



Northern Ireland
Assembly

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

**OFFICIAL REPORT
(Hansard)**

Commissioner for Older People Bill

8 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 Tom Elliott
Mrs Dolores Kelly
Mr Barry McElduff
Mr Francie Molloy
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Ms Jane Campbell)	Research and Library Services
Mr Tim Moore)	
Ms Jane Corderoy)	
Mr Tim Losty)	Office of the First Minister and deputy First Minister
Mr Chris McCafferty)	
Mr Stephen Orr)	

The Chairperson (Mr Kennedy):

We will receive a briefing on the Commissioner for Older People Bill from Jane Campbell and Tim Moore of the Assembly's Research and Library Services. Good afternoon. You are no strangers to the Committee, but welcome to the new session. You are here to brief us on the

Commissioner for Older People Bill. You have provided us with a research paper, so you may wish to speak to that and then take questions.

Mr Tim Moore (Research and Library Services):

Thank you, Chairperson. Following a previous Committee meeting, when the issue of a consultants' report was discussed, Research and Library Services was asked to assess the extent to which the evidence in that report supported the conclusion that there was both a significant need and a strong case for the establishment of an independent Commissioner for Older People in Northern Ireland. In particular, we were asked to consider the extent to which that consultant's report had addressed and identified gaps in existing provision that would be filled by the creation of such a commissioner.

At the outset, it is important to point out that we intend our paper to consider the evidence that was presented in the consultants' report and the extent to which it supports the conclusion. Our paper is not meant to go beyond that into comment on the wider case for a commissioner; it is simply commenting on the information in the report and the extent to which that backed up the conclusion that was drawn in the report. Therefore, in that sense, we do not want to be seen to be supporting or opposing the creation of a Commissioner for Older People; we are simply commenting on the report.

The Chairperson:

You are keeping yourselves neutral.

Mr Moore:

We are keeping ourselves very neutral; our paper is an assessment of the information and nothing more.

I will begin by giving a broad overview of the information in the consultants' report, and Jane Campbell will then address in a bit more detail the section of the report that examines the extent to which gaps were identified.

If we set aside the report's introduction and conclusion, there are really four sections in it that present the evidence on which the conclusion for the creation of the post was drawn.

Section 2 of the consultants' report provides an overview of the strategic context for the creation of a commissioner, and it examined the advocacy and protection for older people that is already in place here. That section sets out well the demographic changes that are happening and the challenges that older people face, which it recognises are well known. It also identifies policy and legislative developments. It also contains an analysis of the gaps in the existing provision under three broad headings: advocacy; legislation; and the existing bodies and their roles and remits.

Advocacy is discussed on page 4 of our research paper, and the conclusion on and overall assessment of it in the consultants' report is that there is currently an increasingly positive view on it and on the protection of older people. When considering the legislation, the report identifies a gap in anti-discrimination legislation in giving protection where goods, facilities and services are concerned or where there is age discrimination.

It is perhaps worth making a couple of points on that. First, the report, at a later stage, in no way links that gap to the creation of such a commissioner; it simply notes that the gap exists. Secondly, it is worth noting that, in the GB context, that gap is being closed through the Equality Act 2010, which, in 2012 will bring into place provisions to provide protection where goods, facilities and services are concerned. That provision will extend across GB, so it will cross jurisdictions where there is a commissioner and where there is not one. I said that just to provide a point of information.

The consultants' examination of existing regulatory and scrutiny bodies is dealt with on page 5 of our research paper, and it concludes that there is a significant number of existing regulatory and scrutiny bodies, several of which have a specific role for older people. It identifies some particular bodies, such as the Equality Commission, the Human Rights Commission, the Northern Ireland Ombudsman, the Regulation and Quality Improvement Authority (RQIA), the Mental Health Commission and the Northern Ireland Social Care Council. The report identifies those bodies that have some remit for older people, but it concludes that the one gap is that there is no body that has a holistic view of issues affecting older people. That is the extent to which the gaps are identified and brought to a conclusion.

Section 3 of the consultants' report looked at other jurisdictions, including the Republic, England, Scotland and Wales. It outlines the provisions that exist in those places to protect the

interests of older people. Members will be aware from previous briefings that Wales is the only jurisdiction that currently has a commissioner.

In section 3 of their report, the consultants describe the current arrangements. It would perhaps have been more useful had they addressed the arguments for the creation of a commissioner in Wales rather than go to the position as it exists. On pages 7 and 8 of our research paper, we discussed the Welsh advisory board's thinking on why a commissioner was needed in Wales.

Pages 7 and 8 of our paper show that some of the arguments that were used in Wales are, with the benefits of hindsight and time, maybe not relevant to Northern Ireland, particularly those relating to human rights. We have our own Human Rights Commission in Northern Ireland. The concern in Wales was that one commission across GB to cover equality and human rights would be stretched.

We have also seen from the operation of our Human Rights Commission that it has been very active in the field of older people's issues, and there is a current investigation that goes beyond the very narrow confines that the consultants seem to anticipate that the Equality and Human Rights Commission in GB would have. Therefore, it would have been useful if the consultants had addressed those arguments and interpreted them in the Northern Ireland context.

Section 4 of the consultants' report deals with stakeholders' views. That is a relatively strong part of the report. Obviously, there was significant consultation on that. That section addresses stakeholders in two ways: first, by looking at the need for a commissioner; and secondly, it considers the potential role for a commissioner. It also focuses much more on the potential role of a commissioner than on the actual need for one.

The arguments that are made for need tend to say that there is a need for an independent champion, a stronger body with teeth and a body with older people's concerns as its primary focus. The consultants seem not to have gone beyond the call for a body to examine the need that such a body would address. There is a lot of detail about the potential role of such a body in investigations, casework, research and education. However, all that is predicated on the assumption that there will be a body and a commissioner.

Our research paper does not cover section 5 of the consultants' report, which is the final section of the report. That two-part section analyses various options. The consultants seem to have identified options from the different jurisdictions. The report asks what people in the consultation thought of those options. The consultants do not draw any strong conclusions. They simply set out those views against a number of the options. In fact, when they do come to a conclusion, they conclude that none of the alternative models appears to have more potential to meet the defined needs better than an independent commissioner. That is very different to saying that none of the alternatives could equally provide that protection, or could provide it at less of a cost. The report does not address that. However, it goes on to say that if we are to have a commissioner, we should examine the costs and benefits of that.

The final part of section 5 is a cost-benefit analysis of a number of different models of commissioner. It is a cost-benefit analysis to the extent that it lists costs and benefits, but a particular weakness is that usually in a cost-benefit analysis, the benefits are costed, which allows the option that is the most cost-advantageous to be gauged. The report does not do that, but for one option, which is basically the option of a replica of the Children's Commissioner but for older persons it concludes that:

“the potential benefits for older people and wider society could outweigh the costs many times over.”

Therefore, the creation of a commissioner would outweigh the costs many times over, so that is more than 1.5 times two.

