

**Mental Health Commission Meeting**  
**Minutes of Meeting held on 15 February 2018**  
**Held at Waterloo Exchange, Waterloo Road, Dublin 4**

<b>Commission Members</b>	<b>Initials</b>
John Saunders	JS
Patrick Lynch	PL
Catherine O'Rorke	COR
Nicola Byrne	NB
Jim Lucey	JL
Rowena Mulcahy	RM
Ned Kelly	NK
Margo Wrigley	MW
Niamh Cahill	NC
Aaron Galbraith	AG
Xavier Flanagan	XF

<b>Apologies</b>	<b>Initials</b>
Colette Nolan	CN
Michael Drumm	MD

<b>Executive in Attendance</b>	<b>Initials</b>
Patricia Gilheaney, CE	PG
Orla Keane, Secretary to the Commission and Head of Legal	OK
Aine Flynn, Director of the DSS	AF
Kate Frowein, on behalf of the Director of Standards and Quality Division	KF

<b>Agenda Item No</b>	
1	Declarations of Interests - Signed and Returned to the Secretary
2	<p>Minutes of Meetings on 25.1.18 and 26.1.18</p> <p>OK and PG provided an update on the Action Log items.  The Chair noted that the Members had been provided with Notes on the discussions had in relation to each of Quality Improvement and Communications from the January meeting. He said both items would be discussed at the March Meeting.</p> <p><b>Decision 7 of 2018</b>  NK proposed approval of the Minutes and PL seconded same.</p>
-	<p><b>Private Members Session</b>  NC requested same and JS agreed further to Items 1 and 2 being dealt with.</p>

	<p>NC raised her concerns about the Commission papers. The Chair agreed to relay these to the Secretary of the Commission.</p>
<p>3</p>	<p><b>Chair's Business</b></p> <p>3.1 Joint Committee on the Future of Mental Health – Draft Report – Preparatory work on the development of an MHC position paper did not commence due to the unexpected unavailability of both the Chair and CE.</p> <p>3.2 The Chair confirmed that he spoke to the Director of S&amp;QA who has agreed to act as Interim CE. The Chair noted that all other matters were being progressed in relation to the substantive post. The Chair noted that the CE in her Business Case submission to the DOH explained that for legal reasons there cannot be a gap between her departure and the appointment of the Interim CE. The Chair noted that if approval was not forthcoming from the DOH, the Commission would have to appoint regardless of approval from the DOH / DPER. This was agreed by the Members.</p> <p>3.3 Strategic Plan 2019-2021 - The Chair noted that this would be on the March Agenda and that if Members wished to make any comments / suggestions in advance they should do so.</p> <p>3.4 2016 Code of Governance - The Chair noted that the Secretary had prepared and circulated a Note for the members on compliance with the Code.</p>
<p>4</p>	<p><b>Executive Reports</b></p> <p><u>Director of DSS</u></p> <p>There was a detailed discussion in relation to the DSS and the Members requested that a detailed note of the discussion be recorded in the Minutes.</p> <p>AF in going through her report noted that the tender for Business Process Analyst and Project Management had been issued and replies were due shortly. The initial interest in same was good.</p> <p>AF noted that issues in relation to amendments to the 2015 Act, drafts of the Regulations and the impact on the draft Codes had been raised at numerous DSS Steering Group meetings but that the work had not been progressed. AF noted that this was a concern given the proposed implementation date put forward by the Cabinet for the ratification of the UNCRPD and the proposed operational date for the DSS.</p> <p>It was also noted that as of 15.2.18, the DOH was funding the DSS as confirmation from the DJE of the allocation of funds plus the process for the receipt of same remained outstanding. The Members stated that this was completely unsatisfactory, in particular from a corporate governance perspective and the matter needs to be addressed by the DJE immediately. The Members asked how the funding for the DSS was currently being accounted for. PG advised that all DSS expenditure was attributed to a specific DSS cost centre within the MHC accounts. On receipt of DJE allocation of funds for the DSS, the MHC will recoup the costs for the DSS cost centre from the DJE allocation. PG also advised that the MHC was awaiting clarity from the DJE as to whether they required the MHC to open a second bank account for DSS funds and a response is awaited. It was noted that detailed records of all of these issues were being kept.</p> <p>During the discussion it was noted that for a number of meetings last year there was a delay in agreeing minutes to meetings, as amendments to draft minutes requested by the MHC and DoH to accurately</p>

