

Equality and Human Rights Commission

Race rights in the UK

Submission to the UN Committee
on the Elimination of Racial
Discrimination in advance of the
public examination of the UK's
implementation of ICERD
July 2016

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Introduction

1. This report represents the response of the Equality and Human Rights Commission (the EHRC) to the UK Government's 21st to 23rd periodic reports to the United Nations Committee on the Elimination of Racial Discrimination (CERD). The EHRC is a statutory body set up under the Equality Act 2006, and is one of the United Kingdom's (UK's) three 'A status' accredited National Human Rights Institutions (NHRIs).
2. Among other human rights responsibilities, the EHRC was tasked by the UK Parliament with 'encouraging good practice in relation to human rights'.¹ The EHRC has the responsibility to assess and report on progress in Great Britain (England, Scotland and Wales) on the realisation of the human rights in the treaties the UK has chosen to ratify, including the European Convention on Human Rights (ECHR) and other international human rights treaties.² The EHRC works with its colleague National Human Rights Institutions (NHRIs) in the UK (the Scottish Human Rights Commission (SHRC) and the Northern Ireland Human Rights Commission (NIHRC)) and with government departments and agencies and non-governmental organisations and civil society to fulfil this role.
3. This report:
 - draws CERD's attention to the key issues that the EHRC considers are affecting race equality in Great Britain, and
 - where appropriate, makes recommendations to the Committee for actions the UK should take.

Recommendations are included throughout the report. A full list of recommendations can also be found as an appendix.

¹ Equality Act 2006, Section 9(1)(b). Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 21 March 2016].

² Equality Act 2006, Section 9(2). Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9> [accessed: 21 March 2016].

Structure of this report

4. The key issues this report focuses on are:
 - Legal aid and access to justice (Articles 2 and 5(a))
 - Just and fair conditions at work (Articles 2 and 5(e)(i))
 - Right to education (Articles 2 and 5(e)(v))
 - Right to housing (Articles 2, 5(d)(i) and 5(e)(iii))
 - Right to health (Articles 2 and 5(e)(iv))
 - Representation in decision-making (Articles 2 and 5(c))
 - Hate crime, media reporting and stereotyping (Articles 2, 4 and 6)
 - Caste discrimination (Article 2)
 - Stop and search (Articles 2 and 5)
 - Violence against Women and Girls (Articles 2 and 5(b)), and
 - Institutional detention (Articles 2 and 5).
5. The most significant economic event of the review period was the recession and the subsequent recovery. In 2008, the UK experienced a major and deep economic downturn (Office for National Statistics).³ The UK economy shrank by 2.3% in the final quarter of 2008, during a recession that lasted around a year (from the second quarter of 2008 until the second quarter of 2009). Growth resumed towards the end of 2009, but the recovery was protracted and interrupted by brief periods of decline in 2012. The UK has since seen sustained growth into 2015.
6. The impact of this downturn was a substantial increase in the budget deficit and public sector debt. In 2010, the new Coalition Government⁴ made its policy priority the elimination of the deficit to enable sustainable, private sector-led growth, and set:⁵
 - a fiscal mandate to achieve a balanced (cyclically adjusted) current budget over five-year periods – in this case, by 2015–16, and
 - a further target to have the public sector net debt begin falling as a share of national income between 2014–15 and 2015–16.

³ Office for National Statistics (2015), Quarterly National Accounts, Quarter 2 (April to June) 2015. Available at: <http://www.ons.gov.uk/ons/rel/naa2/quarterly-national-accounts/q2-2015/index.html> [accessed: 2 October 2015].

⁴ The Coalition Government was composed of members of both the Conservative Party and the Liberal Democrats.

⁵ HM Treasury (2010), *Budget 2010*. London: The Stationery Office. Available at: http://webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/junebudget_documents.htm [accessed: 2 October 2015].

7. These decisions meant a funding gap that could only be closed through spending cuts, taxation or growth. The UK Government agreed to close this gap with 77% to come from a reduction in spending (while aiming to preserve growth-enhancing capital spending), and 23% to come from tax increases by 2015–16. This reduction in spending meant that the Scottish and Welsh Governments also faced reduced resources.
8. In achieving its spending reduction targets, the UK Government set itself the additional challenge of protecting spending on health, schools and international development. Since health, education and social security made up around a third of total government spending, by giving relative protection to two of these areas the inevitable consequence was the need for more cuts in non-protected areas.
9. The Scottish Government and Welsh Government budgets are tied to the level of UK Government spending, and consequently also reduced. Both governments also pledged to protect key public services such as health.
10. On 23 June 2016, the UK held a referendum over its membership of the EU, voting by 52% to 48% to leave the EU. Any long-term impact on the domestic implementation of human rights will not be clear for many months.

Devolution

11. The Scottish Parliament was created by the Scotland Act 1998.⁶ Its powers were extended by the Scotland Act 2012.⁷ The devolved powers of the Scottish Parliament of relevance to racial equality include education and training, health and social services, housing and local government. In the referendum on Scottish independence on 18 September 2014, Scotland voted to stay in the United Kingdom. A process is now underway to transfer further powers to the Scottish Parliament in areas such as taxation, welfare and elections to the Scottish Parliament. New powers are being devolved under the Scotland Act 2016.⁸

⁶ Scotland Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents> [accessed: 21 March 2016].

⁷ Scotland Act 2012. Available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted> [accessed: 21 March 2016].

⁸ Scottish Parliament. What are the powers of the Scottish Parliament? Scottish Parliament. Available at: <http://www.scottish.parliament.uk/visitandlearn/12506.aspx> [accessed: 13 April 2016].

12. The National Assembly for Wales was established by the Government of Wales Act 1998.⁹ In a referendum in 2011, the people of Wales voted in favour of granting the Assembly further powers for legislating in Wales without first needing the agreement of the UK Parliament.¹⁰ Issues devolved to the National Assembly for Wales include economic development, education and training, health, housing and local government.¹¹ A revised draft of a Wales Bill, proposing the devolution of further powers to the National Assembly for Wales, was published in June 2016.¹²
13. The Scottish National Action Plan for Human Rights (SNAP) was launched on 10 December 2013. It aims to make human rights a reality for everyone. The SHRC, Scottish Government, EHRC, public sector organisations, Civil Society Organisations (CSOs) and others work collectively to deliver SNAP.¹³ In March 2016, the Scottish Government launched its Race Equality Framework for Scotland 2016–2030, setting out the Scottish Government’s approach to promoting race equality and tackling racism and inequality between 2016 and 2030. The EHRC shares its human rights remit in Scotland with the SHRC. The EHRC’s human rights remit extends to those areas outside the legislative competence of the Scottish Parliament, such as immigration or anti-terrorism law. The EHRC can also work on devolved matters in Scotland with the agreement of the SHRC. The work of the two organisations in Scotland is underpinned by a memorandum of understanding, and agreed working arrangements on shared priorities.¹⁴
14. The EHRC agreed with the SHRC that the EHRC would take the lead covering reserved and devolved issues in Scotland for this report. The EHRC and NIHR will be submitting separate reports. This report and its specific recommendations

⁹ Government of Wales Act 1998. Available at: <http://www.legislation.gov.uk/ukpga/1998/38/contents> [accessed: 21 March 2016].

¹⁰ National Assembly for Wales, Information Pack. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx> [accessed: 21 March 2016].

¹¹ National Assembly for Wales, Information Pack. Available at: <http://www.assembly.wales/en/newhome/press-area/Pages/new-mediapack.aspx> [accessed: 21 March 2016].

¹² Wales Bill 2016–17. Available at: <http://services.parliament.uk/bills/2016-17/wales.html> [accessed: 17 June 2016].

¹³ EHRC, *Is Scotland Fairer?* January 2016, p. 16. Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/about-commission-scotland/scotland-fairer> [accessed: 15 March 2016].