There could have been a compelling case had the consultants identified where those savings or additional benefits would come from. However, they did not; they simply stated it as fact. In that sense, the extent to which that provides evidence for the conclusion may not be particularly robust. I will leave it up to members to make their own decision on that.

I will now pass over to Jane Campbell, who will focus on the section of the research paper that looks at the gaps in provision.

Ms Jane Campbell (Research and Library Services):

Section 3 of the research paper begins on page 10, and it covers the list of 13 bodies that the ombudsman named in his evidence to the Committee in June. It also provides information on the role of those organisations and gives examples of how they may act on behalf of older people.

The information was gained from the organisations' websites easily and in a relatively short time. I think that members will find the information in the research paper significantly wider than that which the consultants provided in their mapping exercise. For instance, it tells us that the bodies operate in numerous areas that are relevant to the lives of older people. They operate in areas such as health and social care, finance, including banking, mortgages, pensions and insurance, employment, transport, and the provision of utilities such as water and electricity.

Pages 26 to 28 of the research paper focus on the wide range of health and social care settings that one of those organisations, the RQIA, operates. That part of the paper provides a lot of information on how it might work for older people. I assess that the entries for all the bodies that are mapped in the consultants' report are not sufficiently detailed for making the required assessment of whether a Commissioner for Older People is needed. Although my paper provides a lot more information, I would have to say that such a mapping exercise establishing the boundaries of each organisation requires a more lengthy and detailed piece of work, which would, ideally, be carried out in face-to-face consultations with each of the bodies concerned. I believe that the consultants met with some of the organisations' representatives during the project, and that would have been the ideal opportunity to carry out that work.

The Chairperson:

That is fairly blistering.

Mr Elliott:

It is a damning report on the report.

The Chairperson:

Yes. I am conscious that your research was carried out impartially. Departmental officials are coming immediately after you to discuss your research and the evidence that was received in earlier hearings. However, as I understood it, the basis of the evidence that we received in earlier sessions from the Northern Ireland Ombudsman, Mr Frawley, and his colleagues was that he was not objecting so much to the creation of an older persons' advocate as to a Commissioner for Older People. I suppose that there is a difference in detail. He, in turn, highlighted the work that was carried out by his department, the Banking Ombudsman, the Police Ombudsman and other bodies.

Tim, your evidence seems to suggest that the consultants got it right to the extent that they recommended the creation of the post of an older persons' ombudsman. It seems, however, that Jane is saying that the consultants did not properly assess the information. Based on the desk information that you have gathered, there seems to be gaps in the information that was brought together by the original consultants, which might conflict with and, in fact, agree, with Tom Frawley's view. Therefore, one of you is saying that the consultants got it right on the need for a Commissioner for Older People, but the other is saying that the consultants did not get their knitting done.

Mr Moore:

We are not saying different things. I am saying that, given the consultation and the views that were put forward, there was obviously a very strong desire to have a commissioner. That is reflected in the consultants' report. However, when you ask about the extent to which the existing provision, and the gaps in it, was examined, Jane is saying that that part of the process was a bit weak.

Ms J Campbell:

That was the stage that was intended to take place before the consultants went to stakeholders and interested people. The existing provision should have been assessed thoroughly and properly on the basis of mapping out those bodies.

The Chairperson:

Thank you.

As promised, we have a briefing from departmental officials Tim Losty, Jane Corderoy, Stephen Orr and Chris McCafferty. You are all very welcome. You are going to provide us with the Department's view on the evidence that the Committee has received so far on the Commissioner for Older People Bill. This evidence session is also being recorded by Hansard. You may wish to make some introductory remarks and then answer some questions.

Mr Tim Losty (Office of the First Minister and deputy First Minister):

Thank you. It is good to see you all again. I will make an opening statement that addresses some of the comments and issues that arose in previous consultations, particularly those from the

Northern Ireland Ombudsman. We are grateful for the opportunity to come back to the Committee to deal with some of those issues. The Committee's consultation has been very helpful to us in taking our work on this forward.

Our intention is to provide, as requested, the Department's response to the Committee's consultation. My statement is based on the evidence that the Committee has received to date from a number of interested parties. Again, we want to put on record our responses to a number of the issues that the Committee has raised.

I will respond first to the main points that the Northern Ireland Ombudsman raised in his oral and written evidence to the Committee. Jane Corderoy will then brief you on the clauses of the Bill that Ministers are content to have amendments proposed to in response to consultee comments. Also, if time allows, she will respond to those points that consultees raised on the areas where Ministers intend to retain the current provisions. We are happy to take any questions after our presentation.

First, we want to respond to comments that were made about the commissioner's proposed powers on investigations. The ombudsman suggested to the Committee that there is a fundamental focus in the Bill on investigatory powers. We confirm that the Bill is not focused on investigatory powers. The formal investigation powers of the commissioner are reserved powers that are to be deployed in exceptional circumstances.

The commissioner will have a wide range of powers to be deployed in the interests of older people, including advisory, advocacy, research, educational, communication and outreach powers. For example, clause 3 lists the commissioner's duties, which are the functions that the commissioner must carry out. Those make no reference to investigations but include a wide range of functions that the commissioner must carry out to assist older people. Those include: promoting an awareness of the interests of older people and the need to safeguard those interests; carrying out reviews of services and the law as it affects older people; promoting the elimination of discrimination against older people; and advising the Secretary of State, the Executive and public bodies on the interests of older people.

Clause 4 deals with the commissioner's general powers, which cover their power to act as an advocate, carry out educational activities and research, issue best practice guidance, compile and

publish information that concerns the interests of older people. In the general powers there is reference to what we have often referred to as informal investigations, which is largely an information-gathering power that will support the commissioner's advocacy role.

Clauses 5 and 6 provide powers to review the internal procedures of public bodies. Formal investigatory powers come much later in the Bill and require several clauses to specify the procedures and formal powers associated with them. By the nature of their formality and the potential use of High Court powers, they are reserved powers to be used in exceptional circumstances and for critical strategic matters affecting the lives of older people. There is a parallel with the case that the ombudsman has made to the Committee to be given the power to carry out examinations on his own initiative. On 21 April 2010, the ombudsman assured the Committee that he would be sparing in his use of such a power, because it should be an exceptional measure rather than the norm. As a measure of the exceptional nature of the formal investigatory powers in the Bill, I draw the Committee's attention to the fact that the office of the Northern Ireland Commissioner for Children and Young People, which was established in 2003 with the same powers, has not yet had to carry out a single formal investigation.

In addition, carrying out a formal investigation is subject to various limitations in the Bill to ensure that there is no overlap or duplication with the work of existing bodies. Clause 8(2)(b) prevents the commissioner from carrying out an investigation into a complaint that falls within an existing statutory complaints system, including, among others, the ombudsman's complaints system. Such a limitation prevents the commissioner from acting where another organisation has a statutory power to do so. That addresses the ombudsman's concern about duplication of the commissioner's investigatory powers with the work of other bodies.

