

NEW DECADE, NEW APPROACH - REVIEW OF ARMS' LENGTH BODIES

COMMISSIONER FOR OLDER PEOPLE NORTHERN IRELAND TERMS OF REFERENCE

Background to the Review

An independent review team has been tasked with a review of the Commissioner for Older People Northern Ireland (COPNI) as part of the New Decade, New Approach commitment to review Arms' Length Bodies (ALBs) in Northern Ireland.

The review will be conducted in line with this Terms of Reference, aligned to NI Guidance based on Cabinet Office Tailored Reviews issued in September 2021 (Annex 2).

The aim of the review is to take a holistic look at the Body to determine whether its NDPB and Corporation Sole status continues to represent the optimum mode of delivery for the desired policy and strategic outcomes in comparison to other options, alongside looking at governance, efficiencies and opportunities for better partnership working focused on a strategic and proportionate approach.

Objectives and Scope

The objective of the review is to ensure that the Body remains fit for purpose. It will also seek to improve performance by making recommendations based on review findings.

The review, will consider and make recommendations on the following areas:

- **Form and function** - the status, form, function and continuing requirement for the Commissioner role. The review will look at how well the role is fulfilled, how this compares with other Commissioners across these islands and whether alternative delivery models could be more suitable. The review will also consider sponsoring Departments in other jurisdictions and whether the Department for Communities (DfC) is the most appropriate Department to hold the sponsor role.
- **Control and Governance** – the review will consider whether COPNI and the Department for Communities in its sponsor role is complying with recognised principles of good corporate governance to ensure strong and robust governance arrangements are in place. The review will consider the Commissioner's designation as Accounting Officer and the role of the Audit, Risk and Assurance Committee in the context of a Corporation Sole model. It will also consider challenge and support mechanisms available to the Commissioner to assist with strategic focus and strategy development
- **Efficiency** – the review will examine the current operational structure, corporate functions and related costs and will consider options for operational efficiencies such as those potentially presented through shared services and models such as the Office of the Discretionary Support Commissioner where staffing is provided by the Department with access to HR, IT and other services from the Northern Ireland Civil Service. In considering operational efficiencies the need

for Commissioner Independence and the safeguarding of this should be taken into account.

- **Effectiveness** – the review will consider overall effectiveness of COPNI in delivering on its objectives and will look at comparisons with other jurisdictions in order to make recommendations that will enhance effectiveness and provide increased clarity and accountability for stakeholders.
- **Democratic accountability** – the review will consider current and alternative delivery arrangements in the context of greatest democratic accountability.

Inclusivity

The review will be open and inclusive. The Commissioner and their team will be engaged and consulted throughout the review and have the opportunity to comment on emerging findings and recommendations.

Key stakeholders, including the departmental sponsor team, will have the opportunity to provide input to the review, where relevant and appropriate, and evidence of such engagement will be included in the report of the review. The review team will engage with the Department and the Commissioner to identify a comprehensive list of stakeholders to engage with on a workshop basis.

When conducting the review, the review team must have regard to the Department's Statutory Equality Duties, as set out in Section 75 of the Northern Ireland Act 1998 and in the Department's Equality Scheme. In particular the review team should draw attention to any equality considerations which arise from the findings and recommendations set out in their report.

Supporting Evidence

The review team will be provided with relevant information on COPNI's legislative framework and background together with other relevant reviews.

Timescales

This is a 33 day assignment to be undertaken during XXXX. Allocated days include the delivery of a final report.

Reporting

DfC has established a Challenge Panel to oversee the review and robustly test and challenge the assumptions of the review. The review team will provide their findings to the Challenge Panel prior to finalisation of their report.

The final report should set out recommendations against the five objectives namely - form and function; control and governance; efficiency; effectiveness; and democratic accountability.

Further Information

Further information is provided in Annex 1.

ANNEX 1

Background and Role of the Commissioner

COPNI was established through the Commissioner for Older People Act (NI) 2011, to act as an independent voice and champion for older people, and to safeguard and promote their interests.

The Commissioner acts as a champion for the rights of older people and speaks out on issues affecting them. Through research and engagement with older people and the groups that represent them, the Commissioner seeks to understand the issues that matter most. This understanding provides a platform upon which to provide advice to Government and policy makers on a range of issues impacting older people.

The Commissioner is empowered to provide assistance to individual older people who require advocacy and legal support in defined circumstances. Legislation also enables him to conduct investigations as he determines appropriate.

