



Northern Ireland
Assembly

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

**OFFICIAL REPORT
(Hansard)**

Commissioner for Older People Bill

23 June 2010

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Danny Kennedy (Chairperson)
Ms Martina Anderson
Mr Tom Elliott
Mr Barry McElduff
Mr Francie Molloy
Mr George Robinson
Mr Jimmy Spratt

Witnesses:

Dame Joan Harbison)
Ms Kate McCullough) Older People's Advocate

The Chairperson (Mr Kennedy):

We move now to the Commissioner for Older People Bill. We will receive a briefing from Dame Joan Harbison, the Older People's Advocate, and Kate McCullough, also from that office. You are very welcome. I invite you to provide us with an overview, after which members will be invited to ask questions. The session is being recorded by Hansard.

Dame Joan Harbison (Older People's Advocate):

Thank you very much, Mr Chairman. I am delighted to be here. I thank the Committee for

inviting me to give evidence. I will not go into great detail as you will now have received two submissions from me. You have seen our response to the consultation and the submission that we made prior to the Committee's consideration of the Commissioner for Older People Bill. However, I will make a number of points.

First, after 19 months as the Older People's Advocate, I believe that a Commissioner for Older People is needed — or, preferably, an older people's commissioner, because ownership of the role should lie with older people. I want to acknowledge the tremendous work that has been done by the sector in preparing for the establishment of the commissioner's office, responding to the draft legislation and engaging with the consultation. A huge amount of work has been done and what has been produced is thoughtful, clear, helpful and supportive of the idea of an older people's commissioner. Those in the sector have been very generous in sharing their thoughts with me, as the Older People's Advocate. Ours is a small office, so that has been extremely useful. In particular, Age NI, as you are well aware, has produced an enormous amount of material, which has been helpful all the way through the process and to the Bill team.

During the 19 months that I have been in post, I have been to many parts of Northern Ireland and have spoken at meetings to a total of over 4,000 people, most of whom were older people. Therefore, I have spoken to many older people during that time. Without exception, they are totally supportive of the idea of an older people's commissioner. They believe that the commissioner will raise the interests and rights of older people. I know that that is one issue that the sector has raised with you. It would prefer both interests and rights to be raised. I understand that there is some debate about that, but it is worth considering seriously.

I want to mention two other matters before I take questions. In the legislation, the term "a question of principle" is used on a number of occasions. It lies with the commissioner to take action with regard to investigations, inspections or, indeed, support in taking cases where there is a question of principle. I cannot think of any matter that has come to me during the last 19 months that was not underpinned by a question of principle, whether it was a question of the quality of services provided; common sense in delivery, if you like; or flexibility in the system. There has been a question of principle in even the smallest matter that has been brought to my office. I want to put that on record because it is important.

In respect of that, the advocacy role is extremely important. Although there is emphasis on

advocacy arrangements for the commissioner in the legislation, where it outlines the commissioner's duties or functions, the word "advocacy" is not used. Apart from consultation and work that I have done on aging and an inclusive society, as well as in other big areas where I hope that I have made a difference, most of my work has been to advocate on behalf of individuals and groups, dealing either with a trust, an education authority or another body. The advocacy role is extremely important.

The other role in the legislation that I see as significant is what the Bill calls conciliation services. However, that is a rather limiting definition and we should consider calling it dispute settlement services. There are three aspects to the business of conciliation: conciliation — which would be at a very low level — mediation and arbitration. It is quite important that conciliation is in the legislation, because that may be a very important power for the commissioner. It allows for something to happen that keeps people out of the courts, which is the most important thing. Therefore, we need more clarity around the conciliation services part of the Bill.

Lastly, as I said when I was previously before the Committee, I believe it to be very important that if we have powers of investigation and inspection, the Bill should also include powers of sanction. It is regrettable that those powers have not been included. By sanctions, I do not necessarily mean taking a case to the courts or financial sanctions, because, if a public sector body were involved, financial sanctions would simply involve transferring money from one part of the public sector to another. However, there are a number of very important sanctions that could be provided for. For example, there could be timescales, notices of compliance, schemes for monitoring compliance, written apologies exchanged between individuals and organisations, or lessons learnt statements could be drawn up. All sorts of things could be done that would force bodies to comply with the recommendations. At the moment, if we go down the route of investigation or inspection, there are, as far as I can see, no powers to ensure that recommendations are carried through.

The Chairperson:

Thank you very much. That was very interesting. On the issue of sanctions, the Northern Ireland Assembly Ombudsman does not have the power of sanction. Presently, he can find maladministration and he can criticise. Therefore, it is interesting that you highlight a need for sanctions within your role. Might that create a difficulty in the role of other commissioners?

Dame Joan Harbison:

I do not necessarily see that it would. It could be a way of raising the profile of what I consider to be good practice. Simply telling bodies what they ought to do is not necessarily a way of getting something done. Even if one goes to court, it does not always happen that way. As many of you know, I was involved in the Equality Commission for many years, and one thing that made me very cross was that even when we issued letters about compliance with article 55 — that is, workforce monitoring — some companies would prefer to pay a £50, £100 or £150 fine than be bothered to complete their article 55 forms. Even if there is a power to tell bodies to do things, and to take them to court if they do not, it does not always work. I would much prefer to see something in place that requires bodies to draw up an action plan and to put a timeline on how they might respond. There has to be some way of ensuring that actions follow investigations and inspection; otherwise, what is the point?

Ms Anderson:

Thank you for your presentation. I am looking for some clarity to assist us with the Bill. Clause 4 relates to the general powers of the commissioner. To pick up on what you said about the powers of investigation and inspection, are you looking for an inspection power to be added or for the powers of investigation be widened? Clause 4(3) states that the commissioner can conduct investigations in relation to any matter. Therefore, are you satisfied with the investigative end of it but want that widened to include inspections? Have you made any recommendations for amending that clause?

