



Llywodraeth Cymru  
Welsh Government

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# Human Rights Legislative Options Working Group meeting: 14 March 2023

Summary of the minutes of the meeting held on 14 March 2023.

**First published:** 14 March 2023

**Last updated:** 14 March 2023

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# Contents

**Attendees**

**Welcome and apologies**

**Approval of previous meeting minutes and actions arising**

**LOWG members updates**

**Draft outline discussion**

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## Attendees

- Charles Whitmore (CW) (Chair), Wales Council for Voluntary Action (WCVA) / Human Rights Consortium (CW)
- Nazir Afzal (NA), Independent
- Elisabeth Jones (EJ), Independent
- Rhian Davies (RD), Disability Wales
- Catherine Fookes (CF), Women's Equality Network (WEN) Wales
- Sarah Nason (SN), Bangor University
- Alicja Zalesinska (AZ), Tai Pawb
- Lisa Reynolds, EHRC

## Welsh Government officials

- Stuart Evans (SE), Equality and Human Rights Division
- Chrishan Kamalan (CK), Equality and Human Rights Division
- Karyn Pittick (KP), Equality and Human Rights Division
- Kimberley Mortimer (KM), Equality and Human Rights Division
- Amanda Woodrow (AW), Equality and Human Rights Division

## Apologies

- Simon Hoffman (SH), Swansea University

## Welcome and apologies

CW welcomed members to the meeting and gave apologies.

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CW requested all attendees confirm the next meeting dates for Tuesday 2 May 2023 and Tuesday 27 June 2023 were in diaries. KM confirmed diary markers had been sent out, but the actual dates not yet confirmed. CW requested diary appointments and upcoming dates to be reissued to all. If there are any significant clashes, CW will review and suggest changes if required.

## **Approval of previous meeting minutes and actions arising**

CW acknowledged the previous meeting minutes and accompanying papers had only just been sent and recommended if group members had any changes to the minutes to let him and KM know in writing. If no changes have been received by Friday, it will be assumed they are approved.

Regarding any actions listed on the minutes, CW confirmed the majority relate to contributions on the draft outline paper and they will be discussed during the meeting.

One action, which is now complete, required CW to meet with stakeholders about inputs and environmental rights/right to healthy environment. A paper on this has been distributed to all members for consideration.

## **LOWG members updates**

### **Updates from the secretariat**

CK provided an update on the Illegal Migration bill, the current Government's actions and its potential impact in the coming months. CW thanked CK for that contribution and asked KP and KM if it is worth including it as an agenda item for

the next HRAG meeting.

## **Update from the Chair (contact with external stakeholders)**

CW confirmed he had met with the Welsh Local Government Association (WLGA) and was reassured local authorities, in a broad sense, would support the LOWG framework being put forward. WGLA raised the following points:

- WLGA are keen to see the interconnections between current PSED's, including bespoke rights on LGBTQ+ would work together with other rights.
- LA's want to ensure this work will not just be another impact assessment process but is transformative in terms of culture.
- LA's raised other concerns on budget, staff resources, training and guidance and what is achievable at LA level.

CW highlighted how similar concerns were raised by colleagues on Scotland Day around Impact Assessment but was able to conclude overall the WLGA are positive about this work and are keen to engage with LOWG.

At the request of the Minister for Social Justice (MSJ), CW met with the director of Speakeasy Law Centre. The Centre confirmed it's facing significant challenges around the Human Rights Act, migration in Wales, local authorities and housing rights. The Centre is keen to engage with LOWG and any proposals that address implementation and enforcement issues at local authority level.

CW also met with Wales Environment Link, who are a membership body for environmental NGO's in Wales. They have provided briefing and CW encouraged all LOWG members to review the briefing and pull out the main elements to include in the outline recommendations.

## **Update from Rhian Davies (Chairs' meeting under the Disability Rights Taskforce and potential feed into the LOWG's work)**

RD advised LOWG that she is currently a member of the Disability Rights Taskforce. The taskforce was established by the Minister of Social Justice, in response to the Locked-Out report on the impact of Covid on disabled people. To help examine the recommendations of the report, RD is chairing the 'Independent Living and Social Care' working group, which will feedback to the taskforce.

The taskforce is chaired by the MSJ and Professor Debbie Foster. Professor Foster wrote the Locked-Out report and is keen to link in with LOWG before the taskforce is expected to conclude its work. RD highlights there are concerns relating to human rights the taskforce wished to bring to LOWG's attention. For example, the Social Services and Well-Being Wales Act does not include the UNCRPD. Although there is a requirement in the act to have due regard, the guidance on due regard may raise issues with interpretation and implementation. In meeting with Professor Foster, this would ensure synergy in LOWG's work and provide evidence to highlight various issues.

AZ advised there is a similar stakeholder group involved in Housing. There are Ministerial papers being laid before parliament in Spring on Fair Rents and Rights to Adequate Housing. AZ recommends that CW consider meeting with the group also.

## **Draft outline discussion**

**Paper for discussion – LOWG Work in Progress Outline Recommendations for treaties / rights to incorporate.**

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CW asked for a discussion on next steps to consider, confirming time will be given at the end of the meeting to hold a quick discussion on ongoing work and a medium-term action plan.

A discussion about stakeholder engagement took place and members highlighted the importance of involving stakeholder groups being key to success. Stakeholders identified included legal professionals i.e., practitioners and the judiciary from courts and tribunals. Public Law Wales and Legal Wales Foundation were suggested. Members also discussed sharing the draft with other key stakeholders for a view including Race Equality First. CW confirmed that he considered the group to be appropriate but would explore further representation from Race Equality First.

It was noted that Welsh Government will need to have advice from their own legal services department with regard to competence and enforceability.

