Minutes of the Fifty Third Meeting of the Wales Committee

**EHRC WC 53.01**

**Thursday 3 September 2020  
By weblink**

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Attending

Martyn Jones (Interim Chair)   
Alison Parken  
Faith Walker  
Geraint Hopkins

Mark Sykes  
Rocio Cifuentes

EHRC  
Rebecca Hilsenrath (Chief Executive)  
Melanie Field (Executive Director, Wales & Corporate Strategy and Policy)  
Jackie Killeen (Director of Compliance)  
Rebecca Newsome (Programme Manager, Is Britain Fairer) – Item 12 only  
Ruth Coombs (Head of Wales)   
Angharad Price (Legal Principal, Wales) Item 9 to 10  
Geraint Rees (Senior Associate, Wales)

1. Welcome and introductions
   1. The Chair welcomed members and officers to the fifty third meeting of the Wales Committee. Apologies were received from Grace Quantock and Nicola Williams.
2. Declarations of interest
   1. No declarations were made.
3. Minutes of July Informal meeting and note of the 3 August additional meeting (EHRC WC 53.01 & 53.01a)
   1. The Committee agreed the minutes of both the July informal meeting and the additional meeting on 3 August.
4. Current matters arising (EHRC WC 53.02)
   1. The Committee noted the matters arising paper. In relation Action D (WC54/5.1) Committee members noted that the Equality, Local Government and Communities (ELGC) Committee had paused all its non-COVID19 related activity including the previous proposal of an inquiry into Community Cohesion in Wales. Members discussed ongoing concerns around community cohesion and suggested that the Commission write to the Chair of the ELGC Committee to highlight the issue and recommend that they bring forward that inquiry.

**Action A: Write to ELGC Committee Chair regarding the Community Cohesion agenda.**

1. Update on the race inquiry – Verbal update
   1. Jackie Killeen provided the Wales Committee with an update on progress in developing and the proposed focus of the race inquiry. The Commission was currently gathering stakeholder feedback on draft terms of reference for the inquiry, which was proposed to focus on the impact of COVID19 on ethnic minorities in low paid and insecure jobs in health and social care. The Commission was working to develop a methodology for the inquiry and establishing internal and external steering group.
   2. The Committee were informed that the inquiry team were mindful of the context in the three nations and concerns that the Committee had raised about the impact of the proposed inquiry. It was important that the focus of the inquiry generated meaningful and impactful recommendations. Members were informed that the inquiry team were retaining the option to broaden the focus of the inquiry in Wales to lower paid and insecure roles in other key sectors, should feedback from stakeholder in Wales suggest that change in focus.
   3. The Wales Committee reiterated their concern that the narrow focus on low paid and insecure work in health and social care would not be impactful in Wales’s context and did not reflect the stakeholder feedback captured in recent roundtables.
   4. The Committee were pleased to hear that there could be an opportunity to review the focus, to include other low paid work in other sectors.
   5. The Committee highlighted the Commission need to bring stakeholders along with our plans for the inquiry. There was already credibility issues for the Commission with race stakeholders, so being clear on what we expect to achieve from the inquiry would be important in terms of managing expectations.
   6. Committee members commented that race stakeholders in Wales were reporting consultation fatigue and that this needed to be considered. Suggestions included how could the Commission value people giving up time to engage on the inquiry e.g. remuneration.
   7. On methodology the Committee commented that it was important that the inquiry ensures the experiences of ethnic minority people were clearly reflected and not fall into the pitfall of reporting on poor employment experiences of all lower paid workers in the sector. Members suggested engagement directly with the workforce not just through umbrella groups
   8. The Committee highlighted the lack of voice that ethnic minority people have in the health workforce at senior levels. There were often low levels of engagement through things like employee surveys and their voices not heard or understood at senior/Board level in Health Boards and Trusts.
   9. This could also be linked to feedback shared by a Committee member over experiences around bullying in the sector and the concern that ethnic minority people have about raising concerns, complaining and whistle blowing and the potential repercussions.
   10. The Committee were informed that the inquiry team would keep members updated as the plans for the inquiry progress. The Committee thanked Jackie Killeen for her update.

