

Proposed Commissioner for Older People (Scotland) Bill

Consultation by Colin Smyth MSP, South Scotland Region

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This submission was prepared by About Dementia, Age Scotland's Dementia Policy and Practice Forum. We ensure the voice of those living with dementia, and unpaid carers, is heard at a policy level. We build our policy responses with the voice of lived experience at the core. We believe that the people who face the challenges are also best placed to discuss the solutions.

1. Which of the following best expresses your view of the proposed Bill?

- ☐ Fully supportive

In line with Age Scotland, About Dementia fully supports the call for the establishment of a Commissioner for Older People in Scotland. We believe that creating this position will enhance the promotion of rights for older people in Scotland. The introduction of a Commissioner for Older People places a duty of care on the commission to ensure all aspects and challenges of life as an older person in Scotland are considered and continually discussed and improved. We want a wide national recognition of the fundamental challenges that will continue to affect our ageing population. We want the Scottish Government to commit to introducing a Commissioner for Older People by the end of the parliamentary term, in 2026.

As Scotland's Policy and Practice Forum for Dementia, About Dementia is responding to this consultation to ensure there is representation and recognition of the ongoing challenges faced by people living with dementia, and unpaid carers in Scotland. According to research in 2015, there are an estimated 90,000 people living in Scotland with dementia. Over the next 20 years, there is a projected 50% increase in the number of people living with dementia over the age of 65 in Scotland, with scope to believe that 1 in 3 people born today will go on to develop dementia.

Dementia is not solely an older people's issue; the diagnosis rate of early onset dementia increases annually. That said, we are acutely aware that the majority of people who are affected by dementia, whether they are older adult unpaid carers or people living with dementia, are over the age of 65.

We support the call for a Commissioner for Older People, and we strongly believe that following the introduction of this role, significant resources and infrastructure should be put towards considering the numerous ways that people adults are affected by dementia face injustices, and inequalities on a daily basis.

We also call for the Commissioner to investigate the challenges faced by older adult unpaid carers. Something about Carers Trust

Older People should not be seen as a marginalised part of society, whose issues would only affect a small or unpredictable minority of people. Ageing is a factor that every person should hope to consider, and it affects everyone.

2. Do you think legislation is required, or are there are other ways in which the proposed Bill's aims could be achieved more effectively? Please explain the reasons for your response.

☐ Yes

Aligning with the perspectives of Age Scotland, the stance we take is that the suggested legal measures offer the most transparent and efficient path toward realising the expressed objectives within the proposal. Establishing this office's scope through legal means also presents the added advantage of safeguarding decisions and progress made by the commission, protecting the aims that may be susceptible to change during periods of political shifts and reordering of priorities. This is evidenced recently through the decision of the First Minister not to appoint a new Minister for Older People, effectively removing their voice from the heart of Government. A Commissioner for Older People would ensure that the Government's duties towards older people are upheld and that they are held accountable for their decisions that impact upon them.

3. Which of the following best expresses your view on whether there is a need for a specific, dedicated Commissioner focusing solely on older people's rights and interests?

☐ Fully supportive

Exacerbated by the COVID-19 Pandemic and the ensuing cost of living crisis, alongside substantial reductions in health and social care budgets and workforce, reports continue to emerge about older individuals and those living with dementia facing violations of their fundamental human rights. During our engagement about this consultation, we heard from people living with dementia and unpaid carers that their trust in current healthcare systems has been eroded so much to have become non-existent.

Older People's rights are disproportionately affected in Scotland due to a lack of awareness concerning their rights. Often, older people will be unaware when an infringement has taken place or lack the knowledge or ability to enable them to challenge that infringement. Our engagement on this topic surfaced a number of

themes. One of the most prominent concerns was around neglect within care settings becoming a pervasive issue. Our engagement on Care and Complaints was carried out in four different locations across Scotland. The following quotes are pulled from a discussion in which participants were asked whether they would feel comfortable complaining.

'People are scared to complain.'

'You worry if you complain you will be marked as a nuisance and you'll be treated differently.'

'There could be repercussions if I complain.'

'[If I complain] I keep it friendly as much as possible so that you don't get labelled a complainer.'

Older people find themselves in an impossible position when attempting to challenge poor-quality care. There is hesitancy in speaking up against neglect. This hesitancy is rooted in the fear that any objections could adversely affect the quality of care they receive, even if that care is substandard. For some, the stark understanding of the scarcity of access to adequate care means older people sometimes tolerate unacceptable conduct merely to secure a semblance of assistance and access to care.

