Equality and Human Rights Commission

Minutes of the EHRC Disability Advisory Committee Meeting (Transitional), Tuesday 11 July 2017

# Summary

Minutes of the first meeting of the Disability Advisory Committee (Transitional) held on 11 July 2017 at Fleetbank are attached for review and formal agreement by the current members of the Disability Advisory Committee (Transitional).

# Equality and Human Rights Commission

# Minutes of the first Disability Advisory Committee (Transitional)

# Tuesday 11 July, 10.30am – 4pm

## Present

### Committee Members:

Rachel Perkins – Interim Chair

Marc Bush

Michèle Scattergood (Items 4-9)

Rob Greig (Items 1-8)

Helen Chipchase

Saghir Alam

Colin Young - Scotland Committee representative

### Officers:

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

Rachel Fox, Treaty Monitoring, EHRC Disability lead

Graham Wheaton, Secretary, minutes

### **Speakers and attendees**:

David Isaac, EHRC Chair (Items 1-8 and 11-12)

Rebecca Hilsenrath, CEO (Items 1-8)

Alastair Pringle, Executive Director, Scotland and Corporate Delivery (Item 8)

Eleanor Williams, Legal

Jonathan Timbers, Programmes

## 1. Welcome and apologies for absence

1.1 Rachel Perkins welcomed everyone to the first meeting of the Disability Advisory Committee (Transitional) meeting.

1.2 Apologies had been received from Anna Lawson and Aled Edwards.

## 2 Declarations of interest

2.1 There were no additional declarations of interest.

## 3 Minutes of 57th and final Statutory Disability Committee meeting

3.1 The minutes (**DC 57.01**) were agreed to be a correct record.

## 4 Actions arising

4.1 The actions arising report (**DC57.02**) was noted.

4.2 The Committee agreed that Action I from the 57th DC meeting, Inaccessible Websites, whilst marked as complete, should be raised with the Prioritisation Group, which had taken over the functions of the Regulatory Decision Making Panel (RDMP).

## 5 Chair and CEO update

5.1 David Isaac thanked those members of the dissolved Disability Committee who had agreed to serve on the Disability Advisory Committee (Transitional) and submitted applications to serve on the new Disability Advisory Committee when it was formed.

5.2 Members noted that the closing date for applications from former members of the Disability Committee to serve on the new Disability Advisory Committee was 5 pm on 17 July 2017.

5.3 Members discussed the role of the new Disability Advisory Committee and agreed that it was important that, although this was now an advisory group, the Board should continue to mainstream disability issues.

5.4 The Committee also commented that it was important for the Commission to ensure that disability was a key part of its work and that the recommendations made by the Disability Committee were embedded going forward.

5.5 Rebecca Hilsenrath spoke about the work in the 2017/18 Business Plan, which focused on the Commission working more strategically with Domains and Protected Characteristics.

5.6 Members noted details of ongoing and forthcoming projects on:

a) the disability research report;

b) the Housing Inquiry;

c) Pay gaps;

d) Apprenticeships;

e) Elected office;

f) Disability-focused strategic litigation;

g) Restraint;

h) CRPD (due to report at the end of July).

5.7 The Committee raised a concern about how to make sure issues that are important to disabled people are identified and tackled within the Commission’s work if there was no direct input to the projects. The Committee felt that, while data from surveys was important, there were other ways of obtaining and utilising information.

5.8 Members noted that the Chair and CEO were committed to making sure the Commission’s new ways of working were joined up; that it was crucial the Commission engages in the right way, and that the role of the DAC included that of a ‘critical friend’.

5.9 David Isaac then updated members about Commissioner appointments. Members noted that Lord Shinkwin, since being appointed in May 2017, prior to the General Election, had not attended any Board meetings and that Sarah Veale’s re-appointment was still under discussion with GEO.

5.10 The Committee discussed the chairing of the Disability Advisory Committee. Members noted the options put forward of:

a) Selection of an existing Committee member as Chair.

b) A co-chairing arrangement.

c) A rotating Chair arrangement between Committee members.

d) Chairing by a Commissioner

5.11 Members did not favour a rotating Chair arrangement. The Committee felt that, to ensure a clear link to the Board as well as strong stakeholder leadership, a co-chairing arrangement of a Commissioner and a Committee member was a good option. A Commissioner who could influence the Board being part of the chairing arrangements would ensure that the Committee’s views were heard by the Board. The Committee suggested that a standing invitation to DAC meetings should be extended to all Board members.