¹⁴ EHRC and SHRC, Memorandum of Understanding between the Scottish Commission for Human Rights (SHRC) and the Equality and Human Rights Commission. Available at: <http://www.nihrc.org/documents/nihrc-general/working-with-others-%20mou/mou-between-ehrc-nihrc-and-shrc-website.pdf> [accessed: 13 April 2016].

cover the impact of UK state obligations in England, Scotland and Wales. Devolved issues are covered and many of the recommendations are relevant to the devolved administrations.

Engagement with civil society

15. As part of the EHRC's NHRI role in supporting the implementation of international human rights instrument, the EHRC and the Runnymede Trust developed guidance to provide CSOs in Great Britain with the information they need to use ICERD effectively to progress human rights domestically. The guide explains how civil society can get involved in the ICERD monitoring and reporting process, and outlines the respective roles and responsibilities of the participants.¹⁵
16. Following a competitive tender, the EHRC appointed the Runnymede Trust in 2015 to write a joint civil society Shadow Report to the CERD Committee on race equality in Great Britain. Runnymede facilitated events with CSOs working on race equality issues across England, Scotland and Wales to engage with the CERD Committee treaty reporting process.

¹⁵ EHRC (2015), *From local voices to global audience: Engaging with the International Convention for the Elimination of All Forms of Racial Discrimination – Second edition*. Available at: <http://www.equalityhumanrights.com/publication/local-voices-global-audience-engaging-international-convention-elimination-all-forms-racial> [accessed: 15 March 2016].

Human rights framework (Articles 1, 1(4), 2, 2(2), 4, 5, 6)

Incorporation of ICERD into the domestic framework and implementation of ICERD through Great Britain

17. This section sets out the UK's incorporation of the ICERD into domestic law, which was ratified by the UK Government on 7 March 1969. It entered some reservations and made interpretative statements on signature and ratification. The UK's interpretative statement to Article 4 is particularly relevant.¹⁶ Article 4 requires states parties to condemn and outlaw the dissemination of racist propaganda and prohibit organisations based on racist ideas or those which promote racial hatred or racial supremacy.
18. The UK interpretative statement aims to balance provisions in Article 4 with the right to freedom of expression and freedom of association. In practice, this means that the UK does not outlaw organisations that express views that may be regarded as racist. However, there are a number of criminal provisions under UK legislation that can be used to prosecute racially motivated hate crimes, including racial violence and harassment.¹⁷

¹⁶ The UK entered reservations to: Article 1 concerning Commonwealth migrants; Article 5 relating to any electoral law in Fiji; Article 15 with regard to rights of peoples pending the achievement of the objectives of the declaration on the granting of independence to colonial countries and people; and Article 20 relating to the status of reservations. The UK also made an interpretative statement to Article 6 relating to its interpretation of 'reparation or satisfaction' in the context of providing remedy to victims of discrimination. For the full text of the reservations and interpretative statements, see: United Nations Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination (1965). Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en [accessed: 13 November 2015].

¹⁷ For example, see the Public Order Act 1986, Malicious Communications Act 1988, Protection from Harassment Act 1997, Crime and Disorder Act 1998.

Human rights protections in the UK

19. In December 2015, the UK Government reiterated its intention to consult on proposals to replace the Human Rights Act 1998 with a British Bill of Rights.¹⁸ The Prime Minister provided an update to Parliament in February 2016 that the UK Government would shortly be coming up with proposals ‘to change Britain’s position with respect to the European Court of Human Rights by having our own British Bill of Rights’.¹⁹
20. In response to the UK Government’s intention to introduce a British Bill of Rights, the EHRC has made clear its position that any changes to our current human rights framework must not reduce the protections contained in the Human Rights Act 1998, nor weaken the mechanisms for securing redress for breaches of human rights.²⁰
21. Any proposals would also have to take into account the interaction with legislation on devolution. The Scotland Act 1998 defines the legislative competence of the Scottish Parliament. Legislation which is not compatible with ‘Convention Rights’ is not law and can be set aside by the courts. The Convention Rights themselves are derived from the European Convention on Human Rights, via the provisions of the Human Rights Act. In the view of the Scottish Government any legislation which repealed or replaced the Human Rights Act would affect the competence of devolved institutions in Scotland. It would therefore require the legislative consent of the Scottish Parliament. Given the very clear cross-party support for the Act in the Scottish Parliament, consent is unlikely to be granted.²¹ Similarly, the National Assembly for Wales cannot pass legislation that is incompatible with the European Convention on Human Rights.²² It has been reported that repeal of

¹⁸ This consultation is scheduled for 2016. Revised transcript of evidence taken before the Select Committee on the Constitution, oral evidence session with the Rt. Hon. Michael Gove, Lord Chancellor and Secretary of State for Justice, 2 December 2015. Available at: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/constitution-committee/> [accessed: 1 February 2016].

¹⁹ Prime Minister David Cameron, 3 February 2016. Available at: http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160203/debtext/160203-0002.htm#160203-0002.htm_spm2 [accessed: 11 February 2016].

²⁰ EHRC, *Strategic Plan 2016/2019*. Available at: <https://www.equalityhumanrights.com/en/what-we-do/our-strategic-plan/our-strategic-plan-2016-19> [accessed: 31 May 2016].

²¹ Scottish Government, European and External Relations Committee, Human Rights Inquiry. Available at: http://www.parliament.scot/S4_EuropeanandExternalRelationsCommittee/General%20Documents/Scottish_Government.pdf [accessed: 21 June 2016].

²² National Assembly for Wales, Research Service Quick Guide: The Constitution Series: 10 – Legislative powers of the National Assembly. Available at: http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwjA_6iq4-

the Human Rights Act may require the passing of a legislative consent motion in the National Assembly for Wales.²³ The Welsh Government has repeatedly voiced its support for the Human Rights Act, so, as in Scotland, that motion is unlikely to be granted.

Implementation of outstanding or repealed Equality Act 2010 provisions, including amendment to the exception to immigration functions

22. The Equality Act 2010 harmonised all equality legislation and removed anomalies which existed in the Race Relations Act 1976. It also introduced a number of new protections against discrimination and harassment. However several provisions of the Equality Act 2010 have not yet been brought into legal effect, or have been repealed:

- Section 1 sets out the duty of certain public authorities to have due regard to the desirability of reducing socio-economic disadvantage when taking strategic decisions about how to exercise their functions. This section has not been brought into force, but could provide a model for enhancing the status of ICESCR in domestic law. The EHRC has raised concerns that the duty has not been commenced in Great Britain, and supported a UK Government amendment to the Scotland Bill enabling Scottish Ministers to commence the duty in respect of Scottish public bodies at a time of their choosing.²⁴ The Scotland Act 2016 gives Scottish Ministers the power to commence the duty, and that power came into force on 23 May.²⁵ The EHRC has also supported the proposal in the Wales Bill to devolve powers to commence the socio-economic duty in relation to Welsh public bodies to the National Assembly for Wales.²⁶

[DMAhVIK8AKHTIHDyUQFggxMAM&url=http%3A%2F%2Fwww.assembly.wales%2F07-0010.pdf&usq=AFQjCNE9rYWraaYDMxm65EM4UQFNOLMy7w&bvm=bv.122129774,d.ZGg](http://www.assembly.wales%2F07-0010.pdf&usq=AFQjCNE9rYWraaYDMxm65EM4UQFNOLMy7w&bvm=bv.122129774,d.ZGg) [accessed: 17 May 2016].

²³ Wales Online, Welsh Government will do 'everything it can' to block repeal of the Human Rights Act, 18 May 2015. Available at: <http://www.walesonline.co.uk/news/wales-news/welsh-government-everything-can-block-9279496> [accessed: 17 May 2016].