**Action B: Wales Committee to be kept updated on the progress of the race inquiry.**

1. Update from the Chief Executive (EHRC WC 53.03)
   1. The Committee received an update from the Chief Executive and noted the written report. The Chief Executive provided an update on key corporate priorities including the Spending Review; the relocation of the London office, and alignment with the UK Government’s Places for Growth strategy; and engagement with staff on partial office opening. Members were updated on the key external priorities, which included the race and social care programmes; publishing the two investigations; the S31 assessment on the hostile environment policy; and preparation for the Is Britain Fairer: Coronavirus Synthesis report.
   2. The Committee received an update on the progress of the Commission’s submission to the Spending Review. Members were informed that the Commission had submitted its bid to the Cabinet Office and written to the Secretary of State outlining the impact of proposed savings on the Commission and highlighting the impact of the Commission’s work. Members were informed that the outcome of the Spending Review likely to be announced in November. The Committee received an update on the S31 assessment on the hostile environment policy which was reaching completion.
   3. The Committee highlighted the importance of receiving the disaggregated data on exam results by protected characteristics from Ofqual, Qualifications Wales and Scottish Qualifications Authority to feed into the forthcoming Is Britain Fairer Synthesis report. Members were informed that this data would be unlikely to be received in time for the report. The Chief Executive suggested sharing an analysis of the data once it was received.

**Action C: Share analysis of disaggregated exam results with Wales Committee once received.**

* 1. The Committee asked what lessons can be learnt from the way the BBC investigation was conducted. Members were informed that there would be lessons learnt including review of methodologies. The Committee noted that the Commission was in consultation with the BBC on the interim report.
  2. The Committee raised concerns regarding the implications of the Spending Review and the pause in recruitment and the impact this was having on capacity in Wales, particularly in relation to research capacity and the ability of the Commission to deliver an impactful Is Wales Fairer report. In response the Chief Executive reported that the Commission was exercising caution on resources ahead of the outcome of the Spending Review.
  3. Committee members asked about what the Commission was doing given the constraints around recruitment to improve diversity and inclusion internally. In response members were informed of the ongoing dialogue with the UK Government to ensure diverse appointments to the Board and an end to end review of the Commission’s recruitment policies.

1. Update from Interim Chair of the Wales Committee (EHRC WC 53.04)
   1. The Committee noted the Interim Chair’s report. Members were provided with an update on the stakeholder review work being undertaken by the Commission. The Interim Chair had attended a three nations meeting to discuss the strategy. The Wales Committee’s engagement model was highlighted positively. Members were informed that a paper on the Stakeholder Strategy would come to the November meeting. Members were provided with an update on the recent meeting with the Deputy Minister and Chief Whip Jane Hutt MS.

1. Update from the Head of Wales (EHRC WC 53.05)
   1. The Head of Wales provided an update to the Committee on the activities of the Wales team and corporate messages. Members were informed of the developing work to engage with Regulators, Inspectorates and Ombudsman (RIOs) and the positive engagement with the Older People’s Commissioner for Wales on the social care programme.
   2. The Head of Wales provided an update on Business Planning for 2021/22, explaining that the process would work differently this year. Members were informed that the aim was to bring a paper on the 2021/22 Business Plan to the November meeting. The Commission has published an updated internal business plan for the current year, reflecting the changes, which would be shared with the Committee.

**Action D: Schedule discussion on 2021/22 business plan at the November meeting.**

**Action E: Share internal 2020/21 business plan with the Wales Committee.**

* 1. The Committee asked for an update on the staffing challenges in the Wales team. Members were informed about the pause on the Research Manager post which was a risk in terms of delivery of the IS Wales Fairer report. There was a gap in relation to Business Support following the departure of a member of staff. The new Business Support role would have picked up some communications work, stakeholder engagement management and supporting the Wales Committee. These needed to be seen in the context of the Spending Review and the position across the Commission. The Head of Wales committed to keep the Wales Committee updated on the Wales staffing position.
  2. Members discussed the gap in their stakeholder engagement since the outbreak of the COVID-19 pandemic. Members agreed that they would value the opportunity to discuss options for virtual forums.

**Action F: Schedule a discussion for Wales Committee on virtual stakeholder engagement.**

1. EHRC legal powers presentation (EHRC WC 53.06)
   1. The Legal Principal, Wales shared with the Wales Committee a presentation outlining the Commission’s legal powers.
   2. The Committee asked a number of questions including how long monitoring continues following a S31 assessment and S23 agreements. Members asked about the Commission’s strategy to ensure that stakeholders understand the Commission’s legal powers. Members were informed that the Commission is working hard to communicate the legal cases it supports and in Wales the Commission has been holding seminars with the legal community. In Scotland the Commission produces a newsletter. Members suggested a mix of direct engagement and digital communications to ensure reaching a wide audience. Members noted that it was important to manage expectations of stakeholder on the limits of the Commission’s legal powers.
2. Safeguarding equality and human rights in Wales (EHRC WC 53.07)
   1. The Committee received a paper that collated the existing legal advice that the Commission had on the topic of the Senedd legislative competence on equality and human rights. This discussion was a follow up to a workshop held with the Committee at its meeting in February.  The paper outlined the Commission’s policy positions to encourage Welsh Government to seek further powers and to make the most of their existing powers; to seek to keep pace with EU law and ensure no regression on protections. Members heard about the current work of Welsh Government in this area including commissioning a major piece of research. The Commission would be building our policy lines around safeguarding the equality and human rights framework into advice on manifestos for the Senedd Elections.

