

MINUTES OF THE 59TH COMMISSION MEETING

HELD AT 2.00 PM ON MONDAY 10 NOVEMBER 2003

IN THE OFFICES OF THE NIHRC, TEMPLE COURT, BELFAST

Present: Brice Dickson, Chief Commissioner
Margaret-Ann Dinsmore (*from 2.50 pm*)
Tom Donnelly
Christine Eames
Harold Good
Tom Hadden
Kevin McLaughlin (*by telephone*)

In Attendance: Paddy Sloan, Chief Executive.

1.0 Agenda

1.1 The proposed agenda was agreed.

2.0 Minutes

2.1 The minutes of the 58th Commission meeting were agreed as accurate, subject to the addition of the time at which the meeting ended, 6.00 pm.

3.0 Matters Arising

3.1 One or two Commissioners expressed concern that the review and planning day spent at Malone House was not the best use of Commissioners' time. It was agreed that in future such planning sessions should be structured around a lunch or dinner and should last no more than two to three hours.

3.2 Commissioners are still awaiting a response to their request to meet with the Minister, John Spellar and with the Secretary of State, Paul Murphy. It was agreed that such meetings should be sought after the election to discuss issues such as the appointment of new Commissioners, the government's response to the Commission's Review of Powers, progress with the current action plan and the proposed political roundtable on the Bill of Rights.

3.3 No further communication had been received from the Department of Foreign Affairs regarding a meeting with the Irish Foreign Minister, Brian Cowen. The Commission did meet with his officials but there has been no progress on a meeting with the Minister. The Chief Commissioner agreed to explore the option of a joint meeting with the Irish Human Rights Commission and the Minister on the potential Charter of Rights for the island of Ireland. If that is

not deemed useful by colleagues at the IHRC, the Chief Commissioner will pursue a meeting between the NIHRC and Mr Cowen.

- 3.4 With respect to the proposal that a member of the administrative staff should attend Commission meetings to assist with minute taking, the Chief Executive informed Commissioners that none of the current administrative staff was able to do so but that this was being kept under review in relation to the appointment of new posts.

4.0 Chief Commissioner's Report

- 4.1 It was reported that Dr Chris McGimpsey had resigned from the Commission as a result of his standing for election as a Member of the Northern Ireland Assembly. Despite positive press releases from both the Commission and Dr McGimpsey, there had been very little coverage of this.

4.2 "Withdrawn" Commissioners

- 4.2.1 The Chief Commissioner met with withdrawn Commissioners Paddy Kelly and Frank McGuinness for approximately 50 minutes on 5 November 2003 to discuss their position. Paddy and Frank had to leave due to other commitments before the discussion was complete. They will inform the Chief Commissioner if the meeting can be reconvened.

- 4.2.2 The Commission's handling of the Holy Cross case is a major grievance of the two Commissioners, who feel that the Commission has not fully explored their concerns.

- 4.2.3 The action plan is not considered by them to be sufficiently reassuring that should divisions similar to that in the Holy Cross case arise within the Commission again, individual Commissioners might not react in a similar way.

- 4.2.4 Commissioners discussed their position and agreed that whilst the action plan had been published and cannot therefore be changed, the Commission remains open to discussion of any of the points made in it.

- 4.2.5 It was also agreed that it was important for the Commissioners to meet with Frank and Paddy to discuss both the action plan and their perspective on the Holy Cross case and how future work is managed.

- 4.2.6 Commissioners agreed that the Chief Commissioner should invite the two withdrawn Commissioners to meet with all Commissioners to discuss their particular concerns and to look at the paper currently being considered on dealing with potential future crises similar to the Holy Cross situation.

- 4.2.7 It was suggested by the Chief Commissioner that should such a meeting take place it should be chaired by Tom Hadden, but no decision was taken.

4.2.8 The “withdrawn” status of the two Commissioners is an issue for the Northern Ireland Office. It was agreed that, for the time being at least, Commission papers should continue to be circulated to the two withdrawn Commissioners.

4.3 Action Plan

4.3.1 The Chief Commissioner has drawn up an initial draft of a response to the Joint Committee’s report which requires further work, to be completed in December. There is no formal expectation by the Joint Committee of a response from the Commission although they do expect a response from government.

4.3.2 The Commission will meet with the New York Comptroller, Alan Hevesi, to establish contact and discuss his comments made in the media and to the two governments about the Commission during the summer period. Commissioners attending will include the Chief Commissioner, Tom Donnelly, Margaret-Ann Dinsmore and Harold Good.