²⁴ EHRC, *Briefing on the Scotland Bill, House of Commons Report Stage*, 9 November 2015. Available at: <https://www.equalityhumanrights.com/cy/node/1116> [accessed: 20 June 2016].

²⁵ Scotland Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/11/section/38/enacted> [accessed: 16 June 2016].

²⁶ EHRC, Submission to the Welsh Affairs Committee's scrutiny of the Draft Wales Bill, 25 November 2015. Available at: https://www.equalityhumanrights.com/en/file/12596/download?token=D9_tJB0V [accessed: 16 June 2016].

- Section 9(5)²⁷ was amended so that a Minister *must*, by order, amend the statutory definition of race to include caste and may provide for exceptions in the Act to apply or not to apply to caste. The EHRC supported this amendment.²⁸ However, to date, the order has not been made.
- Section 14 is the provision for tackling intersectional (dual) discrimination. In March 2011, the UK Government announced that it would not bring this section into force.²⁹
- Section 40 is the provision on third party harassment. In October 2013, the UK Government repealed this provision.³⁰
- Section 106, which would require registered political parties to publish data on the diversity of party candidates seeking selection, enjoyed cross-party support. However, it was not enacted by the Coalition Government.³¹

23. The EHRC recommends that the Committee ask the UK Government to:

- **implement outstanding provisions of the Equality Act 2010, including Section 14 on intersectional (dual) discrimination.**

Effective use of positive duties to improve race equality

24. The Race Relations Act (1976) race equality duty came into force in 2001 and arose from the Macpherson Report on the murder of the black teenager, Stephen Lawrence. Following failures of the investigation of Lawrence's murder, the report concluded that there was institutional racism in the Metropolitan Police, and advocated a radical rethink in the approach that public sector organisations were taking towards addressing discrimination and racism.

25. Prior to the introduction of the race equality duty, the emphasis of equality legislation was on rectifying cases of discrimination and harassment after they

²⁷ Enterprise and Regulatory Reform Act 2013, s 97. Available at: <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted> [accessed: 21 March 2016].

²⁸ EHRC, Commission policy statement on caste discrimination. Available at: <http://www.equalityhumanrights.com/legal-and-policy/key-legislatures/equality-act-2010/commission-policy-statement-on-caste-discrimination> [accessed: 23 November 2015].

²⁹ HM Treasury and Department for Business, Innovation and Skills (2011) *The plan for Growth*, p. 18. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31584/2011budget_growth.pdf [accessed: 8 April 2016].

³⁰ See Enterprise and Regulatory Reform Act 2013, section 5(65). Available at: <http://www.legislation.gov.uk/ukpga/2013/24/section/65/enacted> [accessed: 8 April 2016].

³¹ EHRC (2015), *Smoothing the Pathway to Politics for Disabled People: EHRC response to the UN Special Rapporteur on the rights of persons with disabilities call for evidence on the right of persons with disabilities to participate in decision-making*. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/UNCRDP/Smoothing%20the%20Pathway%20to%20Politics%20for%20Disabled%20People.pdf> [accessed: 14 April 2016].

occurred, not preventing them happening in the first place. The race equality duty was designed to shift the onus from individuals to organisations, placing for the first time an obligation on public authorities to positively promote equality, not merely to avoid discrimination. Following the introduction of the race duty, the disability equality duty came into force in 2006, followed by the gender equality duty in 2007.³²

26. The public sector equality duty (PSED) was created by the Equality Act 2010 and replaced the race, disability and gender equality duties. The duty came into force in April 2011 and covers age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It applies in England, Scotland and Wales. The general equality duty is set out in section 149 of the Equality Act 2010. In summary, public authorities subject to the general equality duty must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation
- advance equality of opportunity between different groups
- foster good relations between different groups.³³

27. Public authorities carrying out immigration or nationality functions are not required to have due regard to the need to advance equality of opportunity in relation to the protected characteristics of age, religion or belief, or race where race means nationality or ethnic or national origins (this exception does not apply to colour).³⁴

28. The EHRC had originally planned to produce statutory codes of practice on the PSED, which would have had to been taken into account by courts. As the UK Government declined to lay codes before Parliament, the EHRC published the original text of these codes as technical guidance, last updated in 2014. Technical guidance is a non-statutory version of a code, that still provides a formal, authoritative, and comprehensive legal interpretation of the PSED. It also

³² EHRC, *What is the Equality Duty?* Available at: <http://www.equalityhumanrights.com/private-and-public-sector-guidance/public-sector-providers/public-sector-equality-duty/what-equality-duty> [accessed: 8 April 2016].

³³ EHRC, Public Sector Equality Duty FAQs. Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/public-sector-equality-duty-faqs> [accessed: 15 March 2016].

³⁴ EHRC, *Equality Act 2010: Technical Guidance on the Public Sector Equality Duty England*, p. 82. Available at: <https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england> [accessed: 20 June 2016].

clarifies the requirements of the legislation.³⁵ The EHRC will continue to ask the UK Government to lay out codes of practice.

³⁵ EHRC, *Equality Act guidance, codes of practice and technical guidance*. Available at: <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/equality-act-guidance-codes-practice-and-technical-guidance> [accessed: 15 March 2016].

Access to justice (Articles 2, 5(a))

29. As part of measures to reduce the economic deficit,³⁶ the UK Government has introduced or proposed a number of changes, which have affected how individuals access civil law justice in England and Wales, including:

- introducing the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO Act) which has:
 - restricted the scope of legal aid
 - enabled the introduction of a mandatory telephone gateway for those who wish to access legal aid for debt matters for which the individual's home is at risk, special educational needs matters, and discrimination matters
 - provided for exceptional case funding for those cases outside of the new criteria
- proposing a residence test for legal aid
- reforming judicial review (including restrictions to legal aid)
- introducing employment tribunal fees across Great Britain.

30. The UK Government provides a system of Legal Aid for England and Wales to help meet the costs of legal advice, family mediation and representation in a court or tribunal. In Scotland, there is a separate Legal Aid system, which is governed by the Legal Aid (Scotland) Act 1986. Legal aid is administered on behalf of the Scottish Government by the Scottish Legal Aid Board (SLAB). Changes have been introduced to the provision of legal aid in England and Wales and Scotland. However, the changes to legal aid in England and Wales have been more substantial than in Scotland and with quite different effects.

31. This section of the report contains analysis of:

- the impact of the restriction of the scope of legal aid in England and Wales
- the exceptional cases funding scheme (ECF) in England and Wales
- the potential impact of the proposed residence test in England and Wales

³⁶ Ministry of Justice, *Proposals for the Reform of Legal Aid in England and Wales*, paras 1.3–1.4, November 2010. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228970/7967.pdf [accessed: 17 November 2015].

- reforms to judicial review in England and Wales
- employment tribunal fees in Great Britain, including the position of the Scottish Government.

Legal aid and access to justice in England and Wales

32. The LASPO Act was commenced in April 2013 and narrowed the scope of civil legal aid. For example, it has excluded the majority of private family, housing, debt, welfare benefits, employment and clinical negligence matters.³⁷ The EHRC has previously raised concerns about the impact of this reduced scope on people with certain protected equality characteristics, including ethnic minorities.³⁸

33. Civil legal aid is generally available in two forms: initial advice and assistance (legal help) and representation in court (civil representation). The number of cases receiving support under both forms of civil legal aid has declined significantly in the years following the introduction of the LASPO Act. The number of new matters started for legal help fell from 573,672³⁹ in 2012–13 to 170,617 in 2014–15 (a 70% reduction).⁴⁰ The overall trend has levelled out at around one-third of pre-LASPO levels.⁴¹ Workloads in civil representation fell by a smaller proportion than legal help following the implementation of LASPO, before levelling out at around two-thirds of pre-LASPO levels.⁴²

³⁷ Legal Aid, Sentencing and Punishment of Offenders Act 2012, Schedule 1. Available at: <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> [accessed: 17 November 2015].