Status, Funding and Staffing

COPNI is a non-departmental public body (NDPB) sponsored by the Department for Communities (DfC). The post of Commissioner is a fixed-term position for four years, renewable once and the Commissioner has Corporation Sole status¹.

COPNI has a team of 14 staff and receives its budget as grant-in aid from DfC. The budget for 2021/22 is £1.158 million and is subject to the expectations set out in [Managing Public Money NI](#).

The Commissioner is supported by:

- A Chief Executive who is responsible for day-to-day management of the organisation, staff, finances, strategic planning, resources and governance arrangements, as well as implementation of Corporate and Business Plan objectives. The Chief Executive reports directly to the Commissioner.
- An Audit and Risk Assurance Committee to provide a means of independent assurance and objective review of internal controls and risk management, audit and financial reporting.

The need for a Commissioner

The Commissioner has a legal duty to safeguard and promote the rights of all older people in Northern Ireland. The expectations of the Commissioner are set out in legislation².

The Three Tests for ALBs

A Public Body must pass at least one of the three tests outlined in the Tailored Review Guidance in order to be retained:

- Does it perform a technical function?

¹ Corporation Sole: a legal entity consisting of a single (“sole”) incorporated office, occupied by a single (“sole”) person. This allows corporations to pass without interval from one office holder to the next successor in-office, giving the position legal continuity with subsequent office holders having identical powers to their predecessors.

² [Commissioner for Older People Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

- Does it need to be politically impartial?
- Does it need to act independently to establish the facts?

The review of COPNI should consider whether its current form creates any significant barriers to delivery and whether other delivery options could offer any significant benefits. A range of evidence should be taken into account, to include the views of the Commissioner and the department, the size and performance of the organisation, comparisons with similar organisations and the findings from previous related reviews.

Legal Status

The Commissioner, as prescribed by legislation, is a Corporation Sole (which is set out under Schedule 1 COPNI of the Order). This enables the effective transition of accountability from one individual to another and is aligned to the need to ensure a clear and accountable independent voice on behalf of older people.

Functions

The Commissioner has unique powers to help bring about long-term change and improvements for older people. COPNI speaks up for older people so that policymakers take their views and interests into account when making decisions which impact them. Full details of the functions of the Commissioner can be found in the legislation.³

COPNI is empowered to take up individual cases on behalf of older people in Northern Ireland. Where the Commissioner deals directly, the cases are tested against strict acceptance criteria as legislation does not allow for the duplication of the work of another public authority. However, if an older person is having difficulties dealing with a public authority, the Commissioner can advocate on their behalf.

Appointment and accountability

The Commissioner is appointed by The Executive Office for a term of four years, renewable once. The Commissioner can be removed from post if the Minister is satisfied that the Commissioner has become unfit or unable properly to discharge their functions, or behaved in a way that is not compatible with them continuing in office.

In addition to the appointment of the Commissioner, the Minister's responsibilities include:

- Approving the amount of grant-in-aid to be paid to the Commissioner
- Covering matters relating to the Commissioner in the NI Assembly given the department's sponsorship responsibilities. The Commissioner may be called in their own right to report on performance or to give evidence to NI Executive Committees

The Minister's duties and powers in relation to the Commissioner's statutory duties are also defined in legislation and the current framework document, the Management Statement and Financial Memorandum (MSFM).

The DfC Permanent Secretary is the Principal Accounting Officer (PAO) for DfC. The respective responsibilities of the PAO and NDPB Accounting Officers for are set out in

³ [Commissioner for Older People Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](https://legislation.gov.uk)

Chapter 3 of [Managing Public Money](#). This includes being accountable to the NI Assembly for the issue of any grant-in-aid to the Commissioner and advising the Minister on an appropriate budget in the light of the Department's overall public expenditure priorities.

The PAO is also responsible for:

- the payment of grant-in-aid and any conditions attached to it.
- monitoring of the Commissioner's compliance with those conditions.
- the steps taken to ensure controls applied by the Department and the Commissioner conform to requirements of good financial management and safeguard public funds.

The Commissioner is designated (by the PAO) as Accounting Officer of COPNI. As Accounting Officer, the Commissioner is personally responsible for safeguarding the public funds for which they have charge for propriety and regularity, value for money, efficient and effective use of those resources, and the organisation, operation and management of the office. As the Accounting Officer, the Commissioner is required to provide assurance that the funds are used for the purposes intended and are properly accounted for.

Through its Annual Report, COPNI is directly accountable to the NI Assembly for its performance and impact on the promotion and protection of older people's rights. In addition, the Commissioner is accountable to the PAO for the grant-in-aid they receive from the Department. The final accounts are also made available to the NI Assembly to scrutinise, following audit and certification by the Comptroller and Auditor General.

