

31 March 2020

Minutes

39th Ordinary Plenary Meeting

Irish Human Rights and Equality Commission

Present:

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

Apologies:

None.

In Attendance:

1. Laurence Bond, Director (LB)
2. Iris Elliott, Head of Policy & Research (IE)
3. Jean O’ Mahony, Head of Strategic Engagement (JOM)
4. Gail Malone, Head of Corporate Services (GM)
5. Michael O’ Neill, Head of Legal (MON)
6. Muireann Ní Thuairisg, Minute Taker

The 39th Ordinary Plenary Meeting of the Irish Human Rights and Equality Commission took place between 10:30am and 2:20pm on 31 March 2020 by video conference.

Closed Session

The Commission met in closed session without the Executive present.

1.1 Apologies, Quorum and Declaration of Interest

No declarations of interest made and no apologies noted. The meeting was quorate.

1.2 Minutes of Previous Meeting

The draft minutes of the 38th Ordinary Plenary Meeting, dated 28 January 2020 were approved, proposed by HFB and seconded by SMB.

1.3 Matters arising not otherwise on the agenda

The UN Committee Against Torture List of Issues submission has been finalised and submitted.

The Preliminary Observations of Garda Síochána (Recording of Images) Bill have been submitted to the Department of Justice and Equality.

We are awaiting further engagement from the Department of Justice and Equality on the draft SI on allocating to IHREC the function of National Anti-Trafficking Rapporteur.

A brief update was provided to the Commission on the status of the Traveller Accommodation Equality Reviews.

A first quarter budget review is in preparation.

We have made a submission to the Citizens Assembly on Gender Equality and are awaiting a response to our request to address the Assembly.

The Commission asked the Director to examine the potential security and privacy risks associated with using the Zoom platform to hold Commission meetings.

1.4 Acting Chief Commissioner Update – Moling Ryan Report

Following on from the closed session, the Commission approved TG to take over from CF as Acting Chief Commissioner. It was also agreed that CF would continue to chair ENNHRI for the remainder of IHREC term.

CF and LB have engaged regularly on general business and on matters arising from the evolving COVID-19 emergency. CF believes IHREC is managing things well in the current circumstances.

CF is chairing ENNHRI board meetings and is in contact with the Secretariat on a regular basis. ENNHRI are in contact with NHRI's across Europe on how they are responding to the COVID-19 emergency.

Arising from the work of the sub group (COD, CF and former Commission member Paddy Connolly) tasked with progressing the Moling Ryan Report, CF noted that:

- the Director's contract had been signed on 21 February;
- a redacted version of the report had been provided to the Senior Management Team (SMT) on 28 February, as had been agreed at a meeting with the SMT on 7 February;
- a guidance note on roles and responsibilities had been prepared from the Moling Report, which would be provided to LB and would be adopted by the Commission at a special meeting to be held within a week to deal with this matter.

LB noted that members of the SMT had said that they had thought that the Commission would be meeting further with them on the report and the Commission agreed to consider this.

The Commission thanked the Director for his engagement throughout the process.

The Commission agreed that the sub-group had therefore completed its initial work plan from the Moling Report. It was also agreed that the Chair would write formally to Paddy Connolly to thank

him for his work in the sub-group and for his important contribution to the work of the Commission throughout his time as a Commissioner.

2.1 Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020

IE, JOM and MON joined the meeting.

The Policy and Research Committee (PRC), at its meeting of 24 March, had proposed that CF as Acting Chief Commissioner should write to the Taoiseach on the importance of protecting Ireland's human rights and equality norms, in responding to the COVID-19 crisis, and indicating the Commission's availability to advise on regulations and related matters. A draft letter had then been approved by all Commissioners.

On 25 March, CF's letter issued to the Taoiseach, copied to the Minister for Health and the Minister for Justice and Equality. On the 30 March, the DJE contacted IHREC and requested observations on draft emergency regulations as a matter of urgency, and the Commission responded, which observations had been circulated.

The Policy and Research Committee had also asked that this general item be an agenda item at the Commission plenary meeting of 31 March, for further discussion of how the Commission should proceed in relation to human rights and equality matters arising in the context of the State response to the COVID-19 crisis.

In the discussion that followed, members noted that, given that IHREC was not consulted on the Act itself, it was important to build on the relationship providing input on regulations. It was also important to keep a watching brief on the implementation of the emergency legislation, sunset clause and its termination, as well as review and monitoring of the implementation of the powers under the regulations. Emergency legislation ultimately has an effect on rights and it is important that IHREC's mandate is upheld.