4.4 Conferences to discuss QUB research

4.4.1 Conferences took place in Belfast on 31 October and in London on 1 November at which the interim findings of research conducted on the effectiveness of the Commission, primarily carried out by Professor Stephen Livingstone and Dr Rachel Murray, were presented.

4.4.2 The interim report released in Belfast on 31 October was withdrawn by the researchers prior to the meeting in London the next day. For the conference on 31 October the Chief Commissioner prepared and spoke to a paper challenging the accuracy and assumptions behind a great many points in the interim report. The Commission received considerable support as well as criticism at the Belfast conference and was spoken off very highly by a number of contributors at the London conference.

4.4.3 Any future report will be sent to the Commission in advance of publication.

4.4.4 Commissioners who attended the Belfast conference congratulated the Chief Commissioner on his analysis and presentation.

4.4.5 The Chief Executive urged Commissioners to consider the research carefully and to extract from it any positive and constructive advice. The research is intended to be a comparative study with the South African Human Rights Commission and some useful guidance may emerge.

4.5 Submissions – A Shared Future and Luce Review

Submissions on the community relations consultation document, *A Shared Future*, and a revised response to the Luce Review on coroners are still being finalised and will be submitted later in the month.

- 4.6 There was a brief discussion regarding the meetings with the political parties held in October on the action plan. Comments from Sinn Fein have not as yet been received.
- 4.7 A meeting was held with Gerry Mulligan of OFM/DFM to discuss human rights training for staff in his department.
- 4.8 The Chief Commissioner clarified that the appraisal process for Commissioners being undertaken by him was not for the purpose of a formal report to the NIO. The exercise is largely self appraisal to provide support to Commissioners.

At 2.50 pm Margaret-Ann Dinsmore joined the meeting.

- 4.9 There followed some discussion regarding dates of future Commission meetings. Tom Hadden will be representing the Commission at a UN event in Geneva on 8 December and the Chief Commissioner will possibly be in New Zealand on the date of the February meeting, also at a UN conference. The December meeting will go ahead as planned on 8 December and the date of the meeting scheduled for February will be reviewed in January.

5.0 Chief Executive's Report

- 5.1 The Chief Executive's report and attached financial report were noted by Commissioners.
- 5.2 The recent fire risk assessment report was discussed briefly and it was noted that a disability audit of the premises will be carried out prior to making any commitment to secure the lease of the entire building at Temple Court.

Commissioners expressed their commitment to staying in Temple Court if at all possible and encouraged an investigation of whatever fire or disability alterations are required to remain in this building in preference to moving to alternative premises.

- 5.3 Notes of the Commission Review Day of 27 October 2003 held at Malone House are to be circulated to all Commissioners.
- 5.4 The high cost of insurance to the Commission is to be further explored. The Chief Executive is to seek quotes from other brokers and to pursue the option of cover through the Civil Service.
- 5.5 Anomalies in bills of costs for Casework are still being investigated and will be reported to the Commission when resolved.

6.0 Visit of the Council of Europe Experts

- 6.1 The Chief Commissioner had prepared a brief information paper describing the nature of the contact the Commission has had with both the OSCE and the Council of Europe relating to the Bill of Rights, with particular reference to minority rights. The paper concluded with key points from the debriefing session between the Council of Europe Experts and the Chief Executive and Chief Commissioner on 24 October 2003.
- 6.2 Commissioners found the paper very helpful both in providing a history of contact with the OSCE and the Council of Europe and in providing an explanation of the community/minority debate.
- 6.3 The Chief Commissioner had met with the UK Ambassador designate to the OSCE, Mr Colin Munro who had explained links between the Council of Europe and the OSCE. Mr Munro suggested that the High Commissioner for Minorities in the OSCE should be invited to Northern Ireland. Commissioners considered this as a possibility for some future stage in the process but not at this point in time.
- 6.4 The Chief Executive was thanked for her work in organising the visit of the Council of Europe Experts to Belfast.
- 6.5 The key points identified in the paper from the debriefing session are speculative only with no commitment having been given at this point in time by the Experts on either the content or format of their eventual comments.
- 6.6 A letter had however subsequently been received by the Chief Commissioner from the Director of Human Rights at the Council of Europe, Monsieur Pierre Imbert, thanking the Commission for hosting the mission and confirming that the Experts will provide written comments early in December.
- 6.7 It was agreed that the paper presented by the Chief Commissioner should be revised for more public use and posted on the Commission's website.