'We recognise that staff are under pressure/understaffed, and we don't want to blame staff.'

'With less staff, there should be an even greater push to make sure human rights are met.'

'To tackle the neglect, pay staff the money they deserve, treat them as a person.'

A further area to be considered under the guise and remit of the Commissioner's remit is the lack of access to and recognition of the needs of older people in the realm of housing. When speaking with a person living with dementia on their views towards an Older People's Commissioner, they emphasised the pressing need to consider access to adequate housing and access to adequate healthcare support as a key area of improvement for older people.

"Very little new build housing is accessible. Much more consideration needs to be given to a variety of housing options for older people, including intergenerational housing.

New research shows the increased strain the Health Service faces from older people living with serious conditions. We need to ensure the adequacy of support and health services, and that older people have equality of access with younger people to fitness opportunities.

[Additionally] Consideration needs to be given to what systems work best in encouraging independence, and the role of new technologies in this. Today's 70-year-olds are email and computer literate and will expect support services to move with the times."

The convergence of factors like the COVID-19 Pandemic, financial challenges, and budgetary constraints has created a precarious situation for older people and people living with dementia in Scotland, leading to a perception that their human rights are not valued or upheld. Furthermore, recognition of technology's transformative potential and adapting support services to meet the expectations of the modern era can greatly enhance the lives and rights of the next generation of older people in Scotland.

The introduction of a Commissioner For Older People in Scotland is imperative to heighten awareness of older people's rights, ensure avenues for voicing grievances, and address housing and healthcare disparities.

4. Which of the following best expresses your view on the age range of the proposed Commissioner's remit covering all those in Scotland aged 60 and over?

☐ Partially supportive

In line with the views of Age Scotland, we recognise the rationale behind the suggested age bracket of 60 and above however, in an engagement session with our lived experience group there were several points mentioned which have lead us to consider that this bracket should be expanded.

Whilst those with lived experience of dementia were in favour of the draft proposal, they believed that the Commissioner for Older People should cover a wider age remit.

It was suggested by one person living with dementia that anyone aged 55 and above be considered under the scope of the Commissioner. The rationale behind this was that many age-related health complications start before 60 years old.

"It's not as if people live until 60 and then suddenly, they become ill, I think I would go for 55."

Participants also emphasised the importance of the age bracket being flexible for specific cases where someone is experiencing an age-related issue, but they do not fall within the proposed age bracket. An unpaid carer also raised a proposal that, in line with the current approach of Northern Ireland, the Commissioner's remit can include anyone 50 and above, on a case-by-case basis if deemed

necessary. This is also the approach taken by our own organisation when defining older people in Scotland as anyone over the age of 50.

Considering the views of Age Scotland, and the feedback from our own lived experience voices at About Dementia, we support the notion that a Commissioner for Older People supports people aged 50 and above. With cases of people under the age of 60 being considered on a case-by-case basis.

5. Which of the following best expresses your view on whether the proposed Commissioner should hold powers of investigation?

- ☐ Fully supportive

In line with Age Scotland, we firmly support that powers of investigation should be held within the remit of the Commissioner.

6. Given a number of other bodies have similar functions to some of those proposed for the Commissioner, which of the following best expresses your view on whether the proposed Commissioner's work can avoid duplication with existing officeholders?

- ☐ Strongly Agree

Currently, responsibility for the issues concerning older people in Scotland is scattered across various domains, leading to a fragmented system where no single entity takes comprehensive charge.

The absence of a distinct authoritative body devoted to addressing the concerns of the elderly necessitates a careful evaluation of the efficacy and efficiency of the existing mechanisms.

We believe that by establishing a Commissioner for Older People, the Scottish Government has an opportunity to create a dedicated team and plan focused solely on protecting the rights of older people. The role would play a key part in improving the health and social care support systems for older people in Scotland. This is an aspiration that is particularly vital given the continuing fragmentation of current systems, and the escalating challenges confronting older people in Scotland, due to a growing ageing population.

7. Which of the following best expresses your view on whether the proposed Commissioner should be independent of Government?

☐ Fully Independent

It is the view of About Dementia, and our members that a commissioner would work most effectively if fully independent of Government. We believe that this approach would best ensure the independence and legitimacy of the role and enable older people to have confidence that their rights and interests are front and centre.

Whilst members with lived experience were in support of an independent Commissioner for Older People, there were concerns over how a Commissioner would be appointed; who would be involved in the selection of this role; and how the proposed commissioner would be held accountable.

