

**Mental Health Commission Meeting**  
**Minutes of Meeting held on 20 September 2018 at 10 am**  
**Held at Waterloo Exchange, Waterloo Road, Dublin 4**

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

<b>Apologies</b>	<b>Initials</b>
Colette Nolan	CN

<b>Executive in Attendance</b>	<b>Initials</b>
Rosemary Smyth, Interim CE	RS
Orla Keane, Secretary to the Commission and Head of Legal Services / Division Lead for MHT	OK
Aine Flynn, Director DSS	AF
Kate Frowein, Interim Director of Quality and Standards	KF
Carl Alfvag, Director of Corporate Services	CA

<b>Agenda Item No</b>	
1	Declarations of Interests - Signed and Returned to the Secretary.
	<p>Private meeting</p> <p>The Chair provided the most update position on the appointment of the commencement of the new CE. A number of suggestions were made and agreed –</p> <ol style="list-style-type: none"> <li>1. An informal meeting would be arranged for the incoming CE to meet Members of the Commission ideally on 18.10.18,</li> <li>2. A formal Induction Programme would be prepared on commencement,</li> <li>3. All relevant documentation would be forward to the new CE before commencement, and</li> <li>4. The external provider involved in the SP planning process with contact the new CE to give him and full update on the process to date.</li> </ol>
2	The Minutes of the Meeting on 19.7.18 were approved, subject to certain amendments.

	<p>NB proposed approval of the Minutes and MD seconded same</p> <p><b>Decision 46 of 2018</b></p> <p>The Minutes of the Meeting on 24.7.18 were approved.</p> <p>PL proposed approval of the Minutes and MD seconded same</p> <p><b>Decision 47 of 2018</b></p>
3	<p><b>Chair's Business</b></p> <ol style="list-style-type: none"> <li>1. CE Post – As per the Private Meeting above</li> <li>2. Commission Member Vacancy – Matter with the Minister and in progress.</li> <li>3. Meeting with Minister Daly – Proposal from Minister's office to adjourn but Chair did not agree. Meeting proceeding on 27.9.18. Items for Agenda agreed as – <ul style="list-style-type: none"> <li>• Status of the Heads of Bill to amend the Mental Health Act 2001</li> <li>• Department's Response to the MHC's Annual Report issued in July 2018</li> <li>• Requirement for Senior Representation from the Department on the Inter Departmental Steering Group for the DSS</li> </ul> <p>JS, NK, MW and RM to attend the meeting.</p> </li> <li>4. Communications – Email sent to Members re Seminar in October - JS speaking as a Shine invite and Inspector speaking as an MHC invite.</li> <li>5. Sláinte Healthcare Implementation Plan – Correspondence from Sec General Department of Health (DOH) requesting reflection on plan and co-operation. Discussed lack of mental health focus. PL suggested that we look at this report in the context of the work on the Strategic Plan.</li> <li>6. Vision for Change – Hugh Kane VFC oversight group – RS/ JS provided update. Copies of letters exchanged provided to the Members. Mr Kane to revert to MHC when draft Report progressed for comment.</li> <li>7. Future of Mental health – Joint Oireachtas Group - RS/ JS provided update. Copy of letter sent to Committee provided to the Members.</li> <li>8. Strategic Plan – as per the opening Session.</li> </ol>
4	<p><b>Executive Reports</b></p> <p><u>Director of DSS</u></p> <p>AF confirmed that she had sent the Members a number of reports. AF directed them Project Progress Update prepared by our service provider. AF then noted the following issues –</p> <ol style="list-style-type: none"> <li>1. Currently, the DSS may have custody, control and management of a relevant person funds / property. We have raised with the Department of Justice (DJE) that this will present a real issue for the MHC to deal with if the Project is to go live Q1 2020. Various options are being examined, to include discussions with the Accountants Office in the Courts Service. This is also on the External Dependencies document with the IDSG.</li> <li>2. Deprivation of Liberty provisions / Part 13 of the 2015 Act – If the Project is to go live in Q1 2018 then the MHC will not be able to deal with these provisions. This has been flagged at the IDSG.</li> <li>3. Amendments to the 2015 Act – These are being progressed.</li> <li>4. HR – A number of posts have been provisional approved we are awaiting final confirmation.</li> <li>5. ICT – This could be a major cost as bespoke system for the new services will be required. It will also need to be subject to DPER Peer Review. AF provided the Members with a summary of the issues arising in this regard, the actions taken and the lack of progress with the IDSG. A number of members noted that if the Project or part of it is subject to Peer Review by DPER that will</li> </ol>

affect the timeline. AF confirmed that the MHC had provided the IDSG with the timeline for the ICT procurement and hoped that DPER could work in parallel but it appears that will not be the case.

