Minutes of the Fifty Ninth Meeting of the Wales Committee

Thursday 11 November 2021

**By weblink**

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## Present

Alison Parken

Faith Walker

Grace Quantock

Mark Sykes

Martyn Jones (Interim Chair)  
Rocio Cifuentes

## In attendance

Alasdair MacDonald (Director, Policy and Human Rights Monitoring) Item 7

Carla Garnelas (Senior Principal, Strategy) Item 6

Marcial Boo (Chief Executive Officer)

Melanie Field (Chief Strategy and Policy Officer)

Ruth Coombs (Head of Wales)

Ruth Doubleday (Senior Associate, Wales)

## Apologies

Bethan Thomas

Geraint Hopkins

## Absent

None

## 1. Welcome, introductions and declarations of interest

1.1 The Interim Chair welcomed members and officers to the fifty ninth meeting of the Wales Committee, including a special welcome to Marcial Boo, CEO. Members agreed that the meeting was quorate. The Interim Chair requested any items for any other business, with nothing being raised.

1.2 Apologies were received from Bethan Thomas and Geraint Hopkins. Alison Parken also sent apologies for arriving during the meeting at 11:26.

1.3 Grace Quantock noted that she is a member of Digital Health and Care Wales. No further Declarations of Interest noted.

## 2. Minutes of 58th meeting of the Wales Committee (EHRC WC 59.01)

2.1 Members agreed that the minutes of the 58th meeting of the Wales Committee are an accurate record.

## 3. Current matters arising (EHRC WC 59.02, EHRC 59.03)

3.1 The Committee noted the matters arising list.

3.2 With regards to WC 56/7 Action B, organising a drop in session at the Senedd, is ongoing with Head of Wales. Sixth session of the Senedd now officially opened but Covid-19 restrictions need to be considered. Head of Wales suggested reviewing in January/February 2022 and all Committee members agreed that this would be a suitable course of action.

3.3 Concerning WC 56/7 Action C, members agreed to continue to defer organising private sessions until the new Commissioner is in post or review in January 2022 – whichever occurs first.

3.4 With regards to WC/10.4 Action E, exploring internship opportunities is ongoing with Head of Wales.

3.5 Action WC/5.1 was marked as complete. The Scotland Committee and the Wales Committee are working together during Peer Learning sessions.

3.6 Concerning WC49/6.1(2) Action P, Head of Wales confirmed that the PSED work is being progressed by Principal Officers and Senior Associates in the Wales team and Head of Wales will keep the Wales Committee updated regarding progress.

**Action A: Secretary to simplify Current Matters Arising numbering system for future meetings.**

3.7 With regards to WC50/9.2(2) Action S, members agreed that the appointment of a Vice Chair is to be deferred until the appointment of the new Commissioner for Wales.

3.8 Regarding WC55/8.5.5 Action C, the Welsh Government have been advised on the inclusion of case studies in their guidance. Head of Wales is considering other avenues should the Welsh Government not agree to the inclusion of case studies. This is ongoing and all agreed that future updates would be useful.

3.9 Action WC57/8.1.2 f) was marked as complete. The Chief Strategy and Policy Officer, looked into media reports that women have been underpaid in their state pension entitlement. Taken forward in new action below (WC58/3.10 Action A).

3.10 WC58/3.10 Action A was marked as complete. The Legal team have confirmed that they have received no referrals on the issue of women being underpaid in their state pension entitlement. According to media reports, DWP have been proactively reviewing to check for underpayments and reimbursing people. On that basis, unless we are approached by affected individuals, we don’t consider that there is any action for us to take.

3.11 WC58/5.4 Action B was marked as complete. Secretary RD has shared input for Board arising from 58th meeting with Committee members. To be continued for all future meetings.

3.12 WC58/5.5 Action C was marked as complete. Secretary RD has shared results of stakeholder research with all Committee members.

3.13 Regarding WC58/5.6 Action D, this is on-going. Head of Wales and Secretary will organise joint session with Wales and Scotland Committees, potentially on our Regulatory Approach, when new Commissioner for Wales in post and new Committee processes are in place.

