



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

Minutes of the Irish Human Rights and Equality Commission
(Twenty-Fourth Ordinary Plenary Meeting)
15 March 2018

Present: Ms. Emily Logan, Chief Commissioner (EL); Ms. Teresa Blake (TB); Mr. David Joyce (DJ); Professor Siobhán Mullally (SM); Professor Ray Murphy (RM); Ms. Orlagh O'Farrell (OOF); Dr. Fidèle Mutwarasibo (FM).

Apologies: Ms. Sunniva McDonagh (SMD);

In Attendance: Laurence Bond, Director (LB); Deirdre Toomey (DT); Karen McLaughlin (KMCL) (Agenda Item 3.1); Walter Jayawardene (WJ) and Jean O'Mahony (JOM) (Agenda Item 3.2); Michael O'Neill (MON) (Agenda Item 4.2)

The Twenty Fourth Ordinary Meeting of the Irish Human Rights and Equality Commission took place between 10:30 and 13:22 on 15 March 2018 at 16 – 22 Green Street, Dublin 7.

SECTION 1.0

1.1 Apologies, Quorum and Declaration of Interest

Apologies: Ms. Sunniva McDonagh (SMD).

Declarations of Interest: There were no declarations of interest made in relation to any item on the agenda.

1.2 Minutes of previous Commission Meeting (07.02.18)

The amendments to the Minutes of the Twenty-Second Ordinary Plenary Meeting on the 6th December 2017 were agreed. The minutes were proposed by FM and seconded by RM.

The Minutes of the Extraordinary Meeting of the 9th March 2018 were agreed, proposed by FM and seconded by RM.

Amendments to Item 1.1 of the Twenty-Third Plenary Meeting on 7th February 2018 in relation to Declarations of Interest were agreed as follows (*in italics*):

"SM noted that she was *formerly* a board member of Amnesty International (AI) and is currently a member of the Irish Council for Civil Liberties; TB and DJ *noted that they were previously* board members of ICCL; and RM had been a board member of AI." The amended minutes were proposed by FM and seconded by RM.

1.3 Matters arising, not otherwise on the agenda

It was agreed that MON would join the meeting for Agenda Item 4.2 to brief Commission Members on recent legal cases.

1.4 Update from Chief Commissioner

EL provided an update on a range of matters.

The Joint Committee published a statement on Brexit on 14th March. A copy of the statement had been sent to Mr. Michel Barnier, Chief Negotiator of the EU Taskforce on Article 50 negotiations, and this had been acknowledged with an indication that it would be considered for a response. Follow up contact will be made to arrange a meeting. The tentative date for the next meeting of the Joint Committee is 23rd April.

Following the order in the Supreme Court in the *NHV* case on 9th March, letters were sent to the Minister for Justice and to the Oireachtas Committee on Justice and Equality. The Committee have responded indicating that they will meet IHREC when it has published its policy paper on access to the labour market for individuals seeking international protection. EL suggested inviting Ms Hilka Becker, newly appointed Chairperson of the International Protection Appeals Tribunal to meet Commission Members. This was agreed. [Action 24.01].

A motion was passed on 7th March to ratify the UN Convention on the Rights of People with Disabilities (UNCRPD), with reservations and it will enter into force 30 days after it has been signed in New York by the Tánaiste and Minister for Foreign Affairs and Trade. The Assisted Decision Making Capacity Legislation is due to be enacted and the Equality Miscellaneous Provisions Bill is expected in August. The first report under the UNCRPD will be due in March 2020. Disappointment was expressed at the meeting that the UNCRPD was ratified with reservations and that the Optional Protocol was not ratified.

TB has been nominated to the selection panel for Collaborative Forum in relation to mother and baby homes.

IHREC has been referenced in Oireachtas Debates relating to CRPD; fixed term contracts; equality budgeting (DEPR); financial independence; Employment (Miscellaneous Provisions) Bill 2017 and precarious working hours; OPCAT; education budget in the Irish Prison Service.

It is expected that new Commission Members will be formally appointed before the next plenary meeting.

Proposed plenary dates are 2nd May and 13th June (TBC).

SECTION 2.0

2.1 Director's Report

The Director's Report had been circulated in advance of the meeting and was taken as read. LB answered questions in relation to the content of the report, and updated Commission members on a range of matters.

Following Counsel opinion, proposals for a number of equality reviews are being finalised.

