Detailed summary of Responses

General

The consultation asked for views on a proposed Bill to establish an older people’s champion in the shape of a commissioner. The consultation document consisted of an explanation of the reasons why, in the member’s view, this is necessary and how the proposed legislation could work. Respondents were invited to offer responses to 11 set questions and to give any information they felt was not covered in the consultation document. Questions were ‘open’ in style therefore encouraging respondents to give as much information as they wished. This resulted in a large volume of qualitative data.

Fifty parties responded to the consultation\(^1\). Overall responses to the proposed Bill were positive and the level of support can be seen below in chart 1.

Chart 1

![Level of Support Chart]

In essence support for the proposed Bill totals 62%, this includes those that were firmly in favour - 44% and those who supported the establishment of a commissioner in principle - 18%.

It is important to note that the chart above shows the minimum level of support for the proposal.

If you include the individual responses that came under the cover of two responses from forums, the actual figures would show a significant increase in support. Under these circumstances the total percentage of those in favour would be 57% with a further 18%.

\(^1\) One forum submitted a response expressing views from 25 members and another forum enclosed 3 responses. This would make the total number of responses 76
Commissioner for Older People

giving support in principle, meaning that three-quarters of those who responded agree with the creation of a commissioner for older people.

The following table shows the make up of the 50 responses:

**Table 1**

<table>
<thead>
<tr>
<th>Organisation type</th>
<th>Count</th>
<th>Actual Responses</th>
<th>Support (yes/in principle)</th>
<th>Against (no)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directly representing older people (including forums and individuals)</td>
<td>18</td>
<td>41</td>
<td>34</td>
<td>7</td>
</tr>
<tr>
<td>Local Authority &amp; departments</td>
<td>10</td>
<td>10</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Health &amp; care</td>
<td>9</td>
<td>9</td>
<td>7</td>
<td>0</td>
</tr>
<tr>
<td>Housing</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Academic</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Legal</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Government department</td>
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<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Political</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Public body</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50</strong></td>
<td><strong>76</strong></td>
<td><strong>41</strong></td>
<td><strong>14</strong></td>
</tr>
</tbody>
</table>

It is clear that those organisations that directly represent the interests of older people are overwhelmingly in favour of the creation of a Commissioner for older people with 83% expressing this view. Health and care organisations showed the next highest support 78%. Only the 2 academics and the Department for Work and Pensions were opposed to the proposal.

Approximately half of the respondents engaged with the consultation directly by addressing each question set out in the consultation document. Other submissions engaged with some of the set questions whereas the remainder submitted original responses. Care has been taken to extract the relevant information from these responses as it relates to the questions.

This summary will address the information given to each question and will assess any conclusions drawn from this information.

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2 See annex A for a full list of respondents
Commissioner for Older People

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Each section of this summary can be accessed via the following links:

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Question 10
Question 11
Conclusions
Executive Summary

**Question 1**
**What rights and interests of older people do you consider are not adequately covered by current legislation?**

1. Three distinct views arose from the responses:
   - a majority of respondents identified specific areas in current legislation that do not protect the rights and interests of older people;
   - some felt that although there is adequate legislation it is not being maximised; and
   - some responses indicated that current legislation and statutory bodies are adequate in safeguarding older people’s interests.

2. The majority of respondents believed that the commissioner could have a role to play and highlighted the following areas: giving the commissioner statutory powers over the care commission, establishing a national strategy for dealing with abuse of older people; instituting policy changes to allow people to remain in their homes in old age; altering of age limits to allow older people to take part in scientific trials; ensuring older people have a reasonable income; assist in addressing issues relevant to minority ethnic older people; access to advocacy services; cost of education being a barrier to lifelong learning and access to appropriate transport services.

**Question 2**
**How should an Older People’s Commissioner interact and work with bodies already in place to represent the interests of older people?**

3. It was agreed by the majority of respondents that a commissioner for older people should consult and co-ordinate work with the various statutory and non statutory bodies already representing the interest of older people.

4. The focus of those who responded to this question centred on how to formalise the commissioner’s relationship with existing organisations and groups, one response suggesting that there may be a need for written protocols and sharing of information between the Scottish Public Services Ombudsman and the commissioner. It is clear that consultation with stakeholders, both organisations and individuals, will be key to the post of Commissioner.

5. Concerns were raised about the burden of introducing extra monitoring arrangements and the potential for confusion with other groups tasked with looking after the rights and interests of older people.

**Question 3**
**At what age should people be defined as “older” and coming within the competence of the Older People’s Commissioner?**
6. By far the most support was given to defining older people as aged over 60. This was a popular choice because it is the lowest age at which a person (woman) can receive a state pension.

7. It is interesting to note that although respondents chose a specific age many were attracted to the idea of giving the commissioner discretion as to whether a person of a certain age is deemed to be within the commissioner’s competence.