3.14 WC58/6.4 Action E was marked as complete. The CEO will provide updates on staff culture during future Wales Committee meetings. To continue to be written into agenda.

3.15 WC58/9.1 e) Action F is on-going. Head of Wales noted that several successful events have recently been held. Impact is being maximised by reaching out to stakeholders virtually. The Interim Chair, Head of Wales, and Chief Strategy and Policy Officer are in discussions regarding how to move this forward. This Action is to be reviewed at the next Committee meeting.

3.16 Regarding WC58/11.3 Action G, this is to be postponed until the new Commissioner for Wales is in post. All agreed that the new Commissioner for Wales is to lead on resuming stakeholder engagement and returning to face-to-face or hybrid Wales Committee meetings. To be reviewed latest February 2022.

3.17 WC58/12.4 Action H is on-going. Time to discuss streamlining agendas has been written into the agenda for the 60th Committee meeting.

## 4. Interim Chair Report (EHRC WC 59.04)

4.1 The Interim Chair provided an update on activities since the last Committee meeting on 9 September 2021, including interim Board meetings, a meeting with the Social Justice Minister, and the official opening of the Sixth Session of the Senedd.

4.2 Head of Wales and the Interim Chair agreed that the meeting with Jane Hutt, the Social Justice Minister, was extremely fruitful.

4.3 The Interim Chair requested comments by exception. No comments voiced by Committee members.

## 5. CEO update with input from Chief Strategy and Policy Officer

5.1 MB, the new CEO of the EHRC, thanked everyone for offering a warm welcome and noted that he would like to join all future Wales Committee meetings to gain a solid understanding of Wales-specific issues.

5.2 The CEO provided an update on gender pay gap reporting, noting that 150 organisations are yet to respond. In response to Committee member questions, the CEO clarified that the EHRC could now take legal action against these 150 organisations. Historically this has not been necessary however, as organisations have usually complied with requests after learning of our enforcement powers and intentions. The CEO explained that if an organisation were not to comply at this point, an investigation would be launched. The Commission has in the past achieved 100% compliance without needing to investigate further.

5.3 The CEO explained that at present the Commission has only investigative powers, however the power to impose fines would be valuable. Committee members queried whether the length of time needed for investigations undermines the Commission’s enforcement powers. The CEO noted that the Commission can also publicly highlight organisations for failure to comply with the law but this needs to be executed judiciously.

5.4 The Interim Chair invited the Chief Strategy and Policy Officer to provide an update.

5.5 MF, the Chief Strategy and Policy Officer, noted that the Labour Party has entered into a legally-binding agreement with the Commission. The Commission are monitoring implementation of this agreed action plan and are currently satisfied with the level of engagement from the Labour Party. This agreement will continue for one further year.

5.6 Regarding the Inquiry into Race Inequality for Low Paid Workers in Health and Social Care Sectors, this report is approaching the final stages of drafting. The Commission is looking to publish this report towards the start of next year. The inquiry found that this group is disadvantaged through differential treatment and experiences, poor pay and poor conditions, and an inability to raise concerns, particularly where labour is outsourced. The Commission will recommend that organisations ensure regulatory frameworks are in place which adhere to staff welfare and equality duties. The PSED will be used to tackle issues with outsourcing and improve awareness of compliance with employment rights. It will also be recommended that mechanisms are developed to ensure that workers can have their voices heard.

5.7 The Chief Strategy and Policy Officer also noted that the Commission are measuring and prioritising employee well-being and satisfaction through various means. This includes staff surveys and interviews being undertaken by an external research consultant, the safe re-opening of offices in line with Government guidance, and the Inclusion Programme. Part of this Inclusion Programme includes the use of a new recruitment system which holds promise for increasing diversity and inclusion across the Commission workforce. Committee members queried whether the new recruitment system has yet to pay dividends in terms of increasing diversity. The Chief Strategy and Policy Officer confirmed that it is too early to assess the impact of this new recruitment system.

5.8 An update on the Windrush scandal was also requested by the Wales Committee because individuals in society are still being deported. The Chief Strategy and Policy Officer explained that the Commission has an action plan in place with the Home Office which is being carefully monitored and the Commission are urging for faster progress. The Commission also submitted a response to the recent new plan for immigration and noted that there is a legal challenge to that consultation, about which the Commission is awaiting further information.

