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Reviewing the case for an Older People's Commissioner for Northern Ireland

Introduction

In 2007 the Office of the First Minister and deputy First Minister (OFMDFM) appointed independent consultants Deloitte to review the case for creating a Commissioner for Older People for Northern Ireland. Deloitte was also to advise on the potential role and remit of a Commissioner. Deloitte carried out research and met with age sector organisations, statutory bodies and other stakeholders and delivered a final feasibility report to OFMDFM in May 2008¹. A key conclusion in the report was that there was a need for a Commissioner for Older People:

Our overarching conclusion is that there is significant need and a strong case for establishing an independent Commissioner for Older People for Northern Ireland. The rationale is based on evident need identified in existing research, recognition of the challenges facing older people and the rights of older people in Government strategy and policy, review of arrangements in other jurisdictions, consultation feedback and a cost-benefit analysis of options².

¹ *Examining the case for a Commissioner for Older People* Final Report May 2008 Deloitte MCS Limited
http://www.ofmdfmi.gov.uk/opc_report_may_pdf463kb.pdf

² *ibid.* page 56

The report recommended that legislation be introduced to enable a Commissioner to be appointed with a range of functions, powers and duties. OFMDFM consequently drew up policy proposals and draft legislation and carried out pre-consultation with stakeholder organisations and a formal public consultation between October 2009 and January 2010.

The draft *Commissioner for Older People Bill*³ was introduced into the NI Assembly on 25 May 2010 and began the Second (Committee) Stage in June 2010. In line with its scrutiny duty, the Committee for OFMDFM now wishes to examine the information provided by Deloitte in its report of 2007, in particular, in relation to assessment of the need for a Commissioner given the existing levels of advocacy and protection available to older people in Northern Ireland from statutory organisations. Section 1 of this paper therefore examines the brief provided by OFMDFM to Deloitte for this work and outlines how Deloitte responded.

For further information, Section 2 of the paper outlines the work carried out in recent years to assess the need for an Older People's Commissioner by the Scottish and Welsh governments.

The Committee has also requested a 'mapping' of existing oversight officers, agencies and bodies in Northern Ireland. Section 3 of the paper provides an overview of the role and remit of such bodies and outlines where they may act on behalf of older people. The organisations include:

- the Northern Ireland Ombudsman,
- the Equality Commission for Northern Ireland,
- the Northern Ireland Human Rights Commission,
- the Information Commissioner,
- the Northern Ireland Consumer Council,
- the Regulation and Quality Improvement Authority (RQIA),
- the Police Ombudsman,
- the UK Pensions Ombudsman,
- the Parliamentary and Health Service Ombudsman,
- the Financial Services Ombudsman,
- the Parliamentary Ombudsman,
- the Local Government Staff Commission, and
- the Northern Ireland Patient and Client Council.

³ http://www.niassembly.gov.uk/legislation/primary/2009/niabill21_09.htm

Section 1: Reviewing the case for an Older People's Commissioner.

OFMDFM appointed independent consultants Deloitte in 2007 to carry out the work. Deloitte presented its final feasibility report in June 2008⁴. The introduction to the report states:

Deloitte has been commissioned by the Office of the First Minister and Deputy First Minister (OFMDFM) to undertake an assessment to inform the review of the case for, and in particular to advise on the potential roles and responsibilities for, an independent Northern Ireland Commissioner for Older People.

1.2 Terms of Reference⁵

The agreed terms of reference state that the assessment will take account of the following:

- the desired outcome for older people which is that older people are valued and respected, remain independent, participate as active citizens and enjoy a good quality of life in a safe and shared community;
- the existing provision for advocacy, protection and support (including in other jurisdictions);
- the views of stakeholders; and
- costs and benefits of different options

The key issues which must be considered as part of the assessment include:

- impact and accessibility of existing level(s) of advocacy and protection for older people in Northern Ireland provided by statutory organisations such as (and including) the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission, the Northern Ireland Ombudsman's Office and the Law Centre Northern Ireland;
- how existing provision for older people in Northern Ireland compare/differ from the advocacy and protection provided in other jurisdictions (England, Scotland, Wales and the Republic of Ireland);
- identification of any 'gaps' in existing advocacy and protection currently provided by statutory organisations in Northern Ireland
- stakeholder's views on the need for and the potential role, responsibilities and duties of an Older People's Commissioner; and
- how older people will directly benefit from the establishment of an independent Northern Ireland Commissioner for Older People.

⁴ No information is provided in the report about the time frame which Deloitte was given to complete the project, or the amount paid in fees

⁵ Reproduced from the report, page 1

The Brief

The brief to Deloitte was therefore twofold –

- What is the case for a Commissioner for Older People? (i.e. is a Commissioner for Older People needed?)
- What roles and responsibilities might a Commissioner for Older People have?

As the Terms of Reference show, the consultants' task was to help in assessing the *need* for a Commissioner - and in making this assessment *existing provisions* for advocacy and protection for older people were to be *taken into account*. The *effectiveness* (impact and accessibility) of existing provision in Northern Ireland was to be considered, and the work was to involve looking at whether there are gaps in existing provision. The following sections of this paper examine how the consultants fulfilled these requirements.

Assessment of existing provision

Advocacy

The report contains a review of advocacy and protection structures in Northern Ireland. Two pages within the 56 page document report on advocacy provided by age sector organisations and others such as NICVA, the Law Centre and Health and Social Care Councils. According to Deloitte's review, there are a significant number of organisations providing an advocacy role with older people in Northern Ireland and Deloitte conclude that "*the current view with regard to advocacy and protection of older people is increasingly positive.*" However the report states later on that although the level of advocacy and engagement has improved over recent years, it "*remains limited relative to the needs of the constituency*"⁶.

Protection

Approximately 6 pages⁷ of the 56 page report cover assessment of current protection for older people in Northern Ireland. There is a very brief summary of the role of each of the statutory organisations - the Equality Commission, the Human Rights Commission, the NI Ombudsman, the RQIA, NI Social Care Council, Mental Health Commission, Police and Prisoner Ombudsmen, and the Criminal Justice Inspectorate. A few examples are provided to show how some of these organisations work directly on behalf of older people.

⁶ page 31

⁷ Approximately half a page on ECNI, NIHRC and NI Ombudsman, quarter of a page on NI Social Care Council, two sentences on Mental Health Commission for NI, Victims Commissioners, Prisoner Ombudsman, three sentences on Criminal Justice Inspectorate NI, a quarter page on RQIA.

Although the amount of information presented is very brief, it does reveal that there is protection in many key areas relevant to the lives of older people through the work of some of these organisations, in particular the Equality Commission, the NI Ombudsman and the RQIA. The report's "Overview of Regulatory and Scrutiny Bodies" states:

It is clear therefore that there is a significant number of existing regulatory and scrutiny bodies... and ...several of the existing bodies have a specific role with regard to older people...⁸

Identification of gaps in existing provision

Deloitte was tasked with identifying any gaps in existing advocacy and protection currently provided by statutory organisations in Northern Ireland. The report, however, contains little information on any such gaps. Although the consultants met with each of the statutory organisations individually the report does not indicate whether these organisations were asked to identify 'gaps' in provision. (With the exception of the Equality Commission which identifies legal protection in the provision of goods, facilities and services to older people in the Age Regulations as a significant gap in provision).

Assessment of the impact and accessibility of existing provision

The report does not contain an assessment of the impact or accessibility of the existing statutory organisations, although this was a key requirement in the Terms of Reference for the project.

The report presents a brief consideration of options other than the creation of an Older People's Commissioner by looking at arrangements in other jurisdictions such as Scotland and Republic of Ireland⁹. Deloitte's research found that other jurisdictions have arrangements in place other than a Commissioner and report that "*Advocacy arrangements are well advanced*" in these jurisdictions. An assessment of the effectiveness of these arrangements is not included.

Although the roles and responsibilities of a Commissioner had yet to be firmly defined Deloitte demonstrated awareness in the report that there would be potential overlap between a Commissioner and other organisations currently working to help older people. The report goes no further than to mention the names of the bodies where there was the potential for duplication.

Although a key requirement of the research was to examine whether or not a Commissioner is *needed* the report does not examine a crucial question - whether current bodies and agencies could perform the work of a Commissioner for Older

⁸ page 23

⁹ page 29

People and together provide a feasible alternative, even though Deloitte's research found that there are a significant number of existing regulatory and scrutiny bodies and that several had a specific role with regard to older people.

