Equality and Human Rights Commission

Minutes of the ninth meeting of the Disability Advisory Committee Wednesday 17 July 2019, 10:30am to 3:15pm

## Present

### Committee Members

Rachel Perkins – Chair

Sarah Coleman – Deputy Chair

Simone Aspis

Helen Chipchase

Marsali Craig - Scotland Committee Representative; by telephone

Miro Griffiths; by videoconference

Martyn Jones - Wales Committee Representative

Anna Lawson

Colin Low

Michèle Scattergood; by videoconference

Nick Watson; by telephone

### Commissioners

Caroline Waters – EHRC Deputy Chair

### Officers

Christina Barnes: Senior Principal, Inquiries and Intelligence (Item 6 and 7)

Angus Cleary: Principal, Inquiries and Intelligence (Item 7) by videoconference

Melanie Field: Executive Director, Wales, Corporate Strategy and Policy

Rachel Fox: Senior Associate, Human Rights Monitoring and Disability Protected Characteristic Lead (Item 3-12)

Laura Lucking: Director, Compliance (Item 6 and 7)

Laura Mingins: Principal, Stakeholder Engagement (Item 9)

Joanna Owen: Principal, Advisory and Litigation (Item 4)

Rachel Robinson: Principal, Policy (Item 7) by videoconference

Kay Sharkey: Principal, Inquiries and Intelligence (Item 6) by videoconference

Graham Wheaton: Senior Associate, Corporate Governance (DAC Secretary)

Eleanor Williams: Principal, Legal, Intelligence and Impact (Item 9); by videoconference

## 1 Welcome and apologies for absence

1.1 Rachel Perkins welcomed everyone to the ninth meeting of the Disability Advisory Committee.

1.2 Apologies had been received from Marc Bush, Fazilet Hadi and Liz Sayce.

## 2 Declarations of interest

2.1 There were no declarations of interest additional to those already declared.

# Governance Matters

## 3 Minutes of the eighth Disability Advisory Committee meeting

3.1 Members agreed the minutes of the eighth meeting of the Disability Advisory Committee **(DAC 09.01)**.

## 4 Actions arising

4.1 Members reviewed the actions arising **(DAC 09.02)** and were pleased with progress. They:

a) requested that, under Action 4.1b, an update on the subject of assisted dying and any legal opinion be brought to the Committee at its meeting on 23 October 2019;

**ACTION: Charlie Hamilton** to provide update.

b) heard from Joanna Owen on Action 4.2 (“Good practice in Clinical Commissioning Groups (CCG)”). Members noted that the work was progressing slowly despite pressure being applied by the Commission. All CCGs were undertaking reviews, some of which had been completed. Policies that had been assessed so far complied with equality and human rights obligations, although there were not any mechanisms to check whether practices were changing. Nick Watson suggested that Officers might want to look at the model in Scotland where Health and Social care were integrated;

**ACTION: Joanna Owen** to keep the Committee informed of any developments, and members to share any further thoughts by email.

c) noted that, in relation to the Cabinet Office project on disability, this was to be embedded in the work of the newly formed Cabinet Office Equalities Hub. The Commission had also been asked by the Department for Business, Energy & Industrial Strategy (BEIS) to provide advice and guidance on various matters relating to disability.

**ACTION Rachel Fox** to send more information to members by email when it is available.

## 5 Chair’s Board meeting report

5.1 The Committee heard from the Chair that she had attended the Board meeting on 3 July 2019, reporting that they had welcomed the Chair’s annual report to the Board and were very enthusiastic about the work of the Disability Advisory Committee.

# Strategic Issues

## 6 Strategic Intelligence Gathering Events

6.1 Christina Barnes and Laura Lucking presented details of the Commission’s work in relation to strategic intelligence gathering events **(DAC 09.03)**. This was a programme of work to join up the Commission’s ‘Intelligence’ functions and to hold pilot events, or work in partnership with other organisations, to understand more about issues ‘from the ground up’. This engagement would support promotion of the Commission’s s28 projects on transport and education, in line with Strategic Plan priorities. It would also review access to information and data from other agencies, as part of wider work around intelligence gathering. This would include making better use of the data provided by EASS and exploring options for working with Citizens Advice and ACAS.

6.2 Members noted that the starting point was to target third sector advice providers and user groups and commented that:

a) there were no Disabled People led organisations in the education arena, they were all professional organisations;

b) it was important that events were not ‘single topic’, as this would dissuade attendance;

c) it would be worth contacting Brian Matthews at the Disabled Persons Transport Advisory Committee (DPTAC);

d) transport should take a ‘whole journey’ approach, which includes the pedestrian aspects;

e) unions had raised concerns around automation and technology and that most barriers were around provision of information; and

f) it was important to include cultural impacts, interaction with other people and bullying in any discussions.

**ACTION Christina Barnes** to note members’ comments and send an email to members requesting details of organisations that it would be opportune to contact.

## 7 Criminal Justice System Inquiry

7.1 Angus Cleary and Rachel Robinson introduced the paper on the Criminal Justice System inquiry **(DAC 09.04),** the purpose of which was to understand the experiences of defendants or accused with mental health conditions, cognitive impairments or neurodiverse conditions in the pre-trial phase of the system.

