



## 2011 CHAPTER 1

### *Functions of the Commissioner*

#### **Duties of the Commissioner**

3.—(1) The Commissioner must promote an awareness of matters relating to the interests of older persons and of the need to safeguard those interests.

(2) The Commissioner must keep under review the adequacy and effectiveness of law and practice relating to the interests of older persons.

(3) The Commissioner must keep under review the adequacy and effectiveness of services provided for older persons by relevant authorities.

(4) The Commissioner must promote the provision of opportunities for, and the elimination of discrimination against, older persons.

(5) The Commissioner must encourage best practice in the treatment of older persons.

(6) The Commissioner must promote positive attitudes towards older persons and encourage participation by older persons in public life.

(7) The Commissioner must advise the Secretary of State, the Executive Committee of the Assembly and a relevant authority on matters concerning the interests of older persons—

- (a) as soon as reasonably practicable after receipt of a request for advice; and
- (b) on such other occasions as the Commissioner thinks appropriate.

(8) The Commissioner must take reasonable steps to ensure that—

- (a) older persons are made aware of—
  - (i) the functions of the Commissioner;
  - (ii) the location of the Commissioner's office; and

- (iii) the ways in which they may communicate with the Commissioner;
- (b) older persons are encouraged to communicate with the Commissioner;
- (c) the views of older persons are sought concerning the exercise by the Commissioner of the Commissioner's functions;
- (d) the services of the Commissioner are, so far as practicable, made available to older persons in the locality in which they live.

### **General powers of the Commissioner**

4.—(1) The Commissioner may undertake, commission or provide financial or other assistance for research or educational activities concerning the interests of older persons or the exercise of the Commissioner's functions.

(2) The Commissioner may, after consultation with such bodies or persons as the Commissioner thinks appropriate, issue guidance on best practice in relation to any matter concerning the interests of older persons.

(3) The Commissioner may, for the purposes of any of the Commissioner's functions, conduct such investigations as the Commissioner considers necessary or expedient.

(4) If the Commissioner so determines, Schedule 2 is to apply in relation to an investigation conducted by the Commissioner for the purposes of the Commissioner's functions under section 3(2) or (3).

(5) The Commissioner may—

- (a) compile information concerning the interests of older persons;
- (b) provide advice or information on any matter concerning the interests of older persons;
- (c) publish any matter concerning the interests of older persons, including—
  - (i) the outcome of any research or activities mentioned in subsection (1);
  - (ii) the outcome of any investigations conducted under subsection (3);
  - (iii) any advice provided by the Commissioner.

(6) The Commissioner may make representations or recommendations to any body or person about any matter concerning the interests of older persons.

### **General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities**

5.—(1) This section and section 6 apply to the following arrangements of a relevant authority—

- (a) advocacy arrangements, that is to say arrangements for making persons available—

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*Status: This is the original version (as it was originally enacted).*

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- (i) to represent the views, wishes and interests of older persons in relation to whom any functions of the authority are exercisable; and
- (ii) to provide such older persons—
  - (A) with information, advice and support to enable or assist them to express their views and wishes to the authority; and
  - (B) with advice about their interests;
- (b) complaint arrangements, that is to say arrangements for dealing with complaints made to the authority by older persons about actions taken in relation to them by that or another relevant authority;
- (c) inspection arrangements, that is to say arrangements for examining the state and management of, and the treatment of older persons on, any premises managed by that or another relevant authority in which—
  - (i) an older person is living or being looked after;
  - (ii) an older person is being detained whether under any statutory provision or otherwise; or
  - (iii) health, welfare or any other services are provided for older persons; and
- (d) whistle-blowing arrangements, that is to say arrangements for ensuring that proper action is taken in response to any disclosure of information which may tend to show—
  - (i) that a criminal offence has been committed;
  - (ii) that a person has failed to comply with any legal obligation to which that person is subject;
  - (iii) that the health and safety of any older person has been endangered;
  - (iv) that the rights of any older person have been infringed; or
  - (v) that any matter falling within one of the preceding paragraphs has been deliberately concealed,

in the course of, or in connection with, the exercise by the relevant authority of any of its functions in relation to older persons.