³⁸ See, for example: EHRC (2015), *Socio-Economic Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Committee on Economic, Social and Cultural Rights on the United Kingdom's Implementation of the International Covenant on Economic, Social and Cultural Rights*, pp. 75–85. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fFL%2fGBR%2f21491&Lang=en [accessed: 17 November 2015]; EHRC (2015), *Civil and Political Rights in the UK: Equality and Human Rights Commission Submission to the United Nations Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights*, pp. 12–17. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fCSS%2fGBR%2f20681&Lang=en [accessed: 17 November 2015].

³⁹ This figure does not include the Housing possession court duty scheme, Telephone operator service and Community legal advice centre.

⁴⁰ Legal Aid Agency, Legal aid statistics main tables: January to March 2015, Table 1.2: Civil legal aid workload summary since 2001–02. Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-january-to-march-2015> [accessed: 17 November 2015].

⁴¹ In the last quarter (March-June 2016) new matter starts were, however, 13% lower than in the same period of 2015. Legal Aid Statistics in England and Wales: January to March 2016, 30 June 2016. Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2016> [accessed 1 July 2016].

⁴² The number of certificates granted in the last quarter (March-June 2016) was up 10% compared to the same period of the previous year. Legal Aid Statistics in England and Wales: January to March 2016, 30 June 2016. Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2016> [accessed 1 July 2016].

34. Most housing cases have also been excluded from civil legal aid. There are some limited exceptions, including cases involving housing disrepair where there is a risk of serious harm, and cases where there is the risk of homelessness. In the UK Government's own assessment of the likely equality impact of LASPO, limiting legal aid for housing was predicted to have a disproportionate impact on ethnic minorities given their over-representation among housing clients compared with the adult population as a whole.⁴³
35. Although discrimination cases are still eligible for public funding, the exclusion of funding for employment cases could act as a barrier for victims of workplace discrimination, who often need expert advice to understand that their employment problems engage anti-discrimination law.⁴⁴
36. Using powers under the LASPO Act, the UK Government has introduced a mandatory telephone advice gateway⁴⁵ as the only route to legal aid for cases involving discrimination, debt and special educational needs. While the UK Government has given assurances that reasonable adjustments will be made for people with disabilities and those with urgent cases,⁴⁶ research findings from the Public Law Project⁴⁷ suggest an adverse impact on access to advice for people with limited English language skills.
37. Ministry of Justice (MoJ) research found there was evidence of adjustments to facilitate contact with the Gateway, for example people using the language line interpreter service. The MoJ found that 'participants appreciated such adjustments, and generally felt that they had facilitated their contact', but that

⁴³ The UK Government's Equality Impact Assessment that preceded the LASPO Act reforms notes that housing clients are more likely to be ethnic minorities than the adult population as a whole (32 per cent compared with 11 per cent of the population – excluding unknowns). See Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, paras 2.81, 21 June 2011. Available at:

<http://webarchive.nationalarchives.gov.uk/20111121205348/http://www.justice.gov.uk/consultations/legal-aid-reform.htm> [accessed: 17 November 2015].

⁴⁴ Equality Act 2010, part 5. Available at: <http://www.legislation.gov.uk/ukpga/2010/15/part/5> [accessed: 17 November 2015].

⁴⁵ For an overview of how this system works, see: Anthony, H. and Crilly, C. (2015), *Equality, human rights and access to civil law justice: a literature review*, Equality and Human Rights Commission Research Report 99, p. 18. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 17 November 2015].

⁴⁶ Ministry of Justice, Reform of Legal Aid in England and Wales: Equality Impact Assessment, paras 6.30, 6.57 and 6.86, 2011.

⁴⁷ Public Law Project. Keys to the gateway: an independent review of the mandatory Civil Legal Advice Gateway, 2 March 2015. Available at: <http://www.publiclawproject.org.uk/resources/199/an-independent-review-of-the-mandatory-civil-legal-advice-gateway> [accessed: 20 November 2015].

adjustments were not always offered, and some participants were not aware of this facility although they may have benefited from it.⁴⁸

38. In April 2016, the UK Government published a consultation paper proposing new fees for proceedings in the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber). The consultation proposes increasing fees in those immigration and asylum proceedings where a fee is payable so that the fee meets the costs of those proceedings in full. For example, the cost of an application for a decision on the papers in the First-tier Tribunal would rise from £80 to £490. The UK Government has stated its commitment to continuing to exempt from fees those in particularly vulnerable positions, including those who qualify for legal aid or asylum support; those who are appealing against a decision to deprive them of their citizenship; and those children bringing appeals to the tribunal who are being supported by a local authority.⁴⁹

39. The EHRC has concerns about the impact of the significant (500 per cent) increase in fees proposed. The fees are likely to place people from ethnic minorities at a particular disadvantage, so the proposals will be unlawfully indirectly discriminatory, unless they can be objectively justified. The EHRC notes that the MoJ has published an impact assessment and an equality statement alongside the proposals. The equality statement notes that: 'to the extent that increased fee levels would put individuals sharing a protected characteristic at a particular disadvantage, the Government believes this is justifiable'. The equality statement acknowledges that 'there is likely to be over-representation of people from Black, Asian and minority ethnic backgrounds within First-tier Tribunal users and that it is more likely that individuals with these protected characteristics could be potentially put at particular financial disadvantage'. The proposal is therefore indirectly discriminatory, unless it can be justified as a proportionate means of achieving a legitimate aim. The particular disadvantage these individuals would

⁴⁸ Ministry of Justice, Civil Legal Advice mandatory gateway: Findings from interviews with users, pp. 15-16. Available at: <https://www.gov.uk/government/publications/civil-legal-advice-mandatory-gateway-research-findings> [accessed: 1 July 2016].

⁴⁹ 'The UK Government proposes increasing fees in the First-tier Tribunal from £80 to £490 for an application for a decision on the papers and from £140 to £800 for an application for an oral hearing. We also propose introducing a new fee of £455 for an application to the First-tier Tribunal for permission to appeal to the Upper Tribunal.' Dominic Raab, Parliamentary Under-Secretary of State for Justice, Minister for Human Rights, Hansard, written statement. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-04-21/HCWS691/> [accessed: 29 April 2016].

suffer would be more than a financial one, given the significant effects that immigration decisions can have on individuals and their families.⁵⁰

Exceptional cases funding scheme (ECF) in England and Wales

40. ECF was introduced under Section 10 of the LASPO Act. It was designed to allow funding for areas of law normally excluded from legal aid, where a failure to provide funding would result in a breach of the individual's human rights under the European Court of Human Rights (ECHR) or rights under European Union law. However, evidence suggests the scheme is not functioning as intended, because of its demanding application process and the strict interpretation of its eligibility criteria.⁵¹ In 2014/15, 1,172 applications were made for exceptional funding; only 214 of these were granted, of which 97 were for inquest cases.⁵²
41. The ECF scheme has been subject to challenge in the courts. In December 2014 the Court of Appeal held that guidance issued by the Lord Chancellor on the operation of the ECF was incompatible with Articles 6 and 8 of the ECHR.⁵³
42. In May 2016, the Court of Appeal overturned an earlier finding by the High Court that there was a systematic failure in the ECF scheme. The Claimant has recently applied for permission to appeal to the Supreme Court. Concerns had been raised in that case that the application forms are too complicated for litigants in

⁵⁰ Response of the Equality and Human Rights Commission to the Consultation on proposals for the First-tier Tribunal (Immigration and Asylum Chamber) and Upper Tribunal (Immigration and Asylum Chamber) fees, 3 June 2016. Available at: https://webcache.googleusercontent.com/search?q=cache:cLwc_riSPscJ:https://www.equalityhumanrights.com/sites/default/files/response-to-moj-immigration-appeal-fee-consultation-june-2016.docx+&cd=1&hl=en&ct=clnk&gl=uk [accessed: 17 June 2016].

