

## **EXAMINING THE CASE FOR A COMMISSIONER FOR OLDER PEOPLE IN NORTHERN IRELAND**

### **Introduction**

This paper looks at views and proposals for the establishment of a Commissioner for Older people in Northern Ireland. It reports on two research exercises sponsored by OFMDFM and age sector organisations and also looks at existing provisions in other jurisdictions.

As background information, Section 1 of this paper includes a brief *Timeline* of the key developments in examining the case for a Commissioner for Older People in Northern Ireland.

Section 2 examines an Age Concern / Help the Aged Report of March 2008 and compares the range of powers, breadth of remit, autonomy and degree of participation proposed for each of 4 models.

Section 3 examines a report by Deloitte (commissioned by OFMDFM) of May 2008 and the powers remit and roles for a Commissioner proposed to the researchers.

The following section of the paper briefly summarises and compares examples of older people's representation in other jurisdictions, namely Wales, Scotland and the Republic of Ireland.

The paper ends in Section 6 with the researcher's conclusions and recommendations.

### **1.0 TIMELINE: KEY DEVELOPMENTS**

- **19 December 2006**  
Debate in Transitional Assembly. The motion called for the creation of an Office of independent Commissioner for Older People. The motion was supported by all the parties.
- **5 June 2007**  
Debated by the restored Assembly and again received cross-party support.  
Subsequently OFMDFM engage Deloitte to examine the case for a Commissioner for Older People.
- **December 2007** paper published by Help the Aged and Age Concern NI. *Key Messages: Independent Commissioner for Older People*<sup>1</sup>.

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<sup>1</sup> In *Key Messages: Independent Commissioner for Older People* (December 2007) Help the Aged and Age Concern set out five criteria for achieving a suitable Independent Commissioner, these are:

- **March 2008.**  
Age Concern NI and Help the Aged Report published: *The Possible Remit and Powers of the Independent Commissioner for Older People in Northern Ireland.*<sup>2</sup>
- **May 2008**  
Deloitte Report published: *Examining the case for a Commissioner for Older People.*<sup>3</sup>
- **1 December 2008**  
Interim Older People's Advocate Dame Joan Harbison took up her post.  
The appointment is part-time and initially expected to last for 18-24 months and will cease on the appointment of a Commissioner for Older People.<sup>4</sup>
- **1 June 2009**  
Assembly question to FMdFM for an 'update on the progress with legislation to create an Older People's Commissioner'.
- **June 2009.**  
At present OFMDFM are preparing policy proposals and draft legislation. These are to go out for consultation 'autumn 2009.'

## 2.0 AGE CONCERN NI / HELP THE AGED REPORT OF MARCH 2008<sup>5</sup>

Age Concern NI and Help the Aged engaged the services of Barry Fitzpatrick Consulting to examine the possible remit and powers of an Independent Commissioner for Older People (ICOP). The report proposes 4 models:

### 1.The NICCY model

This model looks to the NI Commissioner for Children for its inspiration.

### 2.The Enhanced Commissioner Model

This model adds to the role and powers of the NICCY model.

### 3.The Ombudsman/Inspectorate model

This model considers the remit and powers of bodies such as the Local Ombudsman and the Social Services Inspectorate.

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- The Commissioner should have a strategic and holistic role in securing, promoting and safeguarding rights and interests of older people
  - The Commissioner should be a body which is independent
  - The Commissioner should be complementary to existing bodies such as the NI human rights commission and the Equality Commission for NI.
  - The Commissioner should offer value for money
  - The Commissioner must engage older people appropriately in all aspects of its work.

