

Mental Health Commission Meeting
Minutes of Meeting held on 17 May 2018
Held at Waterloo Exchange, Waterloo Road, Dublin 4

Commission Members	Initials
John Saunders	JS
Jim Lucey	JL
Michael Drumm	MD
Ned Kelly	NK
Niamh Cahill	NC
Xavier Flanagan	XF
Nicola Byrne	NB
Rowena Mulcahy	RM

Apologies	Initials
Patrick Lynch	PL
Catherine O'Rorke	COR
Colette Nolan	CN
Aaron Galbraith	AG
Margo Wrigley	MW

Executive in Attendance	Initials
Rosemary Smyth, Interim CE	RS
Orla Keane, Secretary to the Commission and Head of Legal Services	OK
Susan Finnerty, Inspector of Mental Health Services	SF
Aine Flynn, Director of the DSS	AF
External Persons	
Vincent Teo, Financial Adviser Crowleys	VT

Agenda Item No	
1	Declarations of Interests - Signed and Returned to the Secretary
2	Minutes of Meetings on 19.4.18 The draft Minutes were agreed. OK and RS provided an update on the Action Log items. Decision 27 of 2018 MD proposed approval of the Minutes and NB seconded same.
3	Chair's Business 1. Chief Executive (CE) substantive post - This matter was dealt without the attendance of any member of the Executive. The Chair informed the meeting that Mr. Ned Kelly has agreed to join

the selection panel. The panel is now composed of an Independent Chair from an external regulatory organisation, the Chair of the Commission, a Commission member, an external member with a legal and organisational background. Secretariat support is provided by PAS. Dates for shortlisting, first and second interviews have been scheduled in accordance with the agreed timeline.

2. Draft Annual Report and the Chairperson's foreword – The Chair explained the work done to date and the process required to have same signed off on by the Members. The substantive discussion was left to the end of the meeting.
3. Draft Report on Joint Committee on the future of Mental Health – The Chair confirmed that a letter had been sent to the Committee but no invitation has been forthcoming.
4. Strategic Plan – It was confirmed that Alpha Healthcare has been appointed further to the tender process. The Chair and members of the Executive had an initial meeting on 15 May and a workshop is going to take place with the Commission members on 21 June for 2 hours (2-4pm). Alpha will meet the Members again in September and will provide the Members with the final draft report for review and comment in November. (As an aside it was noted the Business meeting on 21 June would commence at 10.30 and conclude at 1.30.)
5. Letter from Minister Harris re the DSS – The content of the letter was noted and welcomed. A draft reply was discussed and agreed. The letter shall confirm that it could be Q1 2020 before the DSS is operational.
6. Invite to meet Minister Daly on 14 June – RS noted that this is the annual meeting which the Junior Minister has with the Agencies for which he is responsible. The Chair asked any Members who were free to attend to do so and the Secretary would follow up with the Members in that regard.

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Executive Reports

Director of DSS

AF confirmed that her report was read only. She did however wish to note that she had been requested to attend a meeting at the Taoiseach's office on 21 May and she was going to attend with OK. An update would be provided at the next meeting or as required. She said that she would be telling them that the estimated date for commencement of operations is Q1 2020 as confirmed by the Board in the letter to Minister Harris.

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

RS confirmed that this was read only.

RS then dealt with the proposal in relation to the reconciliation of the Codes of Practice with the Rules; specifically, the proposal to withdraw the Codes in relation to Notifications and Intellectual Disability. RS explained that the Rules were updated in 2016. However, the Codes were not updated and there is now a conflict between the Codes and what is recommended as best practice. She said this makes it impossible for approved centres to comply with the Codes. RS gave examples of where this arises. She noted that both Notifications and the issues related to Intellectual Disability are addressed in the Judgement Support Framework. Therefore, they will be addressed by the Inspectorate Team.

NC raised a few concerns about the withdrawal of these sections of the Codes, the reference to withdrawal and what they will be replaced with. The other Members agreed. There was a discussion as to how members of the public accessing the Codes would perceive the withdrawal. It was noted that the Codes are not required by statute but are there for guidance. It was agreed that a Guidance Note be issued in relation to Notifications and Intellectual Disability. After further discussion, it was agreed that the wording be amended; instead of saying withdrawn say "replace with Guidance Notes" and in the Guidance Note explain how these issues are inspected by the MHC.