8. A note of caution was sounded by a few respondents who thought that defining an age may reinforce existing stereotypes of all older people as frail or vulnerable.

**Question 4**
What role, if any, should the Older People's Commissioner have in investigating age discrimination?

9. There was strong support, from those responding to this question for the Commissioner to have some role in investigating age discrimination. There is division however in the responses received over the level of involvement of the commissioner. The balance of opinion lies with the commissioner considering wider issues that arise from individual cases rather than investigating individual cases. Again, a few concerns were raised in relation to the overlap with other bodies so consideration should be given to clearly defining the commissioner’s role in relation to the proposed Commission for Equality and Human Rights and other bodies.

**Question 5**
Should the Older People’s Commissioner be focussed solely on older people who are vulnerable, or should they have a broader remit for older people?

10. There was a general consensus from those responding to this question that the commissioner should have a broad remit covering all older people rather than focussing on or attempting to define those as vulnerable, particularly as there is no universal definition of a vulnerable person and this may in fact discriminate against other older people.

**Question 6**
What role, if any, should the Older People's Commissioner have in the policy making process as it affects older people?

11. The majority of those who responded to this question agreed that the commissioner should have a role in the policy making process as it affects older people. Three different approaches emerged as to how the commissioner could undertake this role: consultation with existing organisations and groups; monitoring and reviewing existing policy; and the promotion of equal opportunities for older people in respect of policy making.

**Question 7**
Do you agree that the Older People's Commissioner should promote best practice amongst service providers? Please provide reasons explaining your response.

12. The overwhelming response to this question was that the commissioner should promote best practice among service providers primarily because the commissioner
could help service providers learn from each other; promote partnership working; and unify existing practices.

**Question 8**
Should the Older People’s Commissioner focus on undertaking, commissioning, and publishing research; and on dealing with wider issues rather than handling individual cases? Please provide reasons explaining your response.

13. There was popular support for the commissioner to focus on the wider issues of older people’s rights and interests. In terms of research, there was no general consensus on whether the commissioner should commission and publish research; however any research undertaken should be relevant and well executed.

**Question 9**
How should the Older People’s Commissioner be appointed?

14. The overall consensus from those who responded to this question was that the commissioner should be a Parliamentary appointment. It was clear that older people want to be consulted about the appointment of a commissioner and that the process should be transparent.

**Question 10**
How should the Older People’s Commissioner report their work and findings?

15. The most popular choice was for the Commissioner to report to Parliament. A number of suggestions were received as to the frequency and the distribution of the commissioner’s report with an annual report being favoured by the majority of respondents and the report being widely disseminated.

**Question 11**
Is there anything else you believe is of importance in considering a Bill for the creation of the Older People’s Commissioner?

16. A number of issues were highlighted as requiring further consideration. These are listed below:

- how the commissioner will be able to comment on reserved matters;
- caution when comparing with the Commissioner for Children and Young People;
- costs of establishing and running a commissioner and his/her office;
- all vulnerable people may have claim to a commissioner.
Consultation questions and responses

Question 1
What rights and interests of older people do you consider are not adequately covered by current legislation?

Three distinct views arose from the responses:

- Nineteen respondents identified specific areas in current legislation that do not protect the rights and interests of older people;
- Six respondents felt that although there is adequate legislation it is not being maximised; and
- Ten responses indicated that current legislation and statutory bodies are adequate in safeguarding older people’s interests.

Areas not covered by current legislation

Health & Care

By far the areas of most concern are in relation to older people and their health and care rights and interests. For example, some respondents felt that existing legislation does not adequately cater for their physical and mental wellbeing to the extent that it makes it difficult for them to remain ‘safely’ in their own homes. This is supported by one forum for older people who believe the Care Commission does not do enough to safeguard older people living in their own home. Although Falkirk Council is opposed to the proposed Bill, it also considers that the establishment of a commissioner could be justified if it had ‘specific statutory powers’ over the Care Commission and local authorities in this field.

Abuse of older people was highlighted by some respondents as a particular area where legislation is inadequate. North Lanarkshire Council Social Work argued that there exists no ‘national strategy’ for dealing with abuse of older people and that caring organisations, local authorities and health boards address these issues independently of each other.

British Geriatrics Society (Scotland) said that older people, 65 years and over, account for a disproportionate number of NHS prescribed medicines. In their view since adverse drug reactions increase with age then ‘typical older people’ should be involved in clinical trials. The Society suggested that ‘typical older people’ are often excluded from trials because of arbitrary age limits or on the grounds of more than one chronic disease. They requested that age limits on scientific research be closely scrutinised so that medicine trials can be developed more towards the actual users of a drug.

Angus older Persons Strategic Planning Group welcomed a bill that would address pension and health rights in line with the EU policy statement “Towards a Europe for all Ages” and the European Older People’s Platform forum campaign “AGE”, which promotes prosperity and intergenerational equity.