<sup>2</sup> <http://policy.helptheaged.org.uk/NR/rdonlyres/09F9BE8B-6E0F-48CC-A593-ABC8505D4801/0/nicommissremit200608.pdf>

<sup>3</sup> [http://www.ofmdfmi.gov.uk/opc\\_report\\_may\\_\\_pdf463kb\\_.pdf](http://www.ofmdfmi.gov.uk/opc_report_may__pdf463kb_.pdf)

<sup>4</sup> See *Older People's Advocate Information Pack*. OFMDFM May 2008

[http://www.ofmdfmi.gov.uk/information\\_pack\\_for\\_older\\_people\\_s\\_advocate.doc](http://www.ofmdfmi.gov.uk/information_pack_for_older_people_s_advocate.doc)

<sup>5</sup> <http://policy.helptheaged.org.uk/NR/rdonlyres/09F9BE8B-6E0F-48CC-A593-ABC8505D4801/0/nicommissremit200608.pdf>

#### 4. The Advocacy model

This model is inspired by the 'Champion for Older People' as outlined in the Ageing Strategy produced by OFMDFM.

Table 2.1 below examines and compares the range of powers, breadth or remit, autonomy and degree of participation which each proposed model may enjoy. See Section 6 of this paper (pages 11 and 12) for the consultants' conclusions and recommendations.

**Table 2.1 Comparison of the 4 models proposed in the Age Concern NI and Help the Aged report of March 2008**

	<b>NICCY Model</b>	<b>Enhanced Commissioner Model</b>	<b>Ombudsman /Inspectorate Model</b>	<b>Advocacy Model</b>
<b>Powers:</b>	<p>Statutory body.</p> <p>Powers of advice &amp; promotion are wide but powers of investigation &amp; representation are curtailed.</p> <p>Gives primacy to existing agencies.</p> <p>A 'patchwork of powers'. 'Filling the gaps' in existing provision for inspection, investigation &amp; representation<sup>6</sup>.</p>	<p>Statutory body.</p> <p>Wide range of powers. Has equality of status with other bodies.</p> <p>Can take a holistic, strategic approach to the protection of the rights &amp; interests of older people.</p>	<p>Statutory body.</p> <p>A purely investigative role.</p> <p>Has powers of enforcement.</p> <p>Lacks powers of advice, promotion &amp; representation.</p> <p>Significant overlap with existing agencies.</p>	<p>No statutory powers.</p> <p>Largely a promotional and advisory role.</p> <p>May be sectoral in nature, possibly replaced in time with a statutory body.</p> <p>Could be a Minister or senior Civil Servant<sup>7</sup>.</p>
-Advisory	Yes, wide	Yes, wide	No	May have advisory powers
-Promotional	Yes, wide	Yes, wide	No	Envisaged as a 'Champion for Older People' with a promotional and research aspect.

<sup>6</sup> See Chapter 3 of the Age Concern NI / Help the Aged report.

<sup>7</sup> See page 13 of the Age Concern NI / Help the Aged report.

	<b>NICCY Model</b>	<b>Enhanced Commissioner Model</b>	<b>Ombudsman /Inspectorate Model</b>	<b>Advocacy Model</b>
-Investigatory	Yes, wide, but constrained by 'residual clauses'	Yes, wide and unconstrained by 'residual clauses' & other restrictions which could limit powers of investigation & representation.	Wide but there are constraints.  Powers to investigate complaints of maladministration & conduct inspections.  Has discretion as to what to investigate but only at the initiation of an aggrieved person.	No
- Representational (incl. legal representation)	Yes, but significantly circumscribed.  Powers to assist with complaints to relevant authorities & a power to bring, intervene or assist in legal proceedings.	Yes, wide and unconstrained by 'residual clauses' and other restrictions which could limit powers of investigation & representation.	No	May have powers to represent individuals and act on their behalf
<b>Breadth of remit</b>	Most general powers can be applied across public & private organisations. More specific investigative & representational powers largely restricted to 'relevant authorities' ie public authorities. No powers over UK wide bodies which deal with excepted matters <sup>8</sup> .	Fewer constraints than for the NICCY model. Power to act in the community, voluntary & private sectors.	Almost exclusively the public sector.  Generally based on a system of designated authorities.	Based upon a particular range of organisations e.g. the NI civil service. Acts on behalf of vulnerable groups and individuals.