## 6 Review of the draft Terms of Reference for the Disability Advisory Committee

6.1 Rachel Fox presented the amended draft Terms of Reference (ToR) for the Disability Advisory Committee (DAC)

6.2 The Committee reviewed the document, noting the changes that had been made since it had originally been drafted. Members commented that:

a) The document should be presented in an accessible format such as 14 point Arial;

b) Section 8 should be re-worded to reflect that the Committee should have more flexibility to discuss roles where members can contribute to the Business Plan;

c) In Section 9 i the Committee would be best served by a co-chairing arrangement and not a rotating Chair arrangement;

d) Section 9 ii should include ‘from across the GB;

e) Section 10 should include the wording ‘as defined by the Equality Act 2010’;

f) Section 12 ‘Secretary of State’ should be replaced by ‘Board’;

g) on the ToR should explain how the DAC’s role relates to the Prioritisation Group

**Action – Rachel Fox:** to incorporate changes into the draft ToR.

## 7 Legal Update

7.1 Eleanor Williams presented the legal update to members, initially asking members to confirm what they did and did not want from the update in future. Members commented that they found the updates very useful and relevant to the role of the DAC.

**Action – Eleanor Williams:** to discuss with Marc Bush and Anna Lawson the style of legal reports

7.2 The Committee noted that a new Legal Director, Elizabeth Prochaska, had been appointed. Members requested that she be invited to a future meeting.

**Action – Eleanor Williams:** to invite Elizabeth Prochaska to the next Committee meeting.

7.3 The Committee noted that the Commission had hosted a talk for staff on Equality and Human Rights and Brexit by Baroness Hale of Richmond DBE PC FBA, Deputy President of the Supreme Court, on 28 June 2017 at Fleetbank House.

**Action – Eleanor Williams:** to provide Committee members with access to the blog about the event.

7.4 The Committee noted that the disability Access to Justice pilot had funded 105 cases at a cost of £262k and that a discussion had taken place with the Commission’s corporate lawyer to explore how data protection aspects of potential ‘Talking Heads’ videos from those given assistance might be managed.

**Action – Eleanor Williams:** to provide members with a summary of the 105 funded cases.

**Action – Graham Wheaton:** to arrange for the Committee to receive the Commission’s ‘Small Print’ monthly circular and press cuttings.

7.5 The Committee was pleased to note that the Commission was finalising a tender for producing a legal framework in relation to the Restraint project that focused on people with learning disabilities.

7.6 Members noted that the Commission was attending a roundtable on the CRPD report on 19 July 2017, where consent to treatment, improving access to tribunals and long-term segregation would be raised.

7.7 Marc Bush commented that the organisation Article 39 was seeking to fund a strategic case on the use of restraint in secure children’s homes. He asked if the Commission’s legal team could consider it as part of its work in this area. He further commented that the next legislative opportunity on this would be either a Private Member’s Bill or the draft Mental Health Treatment Bill, therefore interim legal action would be very welcome.

7.8 Members discussed the Access to Justice pilot and questioned whether there was scope to continue working on disability related cases. Officers commented that there were lessons to be learned to see if there was a model the Commission could take forward in some form. Officers would keep the Committee informed and involved in any continuing strategic litigation.

7.9 Members asked to be updated on the Birmingham City Council v D appeal and the Davey v Oxfordshire Council case. Officers commented that the former was to be presented to the Prioritisation Group and an update would be provided and that on the latter the Commission was supporting an Article 19 intervention.

**Action – Eleanor Williams:** to provide members with updates on both cases.

## 8 Housing Inquiry Update

8.1 Alastair Pringle presented the Committee with an update on the Commission’s work on the Housing Inquiry.

8.2 Members noted that:

a) The team had made substantial progress on gathering information for the inquiry.

b) 327 responses had been received from individuals, with a good spread of disabled and non-disabled people.

c) BME groups had been targeted to increase the sample.

d) 79 responses were received from housing providers and 40 from Disabled Peoples Organisations (DPOs), with both of which the Commission had carried out a significant number of interviews across England, Scotland and Wales.

e) There was a lack of consistency across housing providers on assessments and provisions available with some gaps to fill.

f) Stirling University had completed their research for the Commission, which involved a literature review and qualitative interviews with individuals, including people in residential care.

f) The IFF survey of all local authorities in England Scotland and Wales would be launched in the very near future.

