the Bill, and members will have the opportunity to raise any concerns or suggest any amendments. Members should read the relevant clauses and paragraphs in the Bill along with the related commentary in the explanatory memorandum.

The Bill has 29 clauses and three schedules, and we need to consider each in turn. There are four options for us: to agree that we are content with the clauses drafted; to agree that the Committee recommend to the Assembly that a clause be amended; where a majority of members support an amendment, the Committee Clerk and the Bill Clerk will take away the proposal and draft the appropriate wording for consideration at a subsequent meeting; or, finally, to reject the clause as drafted.

I ask members to clearly state their positions during this scrutiny session. If they want to oppose a clause or do not feel that they are able to agree a clause, members will be able to set out their opposition or their proposed amendment. Consideration of the clause may then be deferred until the next meeting. I draw members' attention to the text of the three amendments that have been drafted by the Department following last week's meeting. The letter provided by Gail McKibbin on 10 September outlines the draft amendments:

“that Ministers have ‘agreed in principle’ to take forward, subject to the Committee’s views.”

What is agreed in principle? Do you want to confirm that?

Ms Corderoy:

With the Committee’s agreement, our Ministers are happy to make those amendments to the Bill.

The Chairperson:

So that confirms that Ministers have accepted the amendments?

Ms Corderoy:

Yes.

The Chairperson:

That is just for the record, so that we can hang you later on.

We will have the opportunity to consider the amendments to each clause following the reading of the clause. The report of the Examiner of Statutory Rules on the delegated powers of the Bill was included in the information that members received last week. The Examiner has highlighted clauses 25(6) and 26(2), which make regulations subject to draft affirmative procedure, and clause 28(2), which provides for commencement Orders. The Examiner advises that powers to make subordinate legislation seem appropriate, and that there are no other matters to which he draws the attention of the Committee. In light of the Examiner’s report, are members content to proceed with the clause-by-clause scrutiny?

Members indicated assent.

The Chairperson:

The Bill seeks to provide for the appointment and functions of the Commissioner for Older People for Northern Ireland.

Clause 1 (The Commissioner for Older People for Northern Ireland)

The Chairperson:

Subsections 1 to 4 provide for the appointment of a Commissioner for Older People by the First Minister and deputy First Minister acting jointly. The clause also makes provision for schedule 1, which deals with the establishment and operation of the commissioner and his or her office.

Question, That the Committee is content with the clause, put and agreed to.

Clause 1 agreed to.

Clauses 2 and 3 agreed to.

Clause 4 (General powers of the commissioner)

The Chairperson:

Clause 4 is a very famous clause, but that is in another context.

Subsections 1 to 6 set out the general powers of the commissioner. Clause 4 also gives the commissioner power to carry out a formal investigation in relation to his or her duties. The procedures to be followed when doing that are set forth in schedule 2.

Mr Elliott:

Clause 4(4) goes back to the issue of other bodies. I wonder how that will operate in practice with regards to investigative powers that other bodies do not or cannot use. How will it be managed if there is a dispute between two bodies or between the Commissioner for Older People and another body? I know that we touched on that briefly last week, but my query is around the whole process.

Mr Orr:

There are some specific clauses in the Bill that preclude the commissioner from acting if another body has responsibility. In addition, we envisage or recommend that the commissioner establish

memoranda of understanding (MOUs) with other oversight bodies to deal with the areas that are not specifically limited by the Bill.

Mr Elliott:

Does that mean that the commissioner will draw up areas that may not be covered by other bodies?

Mr Orr:

The Human Rights Commission, for example, has memoranda of understanding with a range of bodies, including the Children's Commissioner, who has similar powers to the Commissioner for Older People. When the commissioner has been established and is drawing up priorities for a work plan, we envisage that he or she will meet other organisations that are operating in those areas and agree which areas are appropriate for the commissioner to deal with and which are more appropriately dealt with by another body. That is aside from the areas in which there is a statutory limit on the commissioner from acting.

The Chairperson:

So you envisage that all of that will be agreed, as is presently the case with other commissioners and similar bodies?

Mr Orr:

Yes.

Mr Elliott:

That is OK.