While it is essential to have a Commissioner who presents independently of Government, we must also appoint a commissioner who holds a truly vested interest in older people and recognises their needs. The commissioner must be able to advise the Scottish Government on issues affecting older people. A successful candidate should have a wealth of experience working with older adults and recognising their needs. Some of our members raised concerns that the role could become politically motivated rather than serving the best interests of older people.

“I would like to see somebody with a background in meeting older people and listening to their concerns and worries”.

As Wales and Northern Ireland already have an appointed Commissioner for Older People, we recommend that shared learning and collaborative working with these appointed individuals should fall within the Scottish Commissioners agenda. This will ensure a strengthened UK read across issues affecting older people. We believe this will be of particular importance for the enhancement and shared learning of dementia across the nations and at the interface between reserved and devolved competencies. Scotland is world-leading in its dementia policy and practice. The appointed Commissioner will be a strong independent voice for older people across Scotland and they will be in a position to shed light internationally on the novel and forward-thinking approach of Scotland, in relation to dementia.

8. What financial impact do you think this proposal could have if it became law?

- ☐ Some reduction in costs

The challenges concerning the population of older people in Scotland are currently overseen by various separate entities, resulting in a fragmented support system. This not only leads to a disjointed approach to providing assistance but also contributes to a fragmented financial framework and inadequate financial oversight. To address this issue, we propose the establishment of a long-term research initiative, which aims at evaluating the potential cost reduction resulting from the introduction of a dedicated commissioner for older people in Scotland.

For instance, the delay of treatment for age-related health conditions frequently leads to aggravated severity and subsequently increased overall treatment expenditures. In contrast, a focus on preventive and timely interventions is more financially prudent.

Addressing the prevailing inefficiencies in older people's services through a coordinated approach would not only enhance the well-being of the elderly population but also contribute to the financial sustainability of the healthcare system.

9. Any new law can have an impact on different individuals in society, for example as a result of their age, disability, gender reassignment, marriage and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. What impact could this proposal have on particular people if it became law?

It is evident that the Rights of Older People and their representation as a demographic have been notably and unfairly overlooked within statutes, guidance, and governmental focus. This discrepancy is starkly illustrated by the government's recent choice to eliminate the classification of 'Older People' from the jurisdiction and responsibilities of the Minister for Equalities and Older People, a decision made in March 2023 subsequent to the instalment of the new First Minister, Humza Yousaf.

We are of the opinion that the introduction of an Older Peoples Commissioner holds the potential to bring about positive effects on the existing age-related disparities that older individuals encounter. It possesses the capacity to reshape the perception of Older People in Scotland and compel the government to address the concerns of Older People as matters that pertain to everyone. The demographic of Older People shouldn't be relegated to a minority group that the majority will never become part of. Instead, the category of 'older people' is pertinent to a substantial majority of the current population, given the continuous rise in life expectancy and statistics related to an ageing population.

Members expressed that a dedicated Commissioner for Older People is crucial to tackling inequalities as the population of older adults is rapidly increasing and there is no specific dedicated person to represent the needs of these individuals:

“I think it’s important, the role, because (...) the population of older people is increasing (...) and it’s going to be more exponential now because people are living longer, which is a good thing, but at the same time we don’t really have a mechanism to support older people”.

10. Any new law can impact on work to protect and enhance the environment, achieve a sustainable economy, and create a strong, healthy, and just society for future generations.

The establishment of a Commissioner for Older People reflects Scotland's proactive approach to preparing for and endorsing the well-being of its upcoming generations. Contrary to the idea that concerns relating to the elderly are isolated, the reality is that they have an impact on society at large.

We are of the belief that implementing legislation to establish a Commissioner for Older People will play a pivotal role in guaranteeing a society that is equitable and thriving for older people now, and in the future.

11. Do you have any other additional comments or suggestions on the proposed Bill?

About Dementia not only considers the implications of policy and practice on people living with dementia but also on unpaid carers. We strongly believe that the well-being and support of older adult carers must also fall within the scope of a Commissioner for Older People’s agenda. There is a profound need for unpaid carers to be safeguarded by the proposed Commissioner for Older People. We would expect that the introduction Commissioner would consider older adult carers as a vital cog in the healthcare system for Older Adults in Scotland. We would also hope that the Commissioner would be able to focus, support and advocate for better treatment and recognition of older adult carers. This includes the current campaign led by Carer’s Trust to provide Carers Support Payment for unpaid carers over the age of 65.

We would also hope that a Commissioner would be responsible for tackling stigma and misinformation related to ageing as we believe it is often inaccurately portrayed in the media which can be harmful. In particular, our lived experience members believe that the commissioner should be responsible for combatting the stigma associated with dementia.