8.3 An evidence-gathering day had been held on 10 July 2017 which looked at key issues, evidence gaps and plans to take the work forward. The initial suggestions were that there should be a focus on non-physical disabilities, families impacted by disabilities and transition states. Work was continuing on building good case studies to demonstrate the impact of inappropriate housing on people’s independence and also on family life.

8.4 Members asked, of the respondees to the call for evidence, what percentage were from BME groups and what is the Commission hearing are the issues behind the headlines; are older people’s organisations being specifically targeted.

**Action – Alastair Pringle:** to pass on to members any ‘shareable’ evidence.

8.5 ‘Next steps’ proposals were outlined to the Committee:

a) Evidence gathering interviews would be completed, coded and analysed.

b) IFF survey of all local authorities would be undertaken and reported.

c) A survey of occupational therapists would be undertaken to help supplement evidence on those in hospitals and residential care homes.

d) Evidence gaps would be identified and filled.

e) Recommendations would be built, tested and refined.

8.6 Outputs from the inquiry would include impactful case studies for media use, and a suite of materials to help disabled people assert their rights to independent living and help those providing housing to understand their obligations. Disability Rights UK had indicated their willingness to work with the Commission on this and the Commission was intending to publish in early 2018.

8.7 The Committee then received an update from Alastair Pringle on the Accessible Stadia project that the Commission was progressing.

8.8 Meetings had been held with the 20 Premier League clubs from the 2016/17 season and meetings were planned with the newly promoted clubs. Each club would be in one of three possible states:

a) All improvements completed by the start of the 2017/18 season, so no further work required.

b) Some work still required, so they need to reach a public agreement as to what they will do and when.

c) No impetus to make changes, therefore a potentially unlawful act, consider starting an investigation.

8.9 Currently most clubs are in the first two groups but some are under consideration for investigation. The Commission would be writing to all clubs for further information and would then use this to make final decisions. The Commission would be launching a survey of disabled fans: members engaged in social media could help to bring this to a wider audience.

8.10 The Commission would publish a report in September setting out what each club had done and some of the good things that had been heard and use this to push up standards in lower leagues and other sports stadia.

8.11 The Committee noted that the Commission was not only looking at wheelchair users but also fans with autism, ambulant disabled, services they provide to disabled people, for example: access statements and online ticketing, engagement of senior management with access issues, training offered to staff and how they engaged with disabled fans.

## 9 CRPD Update

9.1 Rachel Fox provided the Committee with an update on the CRPD report which was due to be submitted to the UN CRPD Committee by 31 July 2017 and would be published in mid-August.

9.2 The Committee noted Marc Bush and Anna Lawson’s contribution to the project through a sub-group arrangement and noted that the report had 14 themes and related recommendations, which covered a wide range of substantive areas.

**Action – Rachel Fox:** to circulate the report to members for information once completed.

9.3 A DPO stakeholder event had been held on 6 July 2017 which had been attended by Marc Bush, who commended the event for its very positive engagement with DPOs. The event was aimed at those DPOs who were already engaged with the CRPD process to ensure continuity and a detailed level of engagement.

9.4 Members felt that there had been an opportunity to bring other DPOs from across a broader spectrum and from other areas of the UK into this, but noted that timeframes had made this difficult.

9.5 The Committee was informed that new guidance, primarily aimed at civil society organisations, which explains the CRPD, its history, the rights contained in it, and how to get involved in monitoring and reporting under the Convention would be published on 13 July 2017, updating the guidance first released in 2010. Members would advise officers of appropriate stakeholders such as Local Government Associations who would be best placed to receive and act on the CRPD guidance.

**Action – Rachel Fox:** to share the guidance with members by email

9.6 A funding opportunity had gone out to tender to allow at least five disabled people from England and Wales and at least 3 disabled people from Scotland to go to Geneva, to engage with the UK’s public examination under the UN CRPD.

9.7 Members felt that this gave a huge measure of confidence that the Commission was supporting disability. They felt that the Commission now needed to focus on involving those DPOs who were not currently engaged with the process.

