Minutes of the Forty Seventh Meeting of the Wales Committee

**Equality and Human Rights Commission**

**Wednesday 27 February 2019**

# Attending:

June Milligan (Chair)

Alison Parken

Faith Walker

Mark Sykes

Martyn Jones

Nicola Williams

Rocio Cifuentes

Sophie Howe

## EHRC

Melanie Field (Executive Director, Wales, Corporate Strategy and Policy)

Hannah Wharf (Principal, Wales)

Wayne Vincent (Principal, Wales)

Geraint Rees (Senior Associate, Wales)

# Welcome and introductions

* 1. (WC47/1.1) The Chair welcomed members to the forty-seventh meeting of the Wales Committee. Apologies had been received from Geraint Hopkins. The Committee welcomed Mark Sykes to his first meeting. The Committee wished to place on record its thanks to former member Andrew Edwards for his contribution to the Committee and contribution to the work of the Commission in Wales.

# Declarations of interest

* 1. (WC47/2.1) In addition to the standing declarations, Committee Members made declarations of interest in relation to the Public Sector Equality Duty update paper, by June Milligan, as a lay member of Court of the University of Glasgow, Alison Parken as an Honorary Senior Research Fellow at Cardiff University and Sophie Howe as a Governor at Cardiff Business School.

# Feedback from Joint Board and Committee meeting including update on Strategic Plan (EHRC WC 47.01)

* 1. (WC47/3.1) The Wales Committee shared reflections on the Joint Board and Committee meeting. The Committee wished to understand how the discussions and decisions of the event would be recorded and actioned. Members commented that the timetable for delivering the Strategic Plan seemed to be driving the event rather than the input from Committee. The Committee were concerned about how stakeholder and committees feedback was to be reflected in the final plan. The Committee commented that the Heads of Wales and Scotland had not been asked to attend the event, which had presented challenges.
  2. (WC47/3.2) The Chair commented that the Commission should to consider how it supported Committee members to engage with these events in future. It would have been useful to have had advanced sight of the analysis of stakeholder consultation. The Chair reflected that there had been some positive reflection by Commissioners on the event and the recognition of different opportunities arising in Wales and Scotland.
  3. (WC47/3.3) The Executive Director responded to the Committee’s feedback acknowledging that the timing of the event had been too late in the consultation process and the materials prepared for the event had not reflected the devolved context well enough. The Governance Review would be a good opportunity to address some of the matters.
  4. (WC47/3.4) The Committee were informed that the Commission had agreed a legal resource for Wales, which would be at Principal level. The Committee commented that it would be important for that role to be based in the Wales team in the Wales office.
  5. (WC47/3.5) The Executive Director updated members on the latest iteration of the Draft Strategic Plan, which had been circulated to members. Members were informed that there was an opportunity to amend the context section of the draft plan ahead of publication and that feedback from Wales and Scotland Committee would be considered ahead of the Board meeting on 5 March.
  6. (WC47/3.6) The Committee members shared their feedback on the draft plan including suggesting changes to language. The Committee made a number of key points on the draft plan including:   
     1. the focus on Brexit in the context session was too narrow and it should reference the spike in hate crime following the referendum and how it led to a heightened sense of ‘othering’. There is an absence in the priorities of actions to tackle hate crime
     2. the Commission should highlight its role of promoting equality and human rights, not just ensuring compliance with the law
     3. there was a need to make clearer references to the constitutional, structural and policy differences in Wales
     4. there was a need to draw out the distinctive opportunities in Wales more clearly e.g. the review of the National Curriculum
     5. there should be clarity on the enforcement journey, how the Commission sees and communicates the journey from advice, guidance and support through to enforcement
     6. that references made to deterioration in living standards in the context section aren’t reflected in how the priorities are described and better articulation is required e.g. impact of tax and welfare reforms on the poorest in society
     7. whether the transport aim would seek to improve the accessibility of existing services, or whether it would seek to influence the development of better provision
     8. strengthening the equality objective on Our People. There was concern about the lack of diversity within the Wales office.
  7. (WC47/3.6) The Executive Director responded to the Committee’s comments and committed to share the Committee’s feedback with colleagues working on the Strategic Plan. The Chair thanked the Committee for their contributions.