Deloitte's assessment of the need for a Commissioner

Chapter 6 of the report covers conclusions and recommendations. Deloitte concluded that a Commissioner for Older People is needed, an assessment which was based on research and the views of age sector groups, stakeholder organisations and existing statutory bodies. In Section 6.2 Deloitte specifies the reasons why a Commissioner is needed¹⁰:

With regard to the case for a Commissioner:

1. Northern Ireland's population is ageing with older people becoming an increasingly large proportion of society and there are a range of significant challenges and opportunities which impact directly on older people. The key challenges include health and social care, poverty (including fuel poverty), social exclusion, isolation, safety, housing, and mobility / transport (especially rural transport);
2. although there are strong NGOs in this sector and some good progress has been made in terms of advocacy and there are a wide range of regulatory bodies with a variety of powers and responsibilities, there is no one body which has the concerns of older people as its primary focus;
3. an organisation with power to influence policy making and service delivery which is focused on priority issues relating to older people has the potential to add significant value;
4. an independent Commissioner model has the potential to meet a range of the needs identified and to help facilitate progress towards the desired outcomes described for older people; and
5. none of the alternative models appear to have more potential to meet the defined needs better than an independent Commissioner model.

¹⁰ page 51

Section 2 Other jurisdictions:

Wales - Assessing the need for an Older People's Commissioner

The first Commissioner for Older People for Wales took up her post in April 2008. Prior to the creation of the Office, the Welsh Assembly Government set up an Advisory Group to consider the matter and advise on potential roles and responsibilities¹¹. The Group was chaired by John Griffiths AM, Deputy Minister with responsibility for Older People in Wales. The group included nominees from pensioner organisations, pensioner non-governmental organisations, local government, health service, Department for Work and Pensions, the Office of the Children's Commissioner and the Disability Rights Commission in Wales.

A report from March 2004¹² shows that the Advisory Group looked at the need for an Older People's Commissioner. It considered how such an Office would fit with other organisations and agencies working in the field and how the Commissioner would add value to them. The group specified reasons why a Commissioner for Older People was needed *in addition* to principal agencies in GB (e.g. the (forthcoming) Commission for Equality and Human Rights-CEHR)¹³.

Although the Advisory Group noted that there was a need for more work to be done to identify the existing agencies or systems which currently had a role in dealing with complaints, Annex F to their report identifies the 15 main agencies/systems for lodging complaints in Wales where there might be the potential for duplication by a Commissioner for Older People. The list includes the Disability Rights Commission, Equal Opportunities Commission, Commission for Racial Equality, Local Government Ombudsman, Welsh Administration Ombudsman, and Health Services Ombudsman. Annex F (1) (2) and (3) specifies the matters which the Local Government Ombudsman, the Welsh Administration Ombudsman and the Health Services Ombudsman cannot investigate.

The Advisory Group concluded that there was a need for an Older People's Commissioner for Wales – *in addition* to the CEHR. The main reasons were:

- To ensure that there is a powerful, high level focus on older people in Wales. The Advisory Group anticipated that the Commissioner would be able to tackle issues from a broader perspective than that of the CEHR, with the benefit of a wider remit; and increasingly develop Wales-specific case knowledge and an in-depth understanding of the Welsh policy context.

¹¹ An Assembly Government Advisory group report from 2002 "*When I'm 64 and more*" had recommended the creation of a Commissioner for Older People, and this was adopted as a commitment by the Welsh Assembly Government.

¹² *A Commissioner for Older People in Wales: The Report and Recommendations of the Welsh Assembly Government's Advisory Group*. Welsh Assembly Government. March 2004
<http://wales.gov.uk/consultation/dhss/2957923/report-advisory-group-e.pdf?lang=en>

¹³ Government was looking into the options for the establishment of the Commission for Equality and Human Rights (CEHR)
see pages 17-22

- The Advisory Group anticipated that the CEHR would be limited, certainly initially to considering issues of “age” as they affect employment. The Group stressed that unless further legislation is brought in to address this, goods and services and other areas would not be covered by the CEHR. The Group was concerned that it would therefore remain lawful to discriminate against older people on the grounds of age in many areas of their daily lives except employment.
- The Advisory Group was also unsure as to what the human rights remit of the forthcoming CEHR would be and it anticipated that human rights would form only a limited part of its work.
- Also, it believed that there are important human rights breaches which cannot be pursued under the Human Rights Act (HRA) and which would not, therefore, fall within the scope of the CEHR’s work. For example, only public functions are covered but many of the residential and care services for older people are provided by the private sector.
- The Group also believed that there could be many cases of unfair treatment and poor services which do not constitute unlawful discrimination because they fall ‘out of scope’ of discrimination legislation. These may involve particularly marginalised and vulnerable older people.
- The Advisory Group anticipated that the CEHR’s very broad remit covering all of Britain and all six equality “strands” would mean that the Commission was unlikely to be in a position to conduct Formal Investigations into each and every area of discrimination at a tri-national level (i.e. in Wales, in Scotland and in England).
- The Advisory Group also stressed that the Commissioner’s overarching scrutiny role would allow for the overseeing of standards in the provision of services to older people, liaising with different organisations, and in being able to make recommendations as part of his/her consultative role.
- In addition, the Commissioner would add value to existing agencies in Wales, for example, to the role of bodies such as the Care Standards Inspectorate for Wales in relation to human rights.

Scotland - Assessing the need for an Older People's Commissioner

A Private Member's Bill proposing the establishment of a Commissioner for Older People for Scotland was introduced into the Scottish Parliament in September 2006. The consultation paper for the Bill examined the need for a Commissioner and considered what rights and interests of older people may not be adequately covered by existing legislation¹⁴. The role of existing organisations in Scotland such as the Care Commission and the Older People's Consultative Forum was considered and gaps identified where it was proposed that an Older People's Commissioner could complement these bodies.

The responsibilities of Scotland's existing Commissioners such as the Public Services Ombudsman, Information Commissioner, Parliamentary Standards Commissioner, Children's Commissioner, Water Industry Commissioner, and Public Appointments Commissioner were outlined in Annex B of the consultation document.

The Policy Memorandum to the Bill considered alternative approaches to creating an Older People's Commissioner such as giving the functions of the Older People's Commissioner to an existing Commissioner or Ombudsman.¹⁵ It briefly considered the legal measures necessary to achieve this.

The Scottish Parliament's Communities Committee was designated as lead committee for the Bill but decided that it was not in a position to conduct scrutiny of the Bill as part of its programme, due to an already heavy workload. The Bill fell at the dissolution of the Parliament in April 2007. A Parliamentary Question in June 2007 established that the Scottish government has no plans to introduce legislation to establish a Commissioner for Older People¹⁶.

¹⁴ <http://www.scottish.parliament.uk/business/bills/pdfs/mb-consultations/Commissioner-for-Older-People-consultation.pdf>

¹⁵ Policy Memorandum 20 September 2006

¹⁶ <http://www.scottish.parliament.uk/business/pqa/wa-07/wa0614.htm>

Section 3 Mapping exercise

This section of the paper provides an overview of the role and purpose of oversight officers in Northern Ireland and summarises how these organisations may be able to act on behalf of older people. Information was gained from the organisations' web sites and printed publications.

NI Ombudsman

The name *Northern Ireland Ombudsman* includes two offices:

The Assembly Ombudsman for Northern Ireland; and

The Northern Ireland Commissioner for Complaints.

Establishing Legislation

The Ombudsman (Northern Ireland) Order 1996¹⁷

The Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997¹⁸

The Ombudsman is independent of the Northern Ireland Assembly, the Northern Ireland Executive, and of the government departments and public bodies which can be investigated. His authority is derived from a royal warrant and he reports to the Northern Ireland Assembly by laying an Annual Report before it. The Ombudsman's remit extends to devolved matters only.

Role¹⁹

The Ombudsman investigates complaints from people who believe they have suffered injustice as a result of maladministration from the bodies within the Ombudsman's jurisdiction. The Ombudsman normally expects the individual to have complained to the organisation concerned using any complaints procedure available before approaching his office. All complaints to the Ombudsman must be made in writing.