I referred to one subsection that prevents the commissioner from acting where another body has responsibility in the form of a statutory complaints system. However, the Bill contains several such clauses: 5(4), 6(3) and 7(4), clause 9 in its entirety and clause 11(3). There are others, but that gives an indication of the statutory provisions in the Bill expressly intended to prevent duplication when another body has responsibility for and has been funded to provide a service to older people. That is in addition to the non-statutory responsibility that the commissioner will have to avoid overlap of responsibilities to a memorandum of understanding.

The ombudsman maintained that the focus of the original Deloitte report was on advocacy and

education and not complaints investigation. The Deloitte report was clear in recommending that the commissioner should have investigatory powers like those of the Northern Ireland Commissioner for Children and Young People; those were therefore included in the Bill and received strong support during the pre-consultation and public consultation on the proposals.

The ombudsman also believed that no mapping work was undertaken in the pre-consultation process to look at the full picture of bodies and services that provide assistance to older people across Northern Ireland. I can confirm that the Deloitte report included such mapping work, including the work of the Equality Commission, the Human Rights Commission, the Office of the Northern Ireland Ombudsman, the Regulation and Quality Improvement Authority, the Northern Ireland Social Care Council, the then Mental Health Commission, the victims' commissioners, the Police Ombudsman, the Criminal Justice Inspectorate and the Northern Ireland Commissioner for Children and Young People.

The Department's public consultation document also provided information on many of those bodies. It also included a chapter on how the commissioner would work with other organisations. Attendees at the public consultation events were well informed about the work of existing bodies and were still strongly of the opinion that there was a need for a Commissioner for Older People.

The ombudsman suggested that an organisation that carries out both an advocacy and an investigatory role may be inherently flawed. Although we acknowledge the concern over a perception of incapability between those roles, many other organisations successfully operate with such combined responsibilities, including the Equality Commission, the Children's Commissioner for Wales, the Older People's Commissioner for Wales, the Northern Ireland Commissioner for Children and Young People and the Irish Ombudsman for Children.

I will now respond briefly to some of the ombudsman's other points. At the Committee session on 30 June, the ombudsman suggested that the commissioner will be able to overturn decisions that have already been taken by other investigatory bodies. Although the Bill allows the commissioner to look at how an investigation was conducted, it does not give him powers to reinvestigate a previously investigated issue or to overturn decisions made on it.

The ombudsman also said that the Bill includes conciliation powers that duplicate mediation services that are provided by social care boards and trusts. In fact, the social care boards and

trusts provide mediation services in the arena of health and social care only. The commissioner will be able to facilitate mediation in any arena that affects the lives of older people, not simply in the area of health and social care. For example, the commissioner could assist with the settlement of disputes in the arena of public transport or on banking services. The purpose of the conciliation power is to reduce the number of legal cases that involve older people and, consequently, to enable disputes that involve older people to be resolved in a way that is quicker, less stressful and less costly than legal proceedings.

The ombudsman said that the commissioner's powers extend to everyone over 50 in Northern Ireland. That is not the case. The legislation makes it clear that a Commissioner for Older People could act in the interests of people aged 60 years and over. The commissioner can look at a case that affects an individual below the age of 60 but not less than 50 in exceptional circumstances only or where the matter raises a question of principle that affects people aged 50 or over. That power has been included to address unforeseen circumstances and to take account of differing needs in different sections of society. For example, while the settled community might regard 50 as relatively young — as one who will be 50 next month, I do too— that is not the case in the Irish Traveller community, members of which have a lower life expectancy.

There are other issues, but I will not take up any more of the Committee's time. Annex 2 of the letter from OFMDFM's departmental Assembly liaison officer, to which I referred earlier, addresses other issues. If the Committee wishes, we can take questions at this point or I can hand over to Jane and colleagues to provide members with a briefing on the proposed amendments to the Bill.

The Chairperson:

Thank you very much for your presentation. It might be helpful to take questions now and go through the amendments and clauses thereafter. The evidence provided to the Committee by the ombudsman, Tom Frawley, and his colleagues seemed seriously to question the creation of the Commissioner for Older People — not an older people's advocate with subsequent powers — given the potential for substantial duplication.

We have heard not only from the ombudsman but from our independent, well-respected Assembly researchers that the Deloitte report was a bit underwhelming in mapping out the roles, responsibilities and duties of the other commissioners and similar bodies. You might say that the

ombudsman might say what he said because he is protecting his territory, but is there any serious prospect of duplication? By being sensible, could we not avoid conflict and save money? That is the concern.

Mr Losty:

I will ask Jane and my colleagues to answer that. However, it does not benefit anyone to duplicate services or provisions in the market place as it would confuse stakeholders and be a waste of our resources. That is something that the Department has been looking at in consultation with stakeholders.

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

I will say a wee bit about Deloitte, and Steve and Chris will add to that. That information and the views expressed are new to us. As your researchers said, Deloitte considered the Equality Commission, the Human Rights Commission, the office of the ombudsman, the RQIA, the Social Care Council, the Mental Health Commission, the victims' commissioners, police ombudsmen, the Criminal Justice Inspection and the Children's Commissioner. Deloitte looked at the work that those organisations do for older people and included figures in its report for the bodies that hold those figures. The fact that some of those bodies do not hold figures on what services they provide to older people is a separate issue.

As your researchers said, the main point identified by Deloitte is that no one body has a strategic focus on older people's issues, rights and interests; it also identified the clear need for a champion for people in that demographic. Additionally, following its receipt of the Deloitte report, the Department, as part of the policy development process, continued to meet and consult several of those organisations. We identified the organisations that Deloitte met and have the raw data of the meetings that the researchers mentioned. Although it is not in the report, we have looked at that and at the data from the consultation events that Deloitte held. The six bodies identified were the Age Sector Platform, the ombudsman, the Commissioner for Complaints, the RQIA, the Human Rights Commission and the Equality Commission, and we continued to meet those bodies throughout the policy development process.

In October, at the end of the process, the Department produced its policy consultation document, which included a chapter on how the proposed commissioner would work with those other organisations. The document included an annex listing the organisations and their remits.

The Chairperson:

Sorry, Jane. Are you saying that the Department is satisfied that Deloitte had a full understanding of the roles and responsibilities of all the existing bodies in relation to the proposed position of an older person's ombudsman?

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

Yes. Deloitte addressed that question and provided information on the existing oversight and regulatory bodies operating in the field; it also looked at the extent to which those bodies were carrying out services for older people. In its conclusion, Deloitte said that although there are bodies carrying out work that is specifically related to older people, there is still no body with a specific focus on the needs of older people. The report highlighted the extent of need among older people. Therefore, Deloitte saw that, despite the existence of bodies that are carrying out some work for older people, there are high levels of need and no one body with a specific focus on the needs of older people.

The Chairperson:

Frawley's criticism seems to be that there is already recourse through the various existing bodies to which people can bring their concerns. His concern seemed to be that unhelpful duplication would be created.