<sup>8</sup> Such as the Home Office, the Ministry of Defence and the Treasury.

	<b>NICCY Model</b>	<b>Enhanced Commissioner Model</b>	<b>Ombudsman /Inspectorate Model</b>	<b>Advocacy Model</b>
<b>Autonomy and resources</b>	Subject to Departmental oversight (OFMDFM). NICCY has a budget £1.8M, 21 permanent staff.	Able to act independently of government – and of the community and voluntary sectors. Under Assembly oversight.	High degree of autonomy. Annual report laid before the Assembly.	No autonomy, subject to departmental oversight <sup>9</sup> May only involve an annual report to the Assembly.
<b>Participation</b>	Yes, strongly participatory	Yes, strongly participatory. Strong links with the community and voluntary sector while maintaining its independence from it.	Weak participative approach	Strongly participatory

### 3.0 THE DELOITTE REPORT (MAY 2008)

OFMDFM commissioned Deloitte to examine the case for a Commissioner for Older People. Deloitte produced their final report in May 2008. Section 4 of the report presents an overview of the views of older people and key stakeholders on the potential role and powers of an Older People's Commissioner, these are summarised in Table 3.1 below<sup>10</sup>. See Section 6 of this paper (pages 11 and 12) for the consultants' conclusions and recommendations.

**Table 3.1 Options in Deloitte report**

<b>The Deloitte Report</b>	Views of key stakeholders and older people
<b>Who?</b>	<p><u>Senior Civil Servant</u> No advocacy or investigation due to conflict of interest issues.</p> <p><u>Minister for Older People</u> Would complement OFMDFM Junior Minister responsibilities. However potential for difficulties in relation to accountability.</p> <p><u>Designated Commissioner on ECNI or NIHRC</u> Concern that older people's agenda would lose emphasis.</p>

<sup>9</sup> "It could be envisaged that this position could be made independent and could be given some powers already enjoyed by bodies such as NICCY, the NIHRC and the ECNI, for example, a power to give advice, to undertake research, a power to promote the rights and interests of older people and a representational power to assist complainants both against public bodies and possibly in the judicial process". See page 13 of the Help the Aged and Age Concern Report.

<sup>10</sup> The consultations included: Equality Commission for Northern Ireland, Human Rights Commission for NI, Office for the NI Ombudsman, Age Concern, Help the Aged, Law Centre NI, Officials from Republic of Ireland, Wales, England and Scotland, age sector consultations in Belfast, Cookstown and Londonderry, the Committee for the Office of the First Minister and deputy First Minister.

	<p><u>Finance casework to an existing Commissioner</u> Difficult to address issues of multiple disadvantage.</p> <p><u>Ombudsman for Older People</u> The role may be too narrow to provide a holistic approach to older people's issues.</p> <p><u>Network of Champions</u> Question over it having the necessary independence, legal powers or authority. A wide range of duties could deflect from responsibilities to older people.</p> <p><u>National Forum</u> Some merit seen in this model but not likely to be as effective as an Older People's Commissioner.</p> <p><u>Commissioner for Older People</u> The Concerns of Older People its primary purpose. Cross-cutting remit. Clear visibility. Age remit 60+</p>
<p><b>Age Remit</b></p>	<p><u>50 and over</u> Would reflect that older people are not a homogeneous group.</p> <p><u>Mid 50s</u> As for previous, but focuses more on preparation for moving from employment and into retirement.</p> <p><u>60 and over</u> Represents the best estimation of when people moved into old age. Consistent with the UN definition.</p> <p><u>Pensionable age</u> Difficulty however with pensionable age being 60 for women and 65 for men – though due for change in the future.</p> <p><u>Issue focussed</u> Define the remit for an Older People's Commissioner by the issues they should address.</p> <p><u>Let the Commissioner decide</u> The Commissioner to consider age remit through consultations with older people during the first six months of being in the post.</p>
<p><b>Breadth of powers</b></p>	<p>Should have fairly wide ranging powers.</p> <p>Commissioner to take a holistic, strategic overview of issues.</p> <p>Should have a wide role which includes awareness raising, research, education and advocacy, investigation and casework, all with appropriate engagement of older people.</p> <p>Able to work across all policy and legislative areas.</p>