7.0 Interim Paper on a Bill of Rights

- 7.1 The Chief Commissioner tabled and spoke to a framework document describing the proposed tone and structure of the interim paper currently under preparation.
- 7.2 The interim paper will not be a consultation document in the way that the 2001 document was. Commissioners will however be happy to take views on the document once it is in the public domain.
- 7.3 There was concern that in the proposed structure some rights were being categorised as "others", which could be interpreted as implying a lesser importance. It was agreed that more needed to be said about

identity/community, equality and non-discrimination, social and economic rights and possibly language rights.

At 3.30 pm Miriam Titterton joined the meeting.

- 7.4 It was proposed that the document might run to twelve chapters, including chapters on democratic rights, justice, education and language, vulnerable groups, and enforcement.
- 7.5 There was some discussion regarding the timeframe for publication of this document. It will take six weeks from agreeing the text to producing the published document. However any advance text which may, or may not, be circulated to the political roundtable does not need to be in published form. Ideally Commissioners would like the document to be published by March 2004.
- 7.6 Commissioners would like to have an agreed initial text early in January 2004. The Chief Commissioner will prioritise drafting this document and circulate it to Commissioners.

At 3.45 pm Kevin McLaughlin left the meeting and Miriam Titterton left the meeting.

The Commission broke for tea.

The Commission meeting reconvened at 4.05 pm and Edel Teague joined the meeting.

8.0 Dealing with future crises like Holy Cross

- 8.1 A discussion paper prepared by staff was considered by Commissioners. The paper had been initiated by the Education Committee and had then been reviewed at various stages by staff and the Chief Commissioner. The purpose of the document is to seek to be better prepared to deal with any future similar situations similar to the Holy Cross scenario, and to ensure that external expectations of the role of the Commission are realistically addressed. Commissioners agreed that it is not possible to predict the particular circumstances of such situations in advance. However the procedure to deal with situations as they arise should start with the Commission's agreed strategy. Key policy, strategy and planning issues include those of dealing with non state abuses and monitoring public order situations.
- 8.2 It was suggested that some work should be carried out to review the role of NHRIs in this area. This could take the form of legal action, conflict resolution or independent monitoring or a combination of these three roles.
- 8.3 The role of the Commission as an independent monitor of public order situations was discussed. Limitations of resources and the need for appropriate skills training were considered. The need to separate mediation

and monitoring roles was agreed. Reference was made to the second Council of Europe Roundtable of NHRIs which looked at the role of human rights institutions in conflict resolution.

- 8.4 It was agreed that the individual staff teams would consider how the proposals in this paper could be taken forward within the current strategic plan framework. The outcome of their discussions will be considered by the full Commission.
- 8.5 Tom Hadden agreed to prepare a range of options for the engagement of the Commission in this area of work. Commissioners agreed to return to the options at a future Commission meeting.
- 8.6 Tom Hadden, Linda Moore and Edel Teague will consult regarding a revised paper and will liaise with the Chief Executive to reduce the recommendations to focus on the decisions that need to be taken by Commissioners with respect to policy and strategy to direct future work.

At 4.45 pm Edel Teague left the meeting.

- 8.7 Commissioners expressed concern that the two withdrawn Commissioners were not part of this debate. It was agreed to proceed with the consideration of the paper and to ask Paddy and Frank to contribute should they wish to meet with their colleagues again.

9.0 Regulations on Sexual Orientation Discrimination

- 9.1 In June 2003 the UK Parliament agreed the Employment Equality (Sexual Orientation) Regulations 2003. The Regulations ban discrimination on grounds of sexual orientation in employment and training and extend to England, Wales and Scotland. Draft Northern Ireland Regulations were circulated for limited consultation by OFM/DFM, which consultation did not include the NIHRC. The Chief Commissioner wrote to OFM/DFM and there is now an opportunity to comment by 14 November on these proposals. The proposal in the draft Northern Ireland Regulations is to provide the same direction as the Regulations applying in England, Wales and Scotland.
- 9.2 It was recommended that the Commission support the normal exemption seen in anti-discrimination legislation, namely where there is a Genuine Occupational Requirement.
- 9.3 A further exemption is however included in Paragraph 8(3) of the proposed Regulations which, it was proposed, the Commission should say is unnecessary as a Genuine Occupational Requirement should cover any appropriate exemptions.
- 9.4 There was some discussion of whether this additional exemption was simply an extension of the Genuine Occupational Requirement.