Dr Farry:

Apologies for my late arrival. I want to follow on from Mr Elliott's point. I appreciate that MOUs can be drawn up and that hopefully their operation will proceed smoothly. However, what will happen in the event that there is a conflict of interpretation of what has been agreed or a failure between commissioners to agree how to operate? How will disputes of jurisdiction be resolved?

Ms Corderoy:

It is very clear what the Equality Commission deals with. The ombudsman deals with maladministration, the Children's Commissioner obviously deals with children's issues and the RQIA focuses broadly on inspections. The experience in Wales, where there is a demarcation, is quite clear. However, they found that some complex issues can come up, which, for example, cover both maladministration and the interests of older people, and they are exploring having joint investigations into those issues. There is a specific power given to the commissioner in one of the schedules about collaborating and co-operating with other bodies.

Dr Farry:

That does not really fully satisfy the point. We need legislation that is sufficiently robust and that can take into account situations that may arise. Although I respect what you are saying about the lines of responsibility for most bodies being fairly clearly demarcated — obviously the Children's Commissioner and a Commissioner for Older People do not have an overlap — the main area of concern that has been drawn to our attention is the overlap with the Northern Ireland Ombudsman. That is perhaps the interface that could cause the greatest degree of difficulty.

I think we need to be sure, if we are to pass the legislation as proposed, that there will be a clear demarcation. In the event that there is not, and there is a clash over how investigations are taken forward, there needs to be a methodology for resolving that problem or for giving precedence to one or other organisation. That still needs to be tightened up.

Ms Corderoy:

I can reassure the Committee that in the event of maladministration, the Bill prevents our commissioner from investigating it because there is a statutory complaints mechanism. Our commissioner would not be able to intervene on that point.

Mr Orr:

The specific clause is 8(2)(b), which prevents the commissioner from carrying out an investigation into a complaint made by an older person where the complaint falls within an existing statutory complaints system. The ombudsman's complaints system is an existing statutory complaints system. There is a clear prohibition on that.

Dr Farry:

That takes care of that point.

Mr Elliott:

There may be some areas where not just the ombudsman but some other body may say that that is their remit, whereas the Older People's Commissioner may argue that it is his or her remit. I think that Stephen is right in that there needs to be some way of resolving those disputes. I admit that I do not know what it is; I am not saying that I have any answer.

Dr Farry:

An ombudsman's ombudsman.

Ms Corderoy:

Our understanding through the experience of the Children's Commissioner is that that has not arisen with other statutory bodies; they have not experienced that sort of difficulty.

Question, That the Committee is content with the clause, put and agreed to.

Clause 4 agreed to.

Clause 5 (General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities)

The Chairperson:

This clause sets out the commissioner's power to review a range of activities carried out by relevant authorities.

Question, That the Committee is content with the clause, put and agreed to.

Clause 5 agreed to.

Clause 6 (Review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases)

The Chairperson:

This clause gives the commissioner power to carry out reviews that specifically look at the effect of those procedures on a particular person or at a particular location.

Question, That the Committee is content with the clause, put and agreed to.
Clause 6 agreed to.

Clause 7 (Assistance with complaints to relevant authorities)

The Chairperson:

This clause provides the commissioner with the power to give whatever help an individual needs to enable the older person to bring about a complaint to the relevant authority.

Question, That the Committee is content with the clause, put and agreed to.
Clause 7 agreed to.

Clause 8 (Investigation of complaints against relevant authorities)

The Chairperson:

This clause provides the commissioner with the power to investigate the handling of complaints.

Question, That the Committee is content with the clause, put and agreed to.
Clause 8 agreed to.

Clause 9 (Actions which may be investigated: restrictions and exclusions)

The Chairperson:

This clause details where the commissioner cannot conduct a formal investigation.

Question, That the Committee is content with the clause, put and agreed to.
Clause 9 agreed to.

Clause 10 (Power to bring, intervene in or assist in legal proceedings)

The Chairperson:

This clause sets out the power of the commissioner to bring civil proceedings relating to the law or practice relating to the interests of older persons and to assist or intervene in any legal proceedings that relate to the interests of older people. Do members have any recommendations or amendments?

Dr Farry:

I apologise for seeking clarification on this point, as it may well have been touched on before.

Just to check again, is this power different or of a higher standard than exists for other, similar bodies, such as the Equality Commission or the Human Rights Commission, in terms of the power to take cases in their own name, or is it consistent with the broader architecture out there?