Ms Corderoy:

I will answer your point on duplication. When the Committee looked at the Deloitte report, it said that it wanted the Department to look at means of addressing duplication, of making sure that all the bodies worked well together and of creating a joined-up approach towards dealing with older people's issues. As drafted, the legislation provides statutory and non-statutory ways of addressing potential duplication or the perception of duplication. The residual clauses, to which Tim referred, would prevent the commissioner from undertaking an investigation if another body could already do so. That narrows the commissioner's focus to the interests of older people. The Human Rights Commission focuses on human rights, the Equality Commission focuses on wider equality issues, the ombudsman focuses on maladministration and the RQIA is involved in inspections. All those bodies have a specific focus. However, several residual clauses in the Bill — which we are being lobbied to remove so that the commissioner could have a greater scope to deal with the problems brought to them by older people — provide the commissioner with the

power to co-operate and collaborate with other bodies to create a more joined-up approach to handling issues.

After the public consultation, and as a separate non-statutory approach, the Department committed to encourage the commissioner to establish memoranda of understanding and protocols with other relevant organisations.

The residual clauses are the main statutory way of addressing any potential for duplication and overlap. The Commissioner for Older People will be restricted in what they can do so that they are not doing something for which another body has the resources or remit.

Mr Elliott:

The investigatory powers extend only to areas that cannot be investigated by other bodies, and that is what is in the legislation. I asked Dr Frawley about that issue, and the researchers gave no indication of what gaps in provision were identified in the Deloitte report, although you say that there were other parts of that report of which the Committee and perhaps others have not been made aware. The legislation will give investigatory powers to the Commissioner for Older People; however, if the commissioner does not need those powers, why are they being given them? No one has yet demonstrated to me the gaps that the other bodies cannot investigate. Can you provide the Committee with that information?

Mr Orr:

One example that the age sector recently brought to the attention of the Department was the issue of malnutrition affecting older people in hospitals. They looked to see what existing bodies were, or could be, doing to address that issue and found that no one body could proactively address that issue on behalf of older people.

Mr Elliott:

Could the Patient and Client Council not do that?

Mr Orr:

It is not a statutory body with statutory powers to undertake investigations. I understand that it will work with the age sector to address that issue, but that is not the same as having the power to investigate it or other issues.

That is an example of a gap in the provision. Another example was the Presbyterian Mutual Society. During the debate at Second Stage the question was asked whether the commissioner could have acted on behalf of older people in that case, and in fact they could have investigated that matter. The Department sees the formal investigatory powers as an exceptional or reserve power, but there will be occasions when they will be needed. The Children's Commissioner has similar powers. As mentioned, the commissioner has not needed to use them, but she has found it very useful to refer some public authorities to the fact that she possesses such powers to obtain fuller co-operation when acting as an advocate for younger people. The fact that those powers are in place gives a powerful leverage to obtain co-operation.

There may be cases, such as that involving malnutrition, in which there is evidence of systemic problems that significantly affect the lives of older people. There may also be cases in which the Commissioner for Older People is acting as an advocate and finds that the same problems arise again and again and are either not dealt with by existing bodies or have fallen between two stools. In those cases, the commissioner would have the power to conduct a formal investigation if it is felt necessary.

Mr Elliott:

Would it not be easier to bring in completely new legislation for those powers or amend the existing legislation for other bodies?

Mr Orr:

Although there is a range of bodies with powers that can help older people in certain respects, there is no one body with a specific focus on older people or with the wide range of powers that are provided in the Bill. The Commissioner for Older People will be able to act in an advisory capacity, make representations to the Executive, the Assembly, public bodies —

Mr Elliott:

I have no issue with that. My query was specifically about the powers of investigation that the commissioner will have. The other powers were broadly acceptable, and even Dr Frawley accepted that the advocacy role was required. I was trying to find out whether it would be easier to extend the investigatory powers of, for example, the Equality Commission or the Human Rights Commission into some of the areas in which there is a gap.

I am merely trying to tease out the easiest and most effective solution. Creating another investigatory body could lead to a debate about whether the Human Rights Commission or the Commissioner for Older People should investigate particular cases and potential legal cases about what body should do what.

Mr Orr:

We still come back to the view that a commissioner is the best way of addressing the interests of older people. The issue that came out of the consultation and the Deloitte research was that there was no body to address the specific needs of older people. The Equality Commission has a wide remit, but we are focused specifically on the needs of older people.

Ms Corderoy:

The Commissioner for Older People's investigations will be centred on the interests of older people, which, as Stephen said, cover a very broad spectrum. Typically, other organisations with investigatory powers become involved after a problem has happened. For example, the ombudsman deals with maladministration after something has gone wrong. The commissioner can look at the interests of older people and can almost take a preventative approach through their reviews, advocacy or other powers. For instance, where an organisation keeps failing systemically, the commissioner can ask what can be done to address that and use investigatory powers in that way. It is like a front-end preventative investigation.

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

In our research in developing the policy it became apparent that many of the investigative bodies take considerable time to carry out investigations. However, the only priority that the older people's commissioner will have will be to conduct focused investigations so that they will be carried out more quickly. The approach of the Wales model could take three months, whereas some of the other bodies could take many years. Throughout the consultation, older people indicated that they just do not have that time.

Mr Elliott:

Since many of the bodies come under OFMDFM, would the Department support a review of the overall commissioner and ombudsman areas?

Mr Losty:

I will try and answer that question. Given the financial situation, we need to look at what we have to deliver and what our priorities are. As we do that, there will be reviews of many of the organisations for which we are responsible. We will do that partly because of our normal relationship with those organisations; however, we will have to carry out a review of all organisations in light of financial circumstances.

Ms Anderson:

Go raibh maith agaibh. Jane, when you go through the clauses perhaps you will speak about any changes that were made to the investigatory powers in the Bill as a result of the consultation, as well as the issue of alternative dispute resolution, which Tom Frawley raised with us. He said that it had been put in place originally a year or two ago for the Health and Social Care Board and the trusts to facilitate that kind of mediation.

Picking up on what Tom said, we would like to satisfy ourselves that we are informed about the gaps to which you referred. We have heard the terminology of gaps and that no one body has an holistic approach to the issue. However, the evidence from our researchers indicated that the gaps have not really been identified. Perhaps our researchers were not privy to the full report that you had about the face-to-face consultation exercise, so the background information that you have could be imparted to us. From what has been presented to us, it does not seem that the gaps have been identified, other than that there is no body with an holistic focus on the needs of older people. Probably every one of us around this table and the Assembly would be very keen to ensure that there is such protection for older people.

The Committee is not in any way hostile or opposed to the proposal. However, in the expenditure of public money and the establishment of a Commissioner for Older People, we need to be more informed about the gaps. Those have largely not been presented to us, although you did talk about malnutrition in hospitals. I thought that the RQIA would have been able to intervene in such cases.

Ms Corderoy:

We could send more information about that to the Committee if it would be helpful.

In our consultation, the Older People's Advocate, the Citizens Advice Bureau, the Consumer

Council, the Law Centre and many others identified strong support for having a Commissioner for Older People. Those groups set out issues that they felt were not being addressed by existing organisations. We could show you some of those organisations' evidence.