The Commission also emphasised that it must seek to ensure that the rights of the most vulnerable are upheld while recognising that the Commission does not have a monopoly on human rights and equality issues. Concerns have been raised by NGOs and others about the situation of people in Direct Provision, homeless people, those experiencing domestic abuse, persons with mental health problems, prisoners and others including front line workers. Members also noted the anomalies or unintended consequences that might arise from actions taken, such as the further exclusion of people who are not equipped to operate digitally where access to social welfare and other supports must increasingly be accessed online.

It was agreed that there is a need to engage with civil society, with regulators such as HIQA and the Inspector of Prisons, and with policy makers to try to bring together information and evidence on what the real issues are in the context of the State's response to COVID-19 crisis. The Commission needs to consider how it can be proactive in its approach and needs not only to see what is happening in terms of immediate impact, but also to call to account the long-term implications for society

Summarising the discussion CF said that the Commission needs a multi-layered response and proposed the following steps:

1. Continue influencing regulations;
2. Engage with NGOs and civil society, policy makers and regulators to gather information and identify concerns, to feedback to the Commission to consider where and how it can usefully intervene;
3. Keep under review the legislation, sunset clause and monitor the human rights and equality implications and impact of the legislation

Commission members agreed that these actions would proceed and that the Commission will keep this matter under review.

JOM left the meeting.

2.2 Consultation on 'Police Powers Bill'

This item was discussed at a Policy and Research Committee meeting on 24 March 2020. Following the meeting, a supplementary paper was prepared and circulated to the Commission.

It was agreed the Commission would write to the Department setting out initial high-level themes of concern as identified in the supplementary paper, and indicating that the Commission will consider and further engage with the Heads of Bill when they are published. Members also asked that consideration be given to differential treatment in terms of application and use of the powers involved such as targeting in stop and search procedures that potentially violate rights such as that of bodily integrity.

It was agreed that staff will provide the Department with additional information on the Commission's work to date on matters of relevance to the Bill, and will engage with other stakeholders on their perspectives on the developing legislation.

IE left the meeting.

2.3 Section 41 Own Name Proceedings Guidelines

The draft guidelines had been considered and amended by the Casework Committee at its meeting on 24 March, and the Committee had agreed to recommend the amended draft to the Commission for adoption.

The Commission approved the Section 41 Own Name Proceedings Guidelines.

MON left the meeting.

2.4 Update on Protected Disclosures Policy

GM joined the meeting.

IHREC's policy on Protected Disclosures had been adopted in 2016, and following review, a number of additions and amendments are now proposed.

The revised draft had been tabled at a meeting of the Audit and Risk Committee on 3 March 2020.

The Commission approved the updated policy on Protected Disclosures.

2.5 Update on Committees

a) Audit and Risk

GM updated members on the matters considered at the last meeting of the Audit and Risk Committee (ARC), held on 3 March. The Office of the Comptroller and Auditor General had attended this meeting and in addition to the 2018 Audit Report, it had reviewed the internal audit programme and progress on the implementation of outstanding audit recommendations, and had considered the 2019 Appropriation Account. The ARC had asked that an anti -fraud policy be developed and that work on reviewing the risk register and on risk appetite policy be progressed.

LB outlined SMT work in progress on revising the Risk Register and preparing a draft statement of Risk Appetite for consideration by the Commission and by the ARC. It was agreed that this would be considered at the next ordinary plenary meeting of the Commission.

GM left the meeting.

b) Disability Advisory Committee

The note of the last meeting of the Disability Advisory Committee on 11 February was taken as read. FC reported that the next meeting scheduled for 22 April 2020 would proceed by video conference but with a shorter agenda.

c) Worker Employer Advisory Committee

The note of the last meeting of the Worker Employer Advisory Committee on 13 February was taken as read Commission and taken as read. TG said that he would follow up with staff to determine how best to proceed with the work of the Committee in the current context.

d) Policy and Research Committee

The notes of the last two meetings of the Policy and Research Committee, on 18 February and 24 March respectively, were taken as read. CF noted that the matters arising from the latter meeting had been addressed earlier on the agenda.

e) Casework Committee

The notes of the last two meetings of the Casework Committee, on 28 January and 24 March respectively, were taken as read.

3.1 Director's Update – Business Continuity Plan

CF noted that the Head of Corporate Services would shortly be leaving her position to take up another opportunity elsewhere. LB reported that Mr Niall Kelly would replace GM in the role, on transfer from An Garda Síochána where he is currently Head of Internal Audit (Principal Officer). The Commission requested that a short note on the procedure followed should be circulated.

LB noted that the Business Continuity Plan, Version of 13 March, which had been circulated to the Commission for information, had provided for a structured approach to managing the challenges arising in the context of the COVID-19 situation. Nevertheless, given the need to respond to the