The Commissioner is answerable to the NI Assembly and maintains their own relationships with ministers and officials in government departments and wider MLAs.

Internal controls

COPNI does not have a board and chair. Corporation Sole and Accounting Officer status sit with the Commissioner.

The Commissioner has established an Audit and Risk Assurance Committee to provide a means of independent assurance and objective review of internal controls, risk management, audits and financial reporting. This is in line with expectations set out in [Corporate Governance in central government departments: code of good practice](#) and aims to minimise the risk of illegal or improper acts, safeguards public funds (and assets) and provides confidence in the objectivity and fairness of financial reporting.

Relationship with the department and engagement with key stakeholders

The work of COPNI impacts a range of government departments, public sector bodies and voluntary organisations. Both the Commissioner and DfC are focused on improving the lives of older people. The Commissioner has a responsibility to advise on the rights, views and interests of older people and to represent their interests through engagement and collaboration with key stakeholders and the general public.

A framework document, the MSFM, outlines the governance arrangements between COPNI and the Department. A review of these arrangements is in progress to align with new partnership working arrangements.

Effectiveness

COPNI does not have a delivery function in the normal sense; its core focus is influencing decision makers and those in power to generate systematic change in older people's best interest. It therefore faces a significant challenge in quantifying the impact of its work and the outcomes achieved. This is compounded by the need to focus on longer-term challenges, while maintaining an impactful public presence and responding to current issues.

Planning

The Commissioner's primary function is safeguarding and promoting the rights of older people in Northern Ireland. COPNI is able to achieve these aims through a combination of research and advocacy capability. It carries out its function largely by compiling evidence relating to older people, and advising and assisting ministers and policy makers.

In order to maintain COPNI independence, the Minister for Communities does not have power of approval on the exercise of particular functions of the Commissioner and there are no general or specific powers of ministerial direction.

COPNI provides a draft copy of its annual Business Plan to the department and other relevant government departments prior to publication for comment. Ministerial guidance and comments are also provided on the Annual Report (where required) and on ad-hoc reports or work of COPNI. In addition, the department's dedicated Sponsor Team hold quarterly meetings with the Commissioner to discuss ongoing work, the business plan, annual report and other issues.

COPNI has a broad remit focused on promoting and safeguarding the rights of older people in Northern Ireland. It is ultimately the NI Assembly's role to assess the impact of its work. It has an independent function and its annual reports are laid before the NI Assembly.

Other Jurisdictions

The Older People's Commissioner for Wales protects and promotes the rights of older people throughout Wales, scrutinising and influencing a wide range of policy and practice to improve their lives. Like COPNI, the Welsh Commissioner provides help and support directly to older people through a casework team and works to empower older people and ensure that their voices are heard and acted upon. The Commissioner is funded by, but operates independently of, Welsh Ministers and Welsh Government and is accountable to the National Assembly for Wales (the Assembly) for the use of resources made available.

At present there is no comparative Commissioner representing the interests of older people within England or Scotland.

Annex 2

NI GUIDANCE BASED ON CABINET OFFICE TAILORED REVIEW GUIDANCE

PURPOSE OF THIS GUIDANCE

This Annex is designed to provide information for Departments on the following areas:

Section 1 An overview of Cabinet Office Tailored Review Guidance on Public Bodies;

Section 2 Support and advice available for NI Departments in reviewing their Public Bodies.

Section 1: OVERVIEW OF CABINET OFFICE TAILORED REVIEW GUIDANCE ON PUBLIC BODIES⁴

Background and link to full guidance

1. The most recent guidance published by the Cabinet Office with regard to the review public bodies was published in May 2019. This superseded guidance published in 2010 and 2016. The purpose of this guidance was to establish the principles for Government Departments to review their Public Bodies.

2. The Guidance outlines that,

‘Our Public Bodies have an important part to play in delivering the Government’s vision of high quality services for all our citizens. To do so effectively they need to be set up correctly, be well governed, and observe high standards of transparency and efficiency.

Such regular assurance and challenge about the continuing need, efficiency and good governance of Public Bodies remains central to the Government’s Public Bodies Programme.