As the Chairperson said, the Equality Commission ombudsman was supportive of an advocacy role. The Information Commissioner, the Human Rights Commission, the Consumer Council, the RQIA, the Patient and Client Council, Advice NI and the Citizens Advice Bureau supported having a commissioner with advocacy and investigatory powers; they see no overlap between what they do and what we propose for the commissioner.

Mrs D Kelly:

Thank you for the presentation. Earlier, we discussed the budget bid for the next four years. Has the budget for the Commissioner for Older People already been agreed and ring-fenced?

Ms Corderoy:

It has not been ring-fenced.

Mr Losty:

As part of the process of developing the Commissioner for Older People, money was identified to set up an office. However, nothing will be ring-fenced as we move into the future; we will have to look at everything that we put money into. It is important for us that the role, function, responsibility and purpose of the Commissioner for Older People be firmly established and able to function. How the organisation will be funded or how money will be spent will be reviewed as part of our normal process as we go into the next comprehensive spending review period.

Mrs D Kelly:

It was not included in the budget bids as a specific heading. I am just trying to clarify whether it is already contained in the departmental budget headline as opposed to there being a requirement to put in a bid for further years' funding.

Mr Losty:

It is in the budget headline.

Mrs D Kelly:

Like Martina, I would have thought that malnutrition in hospitals would have been covered by the RQIA; indeed, the Human Rights Commission is commissioning research into nursing homes. You said that you would forward further information on issues that were not being addressed, as outlined in the consultation. However, just because an issue is not being addressed does not mean that it is not the responsibility of an existing organisation. There is a clear distinction to be made, and I hope that your correspondence will make that distinction.

Ms Corderoy:

The commissioner will definitely have a role in challenging organisations to do what they are supposed to do. Your point concerns what happens if organisations are failing to deliver.

Mrs D Kelly:

Where is the enforceability? My recollection is that the legislation gave with one hand and takes away with the other. The legislation highlights the fact that the commissioner will have many investigative powers; however, subsequent clauses contain caveats that the commissioner will not have powers in this or that case. It would be most useful if the detail of exactly what level of investigatory powers the commissioner will have was distilled into a straightforward briefing.

Mr Orr:

A formal investigation is not necessarily required to challenge an organisation that is not delivering on its remit. The commissioner will be specifically empowered, without qualification, to make recommendations or representations concerning the interests of older people to any person or body.

Mrs D Kelly:

We, as elected Members, can do that as well. Where is the enforceability power? Two weeks ago, under carers' legislation — many older people are carers — an individual took a judicial review against the trust in respect of enforceability.

Where is the power of enforceability? In many cases, we all know what has gone wrong, but the question to ask is how it can be fixed.

Mr Orr:

If the commissioner were to challenge an organisation and it did not respond, he or she would

have the legal power either to take judicial reviews or to assist an older person to do so. Therefore, powers exist to challenge an organisation if necessary. We do not envisage that that will happen except in exceptional cases, but there are powers, including through judicial review, to challenge what existing organisations are doing, whether that is by assisting an older person to undertake such a challenge or by doing so on behalf of the older person

Mrs D Kelly:

We all know the costs of judicial reviews, and it is not the preferred route. We would prefer if something else could be done instead.

Mr Orr:

It is a last resort.

Mrs D Kelly:

Yes, but my point is that it is all very well to have judicial reviews, but, at the end of the day, the person making the complaint wants to see action. They do not care how they get there; they want the thing remedied. Will the commissioner have the power to ensure that the problem is fixed?

Mr Orr:

The commissioner can act on behalf of older people and can make strong representations, but if you are talking about enforcement powers, ultimately, it is for the courts, rather than a commissioner, to enforce things.

Mr Spratt:

Thank you for your presentation. I want to return to clause 8(2)(b), which I think Tim Losty mentioned when discussing various other bodies. No doubt older people have access to all the bodies. I think that all of us around this Table send cases to various bodies on a daily basis for our constituents, so we all know that, despite what anyone says, everyone has access to all those bodies. I am concerned about duplication, and I think to a degree that is probably what the ombudsman was concerned about where his remit is concerned. He identified the other bodies in what I think was a powerful piece of evidence to this Committee. I think that everyone around the Table agreed that that was a powerful piece of evidence. I can understand a couple of cases that you pointed out that involved malnutrition.

I am concerned about legal cases. A criminal offence, for example, may be taking place in an old people's home, in that elderly abuse may be going on. I have raised that issue with you before. We have seen that happen on a number of occasions in Northern Ireland over the past number of years. We are always concerned that somebody will meddle in something and destroy a criminal investigation, or perhaps create so much publicity around the matter that by the time that it goes to court, it is thrown out and no one is convicted for what may have been a systemic thing that has been going on for a number of years.

How will clause 8(2)(b) make sure that the Commissioner for Older People will not investigate the complaint? The way that that was described was if the complaint does not fall within present systems. Can you also tell me how the legislation will ensure that, when there is a very clear indication at the start of an investigation that criminal activity is ongoing, the commissioner will not become involved in that in any way and that the Police Service will be carrying out the investigation? How will the legislation protect their involvement?

I am not criticising anybody, but the other thing that annoys me is that other bodies, for example, the Police Service, are very quick to offload on to another body if they can get out of dealing with something. I think that that is the story with a lot of the various bodies, commissioners and so forth that we have right across Northern Ireland. They are very quick to offload on to somebody else. How do we make sure that the system is tight enough to ensure that the buck is not regularly passed on? That is a concern, particularly from a policing point of view. I think that the police would be very quick to pass the buck on to somebody else if they thought that they could do that. However, I want to make it clear that that is not a criticism of the Police Service; I am just using them as an example. However, other bodies do exactly the same thing, and we all know that, so we should call a spade a spade.

Mr Orr:

The purpose of clause 8(2)(b), which you referred to, is to specifically address the existing statutory complaints system. The ombudsman and a number of other existing bodies, including the Information Commissioner, are based in legislation that specifies that someone can raise an issue to them as a complaint and that they will address it and investigate it. Clause 8(2)(b) will protect all those existing statutory complaints systems. The Bill will prevent the Commissioner for Older People investigating an issue that falls within the remit of an existing statutory complaints system. If an issue falls within the remit of the ombudsman or another body, the

Commissioner for Older People must refer it to that body, because the legislation quite explicitly prevents it investigating it.

Ms Corderoy:

You have raised that issue before. As we said, there is a general duty to report a criminal offence to the relevant authorities.

Mr Spratt:

I understand that, Jane, but I am talking about meddling in the public domain to some degree. Some commissioners like to publicise themselves, for want of a better expression. If some of those situations are given a degree of public exposure, a criminal case can be ruined when it comes to court. My question is concerned with ensuring that that does not happen.