⁵¹ See the concerns of Joint Committee on Human Rights, *The implications for access to justice of the Government's proposals to reform legal aid*, Seventh Report of Session 2013-2014, para. 140, 11 December 2013. Available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm> [accessed: 26 November 2015]; House of Commons Justice Committee (2015), Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, Eighth Report of Session 2014–15, paras 30–47. Available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/311/311.pdf> [accessed: 17 November 2015]. The Public Law Project, which assists with exceptional funding applications, has concluded that the process is onerous and complex, and ill-suited to applications made in person: Public Law Project. (2013) *Public Law Project response to Transforming Legal Aid: Delivering a more credible and efficient system consultation*, paras 81–82. Available at: <http://www.publiclawproject.org.uk/resources/20/response-to-moj-consultation-paper-transforming-legal-aid> [accessed: 26 November 2015].

⁵² Ministry of Justice, Legal aid statistics in England and Wales 2013–2014, Legal Aid Agency, 24 June 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325921/legal-aid-statistics-2013-14.pdf [accessed: 26 November 2015].

⁵³ *Gudanaviciene v Director of Legal Aid Casework* [2014] EWCA Civ 1622.

person to deal with, there is no process for dealing with urgent applications, and no right of appeal against refusal of ECF.⁵⁴

43. In response, the UK Government has shortened the ECF application form and introduced a procedure for urgent applications. However, there is still no right of appeal against refusal of ECF and legal aid providers still have to make applications ‘at risk’ – that is, facing the possibility that they will not be paid for their time preparing an ECF application that is unsuccessful. Furthermore, the revised guidance (issued in June 2105) to the Director of Legal Aid Casework has not been noticeably improved to ensure future legal aid decisions under the ECF process are consistent with individual rights under EU law and the ECHR – it simply refers to recent case law without explaining how it affects decisions and what needs to be done to comply with those rights in practice.
44. In the EHRC’s view, the legal aid application procedure remains too complicated for litigants in person to deal with alone; it reduces incentives for lawyers to assist litigants to navigate the process and means individuals who have legitimate grounds to challenge decisions refusing legal aid (including human rights grounds) must accept the decision or litigate, in the absence of an internal appeal mechanism under the ECF scheme.⁵⁵
45. In 2015, the UN Human Rights Committee highlighted the shortcomings in the ECF scheme introduced by the LASPO Act and the plans to introduce a residence test for civil legal aid,⁵⁶ and recommended the UK Government ‘[e]nsure that changes to the legal aid system do not undermine the right of access to courts and effective remedy’ by addressing these issues.⁵⁷
46. The MoJ states that ‘the number and proportion of ECF applications being granted has generally been increasing since the scheme was first introduced in

⁵⁴ *IS v (1) Director of Legal Aid Casework (2) Lord Chancellor* [2015] EWHC 1965 (Admin), and in the Court of Appeal [2016] EWCA Civ 464.

⁵⁵ Gov.uk, News story: Civil news: exceptional funding guidance in non-inquest cases, 9 June 2015. Available at: <https://www.gov.uk/government/news/civil-news-exceptional-funding-guidance-in-non-inquest-cases> [accessed: 19 May 2016].

⁵⁶ Human Rights Committee. *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, 17 August 2015, UN Doc CCPR/C/GBR/CO/7, para. 22. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fCO%2f7&Lang=en [accessed: 17 November 2015].

⁵⁷ Human Rights Committee. *Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*, 17 August 2015, UN Doc CCPR/C/GBR/CO/7, para. 22.

April 2013'. Between January and March 2016, over half of all applications that were determined by 31 May 2016 were granted (54%).⁵⁸

Impact of the proposed residence test in England and Wales

47. The UK Government had intended to introduce a residence test for civil legal aid.⁵⁹ With certain exceptions, the test was designed to limit funding to people who are lawfully resident in the UK and who, at some point, have been lawfully resident for at least 12 months continuously. In the analysis of the UK Parliament's Joint Committee on Human Rights, certain vulnerable groups would be unable to prove that they satisfy the test, including those without documents to prove their immigration history and victims of trafficking whose status is disputed.⁶⁰
48. In July 2014, the High Court ruled that the residence test was 'ultra vires' of the LASPO Act, and in breach of Article 14 of the European Convention on Human Rights (prohibition of discrimination in the enjoyment of rights) read with Article 6 (the right to a fair trial) – and therefore discriminatory.⁶¹ The Supreme Court allowed an appeal against the Court of Appeal's decision in April 2016 on the basis that LASPO does not provide the vires to introduce the proposed residence test for legal aid. The only way to introduce a residence test now would be through primary legislation, but there is nothing currently before parliament.

Judicial review in England and Wales

49. Judicial review enables judges to review the lawfulness of the decisions, acts or omissions of public bodies, providing an important check on their exercise of

⁵⁸ Legal Aid Statistics in England and Wales: January to March 2016, 30 June 2016. Available at: <https://www.gov.uk/government/statistics/legal-aid-statistics-quarterly-january-to-march-2016> [accessed 1 July 2016].

⁵⁹ The proposal is contained in: Ministry of Justice, Transforming legal aid: delivering a more credible and efficient system, 9 April 2013. Available at: https://consult.justice.gov.uk/digital-communications/transforming-legal-aid/supporting_documents/transforminglegalaid.pdf [accessed: 26 November 2015].

⁶⁰ Joint Committee on Human Rights, The implications for access to justice of the Government's proposals to reform legal aid, Seventh Report of Session 2013–2014, 11 December 2013. Available at: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm> [accessed: 26 November 2015].

⁶¹ *R (Public Law Project) v Secretary of State for Justice* [2014] EWHC 2365 (Admin).

power. In addition to changes through the LASPO Act,⁶² the UK Government introduced amending regulations⁶³ changing the rules governing payment for applications for permission for judicial review to cases where the court has granted permission for the application to go ahead, or some cases where the application is withdrawn.

50. Following a successful judicial review challenge of these regulations,⁶⁴ the UK Government expanded the circumstances in which retrospective funding may be granted.⁶⁵ However, legal aid practitioners still have to make applications with no guarantee of funding, which may well deter them from taking on important cases that might have succeeded. In the EHRC's view, this could have a negative impact on the ability of individuals to hold the state to account.⁶⁶

51. The UK Government has also introduced significant reforms to judicial review procedures in England and Wales through the Criminal Justice and Courts Act 2015. These reforms include replacing protective costs orders in judicial reviews with a new type of order called a costs capping order⁶⁷ for public interest proceedings, which the court may now only make if it grants permission for the judicial review to go ahead.⁶⁸ The reforms also create a much greater risk of interveners having to pay costs in cases where certain conditions are met (i.e. where the intervener has in effect acted as a party, where the intervener is not of significant assistance to the court, where a significant part of the intervener's contribution relates to matters that the court need not consider, or where the intervener acts unreasonably). These reforms may deter civil society organisations from applying for judicial review in the public interest, as they would face the risk of paying the defendant's full costs of resisting permission, should permission be refused. It may also deter civil society and the EHRC (in pursuit of its statutory

⁶² For example, there have been changes to when legal aid is available for judicial review: Anthony, H. and Crilly, C. (2015), *Equality, human rights and access to civil law justice: a literature review*, Equality and Human Rights Commission Research Report 99, p. 69. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 17 November 2015].

⁶³ Civil Legal Aid (Remuneration) (Amendment) (No. 3) Regulations 2014.

⁶⁴ *R (Ben Hoare Bell and others) v Lord Chancellor* [2015] EWHC 523 (Admin).

⁶⁵ Civil Legal Aid (Remuneration) (Amendment) Regulations 2015, SI 2015/898.