(2) Subject to subsections (3) and (4), the Commissioner may review the operation of any arrangements to which this section applies for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of older persons.

(3) The Commissioner may not exercise the Commissioner's power under subsection (2) in relation to any arrangements made by a relevant authority unless the Commissioner has reasonable grounds to believe that—

- (a) the arrangements in question are ineffective in safeguarding and promoting the interests of older persons; or

(b) those arrangements have not been operated, or have been operated incorrectly.

(4) The Commissioner may not review the operation of the inspection arrangements made by a relevant authority unless it appears to the Commissioner that there is no other body or person likely to review those arrangements.

(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in subsection (1), the Commissioner may assess the effect of that failure on older persons.

(6) The power conferred by this section to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.

#### **Review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases**

6.—(1) Subject to subsections (2) and (3), the Commissioner may review the operation of any arrangements to which this section applies in the case of a particular older person (or, as regards inspection arrangements, in the case of any particular premises).

(2) The Commissioner may not exercise the Commissioner's power under subsection (1) in relation to the operation of any arrangements made by a relevant authority in the case of a particular older person unless the Commissioner has reasonable grounds to believe that—

(a) the arrangements in question were ineffective in safeguarding and promoting the interests of the older person concerned; or

(b) those arrangements did not operate, or were operated incorrectly, in relation to the older person concerned.

(3) The Commissioner may not review the operation of the inspection arrangements made by a relevant authority unless it appears to the Commissioner that there is no other body or person likely to review those arrangements.

(4) The power conferred by subsection (1) to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.

(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in subsection (1), the Commissioner may assess the effect of that failure on any particular older person.

#### **Assistance with complaints to relevant authorities**

7.—(1) The Commissioner may provide assistance (including financial assistance) to an older person in making a complaint to a relevant authority that

the interests of the older person have been adversely affected by any action taken by that or another relevant authority.

(2) The Commissioner may act on behalf of an older person in—

- (a) making such a complaint to a relevant authority; and
- (b) any investigation or other proceedings conducted by that authority pursuant to the complaint.

(3) In deciding whether to provide assistance to an older person under subsection (1), the Commissioner may take account of the financial or other assistance available to the older person in relation to the complaint.

(4) In deciding whether to take action on behalf of an older person under subsection (2), the Commissioner may take account of whether there is any other person or body likely to take such action.

(5) Where the making of a complaint to a relevant authority is regulated by a statutory provision, nothing in this section authorises a complaint to be made to that authority otherwise than in accordance with that provision.

(6) For the purposes of this section, “relevant authority” also includes the Northern Ireland Commissioner for Complaints, the Assembly Ombudsman for Northern Ireland, the Information Commissioner, the Pensions Ombudsman and the Northern Ireland Office.

### **Investigation of complaints against relevant authorities**

**8.—**(1) Subject to subsection (2) and section 9, the Commissioner may conduct an investigation into a complaint made by an older person that the interests of the older person have been adversely affected by any action taken by a relevant authority.

(2) The Commissioner may not exercise the Commissioner’s power under subsection (1) in relation to a complaint unless the Commissioner is satisfied that—

- (a) the complaint raises a question of principle; and
- (b) the complaint does not fall within an existing statutory complaints system.

(3) For the purposes of subsection (2), a complaint falls within an existing statutory complaints system if a statutory provision confers power on a person to make the complaint to a body or person and—

- (a) that body or person has power under a statutory provision to investigate the complaint; or
- (b) that body or person would have power under a statutory provision to investigate the complaint but for some exclusion or restriction in that statutory provision.

(4) Where the Commissioner decides not to conduct an investigation into a complaint made under subsection (1), the Commissioner must prepare a statement of the Commissioner's reasons for that decision and must send a copy of the statement to—

- (a) the complainant; and
- (b) such other persons (if any) as the Commissioner considers appropriate.