This guidance sets out the principles by which government departments should review Public Bodies from now on to ensure they remain fit for purpose, well governed and properly accountable for what they do’

3. The full guidance document can be found here:

[Tailored Review Guidance on public bodies -May-2019.pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/404242/Tailored_Review_Guidance_on_public_bodies_-_May-2019.pdf)
(publishing.service.gov.uk)

⁴[Tailored Review Guidance on public bodies -May-2019.pdf](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/404242/Tailored_Review_Guidance_on_public_bodies_-_May-2019.pdf) (publishing.service.gov.uk)

Aim of a Tailored Review

4. The aim of a Tailored Review is to:
 - To provide a robust challenge to and assurance on the continuing need for individual organisations – both their functions and form; and
 - Where it is agreed that an organisation should be retained, to review: its capacity for delivering more effectively and efficiently, including identifying the potential for efficiency savings, and where appropriate, its ability to contribute to economic growth. The review should include an assessment of the performance of the organisation or assurance that processes are in place for making such assessments; and
 - The control and governance arrangements in place to ensure that the organisation and its sponsor are complying with recognised principles of good corporate governance. These principles will vary according to the public body under review and departments should consult the relevant guidance.
5. It is for Departments to consider how best to structure and carry out these reviews, in accordance with the principles set out below

Principles

6. The key principles to be followed when undertaking a tailored review are:
 - Proportionality;
 - Challenge*;
 - Being Strategic;
 - Pace;
 - Inclusivity; and
 - Transparency.

*This challenge should take a first principles approach to whether each function:

- Is still needed?
- Is still being delivered?
- Is carried out effectively by the organisation? and
- Contributes to the core business of the organisation, the sponsor department and to the government as a whole?

Three tests and alternative delivery models

7. The guidance also puts forward **three tests that the functions of a public body must pass to ensure that its status as a public body remains**. These are:
 - Is this a technical function, which needs external expertise to deliver?
 - Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality?
 - Is this a function that needs to be delivered independently of ministers to establish facts and/or figures with integrity?⁵
8. If a public body does not meet one or all of these criteria then consideration should be given to its status as public body, and if there is another, more effective, efficient or economic way to deliver the function. This can be done using the delivery model options outlined above.
9. The Cabinet Office Guidance sets out the type of **alternative delivery models** for the functions that may be considered.
 - Abolish
 - Move out of central government
 - Commercial model
 - Bring in-house
 - Merge with another body
 - Less formal structure
 - Delivery by a new executive agency
 - Continued delivery by an NDPB
10. Guidance suggests a number of questions for each of these delivery options. These delivery options are not exhaustive nor are the questions for each option, instead they are meant to give the reviewing department some suggestions to approach the review.
11. In respect of the NDNA commitment to review ALBs and the opportunity available to NI Departments to include ALBS in the draft Public Bodies Bill, Departments are asked to take a further step. The Powers of the draft Public Bodies Bill are:-
 - Power to abolish
 - Power to merge
 - Power to modify constitutional arrangements
 - Power to modify funding arrangements
 - Power to modify or transfer functions
12. If Departments seek to include an ALB in the Public Bodies Bill then they must identify which power they intend to use from the above list.

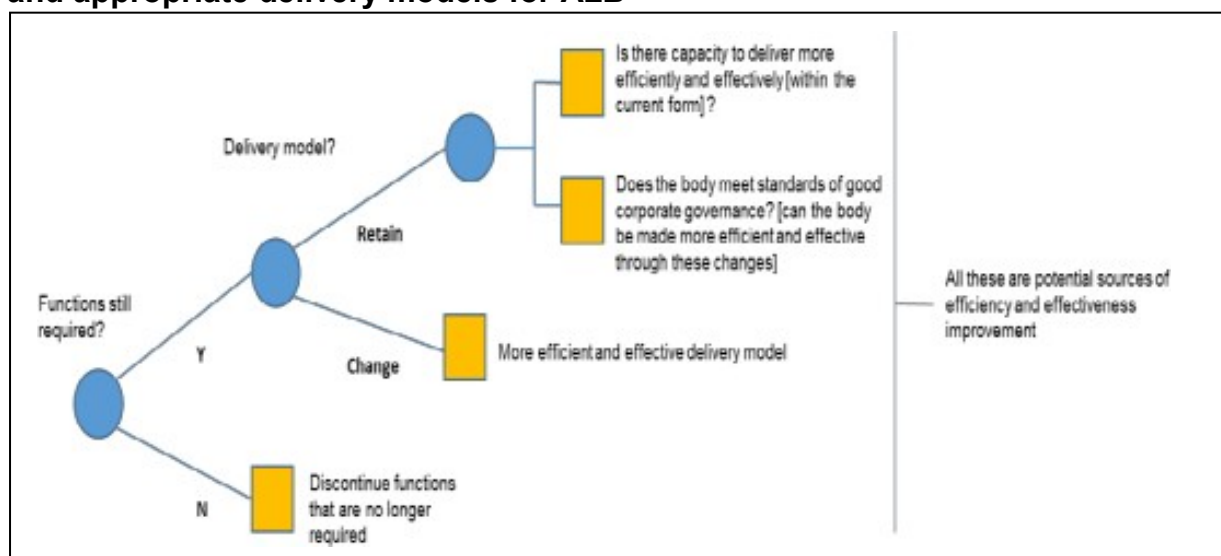
⁵ [Tailored Review Guidance on public bodies -May-2019.pdf \(publishing.service.gov.uk\)](#)