Mr Orr:

It is consistent with the broader architecture. The provision is similar to that held by the Children's Commissioner in relation to children's issues. It will enable the commissioner to bring cases in his or her own name on behalf of older people, to assist with cases or to act as amicus curiae.

Dr Farry:

OK, thank you.

The Chairperson:

Is a lot of this cut and paste?

Question, That the Committee is content with the clause, put and agreed to.

Clause 10 agreed to.

Clause 11 (Assistance in relation to legal proceedings)

The Chairperson:

This clause sets out the scope of the commissioner's power to assist an older person in relation to certain legal proceedings.

Question, That the Committee is content with the clause, put and agreed to.

Clause 11 agreed to.

Clause 12 (Conciliation of disputes)

The Chairperson:

Clause 12 gives the commissioner the power to commission conciliation services in relation to disputes that may lead to court action. The Department has suggested an amendment to subsection 7 in order to provide a broader interpretation that will include conciliation and mediation.

The proposed amendment is as follows: Leave out subsection (7) and insert—

“(7) In this section “conciliation services” means a service which is provided—

- (a) by a person who is not a party to a dispute,
- (b) to the parties to the dispute, and
- (c) with the aim of enabling the dispute to be settled by agreement and without proceedings.”

Do members have any queries, comments or amendments? Will you explain the basis of, and the need for, the amendment?

Ms Corderoy:

After consultation, clause 12 was inserted into the Bill so that the commissioner, as well as doing informal conciliation, will have the power to procure conciliation services separately. In the Committee’s consultation, the age sector and the advocate recommended replacing the term with “dispute settlement services”. We were not able to do that because “conciliation services” is the correct term. This alternative wording was used in the Equality Act 2006, is broader and includes conciliation and mediation, which was the reason behind the request from those bodies.

Mr Orr:

Currently the Bill refers to “advice and assistance”, whereas the proposed amendment talks about “a service”, which includes advice and assistance but is a wider term.

Mrs D Kelly:

You said that the commissioner will have the ability to procure conciliation services. Will the office of the commissioner, therefore, have a budget to have such a tendering process, or will there be staff in the office whose job it is to act as conciliators?

Ms Corderoy:

We envisage it being something outside of the commissioner’s office. Arrangements will be set up, and when a case comes up, if required, the office will use those arrangements.

Mrs D Kelly:

Will the commissioner’s office bear the cost when, for example, conciliation is required between an individual and a government agency? If it was an issue of malpractice, would it be the agency

or the commissioner who would be responsible for paying for conciliation?

Mr Orr:

I am not sure about that specific case, but, if the commissioner is deemed responsible, clause 12 will give him or her the power to fund conciliation. We envisage the commissioner acting on an informal basis as a broker or mediator between parties in a dispute involving older people. The purpose of clause 12 is to provide a more formal arrangement when getting everyone around a table informally has not resolved the matter and there is a risk of legal proceedings. To avoid legal proceedings, the commissioner may then offer to engage a third party organisation to act as a mediator. If both parties are in agreement, the commissioner will be empowered to do that, and there will be no issue about the lawfulness of the commissioner's allocating funds for the service.

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 12 agreed to.

Clause 13 (Formal investigations)

The Chairperson:

This clause provides the commissioner with the power to conduct formal investigations into the actions of those organisations that are known as relevant authorities. Are there any recommendations for amendments?

Mr Elliott:

I just have a query that relates to the next few clauses. Clause 13(5) states that:

"Every formal investigation must be conducted in private."

Some of the other clauses talk about evidence from the formal investigation and further action. If the investigation is conducted in private, what happens with the outcome? I assume that that does remain in private. From later clauses, I note that it is sent to all of the interested parties. Is that then the property of those interested parties, or is the report still under the ownership of the commissioner?

Mr Orr:

The commissioner will produce the report. There is a requirement for the commissioner to publish in a register any appropriate recommendations in the report and to make that register

available to all interested parties. It is clearly the intention that, if there is a recommendation made as a result of the formal investigation, it will be in the public domain or brought to the attention of as many people as the commissioner considers appropriate.

Mr Elliott:

Is that clear in the further clauses?

Mr Orr:

Yes, it is.

Question, That the Committee is content with the clause, put and agreed to.

Clause 13 agreed to.