Conversely NHS Quality Improvement Scotland, although broadly supportive of the proposed Bill, could not ‘easily’ identify changes in legislation that would ‘bring about significant advances for older people’ in the field of NHS health care, as health care and treatment should be made available on the basis of clinical need alone.
Finances
A number of issues raised by respondents related to the financial status of older people. The City of Edinburgh Council Older Peoples Equalities Forum (OPEF) are clear that older people have a right to a reasonable income but a complex pensions and benefits system hinders this. This view was supported by Carers Scotland. One individual felt that as well as these issues ‘council tax single supplements’ impacted on older people’s finances.

Ethnic minorities
The City of Edinburgh Council Older Peoples Equalities Forum (OPEF) felt that the rights and interests of minority ethnic older people were not ‘adequately covered’ in the consultation document.

Age discrimination
Three respondents stated that despite the fact that there is legislation prohibiting age discrimination it continues to exist. North Lanarkshire council contended that this occurs ‘even on a statutory basis where the retirement age is still compulsory in a number of work places’.

Advocacy services
Three respondents felt that access to advocacy services for older people is not given enough emphasis in current legislation.

Education
The Scottish Adult Learning Partnership felt that the costs inherent in education can be a barrier for older people continuing education.

Transport
Scottish Accessible Transport Alliance (SATA) commented on the non-availability of ‘quality door-to-door services’ essentially for the frail or disabled. SATA felt a commissioner should be a powerful advocate for the vulnerable and disadvantaged. Highland Senior Citizens Network highlighted transport issues in rural locations as they affect older people.

Adequate legislation but not being maximised
Renfrewshire Council believes the issue is not the ‘adequacy’ of current legislation but ‘emphasis’. In their view a commissioner could work to ‘enforce’ the existing legislation. Trust Housing Association accords with the view that there is adequate legislation however they questioned whether older people are aware of their rights or if they are being consulted on different issues. They argued that a commissioner could play an invaluable role, especially in an ageing population, in monitoring and evaluating these provisions.

Although West Lothian Council (Older People’s Forum) agree that better use of current legislation such as the Human Rights Act and the Adults with Incapacity Act is required; they consider the establishment of a commissioner as undesirable.

Adequate legislation to safeguard older people’s interests
Falkirk Council and Ayr Social Work, Housing and Health both commented that they could not identify any rights and interests specific to older people which are not adequately
covered by current legislation. From a different perspective East Berwickshire U3A stated that they could not ‘think’ of a single right or interest that is unique to older people.

Four respondents argued that there are already bodies, such as COSLA, Age Concern and the Care Commission etc., that exist with powers similar to that of the proposed commissioner.

In relation to the adequacy of current legislation Age Concern suggested that Parliament has a duty under schedule 5 of the Scotland Act 1998 to ensure all legislation is equality proofed for its impact on age (younger and older).

**Question 2**

*How should an Older People’s Commissioner interact and work with bodies already in place to represent the interests of older people?*

It was agreed by 24 respondents that a commissioner for older people should consult and co-ordinate work with the various statutory and non statutory bodies already representing the interests of older people. The way in which this is undertaken is the focus of those who responded to this question.

**Formalising interaction with existing bodies**

Trust Housing Association felt it ‘imperative’ that the commissioner, if established, work with existing bodies. They consider that this would provide an opportunity to bring different organisations under ‘one umbrella’, co-ordinate efforts and strengthen the focus on older persons needs.

Some respondents expressed the view that communication between the commissioner and existing bodies is essential to avoid ‘unnecessary duplication’ of work. Others considered the commissioner should work closely with the voluntary sector and NHS Forth Valley added that care will be required not to ‘dilute’ the ‘extensive’ work of this sector in supporting older people at a local level. While Argyll & Bute Council believes that the best approach is for the commissioner is to have the power to ‘evaluate’ how bodies are operating in protecting older people and promoting their rights and considers that written protocols should be established between the commissioner and existing organisations.

The Scottish Public Services Ombudsman (SPSO) pointed to relationship between the SPSO and the Commissioner for Children and Young People as a potential model. The Ombudsman also suggested that it would be helpful if the proposed legislation could reflect this relationship and the sharing of information between the proposed commissioner and other Commissioners/SPSO. It may be that the commissioner will carry out joint investigations in appropriate circumstances.

**Consultation with stakeholders**

Two older person forums and North Ayrshire Council commented that older people would need to be consulted with closely by the commissioner. West of Scotland Seniors Forum suggested that the grassroots of pensioner groups should be given greater weight than organisations such as Age Concern as ‘these are not run by older people’.
Renfrewshire Council identified three bodies in their area that would be ‘useful points for liaison and would benefit from interaction’: Renfrewshire Older Persons Champion, social work department and Paisley University Department of Gerontology.

British Geriatrics Society (Scotland) commented, specifically, that the commissioner should work with the Chief Scientists Office to ensure that research funding is not given to projects with upper age limits (see question 1) and that clinical research on health problems common in old age is actively encouraged.