5.9 Committee members asked whether the EHRC could target recruitment of racially marginalised youth and requested updates on this in the future. The Chief Strategy and Policy Officer elaborated on the Inclusion Programme, clarifying that the HR department are considering how to increase staff inclusion. The Commission are also establishing networks for BME, disabled and LGBTQ+ staff. The CEO noted that communication channels within the organisation have historically been hierarchical and that whilst the Union is very strong, it does not necessarily represent all staff. The establishment of these staff representation groups as well as the use of staff surveys will therefore assist with understanding and addressing any specific concerns experienced by BME, disabled and LGBTQ+ staff. A Committee member agreed that staff surveys are highly useful, and that the difficult part is showing demonstrable change after conducting a survey.

**Action B: Committee members to receive updates at future meetings on recruitment efforts and the diversity of the Commission workforce.**

## 6. Stakeholder engagement report (EHRC WC 59.03)

6.1 The Interim Chair suggested that the Committee dedicate available meeting time to discussing the results of the stakeholder engagement research undertaken by an external contractor.

6.2 Committee members noted that the findings of the report were not unexpected, and that there are several challenges and opportunities available in terms of balancing the Commission’s powers as an impartial regulator with their human rights remit. Members agreed that the report will be of use in planning future stakeholder engagement activities in Wales, and that findings were positive for Wales.

6.3 The Head of Wales highlighted some of the stakeholder engagement networking currently being undertaken by the team and across the wider Commission, as well as the role that the new Commissioner for Wales will play in this work. The Head of Wales further noted that the EHRC could do more to publicise the good work they are doing in Wales.

6.4 Committee members noted that the report is useful but to be mindful of the relatively small number of interviews undertaken in Wales. It was agreed that the Commission could be more visible, particularly in relation to their human rights work. It is important that the Commission preserves their credibility in Wales, particularly in the most disadvantaged communities.

## 7. Strategic Plan and Business Planning 2022/23 (EHRC WC 59.05)

7.1 CG, Senior Principal Officer - Strategy, provided an update on the EHRC’s Strategic Plan and Business Planning for 2022–23.

7.2 Regarding the Strategic Plan, CG explained that the Commission ran a public consultation during August and September 2021, including an online survey and thematic roundtables. The consultation aimed to gather feedback on the Commission’s proposed strategic objectives and areas of focus. Data analysis is currently in the early stages.

7.3 In terms of the profile of respondents, CG firstly highlighted an error on the circulated presentation and provided the amended response rate figures. The majority of consultation respondents participated in an individual capacity as opposed to on behalf of an organisation. GC explained that when responses are broken down by nation, rates become quite small but future data analysis will be able to account for this.

7.4 In terms of changes in the level of importance attached to different protected characteristics compared to previous years, support for both sexual orientation and gender reassignment increased amongst respondents.

7.5 Whilst findings are very much preliminary, it is important to note that there were extremely high levels of support for the six areas of focus outlined in the Strategic Plan draft. Regarding other headline preliminary findings, sex based rights and gender based rights were identified as a prominent theme during the consultation, alongside balancing rights and the role of the commission within this.

7.6 Some consultation respondents suggested that the Commission consider additional work in relation to: violence against women and girls, poverty and socio-economic inequalities, and climate change. CG explained that whilst these have not been chosen for prioritisation, the Commission may still consider specific responsive work in these areas if it meets agreed criteria.

7.7 CG, Senior Principal Officer – Strategy, asked the CEO and Chief Strategy and Policy Officer whether they had anything to add, then invited feedback from Committee members on the Strategic Plan:

7.7.1 Wales Committee members were impressed with the scale of the consultation including the response rate. They noted that some consultation respondents suggested that the Commission look at work related to (i) violence against women and girls, (ii) poverty and socio-economic inequalities, and (iii) climate change. Several Committee members requested further clarification on why these three thematic areas had not been chosen for pursuance in the Strategic Plan, particularly because they are currently garnering a great deal of media and public attention. Members suggested that if these areas are not be included in later revisions of the Strategic Plan that it is important that the Commission has a strong and defensible narrative explaining how and why thematic areas have been chosen. Concerns were raised regarding a potential discord between the proposed thematic areas and the real-world issues affecting the most disadvantaged in society.