- 9.5 A particular clause at Paragraph 8(3)(b)(ii) (“*because of the nature of the employment and the context in which it is carried out, so as to avoid conflicting with the strongly held religious convictions of a significant number of the religions’ followers*”) was considered by most Commissioners to be too broad.
- 9.6 The Commission therefore accepted Paragraph 8(3), in addition to the Genuine Occupational Requirement exemption, with the exclusion of clause 7(3)(b)(ii).
- 9.7 One Commissioner wished to retain that clause but amend it to read “strongly held beliefs” as opposed to “strongly held religious convictions”.

10.0 Commission position on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

- 10.1 A joint submission by non governmental organisations, human rights institutions and civil society groups pertaining to the deliberations of the UN’s Commission on Human Rights’ inter-sessional working group established to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights was agreed by the Commission. This document is a product of a network of economic, social and cultural rights NGOs and human rights institutions and allows for complaints to be taken regarding ICESCR violations.

11.0 The Commission’s Working Groups

- 11.1 A paper was tabled by the Chief Commissioner developing the October 2003 Commission decision to reduce the number of Commission Committees to two on a six month experimental basis.
- 11.2 The corollary of that decision was that a range of working groups would be established whose terms of reference and focus of work needed to be agreed.
- 11.3 Following considerable discussion it was agreed that in addition to the Casework Committee and the Finance and General Purposes Committee, which were agreed to be retained at the October 2003 Commission meeting, the Legislation and Policy Committee would also be retained for a further six month experimental period. This Committee meets bi-monthly and is chaired by Margaret-Ann Dinsmore.
- 11.4 All other recommendations included in the working group paper were agreed by Commissioners, including the opportunity to invite external advisors to join working groups on particular issues.
- 11.5 Working groups would be established on an *ad hoc* basis according to the current priorities of the Commission.

For example:

Working Group on Policing and Criminal Justice
Working Group on Racism
Working Group on Articles 2 and 3 of the ECHR
Working Group on Vulnerable Groups
Working Group on Equality

- 11.6 The effectiveness of the revised system will be reviewed in six months time and a further short discussion will take place at the December Commission meeting.

12.0 Report of work on policing and criminal justice

- 12.1 This paper is to be renumbered 59.8.
- 12.2 The paper prepared by the Chief Commissioner was noted.
- 12.3 ACC Sam Kinkaid's successor as the PSNI's "Human Rights Champion" is Judith Gillespie.
- 12.4 At present the judicial review of the Prison Service, following the lack of information provided to the Commission on the investigations into the deaths in Maghaberry of Mark Fulton and Annie Kelly, will run despite the fact that redacted versions of the reports have been provided. These redactions have removed a significant amount of important information.
- 12.5 The Chief Commissioner will represent the Commission at a UN workshop on Administration of Justice in Copenhagen on 13/14 November 2003.
- 12.6 On 8/9 December 2003 Tom Hadden will represent the Commission at a UN workshop on best practice to combat impunity, in Geneva.

13.0 Staff Reports

- 13.1 Casework
- 13.1.1 Staff were congratulated on the high standard of Casework minutes and reports.
- 13.2 Bill of Rights – the report was noted.
- 13.3 Education – the report noted.
- 13.4 Information – the report was noted.

13.5 Investigations

13.5.1 A paper on transsexual rights will be considered at the December Commission meeting.

13.5.2 The joint research with Help the Aged and OFM/DFM into the Rights of Older People in the Health Service requires final editing, which is currently being arranged.

13.5.3 Christine Eames is anxious to have sight of the final text of the Mental Health research to contribute to her work with the Mental Health Review Team. This report should be ready within a month and the Investigation Worker will liaise with Christine on the text.

13.6 Legislation and Policy – the report was noted.

14.0 Any other business

14.1 The Chief Commissioner is meeting separately with Lord Laird and Jane Winter of British Irish Rights Watch in London in December.

14.2 A meeting with the Children's Commissioner Nigel Williams has been rearranged for 19 December.

14.3 Harold Good as Chair of the Committee for Victims represented the Commission at the launch in Westminster of research conducted for the Johnathan Ball Tim Parry Trust in Warrington and is planning a further visit to this organisation.

14.4 Christmas leave arrangements for staff were discussed and Commissioners approved an additional day's leave over the Christmas period. The office will be closed on 24, 25 and 26 December inclusive and on 1 and 2 January 2004.

14.5 There being no other business the meeting closed at 6.15 pm.