Ms Corderoy:

We have given that further consideration. We have explored with the Welsh Assembly Government how the Older People's Commissioner for Wales works there, and we have explored how the Commissioner for Children and Young People here works. We do not think that it is possible to put any sort of clause into statute to deal with criminal activity. However, the Commissioner for Children and Young People here has a child protection policy and has developed protection of children and vulnerable adults (POCVA) policies. If the Commissioner for Children and Young People comes across criminal activity or something such as elder abuse, it withdraws immediately and instigates procedures. The process for reporting that abuse is automatic, and it overrides everything else that that office does. Depending on what issue the Commissioner for Children and Young People discovers, it goes straight to the police or to social services. As I said, that overrides everything. That forms part of the training for all its staff, not just those carrying out the investigation.

Mr Spratt:

What clause will cover that? Will it be mentioned specifically in the Bill?

Ms Corderoy:

No, it will not be in the Bill.

Mr Spratt:

Is there not a danger if it is not in the Bill?

Ms Corderoy:

The Department will require the Commissioner for Older People to do that on its establishment, but it will not be included in statute through the Bill. In the same way, it is not included in the legislation for the Commissioner for Children and Young People or for the Older People's Commissioner for Wales. Those bodies address the potential for that problem in the way that I described.

Mr Spratt:

I want to probe into this a bit further. Why could there not be a clause to say that, if the Commissioner for Older People were to establish that a criminal offence had been committed, it would immediately withdraw from the process? Our legislation does not have to be all singing, all dancing in the same way as that everywhere else. We can have our own clause that may make the legislation better and ensure that the issue is dealt with by the professional who should be dealing with it, which, in this case, is the Police Service.

Mr Orr:

The advice that we have received is that, in our system of law, there is no legal duty on any citizen to report a crime. There is a civic duty and an expectation that people will act in that way.

Mr Spratt:

I think that there is a legal duty on all of us to act in that way, and there is certainly such a duty on government and those employed by government, including commissioners. There should be a legal duty through a clause that, when a criminal offence has been established to have taken place, particularly something as serious as the elder abuse that has taken place in the past, it must be reported immediately. I think that there is such a legal obligation, and, Stephen, I am shocked by what you just said about there being no legal obligation. I think that there is a legal obligation on all of us, even as citizens.

Mr Orr:

It is perhaps more correct to say that there is no statutory obligation.

Mr Spratt:

Why could such a clause not be in the legislation?

Mr Orr:

We have been advised by —

Ms Corderoy:

We have been advised by our draftspeople.

Mr Spratt:

You have been advised by your draftspeople?

Ms Corderoy:

Yes, we have been advised that such a provision would be better as an administrative procedure.

Mr Spratt:

Chair, can we raise that point specifically, because I do not see any reason why there could not be a clause to ensure protection on that matter? A number of serious cases such as those that I mentioned have, very sadly, come up over the past two or three years. Those cases exist.

Ms Corderoy:

Yes, we can come back on that.

The Chairperson:

Has the Department received legal advice on that matter, or drafting advice only?

Ms Corderoy:

We made just an informal query, because we know that the Committee raised the matter previously.

The Chairperson:

It is an important point, and it is exercising the Committee. Mr Spratt raised it, but members generally share the view that the Bill should explicitly refer to that particular circumstance. We are interested not only in the view of the draftspeople but in the legal opinion as to how possible

or otherwise that inclusion is. The Committee might refer the matter for legal advice itself. Are members content with that approach?

Members indicated assent.

Mr Molloy:

I want to follow on from Mr Spratt's point. The danger is that the same thing will happen and that the buck will be passed from one body to another. We should avoid that situation by tying the matter down. A similar question was asked earlier, but have you considered a complete review of the enforcement powers of all the various groups? When dealing with some issues that are to do with the RQIA, there seems to be a number of people who can investigate something that has been raised with them. They must go through a complaints procedure, but there is no role for them to play in rectifying matters when they see something wrong.

Is there no possibility of creating a commission office instead of having a commissioner for every different group in the section? Such an office could deal with the various bodies that need to be protected at different times, could continually improve legislation to advocate more powers of investigation for themselves and could improve the service. The danger, I think, is that we will finish up with an older people's advocate who can advocate as much as they like but cannot do anything to finish the process, or we will have a commissioner who can go only so far in case he interferes with the ombudsman or with the RQIA. There are so many different departments to deal with. If a commissioner is put in place, they must have the power to deliver and must be different from what has existed before.

Mr Orr:

We have carried out research on the existing bodies and on those that already have enforcement powers. Indeed, there is a number of such bodies. The clauses that we referred to in the Bill that protects the clauses and powers of other organisations are there to ensure that there is no duplication of a body that already has powers to investigate a matter. Indeed, in a number of cases, the bodies in question have enforcement powers.

During the public consultation on the Commissioner for Older People Bill, there were strong representations for the commissioner to have greater enforcement powers. When we researched how comparable organisations work, such as the Northern Ireland Ombudsman and the

Children's Commissioner, we found that, when dealing with public bodies, they enjoy a high level of compliance with their recommendations. Indeed, the Northern Ireland Ombudsman made that point to the Committee. Therefore, we have not found evidence of the need for additional enforcement powers for a body that carries out a role that is comparable to that proposed for the Commissioner for Older People.

The argument is sometimes made that, even if it is not necessary, why should those powers not be put on the back burner. The research also shows that organisations such as the ombudsman, the Children's Commissioner and the Commissioner for Older People carry out such a role on a co-operative basis with other organisations. When they contact a public authority about an issue that has arisen, they work on a co-operative basis to improve service delivery. A number of existing ombudsmen have declined the offer to have enforcement powers, and the problem is that, even if bodies have enforcement powers, all those powers are, ultimately, enforced by the courts. Therefore, as soon as a body with those enforcement powers rings up or writes a letter to the public body in question, its first focus is not how it can assist or co-operate, it is to contact its legal advisers.

Legal teams tend to get drawn in, which lengthens the process, makes it more complex and costly and means that the issue takes longer to resolve. We think that the evidence shows that the Commissioner for Older People could make a strong difference to the lives of older people through its recommendations without needing enforcement powers, which might actually make co-operation with big bodies more difficult.

Mr McCafferty:

Deloitte is a starting point in policy development. In our research, we looked at local, national and international bodies. We looked at the relationship between those bodies and their constituent parts as though that were a landscape. One of the most telling things to come out of that research was that punitive powers would be a disadvantage. That is the subject of global debate in the ombudsman community, and, indeed, most ombudsman-type bodies do not use punitive powers. We analysed the local bodies that had enforcement powers and looked at why, and in what circumstances, they used those powers. Those bodies were mostly enforcing specific rules and regulations. The Commissioner for Older People would not have to deal with those specific rules and regulations, because it would be dealing with a far wider issue. That matches our research, which indicated that enforcement powers may well be a disadvantage.

The Chairperson:

I hear what you say, but my sense of the matter is that older people who take cases of discrimination, malpractice or maladministration will not be terribly impressed by an outcome in which the commissioner agrees that there was maladministration but is unable to put a sanction in place to address the complaint directly.

