

MINUTES OF THE 65TH COMMISSION MEETING

HELD AT 1.30 PM ON MONDAY 14 JUNE 2004

IN THE OFFICES OF THE NIHRC, TEMPLE COURT, BELFAST

Present: Brice Dickson, Chief Commissioner
Margaret-Ann Dinsmore
Tom Donnelly
Christine Eames (from 2pm)
Tom Hadden

In Attendance: Paddy Sloan, Chief Executive

Apologies: Kevin McLaughlin

1.0 Agenda

1.1 The agenda as proposed was agreed.

2.0 Minutes (HRC 65.1)

2.1 The Minutes of the 64th Commission meeting of 5th April 2004 were agreed as an accurate record.

3.0 Matters Arising

3.1 Re minute 4.1.1, the Chief Commissioner confirmed that he had written to the Northern Ireland Office regarding the current position of Patricia Kelly. A meeting is scheduled with Joe Pilling on 29th June 2004.

3.2 Re minute 5.5.1, the Chief Executive is currently negotiating through the Valuation and Lands Agency regarding a revised rent to apply to the whole building.

3.3. Re minute 7.1, the Chief Commissioner confirmed that the Commission is about to lodge proceedings against the Northern Ireland Office regarding Commission access to the Rathgael Centre for Children and Young People in order to carry out further research. Counsel has been briefed and the application is due to be presented this week, although the case may not be heard until September. The Commission agreed to review its position on this case in September.

- 3.4 Re minute 12.1, a meeting for Commissioners and staff with Prof Tony McGleenan from the University of Ulster, will be arranged shortly to discuss the report on Medical Negligence which he prepared for the Commission. Christine Eames and Margaret-Ann Dinsmore want to be involved in this meeting.
- 3.5 Re minute 16.4, a date is to be fixed for a meeting of the working group on conflict situations. This will involve Christine Eames and Tom Hadden.
- 3.6 Re minute 18.3, Kevin McLaughlin has circulated a summary report from the internet of the two week meeting on the UN Convention on Disability in New York. The next meeting in New York is planned for 23rd August to 3rd September 2004. Paddy Sloan agreed to speak to Alpha Connelly with regard to obtaining a report from William Binchy on the recent New York Session, as the internet document is complex.
- 3.7 Re minute 21.1, a date for a meeting with the British-Irish Inter-Parliamentary Body, originally planned for 28th June, is being rearranged at the request of that Body.

4.0 Chief Commissioner's Report (HRC 64.2)

- 4.1 The Chief Commissioner spoke to his written report and highlighted the following points.
- 4.2 The British and Irish governments met to discuss the appointment of new Commissioners and agreed to go ahead with advertising these positions. The Chief Commissioner confirmed that the first advert appeared in the Sunday Times on 13th June and that the adverts would appear locally this week. It was confirmed that the closing date is 16th July 2004. It was noted that the criteria for the position of Chief Commissioner include a background in human rights.
- 4.3 A date still needs to be arranged for a meeting of the new Education and Research Committee. 'Relatives for Justice' have not yet responded to a request that they sit on the Commission's Victims' Rights Working Group. In the interim we have written to the Pat Finucane Centre to ask if they wish to participate in the Group.
- 4.4 Comments were requested on a draft article (tabled) for the Belfast Telegraph summarising the outcome of the Commission's latest Opinion Survey. It was agreed that a reference to withdrawals from the Commission should be included.
- 4.5 The Chief Commissioner confirmed that he had written to the Independent Monitoring Commission regarding their recent report. A copy of their response was tabled. Their letter distinguishes between membership of and links to unlawful groups and differs somewhat from the paragraph in their original report.

- It was agreed that the Chief Commissioner should write back to the IMC seeking further clarification.
- 4.6 The Children's Commissioner has now lodged proceedings against the Northern Ireland Office with regard to the introduction of Anti-social Behaviour (NI) Order 2004, seeking leave to take judicial review on the basis of inadequate consultation. It was noted that the Commission did receive an emergency application for assistance with a similar application by from children's groups but this application was rejected because it was not from an individual.
- 4.7 It was agreed that the September Commission meeting should be held on 6th September.
- 4.8 The Chief Commissioner confirmed that the decision in the 'E' case was expected to be issued on 16th June 2004.
- 4.9 A draft copy of the Commission's report on the rights of trans people had been forwarded to the Equality Commission and comments had been received. An updated draft will be forwarded to Commissioners as soon as possible. It is hoped that the document will be published in August 2004.
- 4.10 The Chief Commissioner drew attention to recent correspondence between Jean Corston, MP (Chair of the Parliamentary Joint Committee on Human Rights) and John Spellar, Minister of State, in which Mr Spellar made it clear that the government would issue a response to the Commission's Review of Powers before new appointments to the Commission were announced.
- 4.11 It was agreed that the Commission should respond by 6th August 2004 to the government's White Paper, entitled 'Fairness For All', on a new Commission for Equality and Human Rights in Great Britain. Our response should seek clarification as to which Commission (the GB one or ourselves) would be entitled to the status of a "national human rights institution" at the UN and elsewhere.
- 4.12 All other items in the Chief Commissioner's report were noted.