**Issues identified which may affect the Commissioner’s relationship with other bodies**

The Scottish Pensioners Forum called for ‘no confusion’ with the Scottish Executive’s Older People’s Consultative Forum or with ‘local authority champions’.

NHS QIS, although supportive of the proposal, felt that the role of the commissioner would be of a very broad nature to the extent of limiting ‘practical interaction’ with existing bodies. In their view this raises questions over what value the commissioner could bring and suggest that the gaps are identified in the work of existing bodies in terms either of range, capacity or power to act, which the commissioner might usefully address.

NHS Forth Valley cautioned against the potential to overburden the public and independent sector with ‘extra monitoring arrangements’. They suggested that the commissioner pull together themes identified following review of the outcomes of such bodies such as NHS QIS and the Care Commission.

Angus Council (Angus Older Person’s Strategic Planning Group) were ‘unclear’ how a commissioner could successfully interact with existing bodies and that ‘such a proposition suggests an unnecessary, expensive and additional layer of governance’. Ayr Social Work, Housing and Health agreed with this concern.

**Question 3**

**At what age should people be defined as “older” and coming within the competence of the Older People’s Commissioner?**

Respondents were able to identify or suggest at what age people should be defined as older and coming within the competence of the proposed Commissioner. The following graph shows those responses that suggested specific ages.

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1 See: [http://www.scotland.gov.uk/about/HD/OPU/00015079/partner.aspx](http://www.scotland.gov.uk/about/HD/OPU/00015079/partner.aspx)
It can be seen from the above graph that defining older people as aged over 50 was a popular choice for those responding to this question. Age Concern proposed that ‘the lower age of 50’ be applied as, in their view, this would reflect that 1 in 3 people in Scotland are over 50 and that half of all people aged 50-69 are unemployed (possibly due to age discrimination). Other reasons given are that in respect of ethnic minority older people’s issues are based round lower life expectancy and age demographics, pointing out that 50 plus would be considered ‘elderly’ in many cultures. One individual also stated that 50 may also be deemed ‘old’ in the workplace.

The next most popular choices of age category are 60 and 65. The main reason put forward for these ages is because they correspond with the ages at which a person can receive a state pension. West Lothian Council (Older People’s Forum) suggested that the age be over 60 because it coincides with the World Health Organisation’s (WHO) definition and would help broaden the older persons agenda i.e. detracting from the traditional view that older person’s interests are focussed solely on health and social care needs. Carers Scotland felt setting the age at 60 or 65 is sensible as 50 would be unjustifiable as it does not correspond with demographic changes taking place at present.

Turning to the higher age range, the British Geriatrics Society (Scotland) suggested that health problems usually come later than ‘retirement age’ therefore perhaps a boundary such as 75 years with discretion below this would be appropriate. NHS QIS felt that 65 would be an appropriate age as this is the retirement age for ‘men’ however they also considered that 70 could be justified on the grounds of ‘increased life expectancy’. Trust
Housing Association suggests setting the age at 65 however they also request the commissioner have ‘dispensation for competence for those over the age of 50’.

One of the recurring ideas expressed throughout the age range was that of providing the commissioner with the discretion as to whether a person of a certain age is deemed to be within the competence of the commissioner.

**Potential problems with defining age**

Some respondents expressed concern that attempting to define a group as being in need of a commissioner because of age group could cause certain difficulties.

Falkirk Council believes that old age is not a problem in itself that requires a commissioner; problems experienced by older people such as mental health, disabilities, poverty and discrimination etc. are not unique to older people.

NHS Forth Valley advised that it should be acknowledged that older people are not a homogenous group but are varied in age and come from differing political and social groups. They also cautioned against the potential to reinforce existing stereotypes of all older people being ‘frail or vulnerable’.

NHS Lanarkshire considered the Better Government for Older People (BGOP) definition of the 3rd and 4th age as representing ‘real life’. In their view people pass from the 3rd and 4th age at different chronological ages and that:

“...service providers [need to] develop the means to respond to this reality rather than continue to seek to force people to fit into stereotypes and artificial age boundaries determined by the providers’ own limitations of resources and/or skills and/or insight”

**Question 4**

**What role, if any, should the Older People’s Commissioner have in investigating age discrimination?**

**General support**

There was strong support, from those responding to this question, for the commissioner to have some role in investigating age discrimination. British Geriatrics Society (Scotland), for example, felt that investigating age discrimination is one of the major issues for considering the establishment of a commissioner. NHS Lanarkshire argued that older people are generally considered part of the 4th age (dependency) rather than the 3rd (retirement) even though they are still fit and able to contribute to society and as such it is the anti-age-discrimination role that provides the strongest argument for establishing a commissioner for older people.