1. **Minutes of the last meeting**
   1. (WC47/4.1) The Committee reflected on the discussion with stakeholders on the maturing of partnership working and governance structures across services in West Wales. The Committee suggested it would worth following up with the Health Board on the implications for our Public Sector Equality Duty work.

# Update from the Chair of the Wales Committee (EHRC WC 47.02)

* 1. (WC47/5.1) The Chair updated the Committee on the positive meeting with the new Equality Minister Jane Hutt, and the successful Is Wales Fairer event in North Wales.
  2. (WC47/5.2) The Committee discussed the Welsh Government’s event on Safeguarding and advancing equality and human rights in Wales. The Committee requested sight of the presentations on socio-economic duty and incorporation of human rights treaties.  
       
     **Action A: Circulate the socio-economic duty and incorporation of human rights presentations to the Committee.**

# Developing Commission Policy Positions (EHRC WC 47.03)

* 1. (WC47/6.1) The Executive Director shared a paper on Developing Commission Policy Positions with the Committee. The Committee were informed that the paper stemmed from the ongoing Board and Committee Effectiveness reviews. The Commission planned to review the Governance Manual and Terms of References of Committees to clarify the relationship between the Commission, the executive and the Statutory Committees. The Committee agreed that clear Terms of Reference for all Committee were required.
  2. (WC47/6.2) The Chair noted that the paper highlighted the role of the Wales Committee advising the Commission but did not mention its role in advising the Welsh Government. The Chair asked if it was a new proposition that a policy position could be different in Wales as compared to that agreed by the Board. The Committee were informed that the Board would have to approve any distinctive policy position that would be adopted in Wales or Scotland.
  3. (WC47/6.3) The Committee commented that adequate flow of information between the Board and Committees to give the Committee the opportunity to advise the Commission effectively was important. The Committee requested that the minutes of Board meetings be shared and that the Board’s forward plan of business and meetings enable this.   
       
     **Action B: Circulate Board minutes to the Wales Committee and link with the Board Forward Plan**
  4. (WC47/6.4) The Committee commented on the section of the paper that suggested that major policy decisions on controversial issues be taken to the Board for direction. The Committee agreed the role of the Board and Committees in shaping, informing and advising on policy was important. The example of developing a policy position on chastisement was highlighted, this was an issue had been driven by the policy landscape in Wales and Scotland progressing differently to England.
  5. (WC47/6.5) Committee Members emphasised the need to see how the propositions within the policy paper would translate into new Terms of Reference. The Executive Director confirmed that a table or diagram setting out the process would be developed for the Committee and the discussion would be tabled at a future Committee meeting.  
       