<p><b>Investigatory powers</b></p>	<p>Include powers to compel documents, witnesses, unannounced access etc.</p> <p>Not restricted to public sector but extended across community, voluntary and private sector organisations.</p> <p>In close co-operation with other bodies that currently have investigatory powers - to prevent overlap.</p> <p>Primary and secondary legislation plus memoranda of understanding needed.</p>
<p><b>Casework</b></p>	<p>Focus on individual cases where it is considered that an individual's rights have been breached.</p> <p>Focus on strategic litigation.</p> <p>Focus on cases which fall outside the remit of other bodies.</p>
<p><b>Advocacy</b></p>	<p>Highlighting of issues.</p> <p>Working with NGOs'.</p> <p>Influencing of policy.</p> <p>Identification of best practice.</p>
<p><b>Research &amp; education</b></p>	<p>Research - to identify issues to inform debate.</p> <p>To fill in the gaps in current knowledge and understanding of some issues.</p> <p>Education – promotion of Older People's rights – and the responsibilities of organisations.</p> <p>Possible conflict of interest between Commissioner's educational role and investigations role.</p>
<p><b>Awareness raising</b></p>	<p>Target – the public through the media but also target senior officials and elected representatives.</p> <p>Bring attention to the UN Principles for Older People.</p> <p>Highlighting ageism.</p> <p>Highlighting the contribution older people make to society.</p>
<p><b>Participation</b></p>	<p>Aim - greater engagement of older people in the work of the Commissioner, policy debates, consultation exercises etc.</p> <p>Views of older people must be reflected in findings and outcomes. Need to engage with the most isolated and vulnerable.</p> <p>Engagement needed across Northern Ireland.</p>

#### 4.0 OLDER PEOPLE'S REPRESENTATION IN OTHER JURISDICTIONS

This section looks at existing provisions for advocacy, protection and support of older people in other jurisdictions - Table 4.1 below summarises and compares the provisions and roles in Wales, Scotland and the Republic of Ireland.

**Table 4.1 Provision in Wales, Scotland and the Republic of Ireland**

	<b>Wales:</b>	<b>Scotland:</b>	<b>Republic of Ireland:</b>
<b>Commissioner?</b>	<p><u>Yes, a Commissioner for Older People</u></p> <p>Legislation - The Commissioner for Older People (Wales) Act 2006.<sup>11</sup></p>	<p>No.</p> <p>A Private Members Bill<sup>12</sup> to establish a <u>Commissioner for Older People</u> was introduced in the Scottish Parliament in September 2006.</p> <p>The Bill fell at the dissolution of Parliament on 2 April 2007.</p>	<p>No.</p> <p>The New National Positive Aging Strategy (under development) will give consideration to the appointment of an <u>Ombudsman for Older People</u>.<sup>13</sup></p>
	<b>Wales:</b>	<b>Scotland:</b>	<b>Republic of Ireland:</b>
<b>Then who – or what?</b>		<p><u>A Forum on Aging</u><sup>14</sup> was set up in 2008.</p> <p>The Scottish Executive has also set up an <u>Older People's Consultative Forum</u><sup>15</sup>.</p> <p>In addition, a <u>Scottish Centre for Intergenerational Practice</u><sup>16</sup> has been established.</p>	<p>A <u>Minister of State for Older People and Health Promotion</u>. An Office for Older People was set up in January 2008 to support the Minister.</p> <p>An advisory body, the <u>National Council on Ageing &amp; Older People</u><sup>17</sup> was established by the Minister of Health in 1997.<sup>18</sup></p>

<sup>11</sup> [http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga\\_20060030\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/pdf/ukpga_20060030_en.pdf)

<sup>12</sup> <http://www.scottish.parliament.uk/business/bills/71-CommOldPeople/b71s2-introd.pdf>

<sup>13</sup> See page 52 Programme for Government July 2007 Department of Taoiseach.