reflect key discussion points and decisions at meetings were not accepted. This has subsequently improved. The Members stated that a full set of the minutes of those meetings should be available to support any letter that may need to be written. Concern was expressed at the length of time issues for the DSS were taking to progress with the relevant Departments and the operation of the DSS was now a serious concern for the Members.

The Members stated that the options open to them were to issue a strong letter, ask for a meeting with the relevant Government Ministers and their Officials and/ or issue a public statement about the delays which were being encountered. It was noted that this could be linked to the Memo which was issued to the relevant Government Departments following the January meeting. The Executive stated that they do not know the extent to which the content of the previous Memo was brought to Cabinet as this was not confirmed at the recent DSS Steering Group Meeting. PG did acknowledge that the DOH were supportive of the MHC position in so far as they could be. It was noted that while on the one hand the Government at the highest level want to progress the DSS, the support in terms of the practical / operational matters has not been forthcoming.

The Members were very anxious to note, that the MHC believe that it is a privilege to have been asked to operate the DSS as the 2015 Act is one of the most important pieces of legislation to be enacted in the State for many years. However, the relevant parties appear to have limited understanding of the enormity of the task to be undertaken by the Director DSS and MHC.

It was agreed a letter should be sent from the Board of the Commission to both the Minister for Health and the Minister for Justice and Equality (and copied to the relevant parties). It was also agreed that once a draft was prepared it would be circulated to all Members for comment and issued as soon as possible.

There was also a discussion on the annual reporting requirements of Director. It was noted that the relevant sections of the Act were not operational so the Director had no statutory reporting requirements for 2017. PG added that there was no link between the reporting requirements of the Director under the 2015 Act and the reporting requirements of the MHC under the 2001 Act. This will need to be addressed in due course. PG noted that the DSS, as an office within the MHC, will be included in the MHC's Annual Report for 2017. The Members also requested that the Director submit a Report to them given all of the issues which had been raised.

#### Report of the Director of Standards and Quality Assurance (S&QA)

The Director's report was available to members. The Members did note that they would like to know the level of breaches that are occurring and how we are addressing them. PG advised that the Director's report provides an update on a monthly basis on the status of approved centres in terms of monitoring and enforcement. PG advised that as previously agreed by Members, the Director will be providing a detailed presentation at the end of every quarter in 2018 and that is due at the next meeting.

#### Report on the Administration of ECT in Approved Centres in Ireland for 2017

KF gave a summary of the report. PL and NC queried the purpose of the report, what it was telling us and is ECT used more here than in other jurisdictions? PG noted that exact comparison with other jurisdictions is not possible as the legislative basis underpinning the use of ECT in Ireland differs from other countries). JL noted that the report was to comply with the specific requirements under the 2001 Act and it was not to address if it was used more in Ireland than other countries. Both JL and MW gave the Members some general information on ECT, its use in Ireland and the fact that it is only available in a limited number of approved centres.

It was queried whether the role of the MHC should be expanded in relation to information relation to the use of ECT and where it is being provided. PG noted that there may well be benefit to this but that we can only act within our statutory remit. RM queried whether we could comment on the matter in the Annual Report eg say that it would be beneficial if the remit of the MHC was extended. MW suggested that we could add to the discussion on Quality Improvements and see if there is anything that can be addressed by that route. The other Members agreed.

NC queried if additional questions could be added to the Table in Appendix 1. PG noted that this would then impact on the statutory forms and JL added that the forms address the legislative requirements and therefore no amendments are necessary.