     **Action C: Table further discussion on the role of Statutory Committees on advising on policy positions**.

# Assisted Dying policy (EHRC WC 47.04)

* 1. (WC47/7.1) The Committee received a paper seeking its advice on the Commission developing a policy position on Assisted Dying.
  2. (WC47/7.2) There was a range of opinions shared, which drew upon people’s personal experiences, views, and reflections on the Commission’s position. The Committee reached no definitive position.
  3. (WC47/7.3) Some members stated that in principle, they agreed with an individual’s right to determine for themselves whether to end their life. These views were discussed in the context of the need for robust safeguards, concerns about adequate social and health care provision and the potential wider societal impact of assisted dying. Some committee members commented that the Commission should maintain a neutral position.
  4. (WC47/7.4) A number of Committee members commented on the safeguards and services that would be required as a prerequisite to legislative change, to ensure that people in vulnerable positions are not placed under pressure. There was agreement from a number of members who stated that they were not confident that the current levels of care and support services in Wales or the UK were sufficient to ensure that individuals would not come under undue pressure to end their lives e.g. feeling that caring for them would be a burden on families and carers.
  5. (WC47/7.5) Some members shared concerns on the potential ripple effect of a decision to legalise assisted dying on wider society. Would this lead to the diminishing of the perceived value of life in society? Would it have an impact on how vulnerable and disabled people are treated at the ends of their lives, or are perceived by society? A member commented on the potential impact of legislative change and the challenges this would place on health and care professionals and their relationships with patients.
  6. (WC47/7.6) The Committee noted that the Older People’s Commissioner for Wales had taken a neutral position on assisted dying. Some members commented that the Commission taking a neutral position would still be viewed as the Commission taken a position. A member commented that, should the Commission come to a position, it should be set in the context of clear and narrow parameters. It was noted that the issue being debated was assisted dying for terminally ill people with a life expectancy of six months or less, and that this narrow scope reduced the likelihood of some of the potential negative impacts of changing the law.
  7. (WC47/7.7) A concern was raised about the Commission taking a position on such an emotive issue, with polarised and entrenched views on both sides of the argument. Some members felt that this was an issue that should be decided by Parliament and the Commission’s role was to provide neutral advice expressing the arguments on both sides.
  8. (WC47/7.8) Some members commented that the Commission had a role to clarify and advise on the human rights principles associated with Assisted Dying and set out advice on the safeguards that would need to be in place as part of any legislative change.
  9. (WC47/7.9) A member queried whether it was logical for the Commission to agree a position and then decide not to promote that position or press for legislative change. The Commission should either remain neutral or make the case for change.
  10. (WC47/7.10) A number of Committee Members expressed a wish to see further evidence from other jurisdictions where Assisted Dying was legal – particularly evidence of the extent to which individuals experiencing undue pressure to take decisions on Assisted Dying.
  11. (WC47/7.11) The Chair requested that a note of the Committee discussion be shared with the Board at its meeting the following week to inform its discussion.  
        
      **Action D: Share note of Wales Committee discussion with the Board at its meeting on 5 March.**

# Strategic Plan and Business Plan

* 1. (WC47/8.1) Committee Member Martyn Jones updated colleagues on the latest meeting of the Disability Advisory Committee (DAC). Members were informed that the DAC had met ahead of the Joint meeting of the Board and Committees to develop a shared view on the draft strategic plan. Members were informed that Transport was a key issue for the DAC. The DAC were concerned by the lack of focus on social care in the plan. The Committee requested that it see the minutes of DAC meetings.   
       
     **Action E: Circulate minutes of DAC meetings to the Wales Committee.**
  2. (WC47/8.2) The Committee discussed the Welsh Government’s work to refresh its Independent Living strategy. Members were informed that the Commission had submitted a response to the consultation on the new strategy and officers agreed to share.  
       