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4 The *First Age* is education, the *Second career and family*, the *Third Age is retirement* and the *Fourth Age is dependency*. - [http://website.lineone.net/~wendy_thelwell/thirdage.html](http://website.lineone.net/~wendy_thelwell/thirdage.html)
From the responses it is clear that the difference of opinion is in the level of the commissioner's involvement in investigating age discrimination.

**Monitoring function**

Five responses considered a commissioner could have a strong role in monitoring the effectiveness of the CEHR in relation to age discrimination. Renfrewshire Council stated that demographic changes could increase older people's dependency on younger people therefore the commissioner could have a ‘clear role’ in monitoring the CEHR. One individual considered age discrimination to be an important but large issue therefore the commissioner's role should expand over time, initially leaving it to ‘others’ to take breaches of the law forward. A further three responses stated that the commissioner should have a role similar to that of an Ombudsman.

**Investigation of individual cases**

A number of older people’s forums considered that the commissioner should have the authority to investigate individual cases. One of the reasons cited for this is that there could be cases that fall outwith the ambit of the CEHR legislation. However the majority of responses suggested the commissioner should investigate age discrimination as it affects all older people and should not be overly involved in individual cases. NHS Highland, for example, suggested that instead of the commissioner getting ‘too’ involved in individual cases he/she should have access to information that may ‘identify trends’ that could provide an evidence base for policy decisions. A topic highlighted that would be worthy of investigation was age discrimination in the workplace.

**Potential difficulties**

Age Concern argued that without ‘legislation and positive duty’ in age discrimination the commissioner may be limited to initiating independent enquires; in their view:

“It is particularly important that the roles and function of the Commissioner for Older People are clearly defined in relation to the remit of the new Commission for Equality and Human Rights”

Ayr Social Work, Housing and Health and Angus Older Person’s Strategic Planning Group were unsure how the commissioner could work in relation to age discrimination as, in their view, there is perhaps an adequate number of bodies and legislation able to tackle age discrimination at present. East Berwickshire U3A argued that the commissioner could have a negative effect by potentially ‘promoting’ age discrimination by ‘allocating tax payer money’ to a ‘group categorised by age not need’.

**Question 5**

Should the Older People’s Commissioner be focussed solely on older people who are vulnerable, or should they have a broader remit for older people?

There was a clear consensus from those responding to this question that the commissioner should have a broad remit covering all older people rather than focussing on or attempting to define those as vulnerable. Carers Scotland, Age Concern, NHS
Forth Valley and NHS QIS agreed that attempting to define an older person as ‘vulnerable’ presents difficulties and could even equate to discrimination. This view is supported by one of the older persons forums who felt having a commissioner for one group of people would discriminate against other groups of people. Renfrewshire Council stated that it is important to focus on all older people as ‘valued members of society’ not ‘vulnerable or dependent’ people.

**Emphasis on the vulnerable**

Some respondents emphasised that while the commissioner should be responsible to all older people the focus on those defined as ‘vulnerable’ should be given more emphasis. British Geriatrics Society (Scotland) suggested that to have the greatest influence the commissioner should focus at least initially on the ‘vulnerable’ especially those who are dependent on others. South Lanarkshire Council called for an agreed definition of ‘vulnerable’ in that it may be inappropriate to focus solely on vulnerable people however there would need to be a specific emphasis for this group.

**Existing bodies**

Renfrewshire Seniors Forum suggested that as the Care Commission currently covers care services for those in need the commissioner should enforce this work rather than duplicate it.

NHS Lanarkshire commented that there already exist a number of bodies ‘with and without inspectorial roles who have responsibilities to protect the vulnerable and promote good practice’. They contended that there may be ‘gaps and overlaps’ with these bodies. In their view, an examination on improving this situation would be desirable before ‘superimposing’ a commissioner on this area and adding ‘duplication and confusion’.

**Protecting against vulnerability**

NHS Highland argued that if ‘people are serious’ about continuous health improvements in the NHS then the commissioner could have a valuable role in protecting older people before and after they become ‘vulnerable’. They concluded that there is a need to identify and address what makes people vulnerable therefore reducing the risk to the older population in general.

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**Question 6:**

What role, if any, should the Older People’s Commissioner have in the policy making process as it affects older people?

The majority of those who responded to this question agreed that the commissioner should have a role in the policy making process as it affects older people. A number of respondents regarded it essential that the commissioner have a central role in policy to make it effective. Shetland Islands Council stated that the roles of safeguarding and promoting the rights of older people, informing and influencing policy and service delivery are ‘primary to ensuring older people’s interests are being met’. NHS Greater Glasgow pointed out two possible strands where the commissioner could have a role in policy: (i) the commissioner could influence the development of a ‘Scottish National Service Framework’ and (ii) the commissioner could assess wider planning processes to ensure needs of older people are recognised.
A number of suggestions were made as to how the role of the commissioner should be undertaken with regard to the policy making process. These primarily fall into three categories – consultation, monitoring/reviewing and promotion/lobbying.