The Women in Prison project is proceeding well and is being led by Michael Donnellan, Director General of the Irish Prison Service.

The Department of Justice and Equality had asked for a meeting to discuss its proposed wage transparency legislation.

The Department of Public Expenditure and Reform (DPER) is carrying out a pilot on gender budgeting analysis and is setting up an expert advisory group which will include the Director.

The C&AG is currently carrying out fieldwork in IHREC on the 2017 Appropriation Accounts which are due to be submitted by the end of March.

The Finance Committee and the Audit & Risk Committee will be formally re-established when new Commission Members have been appointed. LB proposed that an ad hoc meeting should take place in the meantime to provide a briefing and update. It was agreed to call a meeting for remaining Commission Members of both committees and other interested Members. [Action 24.02]

Three staff members have recently left the Commission and moved on to other posts. In discussion it was noted that exit interviews have been carried out and these will be analysed. The expected results of the civil service workplace survey related to IHREC will also provide valuable information. Limited opportunities for advancement within IHREC because of the size of the organisation was identified as an issue. It was agreed to include a list of current staff and the current organogram on the portal. [Action 24.03]

Planned recruitment had been delayed pending clarification from D/per on the application to IHREC of standard Civil Service recruitment ratios which require a sequence of open, internal and interdepartmental competitions. The requirement for this clarification – particularly on interdepartmental recruitment – arose from our engagement last autumn with staff unions in the IHREC Council. D/per have recently responded stating that IHREC is subject to the requirement for interdepartmental recruitment. This was not IHREC's previous understanding and it has significant implications for future recruitment. In discussion the role of the Paris Principles and ECRI standards in making a case for open recruitment as a safeguard for independence was noted.

It was clarified that next steps on progressing issues related to family reunification is to seek a meeting with the Oireachtas following submission of IHREC's policy paper.

It was confirmed that further guidance on the Duty is in preparation, though the timeframe for completing this has been extended in the context of staff changes and to ensure that it is informed by the experience of the pilot projects.

The importance of keeping informed about national policy developments such as the *National Planning Framework: Ireland 2040 Our Plan* and the *National Development Plan (NDP)* was noted, and it was noted that the NDP does not reference equality budgeting or the Duty. Some discussion took place about housing and emerging issues, including mortgages in distress in the context of the Duty, considering issues such as the position of children. Reference was also made to the Commission's prioritising the State's role, for example in relation to Traveller accommodation and homelessness.

LB noted that in addition to the developments set out in the Directors report, staff are engaged in the full range of actions set out in the annual work plan and that staff capacity is an issue, particularly in the context of current vacancies.

SECTION 3.0

3.1 Submission: Deprivation of Liberty

KMcL joined the meeting for this item.

The technical nature of the Heads of Bill was noted. While the Policy Paper necessarily engaged with these heads there also needed to be an introductory reference to the broader framework and standards that apply in the context of the UNCRPD, and the Commissions concern about the CRPD compliance of these proposals.

The Commission were updated on the background to the Equality/Disability (Miscellaneous Provisions) Bill Members queries were addressed.

Commission Members acknowledged the complexity of the issue and complemented the work on the Policy Paper in terms of the level of depth and analysis.

It was agreed to submit the Paper to the Department of Health consultation subject to adding an introductory paragraph noting the Commissions concern about the CRPD compliance of these proposals. [Action 24.04]

3.2 Policy Paper: Access to the Labour Market

WJ and JOM joined the meeting for this item.

The Commission welcomed the paper positively and it was agreed subject to suggested changes: to strengthen the recommendation on interim measures by deleting the final recommendation (p. 10) and combining it with the first recommendation on interim measures; to replace the reference to 'treaty' in the first recommendation on page 14 with 'its international human rights obligations'; to remove the reference to 'more generous' and replace it with 'wider' in the first recommendation at the top of page 21; change the wording in the recommendation at the top of p. 21 to reflect the UNHCR formulation in relation to granting access to the labour market 'not later than 6 months after date of lodging an application for international protection'; to include a recommendation on page 18, related to administrative barriers, on the obligation on the State to disseminate information to asylum seekers on rights in the work place, and in the context of assistance available in Vocational training referred to on page 21, the need to expand English language training and supports for English language tuition programme; to add a recommendation and statement on ensuring effective safeguards against discrimination on grounds of 'race' or ethnicity or migration status, recognising the particular vulnerability of asylum seekers in the work place.