5.0 Chief Executive's Report (HRC 64.3)

5.1 Staff

- 5.1.1 An external solicitor has agreed to review the job specifications and application forms for the three new management posts. A further human resources consultant has not responded as yet. These two persons are intended to provide an independent expert element to the appointments process.
- 5.1.2 A meeting with the NIPSA representative is planned for 16th June 2004, to discuss, among other things, the current industrial action.

5.2 Finance

- 5.2.1 Negotiations regarding casework bills of costs are still ongoing. A costs drawer has been engaged to review some large outstanding bills over the summer period. A letter has been sent to the solicitors in question asking for their cooperation in this matter.
- 5.2.2 A meeting has been arranged with the consultants Change Alliance, for 6th July 2004 at 2pm, to discuss the implementation of a new pay structure.
- 5.2.3 A summary of the Finance Report highlighted the overspend on overheads. This is in part related to the cost of postage, relating to the dissemination of the Progress Report on the Bill of Rights. In addition, a large proportion of this year's budget for casework has already been committed.
- 5.2.4 The Chairman of the Casework Committee requested Commission guidance on how to progress with spending on small sum cases. It was agreed that the current system should be reviewed at the July Commission meeting, for which the Casework Committee will provide a paper with more information.

5.3 General Matters

- 5.3.1 A meeting of the 'Celtic Fringe' element of the Joint Equality and Human Rights Group will be held on 25th June at the NIHRC.
- 5.3.2 The first meeting of the consultative forum was planned for 28th June 2004. However it was agreed that this date was no longer feasible, and a new date for the first meeting would be 29th July 2004. The Chief Executive will send invitations to an agreed list of individuals.

Nadia Downing and Miriam Titterton joined the meeting.

6.0 The Bill of Rights

- 6.1 The Chief Commissioner drew attention to copies of his most recent letter to the political parties on the Progress Report.
- 6.2 The notes of the Bill of Rights meeting of 4th June were distributed. It was agreed that the next meeting would take place on 3rd September, at a venue to be decided.
- 6.3 The Chief Commissioner suggested that a summary be produced of the collective body of work completed on the Bill of Rights, which is also due to be archived. The Chief Executive confirmed she would provide this summary.

7.0 Report from the Communication Sub-Group on the Report from Morrow Communications

[To consider the sub-group's recommendation](HRC 65.4)

- 7.1 The Chief Executive spoke to her written report highlighting in particular the list of recommendations. The appointment of a Head of Information, Education and Development will have a material impact on the recommendation to appoint a dedicated member of staff to work on communications. It will be necessary to wait until this post is filled to assess if additional resources will be required. The Commission agreed with the summary of recommendations.
- 7.2 At point 22.0 the phrase "based on equality and international human rights standards" is to be inserted.
- 7.3 The Commission agreed that this was a clear report which they agreed to implement as recommended.
- 7.4 A further update would be provided to the August Commission meeting.

8.0 Annual Report 2003-2004 (draft) (HRC 65.5)

- 8.1 The Chief Commissioner spoke a preliminary draft of the 2003-04 Annual Report.
- 8.2 The tribute to Stephen Livingstone was noted and it was agreed to re-locate it to a different section of the report.
- 8.3 The Chief Commissioner drew attention to the section containing information on Commissioners. It was duly noted that more information on Christine Eames' work on the Mental Health Review was required. In addition, further information should be added with regard to Tom Hadden's work with the UN.
- 8.4 It was noted that on page 4 the work on prisons should be clearly demarcated from investigations up to the end of March 2004.
- 8.5 The last sentence of paragraph 6 on page 6 should read: "protection and promotion of human rights".
- 8.6 The Chief Commissioner confirmed that the section on International work would be included in the next draft.