NC also raised a concern about the terminology in the Codes and specifically the references to statutory provisions, where the Codes are not dealt with by way of statutory provision. RS agreed with this and said that when the Codes are reviewed in their entirety that this will be addressed.

NC also proposed that the Rules and the Codes to be reviewed annually by the Commission. This was agreed by the other Members and the Executive.

Decision 28 of 2018

NC proposed approval of the amendments to Codes and XF seconded same.

Report of the Inspector

OK confirmed that this was read only.

Legal and MHT

OK referred the Members to her Report and addressed three main issues –

1. AB case - OK gave the Members a general update on the decision of the Court of Appeal, its implications for patients, the MHC and the services and her communications with the Department of Health (DOH) in relation to the curative and/ or amendment legislation. She noted that a further update would be provided at the next meeting.

2. IF case – OK reminded the Members of the issues in this case. She referred the Members to the Opinion from Senior Counsel. [REDACTED]

[REDACTED]

[REDACTED]

Decision 29 of 2018

NK proposed approval of the decision to Appeal and NC seconded same.

3. GDPR – OK presented 8 policies as Acting DP/FOI officer. She explained the process which the MHC had undertaken in relation to the drafting to the policies, which cover service users, Panel Members, staff and the Commission / its Committees. OK also gave a summary of the work done on GDPR to date and the work to be done. After some questions on the process and the policies, the Members approved the Policies. It was also agreed that a Master List of Policies would be maintained and the Policies would be kept under review during the next 12 months.

Decision 30 of 2018

XF proposed approval of the Policies and MD seconded same.

HR – Corporate Services

RS gave a general summary, she noted that we had received no resignations since the last meeting. She noted that the re-advertisement of the posts not filled earlier in the year has been done and it is hoped we can fill those remaining posts.

CE's Report

RS referred to the draft Annual Report, which the Chair had referred to earlier in the meeting. She noted the work that had been done by the Executive. SF, the Inspector then attended the meeting. She made a presentation of the key issues arising from her report (which is independent of the Executive and the Commission). Various issues in her report were discussed by her with the Members.

RS then referred to her Report, addressed the matters not addressed earlier in the meeting and then referred to Part 2 of her Report and the Quarterly Management Accounts. VT attended for this part of the meeting and brought the Members through the figures and the variances. He noted in relation to the 2001 Act and general corporate services, the spend was largely in line with the Budget. He also noted the split between the MHC and the DSS. He noted that there was a major under spend in the DSS, which is due to the fact that the Business Analyst / Project Management Team are only in place a few weeks and that certain expenditure has not yet been realised. He added that the spend on staff is significantly under than budgeted. Finally, he noted that the cost of certain central corporate services has been appropriately split between the MHC and the DSS.

VT and OK noted that the detailed information on budget-v-spend is provided each quarter. It was noted that PL had sought same every month but that this would be an additional cost. After discussion it was agreed by the Members that the detailed document was only required every quarter.

Decision 31 of 2018

NK proposed approval of the Accounts and MD seconded same.

After all other matters were dealt (including the issue of Risk below) and a short recess, the Chair then addressed the Members in relation to his foreword which should reflect the views of the Commission Members. Various suggestions were made in relation to the foreword. The Members' view was the MHC need to make it clear that we are the authoritative voice on mental health in Ireland and to express the MHC's dismay that a number of matters have not changed / improved over the last number of years' despite being highlighted and that this cannot be allowed to continue. The MHC should use this as a platform to set out the key concerns we have in relation to the services, the failure to progress the review of the 2001 Act and the issues encountered with the DSS. The Chair said he would revise the draft and circulate it to the Members. Thereafter, the Annual Report would be reviewed and signed off on by the Executive and submitted to the DoH before the end of June.

Decision 32 of 2018

NB proposed approval of the Annual Report and XF seconded same.

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Risk Management

OK and RS noted that the quarterly review of the Risk Register will take place on 30 May and the updated Risk Register will be on the Agenda for the next meeting.