Clause 14 (Formal investigations: exclusions)

The Chairperson:

This clause prevents the commissioner from carrying out a formal investigation into a matter in which he or she has previously brought, intervened in or provided assistance with legal proceedings.

Dr Farry:

Have we considered the situation in which new material coming to light leads to a closed investigation being reopened?

Ms Corderoy:

I am not sure whether it is dealt with in this clause, but it was brought to our attention in your consultation. Our legal people felt that the clauses provided for that, but in situations where new information came to light for an inquiry, it would be up to the inquiry to deal with it. They also felt that there was a risk that somebody might withhold information from an inquiry just so that they could go to the commissioner.

Dr Farry:

So that point has been worked through?

Ms Corderoy:

Yes, it has.

Question, That the Committee is content with the clause, put and agreed to.

Clause 14 agreed to.

Clause 15 agreed to.

Clause 16 (Further action following report on formal investigations)

The Chairperson:

This clause follows on from clause 15 and relates to the follow-up action that the commissioner can take after he or she has published a report on a formal investigation.

Mr Orr:

To answer the query about the part of the Bill that makes it clear that the commissioner must make public the recommendations, it is clause 16(5). That subsection states that the commissioner must maintain a register, so there is an obligation to maintain details of recommendations that are contained in reports made under clause 15, which deals with formal investigatory reports.

Question, That the Committee is content with the clause, put and agreed to.

Clause 16 agreed to.

Clause 17 (Evidence in formal investigations)

The Chairperson:

This clause sets out the type of evidence or information that a commissioner may have access to in order to conduct a formal investigation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 17 agreed to.

Clause 18 (Powers of entry and inspection for purposes of formal investigation)

The Chairperson:

Subsections 1 to 6 provide the commissioner with the power, when carrying out a formal

investigation into premises that are managed by a relevant authority, to at any reasonable time enter a building in which an older person lives, is being held, or is receiving care or education.

Question, That the Committee is content with the clause, put and agreed to.

Clause 18 agreed to.

Clause 19 (Obstruction and contempt in relation to formal investigation)

The Chairperson:

Subsections 1 to 3 provide a sanction against obstruction of the commissioner as he or she conducts a formal investigation.

Question, That the Committee is content with the clause, put and agreed to.

Clause 19 agreed to.

Clause 20 (Disclosure of information by commissioner)

The Chairperson:

This clause provides for restrictions on the disclosure of information obtained by the commissioner during a formal investigation. Do members have any recommendations or amendments?

Question, That the Committee is content with the clause, put and agreed to.

Clause 20 agreed to.

Clause 21 (Review of this Act)

The Chairperson:

This clause provides for the commissioner to review the workings of the Bill and send a report to the First Minister and deputy First Minister. The Department has suggested an amendment that would make it a requirement that reviews be carried out at least every five years. That seems to be fairly self-explanatory. Do members have any queries on that, or recommendations or amendments? Is the Committee content with the wording of the amendment?

Question, That the Committee is content with the clause, subject to the Committee's proposed amendment, put and agreed to.

Clause 21 agreed to.

Clause 22 (Privilege for certain publications)

The Chairperson:

This clause provides that any report that the commissioner is required or permitted to publish is exempt from challenge under the law of defamation. I wish. Do members have any recommendations or amendments?

Question, That the Committee is content with the clause, put and agreed to.

Clause 22 agreed to.

Clause 23 (Application of this Act: relevant authorities with mixed functions)

The Chairperson:

This clause provides that for a general healthcare provider, the “relevant authority” provisions of the Bill apply to only the general healthcare provided by the provider. Do members have any recommendations or amendments?

Question, That the Committee is content with the clause, put and agreed to.

Clause 23 agreed to.

Clause 24 (Application of this Act: matters arising before commencement)

The Chairperson:

This clause provides for the “retrospectivity” — thank you for a good word — of the Bill. Do members have any recommendations or amendments?

Question, That the Committee is content with the clause, put and agreed to.

Clause 24 agreed to.

Clause 25 (Interpretation: “older person”)

The Chairperson:

This clause defines the use of the words “older person” to mean “a person aged 60 or over”. It also proposes that the commissioner could deal with a matter raised by someone aged 50 or over if it was an issue that raised a question of principle affecting people aged 50 or over. Do members have any recommendations or amendments? Does anyone want to declare an interest?