RS interjected to note that we had received a reply from the Department of Health this morning, which resolved the Governance issue relating to the IDSG. Therefore, the IDSG will be responsible for the overall governance of the Project.

PL then noted that the ARC discussed the DSS at length. He referred the members to his report to the Chair. He noted that the risks relating to the DSS on the Register required to be amended to deal with the specific concerns - budget, costs and project management / governance. He noted that the Risk Register had been amended to reflect the ARC's comments.

A detailed discussion ensued with the members asking AF various questions about the management of the Project Manager / Business Analyst's Contract, the provider's costs and the contingency in relation to those costs. OK noted some of the comments from the ARC in that regard. In reply to a question from the Members, OK and AF noted that the Contract could not have been a fixed price contract due to the various unknowns. The MHC needed the service provider to produce the project plan and cost same. This is what we have been waiting for and have received some but not all of that information. It was also noted that our Internal Auditors were contacted for assistance in terms of how best to agree the costs with the service provider. Those discussions are ongoing and should include agreeing Statements of Work for each piece of work to be done. Some Members noted that the MHC needs to be satisfied that it requires all of the proposed work to be done, and if not, does it need to be done or can it wait until after the commencement date.

RS and AF noted that the Department of Justice wrote on Monday expressing concern about the Budget Estimates for 2019 and a reply was issued to them yesterday. OK noted both letters were posted this morning and form part of the Commission papers.

RS and OK noted that there had been a number of meetings with the service provider in terms of their costs and discussions are ongoing in relation to the July and August Bills. OK and RS also noted the process, which had been undertaken in relation to the June Bill and the Estimates for 2019.

The Members noted that the Director and the SMT need to scrutinise the figures very carefully and must challenge those figures. PL noted that the same applies in relation to the costs for IT. AF with RS /OK noted that ultimately the IT costs will be decided by the market but agreed we can look to other organisations to see what they are doing in terms of efficiencies. However, we do have to go to tender and will be bound by that process.

One member queried what stage the Project was at as that was not clear from any of the reports, which had been provided and requested that the deliverables to date and for the remainder of the Project be made clear for the next meeting.

After further discussion, a number of members noted that they have received some comfort by the replies furnished by the SMT at the meeting. However, it was agreed that the Minutes should note the concerns of the ARC and the Commission about the costs to date.

It was further agreed that –

1. The Service Provider would attend the next Commission meeting and provided a summary of the status of the Project, and

2. A report on the main service providers costs – to include reference to the Contract, what agreement was outlined at outset when work commenced / cost issues raised by SMT / plan of action.

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

KF presented the Quarterly Report in which she provided updates on the regulatory functions and thereafter, development work. The following issues were highlighted–

1. Enforcement – All of the Immediate Action Notices issued in 2018 were noted. One relating to covert medication was highlighted along with others relating to inadequate therapeutic services and bed capacity. KF noted that SQA track the action taken and may take other action as required. KF again outlined to the Members the process taken by SQA when they receive an Inspection Report from the Inspector Team or notice of a Critical Incident. KF highlighted some improvements because of action taken by the MHC.
2. Quality and Safety Notifications – Compared to 2017 there has been a significant increase in both the total number of deaths reported and the amount, which have been reported as suspected suicide. However, the reported deaths in approved centres have decreased. The MHC has raised awareness about the need to notify Serious Reportable Events and this may be the reason for the increase in numbers rather than an actual increase.
3. Q&SNs for Children - Compared with this time last year there has been a decrease in the number of children admitted to both adult (5%) and child units (16%). The reason behind this is not entirely clear. MHC are following up on this.

Restrictive Practices Report 2016 – submitted for approval to publish.

KF presented the report. The report rates the services from the highest to lowest in order of usage and notes those services that use seclusion for over 24 hours, 48 hours or 72 hours. KF addressed various queries from the Members. It was noted that the content of the report marries with the theme of the Strategic Plan currently in development in terms of human rights. The Members specifically wanted to know what could be done with the data to lead to improvements. KF noted that the MHC / Inspector take themes from such reports each year and focus on them. One of the Inspector's themes for 2018 was restrictive practices as per the business objectives. It was also queried why the figures relating to 2016 were only being published now. KF confirmed that this was due to resources (which has been addressed) and systems (everything is manual but that should change with the CIS system). It is hoped the timelines for reports will improve when MHC Centralised Information Systems (CIS) is operational.