The Ombudsman's website indicates what actions may constitute maladministration, for example:

- Avoidable delay
- Faulty procedures or failing to follow correct procedures
- Not telling the individual about any rights of appeal they have

¹⁷ http://www.opsi.gov.uk/si/si1996/Uksi_19961298_en_2.htm#mdiv1

¹⁸ http://www.opsi.gov.uk/sr/sr1997/Nisr_19970457_en_1.htm

¹⁹ Source: <http://www.ni-ombudsman.org.uk/>

- Unfairness, bias or prejudice
- Giving advice which is misleading or inadequate
- Refusing to answer reasonable questions
- Discourtesy and failure to apologise properly for errors
- Mistakes in handling the individual's claims

For the purposes of an investigation the Ombudsman is empowered to obtain information from any person and make such inquiries as he thinks fit and may determine whether any person may be legally or otherwise represented in an investigation. The Ombudsman has the powers of the High Court in requiring evidence and where he or his staff is obstructed without lawful excuse; this may be certified to the High Court to be dealt with as if it were an offence committed against the court.

If an investigation is completed then a report is made to the complainant, to the body concerned, and to any person alleged to have taken or authorised that action complained of, or is otherwise involved in the complainant's allegations.

Following an investigation the Ombudsman may conclude that a complaint was wholly or partly justified, or that it was not justified. If it is found that a complaint is justified, he can recommend that the organisation complained about should provide a remedy. Whilst the Ombudsman's power does not extend to enforcing any recommendations that he makes, the organisations almost always accept them. Where a recommendation is made under the Commissioner for Complaints legislation, the complainant may seek the support of the courts if the organisation fails to provide the remedy he recommended.

It is not the Ombudsman's role to obtain compensation for individuals. However, if it is decided that someone has suffered because of something an organisation has done wrong, the Ombudsman will try to get the organisation to put them in the position they would have been in if they had been treated fairly in the first place. This may involve the recommendation of a consolatory payment, but often the Ombudsman may decide that an apology is sufficient and he will also tell the organisation to improve its procedures so that no one else suffers in the same way.

Bodies within the Ombudsman's jurisdiction:

As Assembly Ombudsman:

(these require a complaint to be made to the Ombudsman by a MLA)

Northern Ireland Government Departments

Government Agencies

Other Organisations

Tribunals (Administrative functions only)

For full list see Annexe A

As Commissioner for Complaints:

(The public can send a complaint directly to the Ombudsman for investigation in relation to these organisations)

Local Councils

Education and Library Boards

Harbour Authorities

Health and Social Services Boards

Health and Social Services Councils

Health and Social Services Trusts

Special Health and Social Services Agencies

Housing

Other Public Bodies

For full list see Annexe A

In general the Ombudsman would not investigate a complaint if:

- The action complained of took place more than 12 months ago
- The person could take the case to a tribunal
- The person could go to court
- It is about government policy or the content of legislation or
- The Ombudsman believes the action or decision complained about was in fact reasonable.

Does the Ombudsman have a specific role with regard to older people?

No. The age of people who approach the Ombudsman's Office is not recorded²⁰.

How does the Ombudsman act on behalf of older People?

- The Ombudsman does not have a specific remit in relation to older people, however, older people, as members of the general public, can make complaints to the Ombudsman.

²⁰ Deloitte report page 21

- The Ombudsman's Annual Report for 2009/2010 states that his Office considers complaints about a wide range of matters including planning, health, housing and education.
- Cases investigated in the health and social care field usually relate to the handling of a complaint by Social Services Boards or Health and Social Care Trusts or to care/ treatment received by an individual. See the Ombudsman's Annual Report for 2009-10 (Appendix A) for selected summaries of Investigations.²¹
- The Ombudsman states that many of the complaints he considers are from older persons. In agreement with the Older People's Advocate, outreach activity for the year 2010/11 will be on older persons. This will involve some joint working with the Older Person's Advocate to raise awareness of the role of his office, particularly in the areas of health and social care complaints.
- The Ombudsman's outreach activity in 2010/11 in the Health and Social Care Sector will focus on Primary Care (GPs) services and the independent nursing home sector where residents are publicly funded.

The Equality Commission for Northern Ireland

Establishing Legislation

The Equality Commission for Northern Ireland is a non-departmental public body in Northern Ireland. The ECNI was set up under the Northern Ireland Act 1998²²

Role²³

The Commission is responsible for implementing the legislation on:

- fair employment,
- sex discrimination and equal pay,
- age,
- race relations,
- sexual orientation and
- disability.

²¹ http://www.ni-ombudsman.org.uk/pubs/ombud_2010.pdf

²² http://www.opsi.gov.uk/acts/acts1998/ukpga_19980047_en_1

²³ Source : ECNI website: www.equalityni.org

Its powers and responsibilities include

- advising and assisting complainants
- investigation and enforcement
- promoting equality and good relations
- research
- reviewing equality legislation
- overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998.

Assistance by the Commission ranges from giving advice to arranging for legal representation in some cases. The Commission can also take legal action against individuals and organisations in some circumstances. The Commission does not decide whether discrimination has in fact occurred; this is for an independent industrial tribunal or court to establish.

The main pieces of equality legislation in Northern Ireland are:

Sex Discrimination (Northern Ireland) Order 1976 (as amended)

The SDO outlaws discrimination by all employers in relation to opportunities for promotion, transfer or training, or to any other benefits and in relation to dismissal. It also outlaws discrimination in the recruitment of new employees, and in the terms of an offer of employment. The SDO outlaws discrimination on the grounds of sex in the provision of goods, facilities and services²⁴.

Equal Pay Act (Northern Ireland) 1970 (as amended)

Equal pay legislation provides for equal pay between men and women by giving a woman the right to equality in the terms of her contract of employment where she is employed on:

- like work to that of a man,
- work rated as equivalent to that of a man, or
- work of equal value to that of a man.

Race Relations (Northern Ireland) Order 1997 (as amended)

The RRO outlaws discrimination on the grounds of colour, race, nationality or ethnic or national origin. The RRO makes it unlawful to discriminate in the fields of

24 The SDO also applies to employment agencies, sub-contractors, trade unions and employer organisations, bodies which confer qualifications, vocational training providers, those with the statutory power to select employees for others, those who have the power to select office holders, office holders, barristers and partnerships.

employment, education, the disposal and management of premises, and the provision of goods, facilities and services. The RRO also provides that segregation on racial grounds constitutes discrimination.

It is unlawful for public authorities to discriminate on the grounds of race or ethnic or national origins or to subject persons to harassment in the course of carrying out any of its functions relating to:

- any form of social security;
- health care;
- any form of special protection; or
- any form of social advantage.

Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)

FETO makes it unlawful to discriminate on the grounds of religious belief and/or political opinion in the fields of employment, the provision of goods, facilities and services, the sale or management of land or property and further and higher education.

Northern Ireland Act 1998

Section 75 of the Northern Ireland Act 1998 places significant duties on public authorities regarding how they carry out their functions and deal with the general public. These duties relate to the promotion of equality of opportunity on grounds of age, marital status, disability, political opinion, race, religious belief, sex, sexual orientation, and whether or not people have dependants; and promoting good relations between people of different racial groups, religious belief or political opinion.

The Commission can investigate complaints that public authorities have failed to comply with their Equality Scheme from persons who are directly affected by such failure, and can also initiate such investigations itself.

Disability Discrimination Act 1995 (as amended)

Equality (Disability, etc.) (Northern Ireland) Order 2000

Disability Discrimination (Northern Ireland) Order 2006

Disability legislation in Northern Ireland provides protection for disabled persons against discrimination on the grounds of disability. The DDA applies to disabled persons who are seeking employment, who are currently in employment and when accessing goods, facilities services or premises.

The legislation provides protection in the areas of:

- employment and vocational training;
- goods, facilities and services;
- education; and
- premises.

There are exceptions to the general principle of discrimination for a reason related to disability.²⁵

Employment Equality (Age) Regulations (Northern Ireland) 2006

The Equality Commission has responsibility for enforcing the Employment Equality (Age) Regulations (Northern Ireland) 2006, and working for the elimination of unlawful discrimination on grounds of age. It also has general duties with regard to promoting equality of opportunity and positive action, as well as a duty to keep under review the operation of the Regulations.

The Employment Equality (Age) Regulations (Northern Ireland) 2006, make discrimination on grounds of age unlawful in the following areas:

- employment and occupation;
- further and higher education;
- vocational training.