It was agreed to retain the recommendation in relation to carrying out a survey of skills to ensure that access issues to the labour market can be assessed. The importance of ensuring that people have access to basic information and the potential role of the Commission was discussed. It was confirmed that the next step is to seek to meet the Oireachtas Committee.

SECTION 4.0

4.1 Recruitment Process for Commission members

EL referred to correspondence on the recruitment process from Ms Fiona Tierney , CEO of PAS, which stated that : Pas, in agreement with the Department of Justice and Equality (DJE), had followed a process in line with that for appointments to State boards generally; the inclusion of the Chief Commissioner on the selection panel was in line with this process where the Chairperson is actively involved in the selection of members; where a candidate is known to a selection panel member, their assessment of that candidate is only considered after other panel members have given their assessment; candidates are only assessed on the information provided through the section process; and a Pas representative is present to oversee the conduct of the process.

EL indicated that she also took account of relevant practice elsewhere such as the NIHR, and the fact that in 2014 Commission members had been involved in developing the job description and selection criteria for appointment of the Chief Commissioner. She noted that she had not discussed the recruitment process with Commission members because there are PAS confidentiality requirements and because she felt there was a risk of a conflict of interest given that a number of members had indicated their candidacy in addition to the possibility of knowing candidates.

Three documents were forwarded in response to the request from the DJE for input on the recruitment process: the IHREC Act, the Commission's Strategy Statement and the 'Role of the Commission' document which had been approved on 11 April 2017 and which the Commission had agreed would serve as guidance in the selection competition. Additional comments were made by the Chief Commissioner that related to the strengths of the Commission. EL noted that in referring to capacity on corporate governance she was conscious of the requirement to have a Finance Committee and an Audit and Risk Committee and that the matter of capacity had previously been raised by the external Chair of the Audit Committee. However, at no time had she suggested that corporate governance or financial skills be given more weighting than other skills. In conclusion EL noted that while she sent an internal email to her private secretary on the matter, she had no contact with the relevant DoJE official.

The Commission were reminded that the Director had met with PAS and the Department in early September. He noted that he had provided comments on a draft recruitment booklet, correcting some factual errors about the Commission and querying the drafts relative emphasis on corporate criteria.

In the subsequent discussion some members indicated that they had assumed that the Chief Commissioner would be involved in the recruitment process, and noted that this would be normal elsewhere such as in the case of the NIHRC. Others had not assumed this and, in some cases, were of the view that there should not be direct Commission involvement in the selection process. A number of members stated that there had been insufficient communication and transparency about this aspect of the process.

Several members again expressed concern about the degree of emphasis on corporate skills and experience within the selection criteria for Commission membership. Some members were also concerned at specific references in the email of July 14th, 2017, in particular the comment that the Commission had sufficient skills in gender equality and media. A number of members felt that the Commission as a whole should have been involved in agreeing any advice on selection criteria from the Commission to the Department.

It was agreed that a lack of communication had given rise to some confusion, misunderstanding and suspicion. EL said that she had acted in the interests of the Commission and accepted that a lack of communication had contributed to suspicion on the matter and for that she apologised.

It was agreed that it would be important that the Commission be given an opportunity to communicate with PAS. This would include the question of future involvement of the Commission, determining the selection criteria, and whether the application of the standard process for the recruitment of members of State Boards is appropriate for appointments to the Commission. It was agreed that a meeting should be sought with PAS to discuss these matters. It was also agreed that the Commission would give further consideration to its role in any future recruitment process in following the PAS meeting and in advance of any future recruitment.

4.2 Any other business

DJ stated his concern that a scoping paper on the potential for an inquiry into emergency accommodation in the State, which he understood was due from the Executive, had not been put forward for consideration to date. LB agreed to review previous plenary minutes to provide clarity on the issue. [Action 24.05]

MON joined the meeting and updated the Commission [REDACTED]
[REDACTED]

MON also updated Commission on significant judgements [REDACTED]
[REDACTED]

Date of Next Meeting

The proposed date for the 25th Ordinary Meeting of the Irish Human Rights and Equality Commission is the 2nd May 2018 (TBC) at 10:30.

Close

There being no other business, the meeting concluded at 13:22.

Signed: Emily Logan

Date: 9 May 2018

Emily Logan, Chief Commissioner