Mr Orr:

If I understand you correctly, you are saying that older people want the issue or problem to be resolved and dealt with rather than just identified. However, the research that we undertook discovered high levels of compliance with the recommendations that such bodies made. Therefore, it was not a case of problems being found and noted but not resolved.

The Chairperson:

OK; thank you very much indeed.

You will now take us through the suggested amendments that the Department has taken on board.

Ms Corderoy:

As Tim Losty mentioned, we were grateful to receive the responses to the Committee's consultation. The Department has given all those responses thorough consideration. We have presented those responses to you in a tabular format that is similar to that that the Age Sector Platform used in its response. The table covers each of the responses that were made to the Committee and details those against the related clauses.

The specific suggestions for amendments have been particularly interesting and constructive. We appreciate those and recognise the time that was spent and the commitment that was shown by consultees in attempting to improve and clarify the Bill. A number of issues that consultees raised sought greater clarification on some of the Bill's provisions. Although we have been advised that, for legal reasons, it is not appropriate to amend the Bill on many of those points, we have provided clarification and reassurance on those matters that are listed in the table. In some specific instances, we intend to amend the explanatory and financial memorandum, in particular on the explicit advocacy powers of the commissioner, which I will touch on shortly.

I will preface my remarks by stating that the majority of the consultees' comments in response to the Committee's consultation had been raised during the Department's consultation. Ministers considered and responded to all those at that time, and the outcome was published in May 2010 in the Department's consultation analysis and report. However, we have given fresh consideration to every comment that was made and sought advice where appropriate. The final column of the table gives information on the Department's response. I will provide information on the main issues that were raised, and we will be happy to take members' questions about any of those.

I will deal first with the issues that consultees raised and that Ministers are content, in principle, to respond to by proposing amendments to the Bill, subject to the Committee's views. The first is consultees' request that the Bill should specify that the Bill's references to older people's interests should include their rights. That has been an ongoing lobbying issue, and in its consultation analysis and report and the explanatory and financial memorandum, the Department has clarified that the term "interests" is wider than, but includes, rights. In June 2010, junior Minister Kelly made it clear in the Second Stage debate that "interests" is a broader term that covers the wider picture, including rights. However, given that there appears to be ongoing concern about the matter as raised by the Age Sector Platform, the Human Rights Commission and the advocate, Ministers have agreed, providing that the Committee is content, that an amendment can be made to clause 27, which is the interpretation section, to clarify that the legislation's references to interests includes rights.

That amendment would be significant. In its response to the Committee, the age sector lists the issue as its first priority. We hope that, if the Committee is content with the amendment, it will be extremely well received.

The second suggested ministerial amendment relates to the commissioner's proposed power to procure conciliation services to resolve disputes involving older people. That new power, which is in clause 12, was inserted into the Bill when Ministers responded to the representations that were made during the Department's consultation. Clause 12 empowers the commissioner to make arrangements for the provision of conciliation services in disputes that may lead to legal proceedings that involve law or practice concerning the interests of older people.

The age sector and the older people's advocate have now recommended the replacement of the

term “conciliation services” with “dispute settlement services” and have called for a wider definition of the term.

The Chairperson:

What page are we on, Jane?

Ms Corderoy:

I was talking about the three main areas of the report that we were going to go through as part of the clause-by-clause discussion.

The Chairperson:

Yes, we have the clause-by-clause papers.

Ms Corderoy:

The conciliation of disputes is dealt with in clause 12.

We are advised that “conciliation services” is the appropriate term to use, given that it is used in comparable legislation to achieve the same purpose. However, Ministers have agreed that, providing that the Committee is content, an alternative and broader definition of the term “conciliation” could be substituted to replace the definition of the term that is used in clause 12(7). A wording that is similar to that which we are proposing was used in the Equality Act 2006. It is considered to be much broader and includes conciliation and mediation.

The third proposed amendment relates to the review of the legislation. The Bill currently specifies that a review of the legislation cannot be carried out more frequently than every three years, but no maximum period during which reviews must be carried out is specified. The age sector has suggested an amendment to clause 21 to make it a requirement that reviews of the Act are carried out at least every five years. If the Committee is content, Ministers would be willing to bring forward an amendment to clause 21.

A number of points were raised on other drafting amendments. The age sector, the advocate and Advice NI contend that it would not be appropriate to respond to such matters by way of amendments. That applies in particular to providing definitions for phrases in the Bill such as “a question of principle”, “unreasonable delay” and “as far as practicable”. On the specific point

that the age sector raised in its submission to the Committee on clause 14, titled “Formal investigations: exclusions”, we are advised and can confirm that the commissioner’s acting as amicus curiae does not prevent a formal investigation. With the Committee’s agreement, that point can be clarified in the explanatory and financial memorandum so that reassurance can be provided.

On the specific power to advocate, which I mentioned earlier, the age sector and the advocate propose that one of the commissioner’s key roles will be to act as an advocate on behalf of older people and that the Bill should refer explicitly to that provision. Clause 4(6) provides for the advocacy role of the commissioner. It empowers the commissioner to make representations or recommendations to anyone about any matter concerning the interests of older people. If the Committee agrees that it would be useful, Ministers will provide clarification of those powers in the explanatory and financial memorandum after Consideration Stage.

We can take questions on those amendments if members so wish, or I can touch on the main topics on which Ministers did not agree amendments. It might be useful to explain the reasons for that.

The Chairperson:

OK. For our own consideration, it will obviously be helpful to see the amendments by next week.

Ms Corderoy:

Yes.

The Chairperson:

Do members wish to comment on the amendments that have been explained so far? We are generally happy. Let us move to the amendments that have been suggested, but, on reflection, you have declined.

Ms Corderoy:

There are a number of areas that Ministers are not persuaded are appropriate for amendments. The first relates to the title of the commissioner. Age NI, the advocate and Citizens Advice have recommended that the title of “Commissioner for Older People” be changed to “Older People’s Commissioner”, to give greater emphasis to the group of people being served. We can confirm

that there is nothing in the Bill that would prevent the commissioner adopting the title of “Older People’s Commissioner” for operational purposes if he or she so wished. However, in line with terminology that is used in other pieces of legislation, Ministers believe that the legal title should remain the “Commissioner for Older People”. Ultimately, any change in the working title will be a matter for the commissioner to decide once he or she is in post.

The residual clauses, which we touched on, limit the commissioner’s ability to act where another organisation already has responsibility for and has been resourced to address the issue concerned. As Mr Losty mentioned, those include restrictions in parts of clauses 5, 6, 7 and 8 and clauses 9, 11 and 14. The age sector and some other respondents to the Department’s consultation argued strongly for the amendment or removal of those clauses. As a consequence, some of those clauses, specifically clause 5(4), clause 6(3), clause 7(3) and clause 7(4), were amended after the public consultation. They now give the commissioner greater discretion to act. However, other consultees favoured their retention and, in some cases, argued for the strengthening of the residual clauses as they are concerned about the risk of potential or perceived duplication of the commissioner’s work with existing bodies. As Ministers have responded already and amended the Bill in response to the consultation, they do not propose to amend the residual clauses further.