<sup>14</sup> [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_Archive/Publications\\_2007/Eng\\_Prog\\_for\\_Go\\_v.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/Eng_Prog_for_Go_v.pdf)

<sup>15</sup> First met on 16 Sept 2008

<sup>16</sup> <http://www.scotland.gov.uk/Topics/People/Equality/18501/Experience/NationalForum/Paper1>

<b>Roles:</b>			
Advisory role?	Yes, provision of advice and support. <sup>19</sup>	<p><u>The Forum on Aging</u> Has an advisory role in relation to implementation of the Strategy in all sectors.</p> <p><u>The Centre for Intergenerational Practice</u> gathers &amp; shares best practice provides information &amp; support to individuals, organisations &amp; businesses who want to get involved in intergenerational work.</p>	<p><u>Yes - The National Council on Ageing &amp; Older People</u> has a strong advisory role - advises the Minister for Health and Children &amp; others on all aspects of ageing &amp; the welfare of older people.</p>
Promotional role?	yes		<p><u>The National Council on Ageing &amp; Older People</u> –has a strong promotional role - direct involvement in &amp; the promotion of a better understanding of ageing &amp; older people.</p>
	<b>Wales:</b>	<b>Scotland:</b>	<b>Republic of Ireland:</b>
Investigatory role?	<p>Yes. The Act also enables the Commissioner to enter care establishments).<sup>20</sup></p> <p>Duty of co-operation in relation to investigations which overlap with other bodies.</p>	None	<p>None</p> <p>(The Irish <u>Ombudsman</u> deals with complaints about maladministration by specified public bodies.)<sup>21</sup></p>
Representational role?	Yes. The Commissioner can provide assistance to	None	None

<sup>15</sup> Its remit is “assisting in developing & monitoring an ongoing strategy for Older People in Scotland & providing a sounding board for policy thinking in specific areas affecting older people”. Members include Age Concern Scotland, Alzheimer Scotland, Black & Minority Ethnic Elders Group, CoSLA, Dumfries & Galloway Local Authority, Help the Aged Scotland, National Pensioner’s Convention Scotland, Scottish Older People’s Advisory Group, Scottish Pensions Association, Scottish Pensions Forum, Scottish Seniors Alliance, Scottish Trades Unions Congress, West of Scotland’s Senior Forum, Women’s Royal Voluntary Service.

<sup>16</sup> <http://www.scotcip.org.uk/> It is funded by the Scottish Government. Centres for Intergenerational Practice also exist in England and Wales.

<sup>17</sup> The Council consists of not more than 30 members, each of whom is appointed by the Minister for Health and Children. A minimum of four members must be aged 65 years or over. <http://www.ncaop.ie/>

<sup>18</sup> However, Minister Aine Brady announced in May 2009 “The Council is soon to be subsumed into Department of Health and Children and my Office to help strengthen central policy-making in relation to older people” <http://www.equality.ie/index.asp?docID=802>

<sup>19</sup> Also reviews & monitors the operation of complaints, advocacy, advice & whistle blowing arrangements to ascertain whether & to what extent Wales is effectively safeguarding & promoting the rights & welfare of older people.

The Commissioner also has power to review the adequacy & effectiveness of law, policy & strategy affecting the interests of older people in Wales.

<sup>20</sup> For example, to interview an older person, with their consent, in connection with her powers to review public bodies’ “discharge of functions”.