These provisions apply to employers and other organisations such as:

- employment agencies
- persons who appoint office holders
- persons with statutory powers to select employees for others
- trade organisations – including trade unions and professional organisations
- partnerships (in businesses)
- barristers
- the Police Service of Northern Ireland and other police bodies
- trustees and managers of occupational pension schemes
- The Crown – which includes government departments and agencies
- career/training guidance providers who assist others in accessing work and training
- organisations which confer professional and trade qualifications
- vocational training providers and

²⁵ The DDA exempts small private clubs with less than 25 members, acts done to safeguard national security, and acts done under statutory authority.

- institutions of further and higher education

There are exceptions in the legislation. Some examples of exclusions and excluded activities include:

- Genuine occupational requirement
- National minimum wage
- Provision of enhanced redundancy funds
- Life assurance cover
- Statutory exceptions including the armed forces, statutory authority and national security
- Retirement
- Recruitment of over 65s
- Length of service exemptions
- Objective justification

The Regulations do not generally prohibit discrimination by those who provide goods, facilities and services to the public.

Complaints relating to discrimination in employment should be made to an Industrial Tribunal within 3 months of the date of the alleged act of discrimination.

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003

The Equality Act (Sexual Orientation) Regulations (Northern Ireland) 2006

Sexual Orientation legislation in NI makes it unlawful for employers and others to discriminate on grounds of sexual orientation in the areas of employment, vocational training and further and higher education. It also covers protection against discrimination in relation to the provision of goods, facilities and services, the management and disposal of land or premises and the provision of education in schools.

Does the Commission have a specific role with regard to older people?

The ECNI has a statutory role to ensure implementation of the age equality legislation including S75 duties.

How does the Commission act on behalf of older People?

- Promoting awareness of the interests of older people.
- Promoting the provision of opportunities for, and the elimination of discrimination against older people.
- Providing advice and assistance to people who believe they have been discriminated against on the grounds of their age. This can include investigating complaints and arranging for legal representation. As stated earlier, the Age Regulations relate only to employment and occupation, further and higher education and vocational training. The provision of goods, facilities and services is not included.
- Enforcing compliance by employers and authorities with (age) equality legislation.
- Encouraging good practice in the treatment of older people.
- Reviewing the law affecting the interests of older people.
- Providing information, advocacy and support for older people.
- Through partnership working with age organisations.
- Undertaking research on age equality issues.
- Listening to the concerns of older people through correspondence, focus groups, meetings, conferences and community events and running / attending events to raise awareness of issues facing older people.
- Lobbying the Assembly to make policy changes based on the concerns of older people.
- Commenting on and highlighting issues that affect older people through its website and the media.

Northern Ireland Human Rights Commission (NIHRC)

Establishing Legislation

The NIHRC is an independent statutory body established under the Northern Ireland Act 1998

Role²⁶

Its role is to promote awareness of the importance of human rights in Northern Ireland, to review existing law and practice and to advise government on what steps need to be taken to fully protect human rights in Northern Ireland.

The Commission is able to conduct investigations, and has powers to enter places of detention, and to compel individuals and agencies to give oral testimony or to produce documents, through the Justice and Security Act 2007.

The Commission also has the power to assist individuals when they are bringing court proceedings, to intervene in proceedings and to bring court proceedings itself. It receives enquiries from people who believe that their human rights have been violated, and provides training and information on human rights.

Does the Commission have a specific role with regard to older people?

No. The Commission does not keep age-related statistics on those who approach it for assistance or advice.

How does the Commission act on behalf of older People?

- Older people may approach the Commission regarding human rights issues.
- Reviewing human rights issues affecting older people, such as adverse impacts of policy and practice in the health service.
- Reviewing the law as it affects mental health and learning disabilities in Northern Ireland.
- The Commission has been involved in lobbying government on issues relevant to older people such as the extension of human rights protection to private and voluntary care homes in Northern Ireland.

Example of a current Investigation (from NIHRC website)²⁷:

²⁶ Source NIHRC website: <http://www.nihrc.org/>

Investigation into the rights of older people living in nursing homes in Northern Ireland

The number of older people in the UK is growing faster than any other age group. This has implications for the whole of society, including, among other issues, the provision of nursing care.

The Human Rights Commission is investigating how older people living in nursing homes in Northern Ireland are being treated. We are focusing on the day to day lives of nursing home residents and the care they receive. We ran a call for evidence through a free and confidential telephone line from 15 to 26 February 2010 and we received many calls from the public and those with experience of nursing care. During March 2010, we provided a short questionnaire on our website after the Freephone had closed to allow people to share their experiences of nursing homes.

We are now considering all the information we received through our call for evidence. Thank you to everyone who took the time to get in touch. Your input is invaluable to the investigation.

Report to be published

The information we received through the call for evidence and our wider investigation will contribute towards a report. The Commission intends to publish the final report by December 2010. It will make recommendations for improving the lives of nursing home residents as well as addressing the needs of care providers.

²⁷ Terms of Reference

http://www.nihrc.org/dms/data/NIHRC/attachments/dd/files/116/Investigation_into_nursing_care_-_Terms_of_reference_%28February_2010%29.pdf

Information Commissioner

Establishing Legislation

The Data Protection Act 1984 created the post which was then named Data Protection Registrar. Under the Data Protection Act 1998, the name of the post was changed to Data Protection Commissioner and later to Information Commissioner.

The Information Commissioners Office (ICO) is the UK's independent public body set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Information Commissioner is appointed by the Queen. The ICO reports directly to Parliament and the Ministry of Justice is its sponsoring department. The ICO also has three regional offices – in Northern Ireland, Scotland and Wales.

Role²⁸

The ICO enforces and oversees the Data Protection Act, the Freedom of Information Act, the Environmental Information Regulations, and the Privacy and Electronic Communications Regulations.

Its main functions are educating and influencing (promoting good practice and giving information and advice), resolving problems (resolving eligible complaints from people who think their rights have been breached and enforcing (using legal sanctions against those who ignore or refuse to accept their obligations).

The Commissioner's decisions are subject to the supervision of the Courts and the Information Tribunal.

The Northern Ireland regional office is responsible for:

- Fostering awareness of information rights and ICO guidance.
- Researching local priorities and influencing policy making within Northern Ireland.
- Providing a local enquiry and advice service for organisations and individuals.
- Undertaking FOI and EIR casework relating to public authorities based in NI and GB.
- Identifying opportunities for and supporting local enforcement action.
- Assisting the implementation of ICO statutory equality duties.

²⁸ Source: Commissioner's website: <http://www.ico.gov.uk/>

Does the Commissioner have a specific role with regard to older people?

No.

How does the Commissioner act on behalf of older People?

- An older person may approach the Commissioner for help and advice. Anyone who believes they are directly affected by the processing of personal data may ask the Commissioner to assess whether it is likely or unlikely that such processing complies with the Data Protection Act.
- The Office also has powers to conduct an assessment or 'audit' of an organisations processing of personal data in order to establish whether that processing follows good practice. It also has powers to enter and search premises where there are reasonable grounds for suspecting either a breach of the data protection principles or that an offence under the Act has been committed
- Following a finding of failure to comply with the Act, the Commissioner may ask an organisation to take steps to comply with the data protection principles. The Commissioner has powers to order compliance but has no power to award compensation - this is through the courts. The Commissioner has a statutory power to impose a financial penalty on an organisation if the Commissioner is satisfied that:
 - there has been a serious breach of one or more of the data protection principles by the organisation and
 - the breach was likely to cause substantial damage or distress.
- The Office also has powers to conduct an assessment or 'audit' of an organisations processing of personal data in order to establish whether that processing follows good practice. It also has powers to enter and search premises where there are reasonable grounds for suspecting either a breach of the data protection principles or that an offence under the Act has been committed

The following examples of recent investigations show how the Commissioner has acted on behalf of older people²⁹:

**Information Commissioners Office
Decision Notice**

8 October 2008

Public Authority: Belfast Improved Housing Association (BIH)

Summary

The complainant made a request to Belfast Improved Housing Association (BIH) under the Environmental Information Regulations 2004 (EIR) on 31 May 2006 for access to all documents held and produced by BIH in relation to the development of sites at Crumlin Road Methodist Church and 237-247 Tennent Street. BIH did not provide the information as it stated that Housing Associations were not public authorities for the purposes of the EIR. This Decision Notice requires BIH to either provide the complainant with the requested information or to issue a formal refusal notice, stating which exemptions (if any) under the EIR it believes to be applicable.