7.7.2 Committee members also highlighted that most of the consultation responses were from individuals as opposed to organisations and urged the Commission to consider why this might be so and what it might mean.

7.7.3 The Committee reiterated the importance of considering the devolved context, such as current Welsh Government work on violence against women and girls and socio-economic inequality. Similarly, regarding climate change, another example of policy/legislative divergence in the Welsh context would be the Wellbeing of Future Generations Act and Commissioner.

7.8 Regarding Business Planning for 2022-23, CG, Senior Principal Officer – Strategy, explained that the Commission has committed to addressing multiple areas of focus as outlined in the Strategic Plan, as well as maximising their impact as a regulator. This work will span all elements of the new end-to-end model which underpins all future Business planning.

7.9 The Commission will ensure that space is available for responsive work outside of priority areas and reserve resources to be agile. Relatedly, there will be a programme of developmental work including one-off or scoping projects that could respond to emerging developments and feed into future activities and strategies. Work would meet agreed prioritisation criteria.

7.10 GC explained that work on ‘Fostering Good Relations’ will straddle a number of areas including developmental, AI tech, online tech, and fairness to children and young people.

7.11 To elaborate on the new end-to-end model, this ensures that the Commission will have informational, systematic, behavioural and societal impact as it enforces the legal framework for equality and human rights. It shows how the Commission’s functions contribute to the goal of being a strong regulator. The Commission will implement a prioritisation/triage process to inform decisions about which work to focus on, available regulatory powers, and what interventions could be used.

7.12 In terms of next steps, GC noted that the EHRC Board of Commissioners would provide feedback on the Strategic Plan and Business Planning 2022-23 at their December meeting. The Commission’s Strategy team will be producing draft strategies for proposed thematic areas by the end of November with three-year and one-year outcomes to include: major programmes of work, implications for the PC and nations spread, and a mapping of proposals against the end-to-end model. The Strategy team will additionally be holding a two-day workshop and establishing a Commissioner Reference group. The Board are expected to provide high level sign-off of the plan and strategies in January 2022.

7.13 CG, Senior Principal Officer – Strategy, invited questions and comments from Committee members on Business Planning:

7.13.1 In response to the outlined plans for Business Planning 2022-23, Wales Committee members requested further clarification regarding how decisions will be made whilst triaging cases and workload as well as what options exist if the Commission becomes unable to fulfil its remit or suffers oversights in terms of areas of work to focus upon. Committee members urged the Commission to reflect on how decision-making processes may be affected by individual bias.

7.13.2 Wales Committee members welcomed the inclusion of a responsive and agile approach that would allow the Commission to undertake work not directly related to the new thematic areas outlined in the Strategic Plan.

## 8. Race Policy Position and Transgender Policy Position (EHRC WC 59.06, EHRC WC 59.07)

8.1 AM, Director, Policy and Human Rights Monitoring, provided an update on the EHRC and the protected characteristics of race and gender reassignment.

8.2 AM explained that the Board of Commissioners will be discussing these issues at upcoming Board meetings therefore the aim of the present discussion was to understand the different dynamics in Wales.

8.3 Regarding the protected characteristic of race, the paper presented by AM sets out the Commission’s recent position on race and sets out steps for refining the Commission’s understanding of race equality. The paper also outlines how the Commission talks about and delivers work against certain key concepts and how one can better understand the causes of racial disparities. In sum, it is about firming up what the EHRC thinks about key concepts to help lay the foundations for future race equality work, including in Wales.

8.4 The Interim Chair invited comments and questions from Committee members on the Commission’s policy position on the protected characteristic of race:

8.4.1 The Wales Committee were grateful for being given the opportunity to review these insightful and important papers.

8.4.2 Members noted that greater sensitivity was needed regarding the devolved context in Wales, for example in terms of education and health policy. Similarly, in Wales the Commission works closely with the Welsh Government and this may not be reflected in structures in England.