**Consultation**

Some responses highlighted the need for the commissioner to work jointly with bodies such as BGOP and the Older People’s Consultative Forum in shaping and influencing policy and others like the Scottish Adult Learning Partnership, considered that the commissioner should work closely with older people themselves, i.e. older peoples forums, when considering policy.

**Monitoring/reviewing**

Dundee City Council considers that another area where the commissioner could have a role to play is in the auditing existing policy and legislative provision as it affects older people, as does the Scottish Pensioners Forum. Renfrewshire Council accords with this view but goes further by saying that the commissioner should identify new areas of legislation.

**Promotion/lobbying**

Another role where some respondents believe the commissioner could be active is in the promotion of equality of opportunity for older people in respect of policy making. North Ayrshire Council and Age Concern Scotland both agreed that this should be a key feature of the commissioner’s post as did Dundee City Council. NHS Lanarkshire highlighted that older people’s organisation have a tradition of campaigning and hoped that organisations should place a ‘higher premium’ on being part of the overall framework.

**Question 7**

**Do you agree that the Older People’s Commissioner should promote best practice amongst service providers? Please provide reasons explaining your response.**

The overwhelming response to this question was that the commissioner should promote best practice among service providers. Carers Scotland, for example, classed the dissemination of best practice as one of the most effective drivers of change. Scottish Adult Learning Partnership felt that the commissioner’s role in this regard would help service providers ‘learn from each other’, ‘promote partnership working’ and ‘bring existing practices together’. Angus Older Person's Strategic Planning Group however expressed a different view arguing that there is no evidence to suggest existing structures and arrangements are inadequate and that a commissioner would not necessarily improve the situation.

**Reasons and suggested approaches**

Argyll & Bute Council stated that the Care Commission is responsible for enforcing best practice through National Care Standards. They recommended that the commissioner
promote best practice in a broad sense by highlighting thematic issues emerging from inspections and complaints investigation.

British Geriatrics Society (Scotland) felt that best practice should be promoted particularly in ‘evidence based healthcare delivery’. Other respondents felt that the commissioner could look at inconsistencies and inequalities in the provision of services across Scotland. Trust Housing Association went further in suggesting that the commissioner always look to promote services by highlighting and promoting examples of good practice from UK and other countries.

NHS Highland highlighted that ‘all organisations’ are implementing similar policies and initiatives and that there is evidence of ‘sharing experiences’ such as ‘Delayed Discharge Learning’ and ‘Sharing Network’. They saw the commissioner as being able to lead the way in encouraging and facilitating this approach.

**Defining best practice**

South Lanarkshire offered their definition of best practice as including: any person or agency providing services to older people in the public and/or independent sectors. In this context they suggested that the commissioner make recommendations to service providers following a review of current practice.

NHS QIS felt it ‘reasonable’ for the commissioner to highlight areas where a particular benefit to older people is recognised however they cautioned against the term ‘best practice’ as possibly meaning different things to different people.

**Issues relating to promotion of best practice**

Falkirk Council argued that this question raises issues about the relationship between the proposal and existing initiatives such as the Care Commission. They considered bodies such as these to have an advantage because they are independent of the Government.

Age Concern advised that the process of promoting best practice will depend on ‘good relations with professional organisations and older people’s groups and associations’. Within this context they argued it is crucial that there exist sufficient resources to support the training of service providers.

**Question 8**

Should the Older People’s Commissioner focus on undertaking, commissioning, and publishing research; and on dealing with wider issues rather than handling individual cases? Please provide reasons explaining your response.

The following is a summary of respondents views on this question broken into issues/cases and research.

**Wider issues versus individual issues/cases**

There was popular support, by those responding to this question, that the commissioner should focus on the wider issues of older people’s rights and interests. Respondents felt
that the work of the commissioner should not be distracted by ‘individual cases’ except where a particular case has wider implications. Renfrewshire Council commented that it would be difficult to perform the task of dealing with individual enquiries at same time as major public issues. Shetland Islands Council also argued that individual cases would be time consuming therefore, in their view, the commissioner should ‘take the lead in promoting best practice’ including commissioning research on wider issues. Trust Housing Association thought that there should be a mechanism to ensure the commissioner receives collective information of individual cases to ‘help identify gaps in service provision and policy making’.

One older people’s forum suggested that when all routes or agencies have failed to resolve an issue then the commissioner could have an ombudsman role and investigate individual cases.

Research

There was no general consensus on whether the commissioner should commission and publish research. There was, however, general agreement from those who responded to this question that research would have to be relevant and well executed. One academic, for example, argued that the commissioning of research is ‘fundamental’ if it is carried out by a ‘recognised and skilled researcher’ with findings presented to Parliament. Alcohol Focus Scotland felt the commissioner should, primarily, be concerned with broad issues and use research to ‘inform its strategic role in influencing policy and informing practice’. This view was shared by South Lanarkshire Council who suggested that the commissioner commission and publish research on ‘major issues’ such as the abuse of older people and the domestic abuse of older women.