NK proposed approval of the report and NB seconded same

#### **Decision 48 of 2018**

#### Legal and MHT

OK said she wanted to bring a few matter to the Members' attention –

1. Mental Health (Renewal Orders) Bill 2018. Mental Health (Renewal Orders) Bill 2018. OK noted that there had been a lot of communication with the Department of Health on this matter and that a number of amendments proposed by the MHC were incorporated into the Bill. RM expressed concern that the Bill enabled the making of six month renewal orders notwithstanding that the Court of Appeal in the AB case had held that both twelve month and six month renewal orders were unconstitutional. She believed that the relevant section would be open to challenge. OK noted that there had been detailed discussions on this and it was considered that it did address the issue in the case but agreed that this did not mean it would not be further challenged. OK gave a summary of the views expressed by other interested parties (HSE, CPs, services users, legal representatives) and that the MHC was one of the only parties advocating a system of three-month renewal orders. OK noted that the Bill passed through the Seanad the previous evening and expected to go to the Dail next week.

RM noted that the Bill provided that where a person was detained under a renewal order which exceeded three months, the patient was entitled to have that renewal order further reviewed after a period of three months. The patient or their legal representative must initiate that review. . She suggested that all support should be provided to patients so as to ensure that a patient could, in practice, avail of his or her right to seek a further review of the renewal order for instance the patients' legal representatives could be required, as a term of their appointment, to meet with the patient shortly prior to the end of the three-month period for the purpose of advising the patient on his or her right to seek a further review of the renewal order and taking the patient's instructions on the matter. OK noted that this had already been anticipated and that she would work out a plan in that regard once the Replacement Renewal Orders had been dealt with.

OK noted that the patient had a right to appeal each decision of a MHT to include the additional review. RM suggested that the patient should be made aware by the MHT of his or her right to appeal a decision of the MHT and, where a six month renewal order is made, of his or her right to apply for a further review of that renewal order after a period of three months. This could be addressed by the MHT at the end of the hearing when the MHT had delivered its decision. OK noted that she would consider this but noted that the MHTs are independent of the MHC. RM acknowledged this but pointed out that the MHT panel members could be advised during their induction training that this was a good practice to adopt.

3.Amendments to 2015 Act – OK noted that the Department of Justice had reverted in relation to our Submissions (save for the Fundamental Observations on which they are awaiting the AG's advice). OK noted that a number of our submissions were accepted. In relation to the balance of our submissions, OK / AF met and are proposing that certain amendments be deferred to a later date but that others must be addressed now. OK noted that the reply from the MHC to the DJE would go to the Legislation Committee for their input.

3.LAB – Transfer of the MHC Legal Aid Scheme. OK noted that the MHC believe that it might be best to have this remain within the MHC but that certain legislative amendments would be required as well as an amendment of the terms of the scheme. Advice was sought from Counsel. A call was had with him yesterday and some additional issues are been followed up on further to that call. OK noted that she would update the Members in due course.

#### CE's Report (dealt with as the first of the Executive reports on the day)

RS addressed the Action Log from the last meeting and confirmed that the issue relating to the number of Community Residences under the remit of the HSE from a previous meeting has been addressed since the writing of her report.

RS then referred the Members to the HR update, and in particular, the provisional sanctions of 19 posts for the central corporate spine and 5 posts for the DSS. Work is ongoing in relation to the remainder of the posts for the DSS.

Management Accounts – July and August were presented for review and approval.

PL noted the same issue arises as with the Budget and previous Accounts (staffing / agency costs and now MHT costs).

PL then referred to the discussion about the Half Yearly Review of the Accounts at the ARC and the revised Budget for the year. He said that when the members are looking at the variances for August they are doing so as against the revised Budget. He noted that the ARC were happy with the approach. He still has some queries with regard to the swing from an overspend to an underspend (and the underspend in the DSS). He acknowledged the additional notes provided with the Accounts are helpful. However, he said it was noted at the ARC by way of example in relation to the DSS, that there was a difference between the projected spend to one supplier versus what had actually been paid. He said this is not

addressed anywhere in the Accounts or the notes. He said the big differences should be addressed in a cover note / introduction to the Accounts. He said this would help Members.

There was a brief discussion with the other Members. It was then agreed that approval of the Management Accounts for July and August and the Revised Budget for 2018 would be deferred to the next meeting, at which time Finance will have produced the required Notes. It was also agreed that in the interim the MHC would continue to work on the basis of the revised Budget.

RS then referred to the Estimates process for 2019 and updated the Members on the Communications with the Department of Health and the Department of Justice. She noted that both Departments had received communications from us but that we had to confirm the estimates as a matter of urgency. RS noted the key issues with the figures sent to the DOH (the increased cost to MHTs arising from the AB case and a few other matters) and the figures that went to the DJE, which were a lot more than the Department had expected. It was noted that the MHC were surprised provision had not been made for this, given a new service is in effect being set up. RS noted that the figures for the DSS had gone through a number of reviews; Finance, the CE, the SMT and with our external providers and that we had not accepted all of the figures presented by the Business Analysts. There was a discussion around a few key figures such as the IT costs and the Project Manager/ Business Analysis Costs. PL requested that certain additional information be provided to the Departments and RS confirmed that it would be provided.