Note. BIH is a registered housing association which develops and manages housing developments and provides support services for the elderly, vulnerable and those with special needs.

**Information Commissioners Office
Decision Notice**

7 November 2007

Public Authority: Norfolk County Council

Summary

The complainant made a request to Norfolk County Council which was the most recent in a series of requests, relating to the care provided to an elderly person by an independent care organisation, contracted by the Council. The Council applied for exclusion under section 14(1) of the Freedom of Information Act 2000 because it considered that the request was vexatious. The Commissioner has investigated and was satisfied that the Council was able to demonstrate that the request had been correctly refused.

²⁹ http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs_50169994.pdf
http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fer_0152607.pdf

Northern Ireland Consumer Council

Establishing Legislation

The Consumer Council is a statutory body and an independent consumer organisation. It was founded in 1985 under the General Consumer Council Order 1984³⁰ and is funded by the Department of Enterprise, Trade and Industry.

Role³¹

It represents consumers in the areas of transport, water and energy. It also has responsibility to educate consumers on their rights and responsibilities and to equip them with the skills they need to make good decisions about their money and manage it wisely. The Council carries out research and investigations to identify key consumer concerns.

Transport

The Consumer Council protects and promotes the interests of all passengers travelling to, from or within Northern Ireland. It can help individual passengers with their transport complaints and also work with transport providers to help prevent complaints arising in the first place.

It campaigns for better public transport and work with all the main transport providers, key stakeholders and government to ensure transport services meet passengers' needs.

Water

The Consumer Council represents consumers on water and sewerage matters. It also works with stakeholders to ensure Northern Ireland Water delivers value for money in providing its services.

Electricity

The Consumer Council has a responsibility to represent energy consumers in Northern Ireland. It works with the energy companies, the Utility Regulator and social partners, and by lobbying government.

Challenges facing the energy industry include: tackling fuel poverty; delivering competition; developing renewable energy and energy efficiency measures; and

³⁰ http://www.opsi.gov.uk/RevisedStatutes/Acts/nisi/1984/cnisi_19841822_en_1

³¹ Source: Consumer Council's website, see <http://www.consumercouncil.org.uk/>

deciding on Northern Ireland's energy future. The Council also handles complaints about electricity, natural gas and coal.

Money affairs

The Consumer Council works to help consumers gain the skills and confidence to manage their money. Actions include development of policy, carrying out research and running information campaigns on financial capability, inclusion and financial markets such as banking and insurance. It also works with Government and other stakeholders including banks and building societies

Does the Council have a specific role with regard to older people?

No.

How does the Council act on behalf of Older People?

Older people, like any consumer, may contact the Consumer Council if they are unhappy with how their complaint to a company has been dealt with. The Council will also make a complaint on behalf of an individual. The Council will investigate a complaint and try to resolve it.

The Consumer Council's campaigning work seeks to benefit all consumers; actions of particular relevance to older people may include:

- Campaigns for improving the accessibility of public transport in Northern Ireland
- Lobbying government in relation to fair, affordable and sustainable charging for utilities - and that charging schemes are user-friendly and accessible.
- Acknowledging that fuel poverty is a serious problem for the most vulnerable groups in society, such as the elderly, the Council represents consumers' interests on the NI Fuel Poverty Advisory Group and Home Energy Conservation Authority panel. It carries out research and lobbies on behalf of consumers to ensure that energy policy takes account of consumers and the effects of fuel poverty.
- Carrying out and publishing research on the needs of older people, for example *Silver Service? Are Supermarkets Meeting the Needs of Older Shoppers?* a report from 2007 which highlighted the difficulties encountered by older consumers when they shop and identified how these can be improved.

The Regulation and Quality Improvement Authority (RQIA)

The Regulation and Quality Improvement Authority (RQIA) is the independent body responsible for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland, and encouraging improvements in the quality of those services.

Establishing Legislation

The RQIA was established in April 2005 by the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 as a non-departmental public body of the DHSSPS. On 1 April 2009 the functions of the former Mental Health Commission transferred to RQIA. RQIA is now responsible for monitoring the care and services for people with mental ill health or a learning disability.

The Minister for Health, Social Services and Public Safety is accountable to the Assembly for the activities and performance of the RQIA. A Chairman is appointed under the 2003 Order for a period of four years. The Chairman is accountable to the Minister through the Departmental Principal Accounting Officer for ensuring that the RQIA's policies are compatible with those of the Department and for probity in the conduct of the RQIA's affairs³².

Role³³

RQIA's main functions are:

- to inspect the quality of services provided by Health and Social Care Services (HSC) bodies in Northern Ireland through reviews of clinical and social care governance arrangements within these bodies;
- to regulate (register and inspect) a wide range of services delivered by HSC bodies and by the independent sector. The regulation of services is based on new minimum care standards to ensure that service users know what quality of services they can expect to receive, and service providers have a benchmark against which to measure their quality; and
- with the transfer of duties of the Mental Health Commission to RQIA under the Health and Social Care (Reform) Act (NI) 2009, the RQIA has a range of responsibilities for people with a mental illness and those with a learning disability. These include: preventing ill treatment; remedying any deficiency in care or treatment; terminating improper detention in a hospital or guardianship; and preventing or redressing loss or damage to a patient's property.

³² Management Statement between the RQIA and the DHSSPS 2006
http://www.dhsspsni.gov.uk/rqia_-_dhssps_mou.pdf

³³ Source: RQIA's website: <http://www.rqia.org.uk/home/index.cfm>

RQIA inspectors visit nursing and residential care homes and children's homes to examine all aspects of the care provided, to assure the comfort and dignity of those using the facilities, and ensure public confidence in these services. It is also currently responsible for the regulation of independent hospitals and clinics and nursing agencies.

RQIA also has a role in assuring the quality of services provided by health and social services boards, trusts and agencies, to ensure that every aspect of care reaches the standards laid down by the Department of Health, Social Services and Public Safety and expected by the public.

With the transfer of duties of the Mental Health Commission to RQIA under the Health and Social Care (Reform) Act (NI) 2009, RQIA undertakes a range of responsibilities for people with a mental illness and those with a learning disability. These include: preventing ill treatment; remedying any deficiency in care or treatment; terminating improper detention in a hospital or guardianship; and preventing or redressing loss or damage to a patient's property.

The RQIA's powers include:

- Power to issue improvement notices to persons registered under the 2003 Order or a Health and Social Services Board or HSS Trust where failure to comply with a minimum standard under Article 28 of the Order
- Power to require information and power of entry and inspection
- Anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.

The Freedom of Information Act 2000 allows the public to request information from a public authority, such as RQIA. RQIA holds comprehensive up to date information on all registered health and social care services in Northern Ireland including Nursing Homes, and Residential Care Homes. The RQIA is currently developing an online directory. Copies of individual inspection reports for each home will also be available online.

The RQIA also holds details on:

- Children's Homes
- Nursing Agencies
- Independent healthcare providers including independent hospitals and clinics, and private doctors

Does the RQIA have a specific role with regard to older people?

No, the RQIA does not have a specific, statutory role in relation to older people. The value to older people comes from its role in inspecting and improving (regulating) the quality of health care service experienced by older people in a range of settings.

How does the RQIA act on behalf of older People?

All those who access health and social care services in Northern Ireland, including older people, will benefit from the inspection work which the RQIA undertakes.

Services regulated by the RQIA of relevance to older people include:

- **Day care settings:** a place where people in need of particular services may attend for assessment, rehabilitation or counselling, but are not provided with board or accommodation.
- **Domiciliary care agencies:** arranges or provides services to people in their own homes for those who are unable to provide such service for themselves without assistance.
- **Independent clinics:** an establishment (that is not a hospital) in which services are provided by medical practitioners.
- **Independent hospitals:** a hospital which is not managed by a health and social care trust.
- **Nursing agencies:** supplies or provides registered nurses, midwives or health visitors.
- **Nursing homes:** provides nursing for people suffering from any illness or infirmity.
- **Residential care homes:** provides residential accommodation with both board and personal care for persons in need of personal care by reason of old age and infirmity; disablement; past or present dependence on alcohol or drugs; or past or present mental disorder.