It was agreed that the report would be amended at beginning to insert a piece, particularly for the general public, to explain what the report is and why it is being provided. A discussion ensued in relation to compliance and it was explained that in order to fully understand the reasons for non-compliance and to be fair to all it was essential that the reader read the relevant section on compliance.

#### **Decision 8 of 2018**

**JS proposed approval of the Report and MW seconded same.**

#### Report of the Inspector

The Inspector's report was made available to Members. PL raised a query in relation to the final para and the reference to "Continue to have difficulty with HSE in identifying number of 24 hour supervised residences. Approximately 120-125 units". Both JS and PG explained that there has been a lot of correspondence on this over a number of years by both the Inspector and the MHC SMT and there had also been meetings with the HSE Senior Management Team for Mental Health Services and the HSE Estates Department. However, all lists received to date have been inaccurate. PL asked if the Inspector could address the matter again this year. MW queried if it comes down to the definition and perhaps if this was agreed then the figures could be confirmed. PG noted that it was essential that the MHC had accurate information and that the matter continues to be pursued by S&QA and also the Inspector and her team on inspections.

#### Legal Report and Other Matters

OK referred to her report and noted that she would only refer to selected matters –

1. Cases – OK noted that there was a decision of the Court of Appeal which may have implications for practitioners. She said she would circulate a note on same to the Panel Members and would forward it to the Commission Members. OK also referred to the forthcoming Court of Appeal case in relation to Section 19 and that the MHC was not taking an active role in that case but would attend to assist the court in relation to any factual / practical matters.

5. Mental Health Amendment Bills – OK noted that the Executive had written to the DOH but the DOH said that while the coordinated approach suggested would be welcome that it was not possible given the Private Members Bills. OK noted that we would continue to provide comments on the relevant Bills but that we would also continue to try and ensure a coordinated approach. It was noted that if a Draft Amendment Bill was produced then a coordinated approach could be adopted but the DOH may not have the capacity to draft same at the present point in time.

7. GDPR – OK noted that the proposed amendments to address the issues raised by the MHC were submitted to the DOH. OK noted that other work was ongoing but was slow due to the overall lack of resources.

8. Tenders for 2018 – OK gave a general update on same.

PL raised a query in relation to No.4 – Alleged Illegal Detentions - OK noted again that there were no illegal detentions and that progress was being made with the relevant parties but was slow. This was

outside the control of the MHC. OK noted that it was the Executive's intention to close off the matter as soon as possible.

NC noted that the 2017 MHT Circuit Court Appeal figures did not appear to have been posted for Members' information. OK apologised for same and noted they would be posted after the meeting.

#### HR Report and CE's Report

PG referred to the Report of the Acting Director of HR and gave a short update in relation to the current recruitment process.

PG then referred to her Report. PG noted that the RFT for Agency would be posted shortly.

PG noted that we have still not received the letter of financial allocation from the DOH and therefore as requested by Members at the December and January meetings a revised Budget / Business Plan will not be re-submitted to members for consideration until such notification is received.

PG then referred to the Management Accounts for 2017. The Members noted that there were a number of matters over and under budget. PL acknowledged the breakdown in relation to the pay and raised some queries on the figures which PG addressed. RM also raised a few queries which OK and PG addressed.

#### **Decision 9 of 2018**

**COR recommended approval of the Accounts and the XL seconded same.**

It was noted that the Variance Document requested by the ARC should be provided with the Accounts presented at each meeting. It was noted again that all issues over Budget should be specifically addressed in the CE's report with the reason for same / the action taken. PG advised that this will be done in 2018 following receipt of letters of allocation from the DoH and DoJE and approval of a Budget for 2018 by members. PG noted that the MHC were in 2017 and will again in 2018 be over budget for agency due to the resource issue and the fact that we do not yet have an Agency provider in place. The budget will be developed to address this issue but due to a number of dependant variables that cannot be forecast, it may require changes during the year.