- 8.7 It was noted that the new draft should be completed by Monday 21st June and would be circulated to Commissioners as soon as possible thereafter. It is essential that the text is with the printer by the end of June 2004.

The Commission broke for tea from 3.15 pm to 3.40 pm.

Nadia Downing and Miriam Titterton left the meeting.

9.0 Awareness-raising Guide on ECHR (HRC 65.6)

- 9.1 The Chief Commissioner explained that Mark Kelly has more work to do on this paper and would welcome comments from Commissioners.
- 9.2 Commissioners questioned how clear the report would be for the average reader.
- 9.3 It was noted that further explanation is required on the distinction between state liability and criminal prosecutions, especially with respect to the State's alleged failure to take positive action.
- 9.4 It is anticipated that a draft copy will be presented at the conference on Articles 2 and 3 on 22nd June 2004.
- 9.5 It was agreed that there was a need to draw together the various related pieces of work currently being undertaken by the NIHRC, and in the external context of 1800 unsolved murders, "on the runs" and a possible truth recovery process.

10.0 Report on older people and the health care system (HRC 65.8)

- 10.1 There was general consensus that this report could provide a high profile for the Commission. It needs a timeline for publication and dissemination.
- 10.2 The Executive Summary was discussed, as was the need to bring it together with the recommendations. It was suggested that factual material should be presented at the beginning of the report, with human rights issues following.
- 10.3 The recommendations are to be re-ordered.
- 10.4 Reference should be made to the recent Audit Commission Report on compliance with the Human Rights Act.
- 10.5 On page 6 the wording "only scratching the surface" should be deleted.
- 10.6 On pages 79 to 81 there was a consensus on the recommendations.

- 10.7 However it was noted that it would be unwise to tie the Commission to one NGO on this report, which reflects a small sample and anecdotal evidence, but better to deal with the sector as a whole.
- 10.8 Problems had arisen in the partnership process which would be noted for further work.
- 10.9 It was agreed that the report would be reviewed again at the September Commission meeting.

At 3.50pm Linda Moore joined the meeting.

11.0 Proposal to conduct an investigation into deaths in custody and care (HRC 65.7)

- 11.1 A proposal to investigate suicide and self-harm among women, young people and male prisoners was presented. This is in line with the Commission's Strategic Plan 2003-06, prioritising Articles 2 & 3 of European Convention on Human Rights.
- 11.2 The issue of financing three separate reports on women prisoners, young people and male prisoners was discussed. Currently the budget for these reports is £5,000 per report, resulting in five days per report, 15 days in total. It was proposed that there were two alternative approaches to carrying out these reports, either in-house or requesting a supplementary bid for external consultants.
- 11.3 It was agreed that in the meantime work should begin in-house on women prisoners. This decision was made in part due to the transfer of women prisoners next week, which will present a particularly vulnerable period for women prisoners with regard to self-harm and suicide.
- 11.4 It was agreed that a supplementary bid should be considered in September. The other possibility was to look at the possibility of working in partnership with other organisations to reduce costs. Staff will explore these options.
- 11.5 It was agreed that the report prepared by Dr Linda Moore and Prof Phil Scraton of QUB, on the transfer of women prisoners from Maghaberry to Hydebank Wood, could be press released.
- 11.6 Commissioners noted that the Commission would participate in a BBC Spotlight Programme on 15th June reviewing the situation of women in Maghaberry prison.

At 4:15pm Linda Moore left the meeting.

At 4:15 Denise Magill joined the meeting.

12.0 Response to draft Special Educational Needs and Disability (NI) Order (HRC 65.9)

- 12.1 Amendments to the legislation had not been drafted as part of the response prepared to date, as once the draft Order is introduced into Parliament it has to be accepted or rejected in total, without any changes. Commissioners again emphasised, however, that without suggested alternative wording, at this stage commentary might have little impact.
- 12.2 The main concern raised by the report was the provision of education in the best interests of an individual child and how this might be achieved. It is not always in the child's best interest to attend a mainstream school.
- 12.3 It was agreed that both schools and public authorities had a duty to comply with new regulations, however it was noted that there was no deadline for such action. It was agreed that the Commission should consider trying to get a clause added with a reasonable compliance date for both schools and public authorities. The Equality Commission would be consulted on this point.
- 12.4 It was agreed that contact should be made with the Office of the Legislative Draftsman to suggest three or four points with regard to specific changes.
- 12.5 It was agreed that further commentary and amendments were needed by the deadline of 28th June 2004.
- 12.6 The possibility of a joint meeting with the Minister and NIHRC and Equality Commission, and possibly a joint press statement which could strengthen the position, was considered but considered unlikely. The compliance with EU regulations in December 2006 could be a suitable date to suggest for a deadline.
- 12.7 It was agreed that contact should also be made with the Disability Rights Commission to take their views in light of their previous experience of the legislation in Great Britain.