Dame Joan Harbison:

No. Clause 6 mentions inspection and is perfectly adequate for any needs that the commissioner would have. Inspection is already there in a form that is, for me, acceptable.

Ms Anderson:

Therefore, you are not advocating any amendment to strengthen the Bill and are satisfied that it is adequate.

Dame Joan Harbison:

For those powers, yes.

Mr Elliott:

Thank you for the presentation. The Northern Ireland Ombudsman’s response states that he is:

“concerned that the proposal is premature and that progress on the Wales model and a fundamental review of the existing oversight and complaints handling landscape in Northern Ireland is needed.”

Do you believe that to be wrong?

Dame Joan Harbison:

It is not for me to say. However, I do not think that what the ombudsman is suggesting in any way takes away from my experience of the past 19 months, which tells me that the current situation is that neither the ombudsman nor the Equality Commission is adequately meeting the needs of older people, supporting them, advocating on their behalf or promoting their interests and needs. It is for you or other Assembly Members to decide whether there needs to be a review beyond that. However, his response does not take away, in any way, from my belief in the need for an older people’s commissioner.

Mr Elliott:

The ombudsman seems pretty keen that there would be an overall review. He also said that he:

“strongly believes that a model that combines advocacy, championing and education with investigatory powers is inherently flawed. It is not equitable to combine the role of an advocate with a parallel and conflicting role to independently investigate specific cases.”

Dame Joan Harbison:

He and I would not agree on that. There are many models in which that works satisfactorily. As I said, I was chief commissioner of the Equality Commission for six years, a position in which those two responsibilities sit very comfortably with each other. In fact, to a large extent, the two inform each other and are complementary rather than conflicting.

Mr Spratt:

Thank you, Dame Joan, for your presentation. I have some concerns around sanctions. If a report is made on an establishment, that report will be open, transparent and in the public domain. That is a sanction in itself, given the recommendations that will be in such a report.

However, I can see a case for paying individuals. I know of a recent case in which the ombudsman found that a well-known housing association had 11 or 12 instances of maladministration in the case of two individuals. The ombudsman awarded an amount of money

to those individuals; I believe that it was £5,000 each, which was right and proper. Therefore, the ombudsman can decide in certain cases not to impose fines, but that money should be paid back to individuals. That would be a sanction, and I would support that. You talk about timescales, monitoring and compliance, but you have to be careful that you are not creating another department within a department.

It will be difficult to do that in the current economic climate, but the important thing is to get the whole thing up and running. Your report going into the public domain would be a sanction against whomever you were investigating or reporting on, and that should be a way of ensuring that those things were carried out. The responsibility would then fall on Assembly Members and Departments to ensure that your recommendations are complied with.

What is your view on individual cases of maladministration in which you could award against an organisation, such as a private nursing home where people are paying money?

Dame Joan Harbison:

Presumably, I would not be finding maladministration. For many people, certainly those who have come to me with issues, I am not saying that I have felt that at any point an investigation was necessarily the right way forward. However, money was not the issue for those people. The issue was about ensuring that the delivery of the service was appropriate to the needs for which it was designed. Quite frankly, in many instances, people's concern was that their experiences should not be repeated elsewhere.

I take your point that there may be other bodies that could ensure that change was taking place, but I have had experience of recommendations being made to organisations but an inordinately long time being taken to change the system in such a way that makes a difference for individuals on the ground. Older people do not have time; if you are going to change something for older people, you need to change it today or tomorrow because next month or next year may be too late. There are issues about ensuring that the recommendations that are made on foot of inspections and investigations are carried through.

As to creating a so-called compliance department within the office of the older people's commissioner, I do not see that happening because I do not see the powers of investigation or inspection relating to that. Investigation may be on wider themes, such as is happening in the

office of the Older People's Commissioner for Wales, which is examining the quality of services provided for older people. However, such investigations will result in broad-brush recommendations to improve the quality of services; it is not an investigation into a particular event. Therefore, those two elements are quite different, and they would be quite different in the office of the older people's commissioner here.

I do not see the need to create a department in order to do that, because I do not see an individual investigation following up on a complaint that is brought to the commissioner happening regularly. For instance, the Children's Commission has those powers and, so far, she has never carried out an investigation. Nevertheless, when an investigation is carried out, it must be followed through on. In my experience, I have found that people are ready to offer support and to help change things before we ever reach the point at which an investigation is needed.

Mr Molloy:

Thank you for your presentation. Do you have any recommendations on sanctions that the Committee might consider? As Mr Spratt said, a report is one mechanism through which issues can be highlighted. The role of commissioner has to have teeth, and people want to know what the next stage will be. Therefore, it is important that there are proposals about structures. For instance, a mechanism could be put in place to categorise complaints and decide whether action should be taken by a Minister or by the commissioner.

Dame Joan Harbison:

In the correct circumstances, I would be happy with either or both of those recommendations. An action plan with a corresponding timescale would be one way to know when things are supposed to happen, and the commissioner could then go back to the relevant body and ask for an update based on that action plan. If the worst came to the worst, rather than going down a legal route, the commissioner could request that someone be put into an organisation to ensure that recommendations are carried through. If a power exists, there needs to be some way to ensure that any actions that are taken under that power are delivered on. As I said, however, it is not something that will happen every month or every six months.

The Chairperson:

Thank you, Dame Joan and Kate, for attending this afternoon and for your briefing and answers. Undoubtedly, we will continue to stay in contact.

Dame Joan Harbison:

No doubt we will be in contact with the Committee because ours is a small office and the timescale for producing this response was very tight, so we are still considering it. If we come up with any more ideas, we will pass them on.

The Chairperson:

We will be happy to receive them.