Some respondents were unclear how the commissioner could add value as currently, in their view, there are already a number of organisations carrying out research. In this context OPSIG Fife considered that there would be a danger of duplication and a waste of resources. They believed that the commissioner should have a role in agreeing research priorities with key agencies and be involved in the dissemination of findings.

One older person’s forum argued that ‘research’ should not be a core function of the commissioner and instead should be involved in stakeholder and consultation events.

Question 9
How should the Older People’s Commissioner be appointed?

The overall consensus from those who responded to this question was that the commissioner should be a Parliamentary appointment. It should also be noted that four respondents said a Parliamentary appointment similar to the Commissioner for Children and Young People would be desirable. One respondent specifically stated that the credibility of the commissioner would be dented if appointed by the Executive. South Lanarkshire Council commented that it would be helpful if the commissioner’s period in

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[3] It should be noted that one older persons forum stated that 18 of its participants in this consultation agreed that the Commissioner should commission and publish research.

office and provisions for reappointment were ‘consistent’ with those already established for
the Commissioner for Children and Young People.

Some respondents considered that older people should have a direct role or be consulted
with regard to the appointment. One older people’s forum suggested that a panel of ‘older
people’s representatives’ to be consulted with regard to ‘short-letting’ and possibly having
one representative on the interview panel.

There was also a call from some respondents for the appointment process to be as
transparent as possible and that the post is publicly advertising the post.

One respondent questioned the appropriateness of creating a commissioner, not in terms
of subject matter i.e. older people, but whether a commissioner has a direct role in the
core governance aspects of the Parliament, the Executive and the wider devolved public
sector and also where a formal connection with the Parliament is necessary for its proper
and effective operation.

**Question 10**

How should the Older People’s Commissioner report their work and findings?

There were various suggestions as to how the commissioner could report its work and
findings.

The most popular choice, from those responding to this question, was for the
commissioner to report to Parliament. A number of suggestions were received as to the
frequency and the distribution of the commissioner’s report:

- Annual written report;
- Scrutiny of reports by Parliamentary committee;
- 6 monthly reports detailing workload, problems addressed and researched
commissioned;
- 6 monthly reports copied to Senior Forums;
- ‘An open annual report’ with a fully disclosed statement of activities and a financial
account as a ‘minimum method of accountability’;
- Flexibility to deliver any reports to Parliament as the Commissioner sees fit.

Some respondents called for full transparency in the commissioner’s reports. NHS
Highland, for example, commented that the wide distribution of reports across NHS Boards
and Local Authorities ‘would be appreciated’. One older person’s forum suggested that
the commissioner’s report be available quarterly in periodicals and newspapers etc.
City of Edinburgh Council Older Peoples Equalities Forum raised a concern about how
ethnic older people would be informed and asked whether reports would be translated into
other languages.
Question 11
Is there anything else you believe is of importance in considering a Bill for the creation of the Older People’s Commissioner?

There were various issues raised in response to this question and these can be summarised under the following headings:

Omissions

Mobility and Access Committee for Scotland (MACS) highlighted that the proposal/consultation document made no reference to ‘health and transport issues’. They emphasised that older people can face difficulty in accessing transport and a large number of older people suffer from a ‘range of disabilities’.

Falkirk Council said it is not clear how the commissioner could improve the protection of older people from abuse unless ‘specific authority’ was given to monitor the Care Commission and local authority arrangements for protecting vulnerable adults. They highlighted that the consultation did not propose this would be part of the Bill.

Trust Housing Association felt that the consultation did not refer to older people from black and ethnic minority communities. They suggested it would be useful to ‘mention the similar but different needs’ of this group’.

NHS Highland highlighted were disappointed that the consultation did not mention ‘Joint Future, The Framework for Services for Older People’ and other such initiatives. They concluded that without such referencing the commissioner could be seen as a separate and ‘yet another initiative’.

Reserved issues

The Equal Opportunities Commission (EOC) highlighted that important issues for older people such as pensions are reserved matters. They saw this situation as having an impact on the capacity of the commissioner to change or direct policy.

Commissioner for Children and Young People

Some respondents asked that care be taken when comparing the proposed Commissioner for Older People with the Commissioner for Children and Young People. These concerns can be summarised as follows:

The Equal Opportunities Commission argued the situation between the two commissioners as different. In their words the Commissioner for Children and Young People is different in that a ‘UN framework exists on the rights of children and there are clear obligations for signatories in respect of delivering on the commitments in that Charter’.