At 4.40pm Denise Magill left the meeting.

13.0 Home Office paper on Counter-terrorism Measures (HRC 65.10)

- 13.1 The Chief Commissioner reminded the meeting that a roundtable on this topic had been held on 9th March and that from this Prof Clive Walker had offered to help

with the NIHRC submission. It was agreed that any issues raised would be passed on as guidance to Prof Clive Walker.

- 13.2 The Chief Commissioner asked for Commissioners' views on point 6 in his paper, concerning freedom of association. It was agreed that this French approach should not be endorsed. It was better to target actions rather than mere association. With regard to directing terrorism, it would seem that building on existing offences could cover the matter.
- 13.3 The question was raised about what could be put in place of point 4.
- 13.4 Point 7, on geographically restricted identity cards, and point 17, on identity cards as alternative methods to detention were discussed. It was agreed that further investigation into trials of these methods was required.
- 13.5 There was a discussion on point 10 ('the use of intercept evidence'). It was suggested that responses should be tailored to the guidelines of the European Court of Human Rights and/or the Council of Europe guidelines. The best overall option is to tie in the recommendations with European guidelines.
- 13.6 Point 13 on plea bargaining was discussed.
- 13.7 Prof Clive Walker is due to submit his report in July. Tom Hadden is also working on this topic.

14.0 DPP's draft Codes for Prosecutors and on Complaints (HRC 65.11a)

- 14.1 The Chief Commissioner highlighted point 8 for discussion, as to when the DPP will give reasons for not prosecuting. Publicity not being given to a case when the charges have been dropped is at the discretion of the DPP. However, it was suggested that the Code should specify when the DPP is or is not going to comment in other situations. The Commission could not come to an agreement on this point.
- 14.2 On point 15 ('reasons for not prosecuting') it was agreed that reasons should be given more frequently unless there is a good reason for not giving them.
- 14.3 It was agreed that more clarity should be requested on point 27 (plea bargaining). It should not be presumed that this practice is always inappropriate, as some cases are exceptional, although it was noted that seeking guidance is not the same as plea bargaining.
- 14.4 It was agreed that a response should be submitted by the end of June.

(HRC 65.11b)

- 14.5 The Chief Commissioner presented a draft response from NIHRC on ‘Handling of Complaints not Relating to the Exercise of Prosecutorial Discretion – draft issued by the Public Prosecution Service.
- 14.6 There was consensus on the draft response.

15.0 Report of work on policing and criminal justice (HRC 65.12)

- 15.1 This report was noted.
- 15.2 Relating to point 14, notes of the meeting with Keir Starmer QC and Jane Gordon were circulated. It was confirmed that the Policing Board hope to have a report by September 2004 on monitoring PSNI human rights compliance.
- 15.3 Relating to point 9, the PSNI quarterly meeting planned for 28th June 2004 has been postponed and has now been rearranged for 4th August 2004.

16.0 Staff reports were noted:

Casework	(HRC 65.13)
Development	(HRC 65.14)
Investigations and research	(HRC 65.15)
Legislation and policy	(HRC 65.16)

- 16.1 Point 4 of HRC 65.13 on casework refers to the ‘capping’ of cases. Counsel’s opinion is that this is acceptable so long as it is indicated at the outset when offers of assistance are made.
- 16.2 It was confirmed in HRC 65.15 that the Commission will intervene in the case of 17 year old woman in Maghaberry. Counsel has been briefed.
- 16.3 Point 4 of HRC 65.15 confirms that a report on the transfer of asylum seekers will be completed soon.
- 16.4 It was noted in HRC 65.16 that the response to the DCA consultation on the reform of public inquiries will be complete by the end of June.
- 16.5 It was noted that there is speculation that a consultation document on truth recovery mechanisms is imminent from government. The Chief Commissioner has written to the Secretary of State Paul Murphy, seeking further information, and a copy of this letter was in the Information Papers.

17.0 AOB

- 17.1 There followed discussions on a range of diary dates for meetings.
- 17.2 Margaret-Ann Dinsmore asked to be released from the Joint Committee Sub Committee on a Charter of Rights for the island of Ireland.
- 17.3 There being no other business, the meeting ended at 5:30pm