PG noted that the Management Letter from the C&AG has been received. This is the letter which will be discussed at the ARC on 12.3.18.

PG noted that she had circulated a letter (7.10.16) for Members information in reply to a question raised at the last meeting as to the basis upon which posts are sanctioned by the DOH.

PG also noted that she had circulated a document at the request of the Members setting out the Strategic Priorities addressed and not addressed to date for the 2016 - 2018 period.

5

#### **Risk Management**

OK commenced the discussion but PL brought to her attention that the amendments to the Risk Policy were not appearing on the draft as posted. It was agreed given this issue, that the Risk Register was not due to be updated until the next meeting (ie every quarter) and that the meeting had run over time that the discussion on Risk would be deferred to the next meeting.

PL requested that in the future if there are specific Risk issues that have been identified since the last meeting that they would be addressed in the CE's Report.

6

**Committees (dealt with before the Risk at the meeting)**

**Audit and Risk Committee (ARC) – No update.**

**Legislation Committee –** RM Chair of the Committee, noted that the Committee met on 1.2.18 and she gave a summary of the issues discussed.

RM then gave a detailed presentation in relation to the draft Submissions on the Heads of Bill on the Deprivation of Liberty provisions and noted the following –

1. A strong rights based approach should be pursued.
2. All persons no matter where they live should be treated equally.
3. The Director is not to make the applications as this would be contrary to the ethos of her role.
4. More needs to be done by the persons in charge of the facilities.
5. Full supports to be provided to the relevant persons.
6. The provisions should not be overly reliant on the Courts.

RM notes that the statements in the draft have been made more authoritative. JS said this was important as the MHC needs to be seen as an authoritative voice in this area.

The Members complimented the Committee and the Executive on the work done. A few amendments were proposed and it was agreed that the next draft would be sent to the Committee and then the Members for final comment before being submitted.

The Members stated that they are agreeable to sign off on the draft Submissions and the minutes should record that the draft produced to the meeting has been recommended by the Committee, it is legally sound, will be subject to minor amendment, will be reviewed by the Committee again and will be submitted on or before 9.3.18.

RM then referred to the Committee's discussion on the Recommendations of the Expert Group in relation to the review of the 2001 Act. She noted that the Committee had considered preparing a sub list of the Recommendations that might be pursued but on reflection it was thought that this was not a good idea as it could be viewed that the MHC were prioritising some issues over others. It was agreed that the MHC need to be more proactive and ask the DOH when Heads of Bill are going to be issued.

As part of this discussion RM noted that the Committee requested that the Executive write to the DOH advocating a co-ordinated approach in relation to the amendments to the 2001 Act, the 2015 Act and the draft Deprivation of Liberty provisions (DoLs). She noted the update given by OK in relation to same as part of her report.

<b>ACTION LOG</b>			
<b>No</b>	<b>Action</b>	<b>Person Responsible</b>	<b>Status</b>
1	Letter to be sent to the relevant Government Ministers in relation to the Board's concerns about the DSS	Members / Executive	Done
2	Monitoring and Enforcement of breaches by Approved Centres and how we are addressing them?	S&QA	Director will provide update March 2018
3	MHC to confirm with the HSE number of 24 hour supervised residences	Inspector	In progress
4	Specific Risk issues identified between Commission Meetings to be addressed in the CE's report	CE / CRO	March 2018 Report to CMs
5	Post Statistics for 2017 MHT Circuit Court Appeals	Secretary	Done
6	Re post Risk Policy showing all amendments	Secretary	Done
7	Finalise and submit Submissions on DoLs	OK / AF	Done
8	Follow up with the DOH as to when Draft Heads of Amendment Bill for 2001 Act will be issued	Executive	Ongoing
9	Items over Budget to be addressed in the CE's Report	CE	Ongoing

**Dated: 22 March 2018**

**Signed:**



**By the Chair**