The Department for Work and Pensions highlighted that children are ‘dependents’ whereas ‘most older people are not’ and ‘would not wish to be treated as such’. NHS Lanarkshire argued the case for the Commissioner for Children and Young People is stronger than the proposed Commissioner as, in their view children are ‘uniquely vulnerable’ (i.e. no democratic power) whereas older people are not. Falkirk Council argued that comparisons between the two commissioners are not ‘persuasive or helpful’.
as, in their view, young people even past the age of 18 are not democratically active whereas older people may be the most democratically active people in society.

Three respondents, including Age Concern, suggested that the Commissioner for Children and Young People be evaluated, being a recent appointment, to provide evidence for the proposed commissioner

Costs

Some respondents expressed concern over the costs of establishing and running the proposed commissioner. These respondents were unsure if the commissioner’s role/function could justify this kind of expenditure. Some of these respondents asked if the money used could be ‘better spent’ on services to older people.

Appointment

Scottish Borders Elder Voice and East Berwickshire U3A both felt that older people already have or should have a commissioner in the form of their elected MSP or MP. They felt the proposed commissioner would be a ‘drain’ on resources.

Some respondents had specific requests as to the appointment of the proposed commissioner, these included:

• ensuring the candidate has an appropriate educational background;
• not to be appointed due to a ‘long standing political career’ and ‘ideally an older person’;
• commissioner should have an ‘appropriate salary’ and a staffed office;
• commissioner should not be a ‘secondary job’.

Role

Some respondents expressed views on the role of the commissioner. In general these respondents reiterated their wish for the proposed commissioner to work for and have an influence on issues relating to older people. One forum felt the commissioner should have a large degree of independence and autonomy and South Lanarkshire Council suggested there be a general duty on the commissioner to encourage the involvement of older people in all its work.

Age Concern reiterated that if a commissioner is to be established then there would need to be a clear role and remit which complements the work of the CEHR.

NHS QIS said that the commissioner would have to ‘tread a fine line’ between making a special case for older people and ensuring their needs are mainstreamed within general services.

Issues to consider

Some respondents identified areas which may pose difficulties in the proposed legislation.

Angus Older Person’s Strategic Planning Group saw older people as a ‘very disparate group with ranging needs and expectations’. In their view to establish a ‘single champion’ runs the risk of ‘oversimplifying the position’. They recommended that improvements be
Commissioner for Older People

made through ‘strengthening and improving existing local structures and inclusive communities’. East Berwickshire also wished to see existing systems work more ‘efficiently and effectively’ rather than establishing a new commissioner.

Barry K Winetrobe from the University of Glasgow and The Constitution Unit argued that the parliamentary commissioner model is inappropriate. To back up this argument a research paper was submitted with the response⁷. In his response Mr Winetrobe described a number of criteria that make a Parliamentary commissioner ‘appropriate’ - in his conclusion he states:

“…I do not believe that the Commissioner for Children and Young People met these criteria, and, by analogy, I do not think the proposed Commissioner for older people does.”

NHS QIS indicated support for the proposed Bill but felt that all vulnerable people may have a legitimate claim to a commissioner and that this may ‘dilute the role of existing commissioners’. They wished this be considered rather than be taken as an argument against the establishment of the proposed commissioner.

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Conclusions

The majority of respondents consider the creation of an Older People’s Commissioner as a positive step towards protecting and furthering the rights of older people.

One of the key advantages of a commissioner which the responses highlighted is the major role that the commissioner can play in reviewing existing legislation and its operation, and contributing to the policy making process. A number of respondents raised specific areas where they thought the commissioner could add value. These covered a wide spectrum of subject areas such as transport, health and care services.

Another area where there was an overwhelming response to the consultation was in relation to promoting best practice. The main advantages of the commissioner’s role are seen as assisting organisations to learn from each other, promoting partnership working and in unifying existing practices.

Consultation responses showed clearly that there is support for the commissioner to focus on wider, thematic, issues rather than considering individual cases, which could constrain the commissioner’s ability to pursue mainstreaming of older people issues.

In terms of the appointment of the commissioner respondents were overwhelmingly in favour of a Parliamentary appointment.

However a number of other issues merit further consideration. The views on defining an age at which people would come within the competence of the commissioner were divided. Although the most favoured age was 50 this was closely followed by 60 and 65.

A number of respondents flagged up that further consideration should to be given to the remit and way in which the Older People’s Commissioner would interact with the

⁷ ‘Officers of Parliament – transforming the role’ Oonagh Gay and Barry K Winetrobe (UCL The Constitution Unit)
Commissioner for Older People

Commission for Equalities Human Rights, the Scottish Public Services Ombudsman and the other Commissioners.

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## Annex A

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<th>ID</th>
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<th>Organisation</th>
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<td>Mairi C O'Keefe</td>
<td>Mobility and Access Committee for Scotland (MACS)</td>
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<td>Rona Fitzgerald</td>
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<td>Professor Ian Melville</td>
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<td>Alasdair Allan</td>
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<td>Joan Thompson</td>
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<td>Joyce Wilson</td>
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