



Commissioner for **Older People**
for Northern Ireland

26th May 2015

Lord Morrow MLA
Chairman
Ad Hoc Committee on the NIPSO Bill
Room 254
Parliament Buildings
Ballymiscaw
Stormont
Belfast
BT4 3XX

Dear Lord Morrow

Re: Call for Evidence – Northern Ireland Public Services Ombudsperson (NIPSO) Bill

I refer to the above and thank you for recent correspondence from the Committee's Clerk seeking written views in a 'Call for Evidence' on the draft Bill.

I have had an opportunity to review the proposed Bill and can provide the following comments on behalf of the Commissioner:

Clause 8 of the draft Bill provides the Ombudsperson with the legislative power to undertake investigations on their own initiative. To undertake these type of investigations the Ombudsperson must have a reasonable suspicion that there is systemic maladministration or that systemic injustice has been sustained as a result of the exercise of clinical or professional judgement in the areas of health and social care bodies, general health care providers and independent providers of health and social care, amongst others.

Clause 9 of the draft Bill compels the Ombudsperson to establish and publish criteria to be used in determining whether to commence an investigation under Clause 8. Clause 42 of the draft Bill places an onus on the Ombudsperson, if he forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4), to consult with that person and subsequently may co-operate with that person in a variety of ways regarding the investigation.

The Commissioner for Older People for Northern Ireland is a named listed person in subsection (4) of Clause 42 and therefore declares an interest in the specific provisions of the draft Bill which relate to this investigatory clause.

The Commissioner is of the view that Clauses 8, 9 and 42 of the draft Bill, as currently worded, have the potential to duplicate elements of the primary statutory duties of her office. Sections 3(2) and 3(3) of the Commissioner for Older People Act (Northern Ireland) 2011 [The Act] compel the Commissioner to keep under review the adequacy and effectiveness of law and practice relating to older persons and the adequacy and effectiveness of services provided for older persons by relevant authorities respectively.

The Act provides the Commissioner at section 4(3) the power to conduct such investigations as she considers necessary or expedient. Clauses 8,9 and 42 of the draft Bill provide the Ombudsperson with similar type powers to investigate where there is evidence of systemic maladministration or systemic injustice caused by clinical or professional judgement.

The Commissioner wishes to see clear and well defined criteria in accordance with Clause 9 of the draft Bill that will outline in detail what actions are to be taken by the Ombudsperson to consult with relevant authorities such as the Commissioner prior to the commencement of any investigation. To avoid duplication of finite resources any such criteria should include the provision of information sharing prior to the commencement of an investigation where the matter to be investigated, in the particular case of this office, affects the rights or interests of older people as defined within the Commissioner for Older People Act (Northern Ireland) 2011.

Additionally, clause 42 in its' current form does not define what is meant by 'consult'. An expanded amendment at Clause 42(2) to outline what is expected of the Ombudsperson with regards to their obligation to 'consult' may assist in avoiding the potential for future doubt.

Subsequent to any duty to consult the Ombudsperson 'may' co-operate with that listed person. The Ombudsperson and the listed persons at Clause 42(4) should have confidence that any decision to investigate will respect the legislative autonomy of persons enacted to carry out specific statutory functions. In the particular case of the Commissioner, she is best placed to undertake investigations which affect the interests of older persons be it in relation to law and practice or services provided.

The Commissioner hopes to see an expanded Clause 42 that will ensure that existing legislative functions are not duplicated or diluted unnecessarily. In the interests of open decision making where the Ombudsperson consults and decides not to co-operate with a listed person there should be an obligation to provide written reasons to the listed person. This will provide an opportunity for the decision to be appropriately scrutinised and for its reasonableness to be tested if necessary.

The Commissioner generally welcomes the introduction of the Draft Bill and views it as an important step in providing a complaints arbiter for many cases which will affect older people. The mechanics of the office should aim to complement existing bodies carrying out similar but distinct investigatory roles.

The Commissioner appreciates the opportunity to provide specific written evidence on the Bill and wishes the Committee well as you undertake and complete this important work.

Yours sincerely,



Evelyn Hoy
Chief Executive