⁶⁶ EHRC (2013), Submission of Equality and Human Rights Commission to JCHR inquiry into the implications for access to justice of the Government's proposed legal aid reforms. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses/response-to-joint-committee-on-human-rights-inquiry-into-access-to-legal-aid-reform> [accessed: 26 November 2015].

⁶⁷ The system of protective costs orders has been evolved by the courts as a device for capping the claimant's exposure to the risk of paying the defendant's costs, should the claim fail. The court takes into account the public interest in the case, whether the claimant has a personal interest in the outcome, and the claimant's financial means.

⁶⁸ Criminal Justice and Courts Act 2015, s 88(3).

powers)⁶⁹ from applying to intervene in a case because of the risk of having a costs order made against them.⁷⁰ Such cases may include enforcing the rights protected under CERD.

Reviewing the changes in England and Wales

52. The EHRC is concerned that the reduced scope of legal aid and the operation of the mandatory telephone gateway, changes to judicial review and proposals for a residence test may have a particular impact on ethnic minorities. This, in turn, indicates potential limitations on effective access to justice and redress for rights protected by CERD.

53. Decision-making by all public bodies is covered by the public sector equality duty (PSED).⁷¹ The EHRC's Guidance on Meeting the Equality Duty in Policy and Decision-Making⁷² makes clear that '[a]ssessing the impact on equality is an ongoing process that does not end once a policy has been agreed or implemented'.⁷³ The experience gained through implementation can be used to consider any possible adjustments to the approach to legal aid reforms.⁷⁴ The UK Government has committed to 'conduct a post-implementation review of the legal aid reforms within three to five years of implementation (2016–2018)'.⁷⁵ The precise timing or terms of reference have not yet, however, been announced.

⁶⁹ Equality Act 2006, s 30.

⁷⁰ For further analysis of the impact on potential interveners see: Anthony, H. and Crilly, C. (2015) *Equality, human rights and access to civil law justice: a literature review*, Equality and Human Rights Commission Research Report 99, pp. 73–75. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 17 November 2015].

⁷¹ Equality Act 2010. Available at: <http://www.legislation.gov.uk/ukpga/2010/15/contents> [accessed: 7 April 2016].

⁷² The public sector equality duty requires a public authority, in the exercise of its functions, to have due regard to the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity of, and foster good relations between, persons who share a protected characteristic and persons who do not share it: Equality Act 2010, s 149(1).

⁷³ EHRC (2014), *Meeting the Equality Duty in Policy and Decision-Making – England (and non-devolved public authorities in Scotland and Wales)*, p. 19, October 2014. Available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Meeting%20the%20duty%20in%20policy%20and%20decision-making.pdf [accessed: 26 November 2015].

⁷⁴ EHRC (2014), *Guidance: Meeting the Equality Duty in Policy and Decision-Making – England (and non-devolved public authorities in Scotland and Wales)*, p. 20. Available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Meeting%20the%20duty%20in%20policy%20and%20decision-making.pdf [accessed: 26 November 2015].

⁷⁵ Ministry of Justice, Government response to Justice Committee's Eighth Report of Session 2014–15: Impact of changes to civil legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, p. 4, July 2015. Available at:

54. The EHRC welcomes the UK Government's publication of research into advice provision in the Not-for-Profit sector; a survey of how individuals seek to resolve civil, administrative or family justice problems; and a survey on the prevalence of civil justice problems in England and Wales.⁷⁶ We would hope to see that evidence base further developed and used to inform the eventual post-implementation review.

Employment tribunal fees in Great Britain

55. In July 2013, the UK Government introduced fees of up to £950 for employment tribunal (ET) hearings, payable in advance by the claimants in England, Wales and Scotland.⁷⁷ This is in addition to a fee of up to £250 for issuing the claim.⁷⁸ All discrimination claims are subject to the higher level of fees. Depending on their financial circumstances, claimants may qualify for full or part remission of the fees.⁷⁹ The scheme is relatively complex in nature; an applicant must satisfy both the test for disposable capital and a separate test relating to gross monthly income.

56. ET statistics show that a full or partial fee remission is granted for the issue fee in only 22% of cases i.e., in 1,150 out of 5,412 cases where the ET requested fees in Q1 of 15/16).⁸⁰ In contrast, the 2012 Equality Impact Assessment that accompanied the UK Government's response to the consultation on the proposal for ET fees predicted that 24% of claimants would benefit from full fee remission

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444939/response-to-justice-committee.pdf [accessed: 26 November 2015].

⁷⁶ Ministry of Justice, Survey of Not for Profit Legal Advice Providers in England and Wales, 2015. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/485636/not-for-profit-la-providers-survey.pdf [accessed: 29 April 2016].

⁷⁷ Since 1971, the UK has provided a statutory tribunal (currently known as 'the Employment Tribunal') for resolving employment-related disputes, at no cost to the employer or worker, save in very limited cases. The tribunal is administered by HM Courts and Tribunals Service, an executive agency of the Ministry of Justice.

⁷⁸ The Employment Tribunal and Employment Appeal Tribunal Fees Order 2013.

⁷⁹ Courts and Tribunals Fee Remission Order, 2013 (SI 2013 2302).

⁸⁰ Ministry of Justice, Tribunals and Gender Recognition Statistics Quarterly: Annex D Employment Tribunal Fees Tables – Table D.1 Employment Tribunal Fees – Issue fees requested, fees paid in full and remissions awarded, 10 September 2015. Available at:

<https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> [accessed: 26 November 2015].

and a further 53% of claimants would benefit from a partial discount on fee rates up to £950.⁸¹

57. The introduction of ET fees has coincided with a significant drop in the number of ET applications. MoJ figures indicate a 72% decline in claims accepted, comparing the first quarter of 2013/14 (when no fees were payable) to the first quarter of 2015/16.⁸² There is some evidence that ET fees have a deterrent effect on potential ET applicants. For example, Citizens Advice found that in over half of claims assessed as having a very good, good or 50/50 chance of success, fees or costs were cited as a reason for the claimants being unlikely to proceed.⁸³ The same statistics show a drop of 41% in complaints of race discrimination⁸⁴ and 63% in complaints of religion or belief discrimination⁸⁵ across Great Britain. In Scotland, race discrimination complaints have fallen 56%.⁸⁶

58. The EHRC is concerned that the introduction of substantial fees for ETs may be compromising claimants' rights under Article 6 of the European Convention on Human Rights (ECHR), which protects access to justice in the determination of civil rights and obligations. For example, the number of race discrimination cases has dropped by 61 % following the introduction of fees in employment tribunals.⁸⁷ The particular impact on ethnic minorities may engage Article 6 (the right to a fair trial) read with Article 14 (prohibition of discrimination in the enjoyment of rights).

59. The UK Government launched a post-implementation review of ET fees in June 2015. The UK Government has not yet reported its findings. The review

⁸¹ Ministry of Justice (2012), Charging fees in Employment Tribunals and the Employment Appeal Tribunal: Government response – Equality Impact Assessment, p. 26. Available at: <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011> [accessed: 30 November 2015].

⁸² From 44,334 to 12,563: Ministry of Justice (2015), Tribunals and Gender Recognition Statistics Quarterly: Main tables (April to June 2015). Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> [accessed: 26 November 2015].

⁸³ Citizens Advice Bureau (2014), One year on from the introduction of fees to access the Employment Tribunal: summary of results from a survey of employment cases brought to Citizens Advice bureaux. Available at: https://www.citizensadvice.org.uk/global/migrated_documents/corporate/et-fees-survey-briefing-final-july-2014--2-.pdf [accessed: 21 March 2016].

⁸⁴ From 1,089 to 624 cases.

⁸⁵ From 220 to 79 cases.