[Laughter.]

Mr Elliott:

There seems to be flexibility in that to investigate other age groups, or is it only 50 and over?

The Chairperson

You have to be 50 before anything happens, is that it?

Ms Corderoy:

In exceptional circumstances, yes.

Mr Elliott:

In exceptional circumstances. OK.

Dr Farry:

I appreciate the rationale for that, but there may be a tendency towards mission creep, and what is framed as being an exception can very readily become the norm. Is there an objective standard that the commissioner has to meet in making a decision to lower the age to 50? Should we maybe insert words such as “the commissioner reasonably makes a decision”? One could foresee circumstances in which the involvement of the commissioner in a case involving a 50-year-old could be subject to a judicial review, and there may need to be some sort of reliable clause in the legislation relating to that.

The Chairperson:

What is the definition of “reasonableness”?

Dr Farry:

Reasonableness in my legal layman’s terms is what you throw in to leave the lawyers to fight over.

Mrs D Kelly:

On a similar point, it is my understanding from previous attendance at this Committee that, given the fact that a number of people who have disabilities, in particular some people who have learning disabilities, who would not have had a life expectancy beyond 50 at one stage are now, thankfully, living longer, and that was my understanding, whether or not it needs a greater

tightening of the clause to illustrate those facts. I understood that it was in such instances —

Dr Farry:

And Travellers.

Mrs D Kelly:

Yes, and Travellers, rather than for the general population of the over-50s. I am not going to say whether I declare an interest or not; I am sure that it is well recorded.

The Chairperson:

It is. *[Laughter.]* I could not hit your age with three darts.

Mr Orr, rescue me.

Mr Orr:

With regard to the question of objective standards, there are two grounds for bringing in people aged 50 and over, and one is “exceptional circumstances”, which, I am sure you will appreciate, is exceptional. The other ground is “a question of principle”. Our legal advice is that that is a term that is generally understood to mean something that must affect a significant number of people to become a matter of public interest, and that it is not just an issue affecting a particular individual aged 50 or over. When it applies across the board it becomes a matter of public interest, and that is why it brings that category of people within the remit of the Bill.

Dr Farry:

I am about 90% satisfied with the situation. However, a lot of issues of principle could arise with regard to the 50-plus age group. I have a slight concern that it may be a little open-ended, but I take some reassurance from what has been said.

Question, That the Committee is content with the clause, put and agreed to.

Clause 25 agreed to.

Clause 26 (Interpretation: “relevant authority”)

The Chairperson:

This clause defines the term “relevant authority” for the purposes of the Bill. It also includes

other organisations that carry out work directly relevant to the lives of older people, which are specifically listed in schedule 3. Is the Committee satisfied that that is an exhaustive list or is not an exhaustive list?

Mr Orr:

We consider it an exhaustive list of public bodies, additional health bodies and other bodies that have an impact on the lives of older people. That is the rationale for the list.

Question, That the Committee is content with the clause, put and agreed to.

Clause 26 agreed to.

Clause 27 (Interpretation: general)

The Chairperson:

This clause defines a number of terms used in the Bill. The Department has suggested an amendment that would clarify that, in the legislation, when the term “interests” appears in the Bill, it includes “rights”. Do you want to explain that and confirm your rationale? I know that representations have been made on the issue.

Ms Corderoy:

There was ongoing lobbying on the issue throughout our consultation. In our response to the consultation and in the debate at Second Stage, junior Minister Kelly confirmed that “interests” was much broader and included rights. However, after representations were made to the Committee, we felt that it was appropriate to put that clarification into the legislation.

Question, That the Committee is content with the clause, subject to the Committee’s proposed amendment, put and agreed to.

Clause 27 agreed to.

Clause 28 (Commencement)

The Chairperson:

This clause provides for the provisions to the Bill to come into operation two weeks after Royal Assent.

Question, That the Committee is content with the clause, put and agreed to.

Clause 28 agreed to.

Clause 29 agreed to.

Schedules 1 to 3 agreed to.

The Chairperson:

I thank the officials for their attendance today and members for their co-operation. A draft report will be prepared for Committee consideration on 29 September. The Committee is required to report to the Assembly by 17 December, so we are well ahead of schedule. I thank everyone for their co-operation, assistance and help.