7.2 Members were briefed on the fact that the evidence-gathering phase was underway and that an Expert Reference Group (ERG) had met on 15 July. The ERG felt that evidence gathering and tentative findings aligned with their understanding of the key issues for defendants / accused with relevant impairments. The group further highlighted a reluctance by defendants to disclose disabilities, although those already receiving support tended to fare better. Concerns were also raised that information relating to impairments was not passing along the system to the next stage.

7.3 Members noted that Officers from the inquiry team were to visit HMP Durham to see their video link facilities. It was further noted that a pilot of guidance, advising those in custody, family members and advocates on what they should do in relation to declaring disabilities when someone was detained, was proposed.

7.4 Members commented that this would require police forces to ‘buy in’ to providing the guidance and that all detainees should be screened. They further commented that it may be better to look at who in custody had an impairment and what could have been done earlier to provide relevant assistance. When it came to those in custody who had learning disabilities, there was a clear and distinct relationship with those brought up in care system.

**ACTION Angus Cleary** to note members’ comments and to provide a link to the inquiry survey for members to promote through their networks.

## 8 Right to independent living

8.1 Rachel Fox spoke to the paper that provided details of the draft influencing strategy **(DAC 09.05)** and asked the Committee to provide views on the strategy.

8.2 Members felt that:

a) further consideration of how the position applied to those with mental health conditions would be useful and it was also important to consider UNCRPD Articles 12 and 14, as well as Article 19.

b) as equal services for disabled people in the community was not the key focus of the position, this should be noted in the context;

c) in relation to the position itself, members reiterated concerns that the position did not require the closing down of existing institutions;

d) there was a need to acknowledge the distinction between those with lifelong impairments and those who acquired impairments later in life.

8.3 The Committee questioned, in terms of procurement, whether the PSED fed into contracting services for Independent Living. In addition, the role of the Care Quality Commission was questioned, as they inspected institutions and this could provide an opportunity to influence them.

8.4 Members suggested that:

a) it was important to understand the breadth of Independent living, to follow it through and identify how local authorities could be supported to make it happen;

b) establishing DPO’s in all local authorities would increase life chances and provide opportunities to campaign for independent living;

c) opportunities for partnership working should be sought out and it would be important to set the context for the Commission’s ‘asks’ by releasing comms and media content over a sustained time-period;

d) it would be useful to identify, within the various sectors, where there would be significant pushback and ensure resourcing was available to challenge the pushbacks;

e) the aspect of the model concerning the ‘right to refuse’ elements of provision could be subject to misuse, so needed to be further considered; and

f) it would be worth considering a context campaign, introduced as a social issue with a drip feed of images looked at as if holding up a mirror to society.

8.5 The Committee thanked Rachel for her continued work on Independent Living, asking that she continued to work with the sub-group and provide updates as required.

## 9 Approach to stakeholder engagement with disabled people

9.1 Laura Mingins briefed the Committee on the work of the stakeholder engagement team, advising members that the team had recently been strengthened.

9.2 Members heard that the aim was to promote all of the Commission’s powers, which was underpinned by the delivery of the Strategic Plan. The team were working to promote the Commission as:

a) an ‘enforcer’ and increase awareness of its legal powers and impact;

b) an ‘influencer’, so as to act as a lever for change; and

c) a ‘thought leader’ to provide a platform and voice within our networks to increase understanding.

9.3 Members noted that the Committee’s involvement in promoting the strategic plan consultations had assisted in obtaining a 49.8% response that disability was important. It was felt important that the DAC, as a resource, could be used better and that while advice from Disabled People’s Organisation’s (DPO’s) was important, it was crucial they did not feel pressured because of repeated contact.

9.4 Members commented that it would be helpful to:

a) keep disabled people’s expectations realistic of what is achievable;

b) have an annual report, by sector, of the implications for disabled people of legal cases and how extensive they were;

c) ask specific questions of DPO’s, ensuring there was something in it for them and to use resources to get to people and groups that the DPO’s can’t;

d) release press commentary when stories highlight unfairness or disadvantages, which could then provide some gravitas;

f) avoid ‘radio silence’ on issues that suggested to disabled people that the Commission was not listening;

g) be clear about how the EHRC makes decisions in relation to taking legal cases or not;

h) endeavour to ensure that any stakeholder engagement sessions were led by disabled people; and

i) review the principle of co-production which, although not perfect, had a statutory basis and was enshrined in devolved legislation.

**Action: Laura Mingins** to note members’ comments, disseminate them to the stakeholder engagement team and employ the Committees suggestions where appropriate and feasible.