## **Policy Objective 1: Wales's incorporation should be inclusive / maximalist in scope, including core UN Conventions**

### **Discussion points**

CW confirmed all UN conventions are referenced including CRC in the outline paper. If the UN convention is not represented within LOWG, CW will reach out to HRAG / external stakeholders for further input (for example Sean O'Neil on HRAG for the CRC). CW is concerned, with timescales, LOWG may not have a full list of all rights. CW will take away any comments and compile an engagement plan for legal services and expert input before the next phase.

## Key points

- Some members advised caution on the scale of work involved for legal services, especially with a view on competence and enforceability.
- CW confirms the original aim of LOWG was to produce an overarching comprehensive wish list and to be inclusive as possible and asks generally if the group was content with the current list.
- Our list of objectives will need to take account that priority may lay with the Welsh Government Programme for government commitments and also to be mindful of the competence matters.
- Prioritising rights and being selective may be considered divisive.
- The group may wish to consider including further gap or impact analysis for the Welsh Government
- The significant resource and timelines required to be involved must be noted.
- In conclusion on prioritisation, it was agreed by LOWG it was required to not prioritise specific rights at this stage. LOWG will produce an overarching list to present to the Welsh Government and await Welsh Government's decision on next steps.

CW invited the group to comment on how it will articulate the duty for compliance and duty of due regard at this stage. It may help the Welsh Government when considering the outline list of rights. It was suggested that this may not be necessary at this stage to specify any specific combination of duty of compliance, due regard or progressive realisation, as each right will need to be looked at by lawyers individually. EJ suggests the group recommend a blanket application of duty of compliance at this stage as it is strongest recommendation.



## **Policy objective 2: the approach to incorporation should be a maximalist approach within the limits of devolved competence and should include a duty to ‘comply’ with incorporated rights while maintaining obligations which embed a human rights approach to policy development**

### **Discussion points**

CW asked LOWG to comment on policy objective 2 how would the group accommodate the duty to comply, the duty of due regard and progressive realisation in the outline document?

### **Key points**

- After discussion on all areas of duty to comply, the duty of due regard and progressive realisation, there was general agreement to consider it on a right-by-right basis with all points raised in the meeting to be considered by CW further.
- SN offered to provide further information on the influence of other areas such as judicial review, regulations, commissioners and ombudsman to support the final outline.
- CW will also consider the role of any new duties and procedures and if they need to be accompanied by guidance.

## **Policy objective 3: legislation to incorporate human rights should include a duty of progressive realisation**

### **Discussion points**

CW acknowledged the group have already discussed progressive realisation in detail but would like the members to regard the 'Bonevero' report as a comparison to other jurisdictions and how they approach progressive realisation.

### **Key points**

- The guidance issued be considered as statutory guidance on legislation. Considering the pressures on Local Authorities and the potential for inconsistency across all authorities, ensuring compliance would be beneficial to both individuals looking to exercise their rights and Local Authorities to ensure consistency in implementation and resource efficiency.
- Ensure the focus is on how the individual gets their rights and ensure the infrastructure, resources, access to advice and support is clear.

## **Policy objective 4: legislation to incorporate human rights should, as far as is possible, re-state / preserve / reproduce Civil and Political Rights**

### **Discussion points**

CW noted there weren't any significant comments on policy objective 4 around

restating, preserving and reproducing civil and political rights. CW agreed to consider EJ's comment on moving the section of the REULbill and placing it under the heading of Economic and Social Rights rather than CCP rights.

## **Policy objective 5: to ensure that the legislative framework on human rights in Wales remains in line with domestic, international and social developments, the Bill should contain relevant interpretative clauses for Welsh ministers, public authorities and courts**

### **Discussion points**

CW confirmed LOWG members had no comments yet as it and CW will return to it later in the process.

## **Policy objective 6 (labelled as Policy Objective 4 on outline paper): legislation to incorporate human rights should include a bespoke right to a clean, healthy and sustainable environment**

### **Discussion points**

CW confirmed he will probably draft an appropriate policy objective 6 which will be linked to the right to a healthy environment. To support the development of an action plan, CW would like to arrange a session with members of Wales Environment Link to see a right to healthy environment working on a procedural level or enforcement level. CW asked LOWG members to consult the Wales Environment Link paper and return any comments for consideration.

EJ provided the meeting with a summary of the current position of UK government and courts on compliance with environmental laws and advises a risk convention may not be required. It may be preferred to consider a duty of progressive realisations backed up with by procedural missed milestones.

## **Policy objective 7 (currently labelled policy objective 5 on outline paper): a duty to prepare and publish a Human Rights Scheme**

### **Discussion points**

The issue of accountability was raised and whether monitoring bodies would have sufficient capacity to monitor effectively. CW concluded the discussion on policy objectives and confirmed with the group to conclude all comments and contributions by the end of the meeting week to enable an agreed second draft to meet the deadline set for circulation, comment and submission and closed the meeting.

Meeting ends.

Action 1: KM to issue confirmed stated diary dates to all LOWG members.

Action 2: KP/KM/CK - Consider including an update on the Illegal Migration bill for HRAG members at the next meeting.

Action 3: CW to consider meeting with Professor Debbie Foster, Disability Rights Taskforce and other stakeholder groups recommended by panel members.

Action 4: CF to provide contact details and introductory email for KP/CW to consider approaching Aliya Mohammed, Race Equality First

Action 5: CW to contact Sean O’Neil and other relevant members on HRAG for their input on outline paper.

Action 6: SN to provide further information to support discussion points in Policy Objective 2.

Action 7: CW to consider EJ’s comment on the revocation and reform bill and moving it.

Action 8: AZ to provide CW with comments regarding policy objective 7.

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