⁸⁶ From 32 to 13 cases: Ministry of Justice, Tribunals and gender recognition certificate statistics quarterly: April to June 2015 – Annex C: Employment Tribunal Receipts Tables: Table C.4 – Total Number of Employment Tribunal Jurisdictional Complaints Received by Region, January 2012 to June 2015, 10 September 2015. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-april-to-june-2015> [accessed: 26 November 2015].

⁸⁷ Anthony, H. and Crilly, C. (2015), *Equality, human rights and access to civil law justice: a literature review*, Equality and Human Rights Commission Research Report 99, p. 92. Available at: <http://www.equalityhumanrights.com/publication/equality-human-rights-and-access-civil-law-justice-literature-review> [accessed: 17 November 2015].

considered 'how effective the introduction of fees has been at meeting the original objectives, while maintaining access to justice'.⁸⁸ On 20 April 2016, the Parliamentary Under-Secretary of State for Work and Pensions provided an update that the review of the impact of the introduction of fees in the employment tribunals would 'include an assessment of the impact of fees on the volumes of Employment Tribunal claims including in relation to gender and other protected characteristics'.⁸⁹

60. Due to widespread concerns about the impact of ET fees, the Justice Select Committee launched an inquiry into the effects of these fees in July 2015. The Justice Select Committee's report, published in June 2016, found that:

- the lengthy delay in the publication of the Government's post-implementation review of the impact of employment tribunal fees was 'unacceptable'
- there has been a significant drop in the number of employment tribunal claims
- serious concerns exist concerning the quality of the Ministry's research. The Justice Committee shared the view expressed by the senior judiciary and some others who gave evidence that it does not provide a sufficient basis to justify the proposals
- the Government's assertion that the drop is largely attributable to the success of Acas's Early Conciliation is 'even on the most favourable construction, superficial'
- fees 'have had a significant adverse impact on access to justice for meritorious claims'.⁹⁰

61. As part of the UK Government's commitment to devolve more powers to the Scottish Parliament, section 33 of the Scotland Act 2016 enables the transfer of the functions of the employment tribunal and the Employment Appeal Tribunal to the Scottish tribunals system. The Scottish Government has committed to use the new powers in the Scotland Act 2016 to consult on how it can best support

⁸⁸ Ministry of Justice (2015), *Employment Tribunal Fees Post Implementation Review*. Available at: <https://www.gov.uk/government/publications/employment-tribunal-fees-post-implementation-review> [accessed: 26 November 2015].

⁸⁹ Shailesh Vara, Parliamentary Under-Secretary of State for Work and Pensions, Hansard, 20 April 2016, written statement. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-04-12/33501/> [accessed: 20 April 2016].

⁹⁰ Justice Select Committee (2016), Courts and tribunals fees, 20 June 2016. Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news-parliament-20151/courts-and-tribunals-fees-report-published-16-17/> [accessed: 21 June 2016].

people's access to employment justice, including a proposal to abolish fees in Scotland.⁹¹

62. The EHRC recommends that the UK Government takes the following action in England and Wales:

- a) monitors the impacts of the LASPO reforms in England and Wales, particularly in cases of housing, debt and discrimination at work. The effectiveness of the mandatory telephone gateway should also be kept under review to ensure its accessibility and effectiveness, particularly for people with disabilities, those with limited English skills, and parents of children with special educational needs**
- b) outlines a clear timetable for the review of the legal aid reforms**
- c) ensures the review includes the commissioning of independent research on the actual equality and human rights impacts of the legal aid reforms on ethnic minorities and other groups sharing protected characteristics across England and Wales**
- d) considers the equality and human rights impacts identified and takes steps to mitigate 1) any indirectly discriminatory effects arising from the reforms and 2) any reduction in access to redress for human rights breaches**
- e) monitors the effect of changes to legal aid for judicial review to ensure that challenges to unlawful administrative decisions relating to the rights under CERD are not being hindered**
- f) withdraws proposals for a residence test for civil legal aid**
- g) reviews the operation of the Exceptional Cases Funding scheme to address its shortcomings, including those identified by the High Court**
- h) takes steps to address any disproportionate impacts on ethnic minorities arising from the employment tribunal fees as identified in its review.**

The EHRC recommends that the Scottish Government:

- i) implements its proposal to abolish employment tribunal fees in Scotland and considers whether there are any specific steps it can take to ensure effective access to employment justice for people from ethnic minority backgrounds as part of its broader programme of work in this area.**

⁹¹ Scottish Government (2015), The Government's Programme for Scotland 2015–16, p. 19 Available at: <http://www.gov.scot/Publications/2015/09/7685/downloads#res484439> [accessed: 14 April 2016].

Just and fair conditions at work (Articles 2, 5(e)(i))

63. In 2011, the CERD Committee recommended the UK intensify its efforts to narrow the employment gap for ethnic minorities.⁹² It also specifically recommended concrete measures to improve the situation of Gypsies and Travellers, including in their access to employment.⁹³

64. This section of the report focuses on:

- employment gaps on the basis of ethnicity, including unemployment rates and concentration in insecure and low-paid jobs
- pay gaps on the basis of ethnicity
- specific employment issues in Wales and Scotland
- public sector equality duty specific duties in Scotland and Wales
- migrant workers' vulnerability to exploitation
- forced labour including trafficking and modern slavery, and
- Gypsy and Traveller economic exclusion.

Employment gaps on the basis of ethnicity

65. In the most recent detailed comparison of ethnicity and employment trends over time, assessing changes in Great Britain from 2008 to 2013, the EHRC has found that *white people* had a higher employment rate (74.7%) than for ethnic minorities generally (59.3%) in 2013. One of the lowest rates was for Pakistanis and Bangladeshis (48.2%, despite a significant increase in their employment rates up to 2013 of +3.8%).⁹⁴

⁹² CERD CO, para. 25.

⁹³ CERD CO, para. 27.

⁹⁴ Employment rate is defined as the number of people in employment as a percentage of the population (our analysis uses the working age population, aged 16–64). The unemployment rate is number of people not currently in a job as a percentage of the 'economically active population' (those who are able to work and have adequate availability to work; this does not include those not working

66. The highest unemployment rate was among Pakistanis and Bangladeshis, at 17.3%, but it was also high for the African/Caribbean/Black group, at 15.5%, and for the Mixed ethnic group at 15.2%. All ethnic minority groups (except for the Mixed ethnic group) had significantly increased unemployment for this period. Whereas there was just a 1.4% significant increase for the White ethnic group since 2008, unemployment for the Pakistani and Bangladeshi ethnic group had increased by 3.3%. The increase in unemployment between 2008 and 2013 was also higher for the African/Caribbean/Black (2.6%), Indian (2.0%) and 'Other' ethnic (1.9%) groups than it was for White respondents.

67. Black and Asian workers are also moving into more insecure forms of employment at higher rates than White workers:⁹⁵

- Black and Asian workers, at 4.3%, are now twice as likely to be in involuntary temporary employment in 2014 compared to White workers, at 2.1%
- Black and Asian workers are more than twice as likely to be in agency work in 2014. This increased by nearly 40% between 2011 and 2014 for Black and Asian workers, compared to just a 16% rise for White workers.

68. Statistics from the 2011 Census highlighted regional variations across the English regions for labour market participation:

- 'White British' and 'White Other' had higher than average employment rates across all regions
- Pakistani and Bangladeshi had lower than average employment rates across all regions. In the West Midlands and Yorkshire and the Humber less than half of these two groups were in employment
- those groups with the highest proportion of the population aged 16-64 who were unemployed ('White and Black Caribbean', 'Other Black' and 'Black African') had higher than average proportions across all regions. The highest proportions for these groups was in the West Midlands where 18% of 'Other Black', 16% of 'White and Black Caribbean' and 17% of 'Black African' were unemployed.⁹⁶

through sickness, disability or because they are studying). Our data on employment rates separates out women and men, as there are significant differences between men's and women's employment rates in some ethnic minority groups. (EHRC, 2015), *Is Britain Fairer?*, p. 36. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 7 April 2016].