#### **Actions which may be investigated: restrictions and exclusions**

**9.—**(1) The Commissioner may not conduct an investigation in respect of any action in respect of which the complainant has or had—

- (a) a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise; or
- (b) a remedy by way of proceedings in any court,

unless the Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort to or have resorted to the right or remedy.

(2) The Commissioner may not conduct an investigation in respect of—

- (a) the commencement before any court in the United Kingdom of—
  - (i) any criminal proceedings; or
  - (ii) any civil proceedings by any person other than a relevant authority;
- (b) the conduct of any civil or criminal proceedings before any court in the United Kingdom; or
- (c) the commencement or conduct of any proceedings before any international court or tribunal.

(3) The Commissioner may not conduct an investigation in respect of any action which is, or has been, the subject of a local or public inquiry.

(4) The Commissioner may not conduct an investigation into a complaint if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.

#### **Power to bring, intervene in or assist in legal proceedings**

**10.—**(1) Subject to the following provisions of this section, the Commissioner may in any court or tribunal—

- (a) bring proceedings (other than criminal proceedings) involving law or practice concerning the interests of older persons;
- (b) intervene in any proceedings involving law or practice concerning the interests of older persons;
- (c) act as *amicus curiae* in any such proceedings.

- (2) An intervention under subsection (1)(b) may not be made except—
- (a) with the leave of the court or tribunal; and
  - (b) in accordance with any such provision as may be made by the rules regulating the practice and procedure of the court or tribunal.
- (3) The Commissioner may not bring or apply to intervene in proceedings unless the Commissioner is satisfied that—
- (a) the case raises a question of principle; or
  - (b) there are other special circumstances which make it appropriate for the Commissioner to do so.

### **Assistance in relation to legal proceedings**

- 11.—**(1) This section applies to—
- (a) proceedings involving law or practice concerning the interests of older persons which an older person has commenced, or wishes to commence; or
  - (b) proceedings in the course of which an older person relies, or wishes to rely, on such law or practice.
- (2) Where the older person applies to the Commissioner for assistance in relation to proceedings to which this section applies, the Commissioner may, subject to subsection (3), grant the application if the Commissioner is satisfied that—
- (a) the case raises a question of principle;
  - (b) it would be unreasonable to expect the older person to deal with the case without assistance because of its complexity, or because of that person's position in relation to another person involved, or for some other reason; or
  - (c) there are other special circumstances which make it appropriate for the Commissioner to provide assistance.
- (3) The Commissioner may not grant an application for assistance under subsection (2) unless it appears to the Commissioner that there is no other person or body likely to provide such assistance.
- (4) Where the Commissioner grants an application under subsection (2) the Commissioner may arrange for the provision of legal advice or representation and any other assistance which the Commissioner thinks appropriate.
- (5) Arrangements made by the Commissioner for the provision of assistance to an older person may, if the Commissioner thinks it reasonable in the circumstances, include provision for recovery of expenses from the older person.

### **Conciliation of disputes**

- 12.—**(1) The Commissioner may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that

person in relation to disputes which may lead to proceedings involving law or practice concerning the interests of older persons.

(2) Neither the Commissioner nor any officer of the Commissioner may participate in the provision of conciliation services for which arrangements are made under this section.

(3) The Commissioner must ensure that any arrangements under this section include appropriate safeguards to prevent the disclosure to the Commissioner or officers of the Commissioner of information obtained by a person in connection with the provision of conciliation services in pursuance of the arrangements.

(4) Subsection (3) does not apply to information relating to a dispute which is disclosed with the consent of the parties to that dispute.

(5) Subsection (3) does not apply to information which—

- (a) is not identifiable with a particular dispute or a particular person; and
- (b) is reasonably required by the Commissioner for the purpose of monitoring the operation of the arrangements concerned.

(6) Anything communicated to a person while providing conciliation services in pursuance of any arrangements under this section is not admissible in evidence in any proceedings except with the consent of the person who communicated it to that person.

(7) In this section “conciliation services” means services provided—

- (a) by a person who is not a party to a dispute;
- (b) to the parties to the dispute; and
- (c) with the aim of enabling the dispute to be settled by agreement and without proceedings.