



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

15 April 2020

Minutes

Irish Human Rights and Equality Commission

Extraordinary Meeting

Present:

1. Tony Geoghegan (TG), Acting Chief Commissioner
2. Heydi Foster Breslin (HFB)
3. Frank Conaty (FC)
4. Colm O' Dwyer (COD)
5. Caroline Fennell (CF)
6. Salome Mbugua (SMb)

Apologies:

None.

Closed Session

The Commission met in closed session without the Executive present.

Note:

The primary agenda item for the meeting was to formally sign off on the '*Guidance Note on the Roles and Responsibilities of Chief Commissioner and Director IHREC*' which emanated from the 'Moling Report'.

1. Guidance Note:

As agreed at the closed session meeting of 31/03/20, TG shared the 'Guidance Note' with the IHREC Director and subsequently held a one to one 'zoom' meeting to confirm same. The Director acknowledged the document and its usefulness in clarifying the roles and responsibilities within IHREC's management structure.

A question arose in relation to the timing of the issuing of the document with a new Chief Commissioner due to take up appointment shortly. In this regard, it was noted that its development had taken place over an extended period and that significant expertise and consideration had been given to its preparation. It was also noted that the document was a 'guidance note' and as such was not written in stone and if deemed necessary at some time in the future it could be revised.

The meeting formally ratified the 'Guidance Note on the Roles and Responsibilities of Chief Commissioner and Director of IHREC'.

2. Disability Advisory Committee:

FC noted that the Disability Advisory Committee (DAC) was due to meet next week and that concerns were likely to be raised in relation to documents/guidelines issued by the Department of Health on Ethical Decision Making in the of provision lifesaving treatment in light of the current Covid-19 situation. It was noted that IHREC had not been appraised or consulted in relation to the preparation of these documents.


FC has already linked with the IHREC Director on the matter and IHREC staff are currently researching the matter further in preparation for the upcoming DAC meeting.

A discussion of the matter agreed that any decisions as to how IHREC should address it would be made post the DAC meeting. It was further noted that under the provisions of the Health (Preservation & Protection & other measures in the Public Interest) Act 2020 other similar matters of concern may be arising and that it is important that IHREC are up to speed on developments. It was agreed that the Commission should meet in advance of the next planned Government announcements on the current restrictions for 05/05/20, and that the IHREC legal and policy teams would prepare a scoping document on issues arising, such as the DAC matter, for the meeting. It was agreed the meeting will be held, via zoom, at 2.30p.m. on Friday, 24/04/20.

3. New Commissioner Appointments:

TG informed the meeting that the IHREC Director had been in touch with the Public Appointments Service and was told that the names of the successful candidates had been forwarded to the Department of Justice and Equality for the formal ratification process.

It was agreed that previous notes of closed sessions of IHREC and decisions taken therein should be attached to the minute of this plenary as approved in order to have a clear record of decision-making.



Signed:

Tony Geoghegan
Acting Chief Commissioner

Date: 24 April 2020

Note of Closed Session IHREC 31 March 2020

(In attendance Heydi Foster Breslin, Salome Mbugua, Colm O'Dwyer, Tony Geoghegan, Frank Conaty, Caroline Fennell (Chair))

1. Memo of closed session 21 February 2020 was agreed.
2. ENNHRI
Update was given by CF re ENNHRI Board meetings: Feb 24th March 13th March 27th April 6th (scheduled). There have also been weekly calls with DK. Queries had been raised by ENNHRI Board with regard to ENNHRI Chair and position of IHREC. Following discussion it was agreed that CF would remain as ENNHRI Chair for remainder of IHREC term. It was agreed that continuing the process of rotation among Commissioners, Tony Geoghegan would take over as interim Chair IHREC for 6 weeks.
3. Chief Commissioner & Commissioners – update was given that interviews for 8 Commissioners had taken place and reference checking by PAS was now ongoing.
4. Moling Report:
 - The Director's contract had been signed on 21st Feb 2020. This was welcomed.
 - *Guidance Note Roles and Responsibilities of Chief Commissioner and Director IHREC*
It was noted that these had been revised and were now agreed. As the Guidelines were now ready for formal approval CF and CO'D would proof the document for presentation at a special plenary for formal approval within a week. This will allow for the Guidelines to be shared with the Director.
It was noted that the redacted Moling Report had been sent to the Director who had circulated it to SMT. It was agreed this completed agreed first stages of implementation of Moling Report and work by the sub group (CO'D PC & CF). It was agreed that thanks would be noted to PC at plenary.

Note of Closed Session IHREC 21 February 2020

(In attendance: Heydi Foster Breslin, Salome Mbugua, Paddy Connelly, Colm O'Dwyer, Tony Geoghegan, Caroline Fennell (Chair))

- 1) Memo of closed session IHREC 28 January 2020
Decision taken at that meeting that CF as Acting CC would be IHREC rep and Chair of ENNHRI - since communicated on behalf of all Commissioners to ENNHRI Board. Further agreed that CF would stay on as ENNHRI Chair until CC in post when it would be discussed CC (though another Commissioner would be Acting CC from March 20th).
- 2) (a) ENNHRI – update
ENNHRI Board virtual meeting scheduled for 24 Feb.