<sup>21</sup> <http://www.ombudsman.gov.ie/en/>

	individuals in making a complaint to a service provider, including private care services.		
<b>Breadth of remit</b>	Mainly public bodies but also has powers in respect of 'regulated services in Wales' <sup>22</sup> e.g. private care homes and domiciliary care providers.	<p><u>The Forum on Aging</u> works with public, private, voluntary, community &amp; older people's organisations. It is tasked with implementing &amp; monitoring the <i>All Our Futures</i> Strategy for older people plus acting as a champion. I</p> <p><u>The Older People's Consultative Forum</u> involves age sector &amp; other interested organisations.</p> <p><u>The Centre for Intergenerational Practice</u> works with individuals &amp; public, private &amp; voluntary sector organisations.</p>	<u>The National Council on Ageing &amp; Older People</u> – provides advice to the Minister of State for Older People and others including statutory and voluntary bodies.
	<b>Wales:</b>	<b>Scotland:</b>	<b>Republic of Ireland:</b>
<b>Autonomy, parliamentary oversight</b>	<p>Independent of government. Provides an annual report to the Assembly.</p> <p>Co-operates with the Public Services Ombudsman for Wales on issues affecting older people.</p>	<p><u>The Forum on Aging</u> is not independent of government. The Forum is chaired by the Minister for Public Health.</p>	<p><u>Minister of State</u> - therefore not independent of government.</p> <p><u>The National Council on Ageing &amp; Older People</u> was established by the Minister of Health as a statutory body with its own independent legal &amp; administrative status<sup>23</sup>.</p>

<sup>22</sup> These are defined in the Act as services which are provided in Wales by, on in, a regulated establishment or agency that is required to be registered under the Care Standards Act.

<sup>23</sup> However, Minister Aine Brady announced in May 2009 "The Council is soon to be subsumed into Department of Health and Children and my Office to help strengthen central policy-making in relation to older people" <http://www.equality.ie/index.asp?docID=802>

<p><b>Participation</b></p>	<p>Yes, strongly participatory.</p>	<p>The <u>Older Peoples Consultative Forum</u><sup>24</sup> provides a means for older people and their representative organisations to raise current issues direct with ministers.</p> <p>The <u>Centre for Intergenerational Practice</u> promotes opportunities for intergenerational work.</p>	<p>In the Republic of Ireland a social partnership framework provides for consultation with age related bodies.</p>
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## 6.0 CONCLUSIONS AND RECOMMENDATIONS

The Deloitte report concluded that there is significant need and a strong case for establishing an independent Commissioner for Older People. The consultants favoured the independent Commissioner model and an age remit of sixty. A budget in line with comparable roles such as the Welsh Commissioner was suggested, that is, in the region of £1.5 million per year. The report recommended legislation to provide for an investigations, casework, advocacy, research and education, participation and awareness raising role. Two options in relation to accountability were put forward. The first of these was to make the Commissioner accountable to OFMDFM, as with NICCY. On the other hand credence was given to direct accountability to the Assembly, as is the case in Wales. Deloitte recommended that OFMDFM proceed with the development of an independent Commissioner for Older People.

The Age Concern /Help the Aged report preferred the Enhanced Commissioner model. This model meets the criteria prepared by the age sector organisations.<sup>25</sup>

- The Commissioner should have a strategic and holistic role in securing, promoting and safeguarding rights and interests of older people
- The Commissioner should be a body which is independent
- The Commissioner should be complementary to existing bodies such as the NI human rights commission and the Equality Commission for NI.
- The Commissioner should offer value for money
- The Commissioner must engage older people appropriately in all aspects of its work.

<sup>24</sup> The Older People's Consultative Forum meets every 3-4 months and is chaired by the Minister for Public Health.

<sup>25</sup> Five criteria for achieving a suitable Independent Commissioner from *Key Messages: Independent Commissioner for Older People* (December 2007) Help the Aged and Age Concern.

In the consultants' opinion, the Enhanced Commissioner model would be a holistic, strategic body and would enjoy:

*..a full range of advisory, promotional, investigative and representational powers, creating a synergy between advice and promotion on the one hand and investigation and representation on the other but on a basis of equality of status with other bodies working in the field.*

June 2009