



18th December 2023

262nd COMMISSION MEETING
Held in the Commission's Offices,
Alfred House, 19-21 Alfred Street, Belfast,
BT2 8ED and via Teams

Present: Alyson Kilpatrick
Helen Henderson
Jonathan Kearney
Stephen White
Justin Kouame
David Lavery
Sean Doherty, Independent Chair of the Audit & Risk Management Committee (item 6)

In attendance: David Russell, Chief Executive
Rebecca Magee, Executive Assistant to the Chief Commissioner and Chief Executive
Rhyannon Blythe, Director (Legal Services)
Colin Caughey, Director (Advice to Government, Research and Investigations)
Lorraine Hamill, Director (Finance, Personnel & Corporate Affairs)
Claire Martin, Director (Engagement and Communications)
Éilís Haughey, Director (Human Rights after EU Withdrawal)
Vivienne Fitzroy, Boardroom Apprentice

1. Apologies and Declarations of Interest

- 1.1 There were no apologies received and no declarations of interest.

2. Draft Minutes of the 261st Commission meeting

- 2.1 The minutes of the 261st Commission meeting held on 27th November 2023 were approved following a minor amendment.

Action: Minutes of the 261st Commission meeting to be uploaded to the website.

3. Application for Assistance

- 3.1 The Director (Legal Services) presented Commissioners with the Application for Assistance McM (in respect of continuing healthcare). Commissioners discussed the application and agreed to not authorise the exercise of legal powers to apply to the Court to intervene in this case and agree to maintain a watching brief on the progress of proceedings.

4. Updates

- 4.1 Commissioner Henderson reported on the IMNI forum meeting and the IMNI Joint Committee meeting which took place on 28th November.

Action: Chief Commissioners from both Commissions to discuss a thank you letter to the outgoing Chair of the forum.

- 4.2 Commissioner White reported on the Dedicated Mechanism Three Commission meeting that took place in Dublin on 6th December.

- 4.3 The Director (Legal Services) provided an update on the Legal function which included:

- OIFET Tribunal (anonymised)- the Commission was requested to intervene in. This case has reporting restrictions and is anonymised. This case involved an application for anonymity before the Industrial Tribunal from an individual who was criticised in a judgment in 2016, following a finding of discrimination and harassment on the grounds of sexual orientation. The NIHRC entered written submissions on the relevant human rights framework under the HRA - which

required the Court to balance A8 and A10 rights. The ECNI also intervened separately and adopted our submissions before the Tribunal. The Tribunal refused the application on the basis that the balancing exercise is not in the applicant's favour - as they were unable to provide sufficient evidence of why the Tribunal should depart from the principle of open justice.

The Tribunal thanked the Commission for its intervention and answers at hearing. Although we only entered written submissions, and did not avail of oral submissions, HW was asked a number of questions by the judge.

Action: A full impact report is being prepared and will be shared with Commissioners in January for information, alongside the anonymised judgment.

- SPUC (Challenge to the Abortion Regulations 2021): The UKSC has also published its decision in the SPUC appeal. It has refused leave on the basis that the application had no arguable point of law. Therefore, the Court of Appeal decision will stand. There is nothing further for the Commission to do in respect of this case - unless the applicant seeks to issue a fresh legal challenge.
- JR123 (Rehabilitation of Offenders Order): The UKSC has granted JR123 permission to appeal. It will be listed for 1 day moving forwards and we will provide a more detailed update to Commissioners once this information becomes available. We are liaising with counsel and the client.

4.4 The Chief Executive updated Commissioners on:

- two complaints that have been made against the Commission to the Information Commissioners' Office. One is based on the RSE Investigation researchers, and the other is based on a Casework issue. Both are receiving attention and further information will be shared in due course.
- The Terms of Reference for the Baseline Review panel have been approved by Officials and they are now with the Secretary of State. The Chief Executive thanked Commissioners for their timely responses.

5. Any other business

5.1 Nothing to report.

6. Report from the Independent Chair of the Audit & Risk Management Committee

- 6.1 Commissioners welcomed Sean Donaghy, Independent Chair of the Audit and Risk Management Committee to the meeting and thanked him for his work.
- 6.2 The Chair of the Audit and Risk Management Committee provided Commissioners with a breakdown of the work of the Audit and Risk Management Committee for 2023.
- 6.3 The Chair of the Audit and Risk Management Committee raised the issue of the Committee being a Commissioner short following the departure of Commissioner Rooney. Commissioners agreed that they would wait until the recruitment had taken place for the new Commissioner before a decision on membership would be made.

Action: Decision on Audit & Risk Management Committee membership to be agreed following recruitment of the new Commissioner.

The meeting closed at 11:15am