JL proposed approval of the Estimates and NK seconded same

#### **Decision 48 of 2018**

RS presented revised Bank Mandates to allow for approval. This will give the new Finance Manager and the new Director of Corporate Services access rights. These were approved.

RS presented the revised Media Protocol. She noted that we had consulted with some other agencies who have a Media Strategy rather than a Protocol such as this. It was agreed that the matter of the overall Media Strategy should be expressly addressed in the RFT that will be issued in the next couple of months. It was also noted that various issues relating to Communications will be key to the new Strategic Plan and consideration should be given to this in drafting the RFT. In the interim, it was agreed that the Protocol as presented could be used. RM requested one amendment, which was that if a team lead was not available there should be specified person identified to deal with Press Release in their absence. RM also noted that it was imperative that the content of any Press Release be fact checked by the MHC and our service provider.

8	<p><b>Risk Management</b></p> <p>PL noted that the Risk Register had been updated and brought to the ARC at the beginning of the month. The ARC had a few comments and all those comments were reflected in the Risk Register presented to the Commission.</p>
9	<p><b>Committees (dealt with before the Risk at the meeting)</b></p> <p><b>Audit and Risk Committee (ARC)</b> – PL provided a brief summary (noting that a number of the key issues had been addressed earlier in the meeting). He specifically noted that the Audit Report in relation to the Inspection Process had been agreed and that the Risk Summary Report was very useful in highlighting the key risks for the organisation. Finally, he noted that there was a vacancy on the ARC and at this point the Chair asked Members to send OK an email if they were interested in sitting on the ARC.</p>

	<p><b>Legislation Committee</b> – There was no scheduled meeting of the Committee since the last Commission meeting.</p> <p><b>Quality Improvement Committee</b> – MW noted that they had met and are working on their Terms of Reference, which shall be produced at the next meeting for approval. They are going to focus on one issue for the moment –Service user access to acute approved centres, which will inform our response to VfC oversight group The members included RS, KF, NB, AG and MW (as Chair).</p>
	Next Meeting 18 October at 11.00 – 2.00 am.

<b>ACTION LOG</b>			
No	Action	Person Responsible	Status
1	Sláintecare Report should be considered as reviewed in the context of the Strategic Plan MHC to consider contacting Laura Magahy in Sláintecare	Interim CE	In progress
2	Follow up with Hugh Kane in relation to Vision for Change Update	Interim CE/ Chair	November
3	Finance to produce a short note setting out the key differences arising – <ol style="list-style-type: none"> <li>1. Between the July and August Management Accounts, and</li> <li>2. Between Budget as of Jan 2018 and revised Half Yearly Budget Review</li> </ol>	Director of Corporate Services / Finance Manager	18.10.18
4	Finance to produce a short note to accompany the Management Account setting out the top 5 issues from the previous month	Director of Corporate Services / Finance Manager	18.10.18 / Ongoing
5	A note should be sent to the Department of Health on the 2019 Estimates addressing the following – <ol style="list-style-type: none"> <li>1. Highlighting key differences between 2018 and 2019</li> <li>2. Reasons for the key differences (eg MHT costs from 2018 Act)</li> <li>3. Noting specific Projects for 2019</li> </ol>	Interim CE / Director of Corporate Services / Finance Manager	Done
6	Media Protocol to be amended to ensure that each person who is to approve a document has a back up to do so if on leave/ sick. Document to be replaced by overall Media Strategy to be put in place after Tender Process	Interim CE/ general Corporate Services Manager	Done
7	RFT for Communications – this document is to ensure that all of the requirements of the MHC for the new provider are very clearly outlined	Chair / Interim CE / Director of Corporate Services	Defer sign off until new CE in post – 30.10.18
8	In relation to the Mental Health (Renewal Orders) Bill / Act 2018 ensure the following –	Head of Legal / MHT Manager	In progress

	1. Patients are supported in seeking the "additional reviews" by LRs / MHTs 2. MHT procedures updated to support same		
9	Invite to Bearing Point to attend October meeting	Director of DSS	Done
10	Paper on Bearing Points Costs – Contract / Agreement by Director/SMT with BP on costs at outset when work commenced / cost issues raised by SMT / Plan of action	Director of DSS / Director of Corporate Services	In progress
11	Invite to Commission Members to sit on ARC	Chair / Secretary	Done.

**Dated: 18 October 2018**

**Signed:**



**By the Chair**