Police Ombudsman

Establishing Legislation

The Police Ombudsman is established under the Police (Northern Ireland) Act 1998 and is appointed by the Queen for a fixed term of seven years. The Ombudsman is accountable to the NI Assembly, through the Minister for Justice.

Role³⁴

The Police Ombudsman can:

- deal with complaints about how police officers do their job, and look at whether these complaints follow any trends or patterns
- investigate complaints about how the police behave when they are doing their job. Complaints may involve allegations of criminal behaviour by a police officer, or allegations that the police officer broke the police code of conduct
- investigate complaints and decide how to deal with them
- investigate a matter even if a complaint has not been made, if there is reason to think that a police officer may have committed a criminal offence or broken the police code of conduct.

Following investigation of a complaint, the Police Ombudsman may decide to do any of the following:

- Recommend to the Director of Public Prosecutions (the DPP) that the police officer should be prosecuted. It is for the DPP to decide whether they will prosecute the officer.
- Recommend that the Chief Constable should bring disciplinary proceedings against the officer involved. If the Police Ombudsman and the Chief Constable disagree about whether the police officer should be brought before a misconduct hearing, the Police Ombudsman can insist that the Chief Constable does so.
- Recommend that disciplinary proceedings should be brought by the Policing Board if the officer complained about is an Assistant Chief Constable, a Deputy Chief Constable or the Chief Constable.
- Recommend compensation.
- Reject the complaint, for example, because there is not enough evidence to support it.

³⁴ Source: Ombudsman's website: <http://www.policeombudsman.org/>

Does the Ombudsman have a specific role with regard to older people?

No.

How does the Ombudsman act on behalf of older People?

The Police Ombudsman acts on behalf of older people through its general remit to represent all people under the police acts.

UK Pensions Ombudsman

Establishing Legislation

The Pensions Ombudsman is established by Part X of the Pensions Schemes Act 1993. The Ombudsman is a NDPB and is appointed by the Secretary of State for Work and Pensions.

Role³⁵

The Pensions Ombudsman investigates complaints about how UK pension schemes are run. Its service is free and open to people who have a complaint against those responsible for the running or administration of pension schemes. It can also consider some issues from trustees or managers of pension schemes and participating employers.

Since April 2005, the holder of the office of Pensions Ombudsman has also acted as the Ombudsman for the Pension Protection Fund, and in that capacity also deals with appeals against decisions made by the Financial Assistance Scheme, established by the Government to provide assistance to those whose pensions have been lost due to an employer going into liquidation.

The UK Pensions Ombudsman investigates complaints about:

- occupational pension schemes (which are linked to someone's employment);
- individual pension arrangements, such as personal pensions.

It should be able to investigate a complaint if the individual is:

- a current or former member of a pension scheme;

³⁵ Source: The UK Pensions Ombudsman's website: <http://www.pensions-ombudsman.org.uk/>

- a spouse or dependant of a deceased member or former member of a pension scheme;
- a person with a pension credit in respect of a current or former member of a pension scheme;
- a person appointed to act on behalf of the estate of someone who was a member or beneficiary of a pension scheme who has died

and the complaint is against:

- the current or former trustees of a pension scheme;
- a manager of an occupational or personal pension scheme (such as an insurance company);
- a public sector body (those who run statutory schemes);
- an administrator of a pension scheme (although there are exceptions);
- an employer who provides a pension scheme (and the complaint is about the pension scheme).

The Ombudsman would not normally investigate the following:

- Complaints about state benefits, for example the state pension.
- Complaints about how a pension arrangement was sold. These are normally dealt with by the Financial Ombudsman Service.
- Complaints that have been taken to Court if the proceedings have not been discontinued.
- Complaints that have been investigated by another Ombudsman.
- Complaints where those involved have not first been asked to deal with the matter.
- Complaints against any party other than the employer, the trustee, the manager or the administrator of a pension scheme.
- Complaints brought to the Office more than three years after the events complained about, or the person's awareness of them if that is later.

Before bringing a complaint to the Pensions Ombudsman, the individual should have raised his/her complaint with the respondents to try and resolve it. The Ombudsman's determinations are enforceable as though they were orders made by a Court.

Does the Ombudsman have a specific role with regard to older people?

No, but naturally, a large proportion of complaints to the Ombudsman are made by people of pensionable age.

How does the Ombudsman act on behalf of older People?

The Pensions Ombudsman's service is open to all people of all ages who have a complaint against those responsible for the running or administration of pension schemes. Many cases investigated by the Ombudsman are on behalf of people of pensionable age or close to pensionable age; for examples of cases in 2009/10 see the Pensions Ombudsman's Annual Report published on the Ombudsman's website.³⁶

Detrimental reliance – substantial compensation award

Mr E complained that he had been provided with an incorrect normal retirement quotation – a fact that was not denied by the respondent. Mr E had received the quotation (when he was 55) and this set out that he would receive a pension of £28,035 a year when he was 65.

Some months later, after negotiations which included reference to his financial position and the amount of his future pension, he resigned under a compromise agreement. He was paid £33,000. A few days later he received a letter saying that his pension had been wrongly calculated, and that the correct figure at age 65 was £20,056 a year. Mr E said that he would not have resigned for a further two or three years had he known the correct pension figure. During the investigation his employer said, in its defence, that Mr E would ultimately have been made redundant anyway had he not agreed to leave.

Outcome

Mr E's correct entitlement was £20,056 a year, not £28,035.

However, the Pensions Ombudsman accepted that Mr E would either not have resigned or would have held out for more by way of final settlement had he known his pension at age 65 was only £20,056 a year. But, the Pensions Ombudsman also accepted that Mr E would have been made redundant, had he not agreed to resign.

Had Mr E been made redundant, he would have received a redundancy settlement of £64,345.40, so the trustees were directed to pay Mr E the difference between the sum he had received under the compromise agreement and the redundancy payment he would have received plus interest, and £750 (instead of £500 offered) as compensation for distress and disappointment.

³⁶ Annual Report 2009-2010

<http://www.pensions-ombudsman.org.uk/Publications/docs/AnnualReport2009-10.pdf>

Parliamentary and Health Service Ombudsman

Establishing Legislation

The Parliamentary and Health Service Ombudsman combines two statutory roles of Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) and Health Service Commissioner for Administration (Health Service Ombudsman), whose powers are set out in the Parliamentary Commissioner Act 1967 and the Health Service Commissioners Act 1993 respectively.

Role³⁷

The role of the Parliamentary and Health Service Ombudsman is to provide a service to the public by undertaking independent investigations into complaints that government departments, a range of other public bodies in the UK, and the National Health Service in England, have not acted properly or fairly or have provided a poor service.

Individual complaints against government organisations (government departments, agencies and other public bodies) must be referred to the Parliamentary Ombudsman by an MP. Individuals in England complaining about the NHS may make their complaint directly to the Health Service Ombudsman.³⁸

The Parliamentary and Health Service Ombudsman does not help with:

- Consumer issues
- Financial services and pensions (banks, building societies, insurance and private pensions)
- Gas, electricity and water
- Local council (includes council tax benefits, housing, planning, social care)
- Members of Parliament
- Police
- Political parties
- Postal services
- Privately funded healthcare
- Social care
- Telecommunications (telephones and internet)
- Television, radio, newspapers and advertising

People in Northern Ireland can complain to the Parliamentary and Health Service Ombudsman about issues outside of the Northern Ireland Ombudsman's jurisdiction.

³⁷ Source: Ombudsman's website: <http://www.ombudsman.org.uk/>

³⁸ For a full list of the bodies within the jurisdiction of the Parliamentary and Health Service Ombudsman see: <http://www.ombudsman.org.uk/make-a-complaint/how-to-complain/government-departments-and-other-public-bodies-which-the-ombudsman-can-investigate>

This includes complaints about HM Revenue and Customs, the Ministry of Defense and the Northern Ireland Office.

Complaints about the health service in Northern Ireland are dealt with by the Northern Ireland Ombudsman, not the Parliamentary and Health Service Ombudsman.

Does the Ombudsman have a specific role with regard to older people?

No.

How does the Ombudsman act on behalf of older People?