Action: Sarah Coleman to support the committee to 'map' our network and identify areas for further reach

## 10 Sub-group reports to the Committee

### CEO and Board

10.1 Melanie Field introduced the CEO and Board report **(DAC 09.06)**.

10.2 In relation to a letter that had been received from Debbie Abrahams MP, which requested that the Commission investigate the Department for Work and Pensions (DWP) for deaths of social security claimants after being found fit to work or having Personal Independence Payments reduced, members noted that:

a) a full discussion had been held at the most recent Prioritisation Group meeting;

b) this fitted with the Access to Justice aim and consideration was given more broadly to the appropriate use of powers;

c) this suggested there was a serious flaw in the process and engagement had already taken place with the DWP to obtain formal agreement on the use of reasonable adjustments when dealing with claimants;

d) the DWP had a system in place where a review takes place in the circumstance of a claimant death, although there were questions as to whether the reviews were independent enough; and

d) Chief Executive Officer Rebecca Hilsenrath had replied to Debbie Abrahams MP, highlighting that there was a potential to take on individual cases.

10.3 Members heard that information related to the Care Quality Commission was discussed by the Prioritisation Group and there was a suggestion that the Commission might explore Article 3 (General Principles) breaches in the early stages.

### Scotland Committee

10.4 Members heard from Marsali Craig that much of the discussion at the DAC had chimed with what had recently been discussed by the Scotland Committee.

10.5 Members noted that:

a) there had been useful stakeholder events in Scotland and that the team were looking for strategic litigation cases to emphasise the role of the EHRC as an enforcer;

b) EHRC Chair, David Isaac, Lesley Sawers, Commissioner and Scotland Committee Chair and Alastair Pringle, Executive Director, Scotland and Corporate Delivery had met with the First Minister in Scotland. Treaty incorporation was one of the items discussed;

c) influencing work with the Scottish Government and the First Minister’s Advisory group, particularly around independent living, was ongoing; and

d) the Scotland Committee would be meeting with the Scottish Human Rights Commission (SHRC) in September 2019 and would be responding the SHRC’s consultation on their strategic plan.

### Wales Committee Update

10.6 Martyn Jones spoke on behalf of the Wales Committee, advising that the First Minister in Wales had recently appointed a Special Adviser on equality and that a newly appointed Welsh Government head of equality was due to be announced.

10.7 Members heard that discussions had taken place in Wales on hate crime in relation to transport. The Welsh Government were also holding a review of the social model and that a new version of the independent living document, driven by the Equality Act, was being drafted.

10.8 Members noted that Welsh Government had committed to part of its website being related to disabled people and Brexit, although no timescale had been provided for this to happen.

**Legal**

10.9 Eleanor Williams presented the legal report **(DAC 09.07)** and advised that the case listed as MDA & Ask v Secretary of State for Home Department had successfully concluded the day prior to the DAC meeting.

10.10 The Committee discussed a recent case involving a woman with a learning disability who became pregnant. The NHS Trust had sought a termination in the woman’s best interests. The initial successful ruling was challenged by the woman’s mother and overturned on appeal.

10.11 Members requested that, if possible, links to those cases that are in the public domain could be provided via an email report.

**Action: Eleanor Williams** to review members request for a report providing links to cases in the public domain and advise on the viability.

## 11 Members’ Horizon Scanning

11.1 Members noted that:

a) the European Accessibility Act had become part of EU law at the end of June;

b) Disability Futures were attempting to inspire discussion around disability in the #metoo form;

c) a consultation document had been issued by BEIS relating to a single labour market enforcement body which proposed to bring together minimum wage and gangmasters licensing regulation;

d) the UK Government were in the early stages of setting up the Office for Tackling Injustices. There was very little information at the time of the meeting, but the proposals appeared to cut across the Commission’s section 12 (monitoring progress) duty; and

e) The Alliance for Inclusive Education (ALLFIE) had started a petition that called upon the Government to increase the future funding of Special Educational Needs and Disability in mainstream settings.

11.2 Members were encouraged to share relevant intelligence with the Committee and officers. Action Sarah Coleman (Mencap Apprenticeships report); Simone Aspis (concerns regarding those held on section 37/41 of the Mental Health Act; Anna Lawson (research on experiences of autistic people in the criminal justice system).

## 12 Any other business

12.1 Members questioned the operation of the buddying scheme, as they had not yet been approached by priority aim leads. It was noted that the mechanisms were only just in place to progress this.

12.2 Members were concerned that there were significant ongoing breaches across the UN Convention on the Rights of Persons (UNCRPD) with Disabilities and the UN Convention on the Rights of the Child (UNCRC) in relation to the use of force, restraint, segregation and seclusion, which appear to have not translated into the Convention Against Torture (CAT) concluding observations.

12.3 Members noted that:

a) the Commission was equally concerned and it had been raised with the CAT Committee, but there was not much of an avenue to press it further with the Committee;

b) doing so would be unlikely to bring about the wanted result as the concluding observations had already been published;

c) whilst disappointing, the Commission would still press ahead with following up its own recommendations, even though they were not in the UN’s concluding observations;

d) the issue would be raised as a priority with the Sub Committee on the Prevention of Torture, which would be visiting the UK on 9 September 2019;

e) the EHRC Board were aware of the issues following a recent Commissioner Working Group presentation; and

f) this was being discussed with colleagues in the Ministry of Justice at an official level.

12.4 With no other business matters being raised, Rachel Perkins thanked attendees. The next Committee meeting date would be 23 October 2019.

Agreed by the Committee at its meeting of 23 October 2019

Rachel Perkins, Chair