     **Action F: Circulate Independent Living consultation response with the Committee.**

# Wales Delivery Plan 2019/20 (EHRC WC 47.05)

* 1. (WC47/9.1) The Committee received a paper setting out the draft Wales Delivery Plan 2019/20. Members were informed that this was a work in progress. The delivery plan had been developed from Wales Committee advice and intelligence from stakeholder engagement. The draft plan was aligned with the Commission’s draft Strategic Plan aims. The budget for the plan had yet to be finalised. The Committee’s input was sought on whether the indicated level of resourcing and the draft activities were appropriate for the Wales context.
  2. (WC47/9.2) The Committee provided feedback on the draft plan. Members suggested that there should be a connection made between the strategic narrative, which sets out deteriorating living standards, and activities in the Wales Delivery Plan, such as continuing the work on Cumulative Impact Assessment. Similar points were made about activities related to tackling hate crime and fostering good relations, which could be included more clearly in the Education priority. Members suggested that the plan should make clear which groups each activity was trying to address.
  3. (WC47/9.3) The Committee noted that there were too many activities set out in the plan given the staffing resources of the Wales team. Members suggested that the team focus on fewer activities rather than spreading the focus too thinly on a broad programme of work. Members highlighted that in 2019-20 the Commission would be advising the Welsh Government on enacting the socio-economic duty and reviewing the Public Sector Equality Duty. The team would need to reflect the impact that would have on its capacity to deliver the breadth of the activities set out in the draft plan.
  4. (WC47/9.4) On staff resourcing members were reminded that the new role of a Legal Principal for Wales had been agreed. There would be a review at the mid-year point about a Compliance role for Wales. There would be a dedicated link for Wales into the research team. The Executive Director reflected that the Wales team needed more capacity on policy and influencing.
  5. (WC47/9.5) Members suggested the Commission should be clear on the activities that it would prioritise and on which it would proactively engage. The Wales Delivery plan should not prioritise non-devolved activities such as Detention. Members suggested that devolved opportunities needed to be reflected in the plan, such as engaging with the Fair Work Commission and advising on new legislation such as Social Partnerships Bill.
  6. (WC47/9.6) Members commented that addressing the Is Wales Fairer? 2018 challenges needed be more clearly reflected throughout the plan. Members suggested that the Wales team collaborates with other organisations working on similar activities. As an example, committee member Sophie Howe, whilst declaring an interest as the Future Generations Commissioner, informed the team that her office would have a significant focus on transport.
  7. (WC47/9.7) Summarising the discussion, the Chair highlighted feedback from the committee that activities related to tackling hate crime and a continuation of the Cumulative Impact Assessment work should be considered. The Committee had also suggested that the plan be more focussed and there should be significantly fewer activities.  
       
     **Action F: Committee members to feed in further views on Delivery Plan priorities.**

# Wales Programme Performance Report 2018-19 (EHRC WC 47.07)

* 1. (WC47/10.1) The Committee noted the performance report paper and thanked the team for delivering the work.

# Public Sector Equality Duty update (EHRC WC 47.06)

* 1. (WC47/11.1) The Committee received an update on the compliance monitoring work on the Public Sector Equality Duty (PSED) in Wales. Members were informed that the Commission would publish sector specific briefings from the compliance monitoring. Members noted with concern the levels of non-compliance identified by the monitoring and highlighted the risk in not addressing this. Officers commented that the results were not surprising given that a number of specific duties are heavy on process such as the duty to publish employment information or the pay duty. Members were informed that the process of monitoring had stimulated activity by public bodies to comply.
  2. (WC47/11.2) Members commented that it was widely acknowledged that the PSED specific duties had not driven the change that had been intended. Members suggested that the intelligence gathered by the Commission in its compliance monitoring should shape and inform the future of the duties as part of the Welsh Government’s review.
  3. (WC47/11.3) Members commented that work was required to align guidance between the Wellbeing of Future Generations Act and the PSED. Members suggested that the Commission should engage with other regulators and inspectors to develop a sophisticated view on whether there were patterns of underperformance across Welsh public service. The Committee suggested that this could be a topic for a future Joint Commissioners meeting.
  4. (WC47/11.4) The Chair suggested that the PSED would need to come back for a further discussion at the Committee.  
       
     **Action G: Agenda item on PSED at a future meeting.**

# Approval of the minutes of the Forty Sixth meeting of the Wales Committee (EHRC WC 47.08)

* 1. (WC47/12.1) The minutes of the forty sixth meeting were agreed as an accurate record.

1. **Current matters arising (EHRC WC 47.09)**
   1. (WC47/13.1) The Committee noted the current matters arising paper.
2. **Any other business**
   1. (WC47/14.1) The Chair informed the Committee of her decision to stand down from her role as Commissioner and Chair of the Wales Committee due to personal circumstances. The Chair informed members that she had notified the Commission’s Chair, the UK Government and Welsh Government of her decision. The Chair stated that she had offered to remain in post while the process for appointing a new Commissioner was underway. The Committee wish to put on record their thanks for the Chair’s leadership of the Committee.

**Close of meeting**