- The Ombudsman provides a free service, open to everyone. People in Northern Ireland can complain to the Parliamentary and Health Service Ombudsman in relation to bodies such as HM Revenue and Customs, the Ministry of Defence and the Northern Ireland Office. The Ombudsman will look for indications of maladministration, failure in service, evidence of injustice or hardship arising. An investigation report will detail the actions the body should take to remedy any outstanding injustice or hardship.
- Below is a recent example of an investigation by the Parliamentary and Health Service Ombudsman:

Recovery of unpaid tax caused worry and stress

Mrs N, a retired woman who worked part time and received a widow's pension, found herself owing HM Revenue & Customs (HMRC) over £2,500 in unpaid tax, the recovery of which was causing her hardship. She complained to the Adjudicator's Office, who did not uphold her complaint.

Our investigation found that HMRC had made mistakes over Mrs Ns tax code and had then not properly applied the concession that allows them to waive tax that is legally due. The Adjudicator's Office failed to identify this, causing Mrs N avoidable worry and stress. At our recommendation, HMRC reviewed her case, as a result of which they waived all but £480 of the unpaid tax, and refunded everything she had paid over and above that. They also paid her compensation of £150, agreed to circulate our findings internally and to tell us what action they had taken, or planned to take, to help retired people engage with HMRC. The Adjudicator's Office apologised to Mrs N and circulated out findings to relevant staff.³⁹

For further information on the work of the Ombudsman see the Annual Report for 2009-10 on the Ombudsman's website⁴⁰

³⁹ Source : Annual Report 2009-10 page 13

⁴⁰ See Pages 13-15 "Stories from the Year"

http://www.ombudsman.org.uk/_data/assets/pdf_file/0015/4263/Annual-Report-2009-10-low-res-with-appendix-as-spread.pdf

Financial Services Ombudsman

Establishing Legislation

The Financial Services Ombudsman is set up under the provisions of Part XVI and Schedule 17 of the Financial Services and Markets Act 2000 and section 59 of the Consumer Credit Act 2006.

Role⁴¹

The Financial Ombudsman Service can deal with consumer complaints about most personal financial matters including:

- financial advice
- banking services
- endowment policies
- mortgages
- personal pension plans
- building society services
- insurance.

It can mainly deal with consumer complaints about companies which are authorised by the Financial Services Authority, although it can also deal with some unauthorised companies

It does not give personal advice about financial matters or debt problems.

Does the Ombudsman have a specific role with regard to older people?

No.

How does the Ombudsman act on behalf of older People?

The Financial Services Ombudsman provides a free service open to all consumers. In its *Annual Review*, covering the financial year 2007/8, the Ombudsman noted that 14% of the consumers bringing complaints to the Ombudsman service were between 55 and 64 years of age and 23% were over 65. The Ombudsman's website records a selection of recent complaints brought by older customers. Some recent examples of investigations involving older people are given below.

⁴¹ Source: Financial Services Ombudsman website: <http://www.financial-ombudsman.org.uk/>

“Whether bank should have done more to intervene when elderly customer withdrew unusually large sums of money from her account”⁴²

Mrs D, who was 98 years old, had been a customer of the same bank for many years and was well-known to the staff at her local branch. They became concerned when she suddenly started withdrawing large sums of money from her account, at regular intervals.

Because this was so unlike the way she normally managed her affairs, the bank decided to raise the matter with her, as tactfully as possible. However, Mrs D took offence and said the bank should not be questioning what she did with her own money.

After several further large withdrawals from Mrs D’s account, her bank manager contacted the police. He outlined his concerns and said the bank considered her a potentially vulnerable customer, because of her age. The police enquiry led to a Mr T receiving a prison sentence for cheating Mrs D out of her money.

Mrs D’s nephew, Mr K, then complained to the bank. He said it should have intervened at a much earlier stage. He also asked why it had failed to contact him as soon as it spotted the unusual cash withdrawals. Mrs D had told him she had arranged for him to sign cheques on her account, if necessary.

The bank explained the steps it had taken, including notifying the police. But it said it could not prevent customers from withdrawing their own money, particularly where, as in this case, the customer had insisted she knew what she was doing. The bank also noted that it had no record of any arrangement enabling Mr K to sign cheques on Mrs D’s account.

Unhappy with the bank’s response, and with its refusal to refund the full value of Mrs D’s cash withdrawals during the period in question, Mr K brought the complaint to us.

complaint not upheld

From the bank’s records, it was clear that it had been prompt in spotting the unusual activity on Mrs D’s account. It had also correctly followed its procedure for handling situations involving potentially vulnerable customers.

There was no evidence that Mrs D had ever asked the bank to arrange for Mr K to sign cheques on her account. Even if such an arrangement had been in place, it would not have prevented her from continuing to withdraw funds without Mr K’s knowledge.

We had much sympathy for Mrs D. However, we concluded that the bank had done everything it reasonably could do to protect her interests. The bank had no right to stop her getting access to her own money. And we could not fairly agree to Mr K’s request that it should refund the money she had withdrawn from her account and given to Mr T.

⁴² <http://www.financial-ombudsman.org.uk/publications/ombudsman-news/74/74-older-customers.html>

“Elderly customer complains that bank turned down his application for a personal loan because of his age”

Mr G, who was 82 years old, complained about the way his bank had handled his application for a personal loan. He had applied by phone and the bank called him back later the same day to say his application had been unsuccessful.

He said he was surprised by this and asked if his application had been turned down because of his age. However, the bank refused to comment and said it was unable to give any explanation for the decision. Mr G then wrote to the bank again asking if he had been refused a loan because of his age.

The bank sent him a brief reply, saying his application had been assessed ‘in line with normal procedures’, and that it was unable to reconsider its decision. Mr G then brought his complaint to us. He said the bank’s refusal to answer his question seemed to indicate that he had indeed been ‘a victim of age discrimination’.

Complaint upheld in part

The bank provided evidence to show that when it assessed Mr G’s application it had followed its standard procedure, in line with principles laid down in the Banking Code. Its assessment clearly demonstrated that Mr G would not be able to afford the repayments for the loan he had requested. So we accepted that the bank had not treated him differently from other applicants because of his age.

However, we thought the bank had been wrong in refusing to give Mr G an explanation, when he had asked the reason for its decision. We reminded the bank of the relevant section of the Banking Code (13.3) that tells customers:

If we cannot help you, we will explain the main reason why if you ask us to. We will give you this in writing or electronically, if you ask.

We concluded that the bank had been entitled to turn down Mr G’s loan application. However, it had provided him with a poor level of service by refusing to explain its reason for doing this. We thought it unlikely that Mr G would ever have raised a complaint if the bank had provided an explanation when asked. We said it should pay him £100 for the distress and inconvenience it had caused.

Local Government Staff Commission for Northern Ireland

Establishing Legislation

The Local Government Staff Commission for Northern Ireland (the Commission) is an Executive Non-Departmental Public Body established under the Local Government Act (Northern Ireland) 1972. Its powers were later extended under the Housing Orders 1976 and 1981, and the Local Government (Miscellaneous Provisions) (NI) Order 1992.

Role⁴³

The Local Government Staff Commission provides human resource and organisational development advice to district councils and the Northern Ireland Housing Executive.

The Commission also provides secretariat facilities to the Local Government Training Group (LGTG) and the Northern Ireland Joint Council for Local Government Services (NIJC).

In general, the terms of reference for the Commission are to exercise:

'general oversight of matters connected with the recruitment, training and terms and conditions of employment of officers of councils and the Northern Ireland Housing Executive and of making recommendations to councils and the Northern Ireland Housing Executive on such matters.'

Does the Commission have a specific role with regard to older people?

No.

How does the Commission act on behalf of older People?

- Running seminars and conferences on age equality awareness e.g. “*Preparing for Age discrimination Legislation*”
- Running pre-retirement events and “pensions clinics” for staff employed in the bodies within the Commission's remit.

⁴³ Source : Local government Staff Commission website: <http://www.lgsc.org.uk/about-us/functions/>

NI Patient and Client Council

Establishing Legislation

The Health and Social Care (Reform) Act (Northern Ireland) 2009 and the Patient and Client Council (Membership and Procedure) Regulations (Northern Ireland) 2009.

Role⁴⁴

The Patient and Client Council (PCC) was established on the 1st April 2009. The Patient and Client Council has a Board made up of a Chair and sixteen non-executive directors, recruited from across Northern Ireland under the Public Appointments Process. The Board is responsible for setting the policy and direction for the Patient and Client Council and for monitoring progress and performance.