**Action - Rachel Fox:** to share an update on UN CRPD related work with members by email.

## 10 Disability Committee Achievements

10.1 Jonathan Timbers presented the Committee with an oral summary of the former Disability Committee (DC) achievements, including both its successes and where it had been less successful in delivering change.

10.2 The Committee noted that the direction of the paper had changed and would now be prepared as a Board paper, to reflect what the Disability Committee had achieved since 2014. The paper would be structured around what the DC had achieved through influencing the work of the Commission, through its own initiative and through the Disability Programmes team. The DC was sometimes influential in ways that had not been sufficiently highlighted and this was a lesson to be learned. Such lessons should inform the development of the Disability Advisory Committee.

10.3 Members discussed the recommendations that were to be included in the paper and felt that there was an opportunity to mainstream the Committee’s contribution more effectively. Members further felt that the DC had been most effective when providing strategic and expert input to specific projects and issues by interacting in a semi-formal way with officers.

10.4 The paper concluded that the relationship between the DAC and the Commission would work best if the DAC knows when its advice had been taken and had a prompt and clear explanation when its advice had not been accepted.

**Action – Jonathan Timbers:** to share the draft Board paper with members for their input on ways of working.

10.5 Officers commented that the DAC had a strategic advisory role, a role to play in stakeholder engagement and was a source of expertise.

**11 Horizon Scanning**

11.1 Rachel Perkins introduced this item and requested that it be part of all future TDAC and DAC agendas. The discussion was opened up to members for comment.

**Action –Graham Wheaton:** to ensure to share the Commission’s Horizon Scanning digest and to schedule Horizon Scanning on all future agendas.

11.2 Members discussed Lord Shinkwin’s Private Member’s Bill, entitled the Abortion (Disability Equality) Bill [HL] 2017-19, which seeks to equalise the limits of permissible time for aborting of disabled and non-disabled foetuses.

11.3 The Committee noted that the Bill had not yet been published so there was limited detail available, but that the Commission was being asked to support the Bill.

11.4 Members felt that disability should not of itself be a reason for unequal treatment in relation to abortion, but that the issue was complex and controversial.  Some parents faced with the decision whether to terminate a pregnancy may not fully appreciate the perspectives of disabled people on their quality of life.  There was concern that views within the medical community may also not always be fully informed and can sometimes appear biased against disabled people, as evidenced by some ‘End of Life’ decisions.

11.5 Members recognised the need to respect women’s rights over their own fertility, but raised concerns that information provided to women does not always support fully informed choice; women may therefore feel under undue pressure to terminate the pregnancy of a disabled foetus. However, the energy and commitment that can be involved in parenting a disabled child was a factor parents needed to consider carefully.

11.6 The development of genomic profiling was also discussed and it was felt that this needed to be considered because scientific developments could open up the possibility of information about a wider range of potential impairments being identified during pregnancy.

11.7 The Committee agreed that the issues raised by the Bill were important and complex and needed a full, open and informed debate to consider whether there should be legislative change.  They therefore felt that this Bill was not the appropriate way to address the issues.

11.8 Marc Bush asked whether it would be possible to scope out an extension to the Equality Act 2010 on mental health. Officers commented that Department of Health and Department of Work and Pensions officers had already been engaged and that the Commission was pressing for implementation of the Socio-economic duty. However, on balance the Commission felt that amending the disability protection in the Equality Act 2010 was not necessarily a positive step as there was a risk of reducing protection.

11.9 Members commented on the forthcoming Repeal Bill, noting that the translation of EU legislation into UK legislation might be confused and that the Commission needed to have a strategy in place. Officers confirmed that the Commission had a five point Brexit plan and would be working with key stakeholders, particularly disability forums, to align our messages and then drafting amendments to the bill.

**Action – Melanie Field:** to share the 5 point Brexit plan and details of draft amendments to the bill with members

11.10 Colin Young commented that the upcoming Social Security (Scotland) Bill had some positive principles that the Commission may find noteworthy.

11.11 Helen Chipchase commented that she was conducting two pieces of research around disability, on the mechanics of how people are re-deployed and on the lived experience of disabled people in employment.

**Action – Graham Wheaton:** to share Committee’s comments with relevant officers

## 12 Any Other Business

12.1 No other business matters were raised.

12.2 Rachel Perkins thanked attendees and noted that the next Committee meeting date would be advised in the near future.