8.4.3 Committee members agreed on the importance of taking time to clarify the terminology and concepts the Commission are using, such as ‘anti-racism’, ‘minoritised’ and ‘systemic racism’, and many others. Again, this needs to be sensitive to the Welsh context and take into account the language used by the Welsh Government. Members agreed that clarifying these concepts and their origins is vital if the EHRC are to convene useful dialogue about race.

8.4.4 The Wales Committee asked why the Commission is referencing the CRED report as this serves to legitimise the report. Members noted that the CRED report has been widely discredited, therefore using the report as a lever could negatively affect the Commission’s reputation amongst stakeholders.

8.4.5 Regarding the proposed roundtable, Committee members requested further detail on how this would be constituted and how experts would be selected to join the roundtable. It was further recommended that the Commission is careful to strike the right balance between gaining insight from lived experience and other forms of data. In terms of Annex A and the devolved context, it was noted that in Wales, diversity amongst the teaching population is lower than in the population as a whole.

8.4.6 Finally, it was recommended that whilst discussing how best to tackle racial inequality it can be effective to think about how other forms of inequality are challenged and framed, particularly relating to other protected characteristics.

8.5 Regarding the protected characteristic of gender reassignment, the paper presented by AM outlined the Commission’s policy positions on three pivotal areas, including: (i) The process for changing legal sex, (ii) Spousal consent, and (iii) Legal age limits. The paper also drew out the EHRC’s position on ‘conversion therapy’. The UK and Scottish Governments have committed to banning ‘conversion therapy’, as has the Welsh Government within its competence. The Commission supports this ban. AM further explained that the Commission also seeks to refresh their position on sex and gender and the Census in England and Wales, noting that clarity is needed on this. The final section of the paper considered how the EHRC can step in and help to move forward constructive debates around this protected characteristic.

8.6 The Interim Chair welcomed questions from the Committee:

8.6.1 The Wales Committee praised the range of current policy positions for being sensible and pro-actively rooted in advice around the law. Regarding the convenor role, some Committee members were sceptical about whether this is good for the Commission, not least due to related issues surrounding impartiality and neutrality.

8.6.2 Some committee members felt that the EHRC should convene discussions surrounding gender reassignment because talking about this issue is important and helpful.

8.6.3 In thinking about the Wales context, it was noted that the position set out in the paper represents a good middle ground. However, the Committee queried if we were a bit “out of date” with the current issues and asked whether it would be possible to engage with the Trans community about what they now see as relevant, particularly regarding self-identification or improving the process of obtaining a Gender Recognition Certificate (GRC).

8.6.4 The Wales Committee recognised that complexities exist surrounding the collection of data and the use of existing data, particularly concerning comparative research that tries to compare new data with historical longitudinal surveys. There is confusion about the ONS’ position on this also. Committee members agreed that the data question needs to be clarified.

## 9. Head of Wales report (EHRC WC 59.08)

9.1 The Head of Wales requested comments from Committee members on the Head of Wales report paper. No comments offered at this stage.

9.2 The Head of Wales highlighted the Race Inquiry information included in the Annex, ensuring that Committee members were aware that they have a record of it. The Head of Wales offered thanks to Principal WV and others in the Wales team for progressing the temporary office accommodation, as well as the impressive work completed in recent months despite acute difficulties with staff absences.

9.3 The Head of Wales provided an update on the well-being of absent colleagues and praised the EHRC’s new recruitment system for enabling an understanding of how applicants learn about vacancies, including the Commission’s website, word-of-mouth and the hiring platform itself.

9.4 The Interim Chair also highlighted the impressive achievements of the Commission’s team in Wales and offered thanks for everybody’s efforts. All are looking forward to welcoming back absent colleagues. The Interim Chair reminded all Committee members to inform the Secretary of their availability for Peer Learning sessions.

## 10. Any other business

10.1 The Interim Chair asked for any other business. None was noted.

10.2 Members did not wish to escalate any issues to the Board.

## 11. Close

11.1 With no other business being raised, the Interim Chair thanked Committee members and staff for their contributions and drew the formal meeting to a close. The Committee would next meet on 11 January 2022.