The Patient and Client Council is an independent voice on health and social care issues. It has local offices throughout Northern Ireland.

Its role is to:

- Listen and act on people's views
- Encourage people to get involved
- Help people make a complaint
- Provide advice and information

The Council does not investigate complaints, or offer medical advice or legal advice. What it does provide is an independent, confidential and free complaints support service.

Does the Council have a specific role with regard to older people?

No.

How does the Council act on behalf of older People?

- The Council offers information to all individuals on how to complain and who to complain to. It will assist with writing letters of complaint and will make telephone calls on behalf of the individual. It will accompany them to meetings about the complaint and ensure their concerns are heard and responded to. The Council works with health and social care organisations to improve services as a result of the public's concerns.

⁴⁴ Source Council website: <http://www.patientclientcouncil.hscni.net/search>

- Between April 2009 and July 2010 the Council received 41 complaints from patients, relating to the care and treatment of the elderly in hospital throughout Northern Ireland.

- The Council is working to develop relationships and establish mechanisms with independent sector health and social care providers to ensure appropriate advocacy arrangements are in place for residents in residential and nursing care homes by 31st March 2011.

- The Council is to undertake a public campaign focused on understanding service user experience of community care planning in Northern Ireland by 31st March 2011.

- The Council is also to undertake a public campaign focused on understanding public perception of cleanliness across health care settings by 30th September 2010.

- The council has published research reports on related issues e.g. "*Patient, Services User and Public Perspective On End of Life Care Strategy in Northern Ireland*" (February 2010)

ANNEXE A

Northern Ireland Government Departments

Department of Agriculture and Rural Development

Department of Culture, Arts and Leisure

Department of Education

Department for Employment and Learning

Department of Enterprise, Trade and Investment

Department of the Environment

Department of Finance and Personnel

Department of Health, Social Services and Public Safety

Department for Regional Development

Department for Social Development

Office of the First Minister and Deputy First Minister

Government Agencies

Business Development Service

Child Support Agency

Construction Service

Driver and Vehicle Agency

Environment and Heritage Service

Central Procurement Directorate

Health Estates Agency

Land and Property Services

Land Registers

Ordnance Survey

Planning Service

Public Record Office

Rivers Agency

Roads Service

Social Security Agency

Statistics and Research Agency

Other Organisations

An Implementation body to which the North/South Co-operation (Implementation Bodies) (NI) Order 1999 applies:

-Waterways Ireland

- Food Safety Promotion Board
- Special European Union Programmes Body
- Foras na Gaeilge

- Ulster-Scots Agency
- Loughs Agency
- Civil Service Commissioners

- General Register Office

- Northern Ireland Authority for Utility Regulation
- Registry of Companies, Credit Unions and Industrial and Provident Societies
- Registry of Deeds

Tribunals (Administrative functions only)

- Child Support
- Compensation for Loss of Employment through Civil Unrest
- Disability Appeal
- Fair Employment
- Industrial
- Lands
- Planning Appeals Commission
- Provision of General Medical Services List
- Medical Appeal
- Mental Health Review
- Registered Homes
- Rent Assessment Committee
- Social Security Appeal
- Vaccine Damage
- Water Appeals Commission

Local Councils

District Council, a joint committee appointed by two or more district councils for a purpose in which those councils are jointly interested, and any committee or sub-committee of a district or joint committee:

- Antrim Borough Council
- Ards Borough Council
- Armagh City & District Council
- Ballymena Borough Council
- Ballymoney Borough Council
- Banbridge District Council

- Belfast City Council
- Carrickfergus Borough Council
- Castlereagh Borough Council
- Coleraine Borough Council
- Cookstown District Council
- Craigavon Borough Council
- Derry City Council
- Down District Council
- Dungannon & South Tyrone Borough Council
- Fermanagh District Council
- Larne Borough Council
- Limavady Borough Council
- Lisburn City Council
- Magherafelt District Council
- Moyle District Council
- Newry and Mourne District Council
- Newtownabbey Borough Council
- North Down Borough Council
- Omagh District Council
- Strabane District Council

Education and Library Boards

- Belfast Education & Library Board
- North Eastern Education & Library Board
- South Eastern Education & Library Board
- Southern Education & Library Board
- Western Education & Library Board

Harbour Authorities

Harbour Authority within the meaning of the Harbours Act (Northern Ireland) 1970

- Belfast Harbour Commissioners
- Coleraine Harbour Commissioners
- Londonderry Port and Harbour Commissioners
- Warrenpoint Harbour Authority

Health and Social Services Boards

- Eastern Health & Social Services Board
- Northern Health and Social Services Board
- Southern Health and Social Services Board
- Western Health & Social Services Board

Health and Social Services Councils

- Eastern Health & Social Services Council
- Northern Health & Social Services Council
- Southern Health & Social Services Council
- Western Health & Social Services Council

Health and Social Services Trusts

- Belfast Health & Social Care Trust
- NI Ambulance Service
- Northern Health & Social Care Trust
- Southern Health & Social Care Trust
- South Eastern Health & Social Care Trust
- Western Health & Social Care Trust

Special Health and Social Services Agencies

- Guardian Ad Litem Agency
- NI Blood Transfusion Service
- NI Health Promotion Agency
- NI Regional Medical Physics Agency

Housing

Housing Executive

Registered Housing Associations

- Abbeyfield Northern Ireland Development Society Ltd
- Abode Housing Association Ltd
- Ark Housing Association (NI) Ltd
- Ballynaveigh Housing Association Ltd
- Belfast Community Housing Association Ltd
- BIH Housing Association Ltd
- Broadway Housing Association Ltd
- Clanmil Housing Association Ltd
- Clonard Housing Association Ltd
- Connswater Housing Association Ltd

- Covenanter Residential Association Ltd
- Craigowen Housing Association Ltd
- Donacloney Housing Association Ltd

- Dungannon & District Housing Association Ltd
- Filor Housing Association Ltd
- Flax Housing Association Ltd
- Fold Housing Association Ltd
- Gosford Housing Association (Armagh) Ltd

- Grove Housing Association Ltd
- Habinteg Housing Association (Ulster) Ltd
- HEARTH
- Newington Housing Association (1975) Ltd
- Northern Ireland Co-Ownership Housing Association Ltd
- North & West Housing Ltd
- Oaklee Housing Association Ltd
- Open Door Housing Association (Northern Ireland) Ltd
- Presbyterian Housing Association (NI) Ltd
- Rural Housing Association Ltd
- SHAC
- South Ulster Housing Association Ltd
- St Matthews Housing Association Ltd
- Triangle Housing Association Ltd
- Trinity Housing
- Ulidia Housing Association Ltd
- Wesley Housing Association Ltd
- Woodvale & Shankill Housing Association Ltd

Other Public Bodies

A company designated under Article 5 of the Strategic Development and Regeneration of Sites (NI) Order 2003

A Development Corporation established under Part III of the Strategic Development and Regeneration of Sites (NI) Order 2003

Agri-food and Biosciences Institute

Arts Council

Board of Trustees of National Museums and Galleries of NI

Central Services Agency

Commissioner for Children and Young People for Northern Ireland

Community Relations Council

Council for Catholic Maintained Schools
Council for the Curriculum, Examinations and Assessment
N.I. Medical & Dental Training Agency
District Policing Partnerships
Enterprise Ulster
Equality Commission for Northern Ireland
Family health services in the National Health Service where provided by doctors, dentists, pharmacists and optometrists (ophthalmic opticians) - with effect from 1 December 1997

Fire and Rescue Service Board
Fisheries Conservancy Board
Fishery Harbour Authority
General Consumer Council for Northern Ireland
Health and Safety Executive
Industrial Training Boards
Labour Relations Agency
Laganside Corporation
Livestock and Meat Commission
Invest Northern Ireland
Local Government Officers' Superannuation Committee
Local Government Staff Commission
Museums Council
Northern Ireland Certification Office
Northern Ireland Practice & Education Council for Nursing & Midwifery
Northern Ireland Social Care Council
New town commissions established under the New Towns Acts (Northern Ireland) 1965 to 1968 and any of their committees or sub-committees

Regulation and Quality Improvement Authority
Rural Development Council
Sports Council
Staff Commission for Education and Library Boards
Strategic Investment Board
Tourist Board
Ulster Supported Employment Limited
Youth Council for Northern Ireland