(b) Request for financial contribution
Agreed that a once off contribution of €4,000 would be made by IHREC to ENNHRI Solidarity fund.
- 3) Announcement of CC- Press release had issued
Engagement with CC designate in interim- CF to invite SG to attend lunch after next plenary.
- 4) Moling Report:
 - Guidance Note Roles and Responsibilities of CC & Director to be revised in light of discussion and go to next plenary for approval
 - Circulation of redacted report to SMT agreed and delegated to sub group to action

Commission meeting 23 May 2019 IHREC Offices 10 am – 11.20 am

Present: Emily Logan (Chief Commissioner), Patrick Connolly, Sunniva McDonagh, Teresa Blake, Caroline Fennell, Orlagh O'Farrell, Colm O'Dwyer

Teleconference: Ray Murphy, Fidele Mutwarasibo, Heydi Foster, Frank Conaty

Background:

In the course of contract negotiations, an issue has arisen in respect of the precise role and authority of the Director of IHREC. An ad hoc sub-committee of Commissioners including Ray Murphy, Patrick Connolly, Orlagh O'Farrell, Fidele Mutwarasibo, Emily Logan and Siobhán Mullally was set up to examine the issue and both RM and PC have met with and corresponded with the Director over the past few months on behalf of the Commission (copy correspondence was provided to Commissioners by PC).

The position, however, remains that the Director is unhappy with the contract that has been provided to him as, in his view, it does not adequately define the role and, in particular the nature of the relationship between the Director, the Executive/ Managers, the Commission and the Chief Commissioner.

In the circumstances, the sub-committee has recommended that the Commission take independent legal advice on the role and functions of the Director in order to provide clarity to the Director and to the Commission itself. A special meeting of the Commission was held on 23 May 2019 to discuss this recommendation.

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1. The Chief Commissioner indicated that she would not chair the meeting as part of the discussion could be about the interaction between the Director and the Chief Commissioner. It was decided that CO'D should chair the meeting.
2. There was a discussion on the potential for conflict of interest for the Chief Commissioner remaining at the meeting. As the Commission, absent conflicts of interest, makes decisions as a collective, and the discussion was to be about seeking independent legal advice on the role and functions of the Director, it was agreed that it was appropriate for the Chief Commissioner, as a Commissioner, to be present at and contribute to the meeting. It was however also agreed that the Chief Commissioner would absent herself if discussion about the Chief Commissioner's role arose (this did not arise).
3. CO'D thanked RM and PC for their work on the issue.
4. It was noted that in correspondence received from the Director he had emphasised that the issue raised in respect of the contract was **not** that he should have the title CEO but rather one of clarity as to his precise role and authority as Director.

5. It was noted while the 2014 IHREC Act makes specific provision with regard to certain aspects of the Director's role/functions (sections 20, 21 and 22), there are aspects of the inter-relationship between the roles of the Director, the Chief Commissioner, and the Executive which might benefit from further clarification.
6. It was noted by PC that the lack of clarity was causing difficulty in key relationships within the Executive and the Commission and could pose a challenge to the smooth functioning of the organisation.
7. It was noted that the Director has already taken legal advice on his role and functions.
8. In the circumstances, it was decided that the Commission should seek independent advice on the parameters of the role and authority of the Director and on the management structure of IHREC. This advice should be from an independent legal source and should take into account the provisions of the Act, relevant guidelines and codes of conduct for public bodies, the practice in other similar organisations where there is a Director and full time Chair, and adherence to general 'corporate governance' principles and best practice.
9. It was decided that the question posed for the advice should cover the following:
 - a) the role and functions of the Director (role definition);
 - b) the authority of the Director and reporting relationships;
 - c) the management structure within IHREC;
 - d) the nature of the inter-relationship between the roles of Director and Chief Commissioner;
 - e) corporate governance best practice.
10. It was decided that the Commission should, if possible, seek 3 quotes for this advice, 2 from corporate law firms with experience in employment law and governance and 1 from an experienced barrister. The matter should be expedited with advice to be given preferably before the next Commission meeting on 11 June 2019. The recruitment process was delegated to CO'D, PC and CF.
11. It was decided the Director should be provided with a copy of the question posed.
12. The meeting concluded at approximately 11.20.

Actions:

- CO'D, PC and CF to formulate a 'question' for the advisors to answer.
- This question to be distributed to Commissioners for approval ASAP.
- CO'D, PC and CF to brief and recruit the advisors on behalf the Commission
- RM to inform the Director of the question.

C O'Dwyer

Addendum to note on Commission meeting 23 May 2019

**Proposed Question/Brief re the Director's role and authority.
Private and Confidential**

The Commission is seeking independent legal advice in respect of the role, function, and authority of the Director of IHREC.

While the 2014 IHREC Act makes specific provision with regard to certain aspects of the Director's role/functions (sections 20, 21 and 22), the Commission has noted that there are aspects of the inter-relationship between the Director, the Chief Commissioner, the Commission and Heads of section which would benefit from further clarification.

Specifically, the Commission seek advice as to:

- a) the role and functions of the Director (role definition);
- b) the authority of the Director and relevant reporting relationships: (to whom does the Director report and who reports to the Director);
- c) the management structure within IHREC;
- d) the nature of the inter-relationship between the roles of Director and Chief Commissioner;
- e) adherence to corporate governance best practice in the above.

It is envisaged this piece of work will produce a document which will inter alia:

- 1. describe and clarify the role, functions and authority of the Director of IHREC;
- 2. describe and clarify the reporting relationship of the Director to the Commission and to the Chief Commissioner, and Heads of section to the Director;
- 3. set out the communications pathways between the Director, Chief Commissioner and the senior management team;
- 4. examine the provisions of the 2014 Act, relevant guidelines and codes of conduct for public bodies as well as the practice in other similar organisations where there is a Director and full time Chair;
- 5. propose a 'best practice' corporate structure model for IHREC in the context of a full-time Director and a full-time Chief Commissioner;
- 6. provide an organigram reflecting the structure.

This piece of work is being commissioned by the body of IHREC Commissioners.
The successful agency may be required to present their findings to the Commission.