* 1. Members asked questions relating to devolution of the Public Sector Equality Duty; whether any changes to Judicial Reviews could be challenged in Wales and if human rights legislation enshrined in Welsh law could be heard in Welsh courts. Members were informed there were enabling powers available to the Welsh Government to amend the Public Sector Equality Duty but that for any changes to the General Duty further devolved powers would be required. Members noted that Judicial Reviews were not devolved and so Welsh Government would not have powers to intervene in those changes. On human rights cases being heard in Welsh Courts, this was a recommendation of the Commission on Justice and there was a recent case [R. (on the application of Driver) v Rhondda Cynon Taf CBC](https://www.bailii.org/ew/cases/EWHC/Admin/2020/2071.html) [2020] EWHC 2071 (Admin) – the first case which the Welsh Language Commissioner has intervened in - that involved the interpretation of the Welsh text of legislation and emphasised the need for it to be heard in the Administrative Court in Wales.
  2. Members were informed that in Scotland the First Minister had established a taskforce on human rights. Members noted that the Scotland Act provides powers to the Scottish Government to add to the Equality Act 2010 and that the reservation on equality was different to that in Wales. Members were informed that the Transfer of Functions may provide more opportunities for Welsh Government to legislate in this area.
  3. The Committee agreed that they were happy to agree to the approach outlined in the paper.

1. Wales Impact Report 2020/21 (EHRC WC 53.09)
   1. The Committee received the up to date impact report on the Wales Activities for 2020/21. Members noted that the status of the Institutions Aim had moved to Green from Amber. The Head of Wales outlined that this was linked to the Social Care programme coming under this aim which had mitigated previous concern about capacity in the Wales team on this priority. Members were provided with an update on the progress of the social care programme.
   2. The Committee highlighted concern over how paused work could be picked up in future with the ongoing issues around staff capacity. Members noted that the upcoming 90 day review would provide an opportunity to reflect on priorities but that to enable new areas of work it was important to be realistic on what could be delivered and some work would have to remain paused.
   3. Members highlighted the work, currently paused, on the education curriculum, as a priority. There were new opportunities to ensure diversity in the curriculum with Welsh Government beginning to focus more on this issue and there were clear links to the race programme.
   4. Members noted the report and thanked the team for their work commenting what had been achieved with the available capacity within the team was impressive.
2. Revisions to Is Britain Fairer (EHRC WC 53.08)
   1. The Committee received a paper on the proposal to revise the timetable for the publication of Is Britain Fairer (IBF), and the governance arrangements for decision making. The Governance of IBF had been delegated from the Board to the Commissioner Working Group but the revised approach would go back to the Board for approval due to the strategic importance. Members were informed that in light of the Coronavirus pandemic there was a proposal to revise the timeline for IBF to move the publication of the full report to December 2022. The proposal suggested publishing standalone thematic reports during 2021 which would be consolidated into the full report. Members noted the strategic risk and implications including the alignment with the next strategic plan.
   2. The Committee noted that in the context in Wales the delay could be helpful as it would better align with the timelines for public bodies in Wales setting their next set of equality objectives in April 2024.
   3. The Committee highlighted the need to ensure that the Evidence team had the capacity and skills to deliver the IBF work, particularly with so much being brought in house. The Committee commented on the value of external research inputting to the IBF process in terms of gaining outside perspectives and triangulation of data.
   4. On capacity to deliver the Is Wales Fairer? report the Committee highlighted the risk of the lack of current research capacity in Wales and that the Commission needed in house expertise to interpret the Wales data sets.
   5. The Committee commented that the standalone reports could be valuable in the context of safeguarding IBF as it would ensure that IBF was a collation of existing evidence rather than a new report. On the standalone reports the Committee asked whether these would be nation specific.
   6. The Committee agreed with the proposal to delay the full IBF report until December 2022 and were content with the governance arrangements outlined on decision making. The Committee commented there was good rationale in delaying to allow time for the impacts of the pandemic to be better understood, rather than rushing out the report too close to the events.
3. Any other business
   1. The Wales Committee Secretary informed members that their availability for a meeting to discuss their stakeholder engagement and to mark Nicola Williams’ end of term would be sought later in the week.
   2. The Wales Committee Secretary thanked members for updating and completing their Declarations of Interest. Members were informed that these would be published shortly on the website and would be reviewed at the next meeting.
   3. The Committee were informed that communications from the Commission would be sent solely to their EHRC email accounts, which had been recently established.