RS noted that the SMT had requested one of our external providers to do an IT review for us. A draft of the report has just been received and raises a number of concerns some of which we were aware and others we were not. She noted that we have a meeting with the provider next week following

	<p>which we shall receive the finalised report, that report will go to the next ARC on 11 June and the next Commission meeting on 21 June. One key issue is that the MHC requires a senior IT resource to manage IT in the future. RS said this is being actioned.</p>
9	<p>Committees (dealt with before the Risk at the meeting)</p> <p>Audit and Risk Committee (ARC) – There was no scheduled meeting of the ARC since the last Commission meeting. Therefore, there was no update.</p> <p>Legislation Committee – (This item was taken after the Chair’s Business.) RM, as Chair of the Legislation Committee, referred the Members to her Report and the draft Submission to the Department of Justice and Equality (DJE) in relation to the proposed amendments to the Assisted Decision Making Capacity Act 2015, which had been circulated to the members for approval. She explained that the Executive had prepared preliminary comments on the proposed amendments set out in the Preliminary Heads of Bill for Public Consultation that had been issued by the DJE. The Committee had considered each of the Heads of Bill and the Executive’s comments under each Head. It had been agreed that amendments should be made under certain Heads. These amendments, the reasons for the proposed amendments and, where appropriate, the wording of the amendment had been incorporated in the draft Submission. Some additional amendments, which had not been proposed by the DJE but which it was considered should be made to the 2015 Act, had also been included in the draft Submission. It had also been agreed that emphasis should be placed in the Commission’s Submission on the rights of the individuals who will be impacted by the legislation. The Executive and the Committee believed that key observations of the Commission on two fundamental issues which would impact on the practical implementation of the 2015 Act, namely Assessments of Capacity and the Guiding Principles under the Act, including the definitions of “Intervener” and “Intervention”, should be highlighted and set out in an Introduction at the beginning of the draft Submission under the heading “Fundamental Observations”. There was a detailed discussion on these matters. Thereafter, RM brought the Members through the remainder of the draft Submission.</p> <p>Decision 33 of 2018 NC proposed approval of the Submission and NB seconded same.</p> <p>The Chair referred again to her report and brought two issues to the attention of the Members –</p> <ol style="list-style-type: none"> 1. The Mental Health Parity Bill – RM relayed the discussion at the Legislation Committee meeting when it had been agreed that parity between mental health and general health was of fundamental importance and that the Commission should actively support, and should be seen to support, the enactment of legislation providing for parity between mental health and general health. The Members agreed that this should be actively pursued. It was agreed that correspondence should be sent to the DOH seeking updates on progress of the Bill. OK noted that she was looking into the position in the UK and would have a Memo for the next Legislation Committee meeting in July. 2. General Scheme of a Bill to amend the Mental Health Act, 2001 – RM advised that the Legislation Committee had been informed that the Government had approved the preparation of a General Scheme of a Bill to comprehensively amend the 2001 Act on the basis of the Recommendations of the Expert Group Review of the Act published in 2015. The DOH had advised that the Heads of Bill were expected to be significantly progressed by the end of Q3 2008 at which point consultation with the Commission would take place. The Committee agreed that consideration of the Heads of Bill would form part of its work plan for Q4 2018 and that the DOH should be advised accordingly. Concern was expressed that the timeline might be pushed out due to the

other issues on the Health Agenda at present. It was agreed that the Commission needed to actively pursue the matters so that mental health was not put to the end of the Health Agenda.

Arising out of this discussion, reference was made to the Mental Health (Amendment) Bill 2017 that had been passed by the Seanad the day before. OK noted that the MHC had been in constant communication with the DOH in relation to the Bill. She noted that a number of the points in the Browne Private Member's Bill were welcomed but that there were concerns about the legal implications of some of the amendments. In relation to the Sinn Fein proposal on Section 15, the MHC welcomed the suggestion but given the decision in the recent AB case, the MHC had informed the DOH that the MHC did not believe that it was constitutional. The Junior Minister had made these points in the Seanad but part of the Bill was still passed. OK noted that further updates would be provided on the Bill at the next Commission meeting.

Next Meeting 21 June 2018 at 10.30 – 1.30 am with Strategic Plan Workshop from 2.00 – 4.00 pm

ACTION LOG			
No	Action	Person Responsible	Status
1	Draft Foreword to be amended and circulated to Members	Chair / Executive	Done
2	Letter to Minister Harris	OK	Done
3	Issues relating to Meeting with Minister Daly	Chair / Executive	Ongoing
4	Report from Director of DSS re meeting at an Taoiseach's Office	AF	For meeting on 21.6.18
5	Codes to be amended as agreed and Guidance Notes to be produced	SQ&A	Ongoing
6	IF Appeal to be filed as agreed	Legal	Ongoing
7	GDPR Policies to be circulated to all relevant parties by 25.5.18	OK	Done
8	Report on IT from Supplier to be finalised	RS	Done

Dated: 21 June 2018

Signed:

By the Chair