If we move to a discussion of relevant authorities, the commissioner can act as an advocate on behalf of older people with any organisation or body. However, provisions in the Bill involve the commissioner carrying out either a formal review of the internal procedures of an organisation or a formal investigation, which is a very significant undertaking, with High Court powers of entry and inspection of premises and the requirement to produce documents. Given the formal nature of those investigations and in keeping with the Children’s Commissioner legislation, the Bill limits the applicability of those specific powers to public bodies that are listed as “relevant authorities”. It would also include independent and private sector health providers that act on behalf of a public body, such as a health and social care trust.

As we advised the Committee previously, during the public consultation, there was very strong lobbying to include nursing and residential care homes in the private and voluntary sector as relevant authorities. Bodies such as those that operate in the public sector were included already. The issue arose because, in some cases, older people were required to fund care by using their life savings or the proceeds from the sale of their homes. Therefore, they were not covered.

Responding to that, Ministers agreed, as an exceptional measure, to include all nursing and residential care homes as relevant authorities, regardless of sector. The amendment has been received very well and welcomed. The age sector's response to the Committee's consultation has now argued for all functions of all private and voluntary bodies as they pertain to older people to be included as relevant authorities, or, failing that, all their functions concerning the health and social care of older people to be included.

The remit of the commissioner is to safeguard and promote the interests of older people. We feel that discriminatory practices in the private arena in the provision of goods, facilities and services would be addressed more appropriately through age discrimination legislation. As Ministers have responded already to consultees on the issue of those bodies that are potentially subject to formal reviews and investigations, it is not their intention to widen further the definition of the term "relevant authority".

It is worth noting, and this point is noted in the table in the sections on clauses 23 and 26, that some of the bodies about which concern had been expressed about the need to include are covered already in the Bill. That includes, for example, domiciliary care agencies, independent hospitals and clinics, including those contracted-out services where the provider is effectively acting as an agent of the trust. The Bill also enables OFMDFM, through subordinate legislation, to address any omissions that are identified in the list of relevant authorities.

As with the OFMDFM consultation, some consultees in response to the Committee argued that a range of additional powers should be in the Bill to enable the commissioner to enforce his or her recommendations following a formal investigation. Many of the powers that consultees suggested are already available to the commissioner. For example, the commissioner can issue codes of practice, set timescales for action, formally report, and monitor the compliance with their codes of practice.

Where enforcement powers of existing organisations are concerned, some consultees strongly support the position that such powers are not necessary for the commissioner to be effective. Those existing organisations include the ombudsman and the Children's Commissioner, and Mr Orr and Mr McCafferty talked about them earlier. The enforcement powers in question include issuing notes of compliance, research and experience. Additionally, they risk altering significantly the nature of the relationship between the commissioner and the relevant authority,

from one that is predominantly co-operative and focused on improving service delivery to a potentially adversarial relationship with the ever-present threat of legal action.

Furthermore, clause 21, which concerns the review of the Act, will allow the commissioner to make recommendations to the Department to amend the legislation, including, if required, the ability to include sanctions and/or enforcement powers, should the experience of the commissioner demonstrate evidence of persistent offenders and thereby a need for such powers. Ministers consider the current enforcement powers in the Bill to be sufficient.

The Human Rights Commission raised the issue of victims' standing with the Committee. There is a recognition among consultees that the Bill will empower the commissioner to take strategic legal cases in his or her own right without an older person being involved. However, for cases involving the European Convention on Human Rights, the Human Rights Act 1998 requires a victim to be involved unless a named organisation has been granted victims' standing through Westminster legislation.

The Human Rights Commission is the only body here that has been granted such status. It is not possible for an Assembly Bill to give the Commissioner for Older People victim standing. During the OFMDFM consultation, the advocate suggested that the Commissioner for Older People could use his or her powers of collaboration to work with the Human Rights Commission and, through reliance on convention rights, take a case through the courts. Following consultation, the Department undertook to consider that matter further.

Although they welcomed the proposal, the National Association of Citizens Advice Bureaux, the Human Rights Commission and the age sector continue to call for victim standing for the commissioner and for the Executive to consider pursuing that through Westminster. In its response to the Committee consultation and after a meeting with the Bill team, the Human Rights Commission expressed concerns about any specific legislative provision for collaboration between it and the commissioner on the issue of victim standing. We met the Human Rights Commission in August, and it stressed that, as part of its work, it engages widely and routinely with individuals and organisations to encourage referrals where there is potential to consider victim standing. It indicated that it is content to work with the Commissioner for Older People on the matter once that post is established.

Given those concerns, Ministers considered it inappropriate to amend the Bill to give the commissioner explicit power to collaborate with the Human Rights Commission. If needed, that matter could be dealt with through the commissioner's general powers of co-operation and collaboration in schedule 1 and through a memorandum of understanding. The Human Rights Commission has such a memorandum with a range of organisations, and we will continue to liaise with the Human Rights Commission to establish a non-statutory arrangement with the commissioner. It is worth noting that we do not anticipate a high number of such cases. The Human Rights Commission has not yet used that power in any case, and Ministers are content that we agree to pursue an informal arrangement with the Human Rights Commission and the commissioner on victim standing.

The Chairperson:

I see that members do not have questions about the amendments that have not been accepted and the explanation for that. We will go through the clause-by-clause scrutiny and look at the amendments next week. Thank you for your presentation and attendance this afternoon. I thank those in the Public Gallery who have come to hear the presentation and the Committee's important discussion on the Commissioner for Older People Bill. I hope that it has been helpful and insightful. Do individual members intend to table amendments to the Committee at this stage?

Ms Anderson:

It will be important to see the amendments first. It would be impossible to get a sense of them until we have the documentation before us.

Mr Spratt:

Does the Clerk of Bills have an opinion on the issue that I raised?

The Clerk of Bills:

No. However, you are going about it in the appropriate way by seeking legal advice and determining whether there is any legal impediment. If the Committee comes to a collective view that it wishes to examine an amendment of that nature, we will propose to explore it fully with the Department. If the Department agrees, it will be appropriate for legislative counsel to draft the amendment. If, on the other hand, the Department does not agree and there is still a collective view in the Committee that it wants to table such an amendment, the Bill Office will assist with

the drafting of an appropriate amendment at that stage.

The Committee should look at any potential amendments next week, because it is very difficult to come to a view on a clause with a potential amendment that you have to look at later. In that event, it must be agreed subject to the text of the amendment. Therefore, that is the appropriate order in which to proceed.

The Chairperson:

It will be crucial to get the legal advice in time for next week.

The Committee Clerk:

We need to find out whether members will table Committee amendments rather than party amendments.

The Chairperson:

The only issue under consideration seems to be the issue that Mr Spratt raised. We could look at that as a Committee amendment.

Mrs D Kelly:

The only other issue is the clarification of the gaps based on the presentation on the research paper. There is additional correspondence that might inform us whether additional amendments are required.

The Chairperson:

Are members content?

Members indicated assent.

The Chairperson:

Thank you very much indeed.