Target benefits

13. Guidance also sets out how best to realise and implement benefits in efficiency and effectiveness. The guidance states,

‘Tailored reviews should be designed to identify real and tangible improvements in the efficiency and effectiveness of the body being reviewed. Improvements in efficiency and effectiveness are part of an integrated approach to benefits realisation.....Figure 1 below demonstrates how the consideration of efficiencies fits into questions around form, function and appropriate delivery models for ALB’

Figure 1: Consideration of efficiencies fits into questions around form, function and appropriate delivery models for ALB’



Source: Cabinet Office Tailored Review Guidance on Public Bodies

14. The guidance states that in undertaking a review, the reviewing department should attempt to identify the following types of benefits:

- Type A – cash releasing or cash generative benefits, for example, an increase in charging or better debt recovery: these benefits should be reflected in immediate cashable savings.
- Type B – efficiencies or improvements in outcomes, for example, greater use of shared services, release of resources to front-line activity: these benefits should result in increased productivity/other improved performance outcomes of which some will be cashable in the short-medium term.
- Type C – wider benefits, for example, improved governance, transparency, accountability, or staff engagement: these benefits may not result in cashable savings immediately, but some may yield or prompt cashable savings in the medium term.⁶

⁶ [Tailored Review Guidance on public bodies -May-2019.pdf \(publishing.service.gov.uk\)](#)

15. In order to help realise and implement the benefits the guidance outlines blockers and how to assess the relationship between the public body under review and different programmes and/or cross functional specialisms, for example digital service structures, property, commercial relationship etc. Where appropriate these must be considered in the context of the review.

16. The Tailored Review Guidance also includes a list of ‘Menu’ of example benefits, which can be found in P.27-P.29 of the guidance.

	Example Benefits	Cash Releasing or income generating	Type of benefit	Examples	Possible Quantitative measures
Efficiency and effectiveness	Greater efficiency in support functions or increased use of shared services	Yes	A or B	The review assesses the body's performance relative to its peers and recommends changes to improve performance.	£ Reduction in workforce or property costs compared to baseline year.
	More efficient use of estate	Yes	A or B	The review assesses the properties occupied and concludes that efficiencies could be generated by implementing hot desking measures, reconfiguring office space or occupying fewer buildings	More efficient and cost-effective use of space (sq.m per FTE), (£/sq.m) or £ reduction in estates contract costs compared to baseline year.
	More efficient and flexible procurement and commercial contracts	Yes	A	Contract renegotiation through a competitive tender may yield cheaper delivery of services. This could include having a diversity of suppliers where this brings an advantage	£ Reduction in costs of Commercial contracts; Reduction in costs of procured commercial goods compared to baseline year.
Purpose, Form and governance	Better alignment of ALB outcomes and objectives to strategic department priorities	Potentially (by focusing activity on value adding or priority areas, or stopping doing things that are not required).	C	The review assesses the success of the body in delivering on its priorities/KPIs and recommends actions to improve performance The review assesses the suitability of the strategy/priorities/KPIs with reference to the department's Strategic Delivery Plan and recommends changes so that they are more closely aligned.	Comparison Between Strategic Delivery Plans between different years showing an improved alignment.

	Stronger internal controls and governance; Better risk management processes	Potentially	C	Review identifies that there is no framework document and recommends that one is produced. Review identifies that the composition of the board does not comply with the principles of good corporate governance, for example, there are no Non-Executive Directors, and recommends changes to address this.	£ Reduction in losses relating to fraud, error and debt
	Improved relationship with sponsor body / OGDs	Potentially (less staff time spent on engaging with ALB as more trust is developed)	C	Review identifies issues in the relationship between the ALB and sponsor department and recommends how this can be improved.	Engagement / relationship index
	Better board effectiveness and NED engagement	Potentially	C	Improved visibility of the body at departmental board Greater involvement and engagement with ALB NEDs.	Number or ratio of NEDs. Feedback from the Chair.