⁹⁵ Trade Union Congress, *Living on the Margins: Black workers and casualization*, April 2015. Available at: <https://www.tuc.org.uk/sites/default/files/LivingontheMargins.pdf> [accessed: 30 September 2015].

⁹⁶ Office for National Statistics (2014), *2011 Census analysis: Ethnicity and the Labour Market, England and Wales*. Available at:

69. The EHRC welcomes the UK Government's announcement of a review into increasing progression in the labour market by people from minority backgrounds. This is a welcome step towards tackling the roadblocks to opportunity that ethnic minorities still face in the workplace. In April 2016, the UK Government released terms of reference for Baroness McGregor-Smith's review of issues faced by businesses in developing ethnic minority talent.⁹⁷

Pay gaps on the basis of ethnicity

70. Data collected through the ONS Labour Force Survey of the UK found that between 2008 and 2013, the hourly pay gap on the basis of ethnicity remained the same with the White ethnic group being paid around 5% more on average in 2013.⁹⁸ Within this analysis there are concerns that particular ethnic groups are more affected than others. For example, in 2013 the pay gap between the Pakistani and Bangladeshi ethnic group and the White ethnic group was 21.2%, and this had not changed significantly from 2008.⁹⁹

71. As it is a very complex picture, it is hard to interpret, so the EHRC has undertaken analysis of the drivers of low pay for specific groups. These do differ from one ethnic group to another, often reflecting the timing and reasons for migration of different ethnic groups, and the impact of living in particular geographical areas. Pay gaps may also reflect different labour market experiences, which can be influenced by the qualifications and language skills of groups. This is much more likely in first generation ethnic minorities, and recent research indicates that the qualification levels of second and subsequent generation ethnic minorities tends to be higher than first generation and that qualification levels for most groups are higher than White British men and

<http://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandthelabourmarket2011censusenglandandwales/2014-11-13> [accessed: 13 April 2016].

⁹⁷ The review will look at the business and economic case for employers to harness potential from the widest pool of talent in the workforce, and will make recommendations which advance ethnic minority progression across public and private organisations. The geographic focus of the review has not been announced. Department for Business, Industry and Skills, Policy paper: Terms of reference: Baroness McGregor-Smith's review of issues faced by businesses in developing black and minority ethnic (BME) talent, 1 April 2016. Available at: <https://www.gov.uk/government/publications/bme-access-to-the-labour-market-review-terms-of-reference/terms-of-reference-baroness-mcgregor-smiths-review-of-issues-faced-by-businesses-in-developing-black-and-minority-ethnic-bme-talent> [accessed: 13 April 2016].

⁹⁸ ONS, Quarterly Labour Force Survey, 2008–2013. Available at: <http://www.ons.gov.uk/ons/index.html> [accessed: 30 September 2015].

⁹⁹ ONS, Quarterly Labour Force Survey, 2008–2013. Available at: <http://www.ons.gov.uk/ons/index.html> [accessed 30 September 2015].

women.¹⁰⁰ But there is also evidence of ongoing discrimination and unfair treatment.¹⁰¹

72. In Scotland, the Equality Act 2010 (Specific Duties) (Scotland)

Regulations 2012 require a listed authority to publish a statement on equal pay every four years. This statement must contain the authority's policy on equal pay, as well as information on occupational segregation (the concentration of groups in particular grades and in particular occupations). The first report needed to contain information relating to women and men only. However, the second and subsequent reports must also contain equal pay information in relation to people who are members of a minority racial group and people who are not.¹⁰² The next report for most authorities, which will include that data, is due in 2017.¹⁰³

73. The Specific Duties in Wales (introduced following the Equality Act 2010, under the PSED) require listed public authorities in Wales to 'when drawing up equality objectives, have due regard to the need to have objectives that address the causes of any difference in pay between employees who are from any protected group and those who are not' and to 'make appropriate arrangements to identify and collect information about differences in pay, and the causes of any such differences, between employees who have a protected characteristic and those who do not'.¹⁰⁴

74. The UK Government has not produced a plan on pay gaps related to ethnicity.¹⁰⁵ The Welsh Government's Strategic Equality Plan and Objectives 2012-2016 included an objective to work with partners to identify and address the causes of the ethnicity, as well as gender and disability, pay and employment differences, which includes a number of specific actions towards that goal.¹⁰⁶ The Welsh

¹⁰⁰ See Platt, L. (2011), *Understanding Inequalities: Stratification and Difference*, pp. 81-92.

¹⁰¹ Wood, M. et al., *A test for racial discrimination in recruitment practice in British cities*, Department for Work and Pensions, Research Report No. 607, 2009. Available at:

<http://www.natcen.ac.uk/media/20541/test-for-racial-discrimination.pdf> [accessed 14 March 2016].

The relevant results from the 2014 British Social Attitudes Survey can be downloaded from: www.bsa-31.natcen.ac.uk/ [accessed: 14 March 2016].

¹⁰² The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Available at:

<http://www.legislation.gov.uk/sdsi/2012/9780111016718/contents> [accessed: 14 March 2016].

¹⁰³ EHRC, *Understanding the Scottish-specific Public Sector Equality Duties*. Available at:

<http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-scotland/legal-news-in-about-us/devolved-authorities/the-commission-in-scotland/articles/understanding-the-scottish-specific-public-sector-equality-duties> [accessed: 7 April 2016].

¹⁰⁴ EHRC, *Guides to the PSED in Wales*. Available at:

<http://www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales> [accessed: 17 May 2016].

¹⁰⁵ In February–March 2016, the UK Government consulted on Mandatory Gender Pay Gap Reporting. See Closed consultation: Mandatory Gender Pay Gap Reporting. Available at:

<https://www.gov.uk/government/consultations/mandatory-gender-pay-gap-reporting>

¹⁰⁶ Welsh Government, *Strategic Equality Plan and Objectives 2012–2016*, April 2012. Available at: <http://gov.wales/docs/dsjlg/publications/equality/120405sepfinal-en.pdf> [accessed: 22 March 2016].

Government has set a similar objective as part of its Equality Objectives for 2016–20.¹⁰⁷

Specific employment issues in Scotland and Wales

75. The 2016 Scottish Parliament Equal Opportunities Committee work on ethnicity and employment found that the world of work is still not representative of the communities and people of Scotland. The report makes a number of recommendations to the Scottish Government and agencies aimed at removing barriers to progress.¹⁰⁸

76. The report found that:

- people from ethnic minorities are, on average, more likely to be unemployed or in low-paid work. Despite largely performing better academically than white Scottish people and, in many cases, holding multiple qualifications, people from an ethnic minority background are under-represented in senior management positions
- previous initiatives aimed at addressing racial inequality in the labour market were time limited with little measurable success
- existing employment and recruitment practices must be improved in order to confront any underlying racism and discrimination
- initiatives such as ‘unconscious bias’ training are not the solution and can serve to mask underlying negative attitudes towards people from an ethnic minority background
- there are considerable gaps in data collection which must be addressed with urgency if the requirements of the PSED in relation to occupational segregation are to be met in 2017.

77. In 2012, a Race Council Cymru survey found that employment is the area of life in Wales in which people from diverse ethnic backgrounds consider that they are least likely to be treated fairly and in accordance with their individual needs. Only 25% of respondents considered that there is race equality in employment, with even lower proportions for those from Black African (20%), Chinese (20%) and Indian (12%) backgrounds. Over a third (35%) of survey respondents said that

¹⁰⁷ Welsh Government, Equality objectives. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/equality-objectives/?lang=en> [accessed: 17 May 2016].

¹⁰⁸ Scottish Parliament, *Race, Ethnicity and Employment*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/89097.aspx> [accessed: 20 June 2016].

they or family members have had negative employment experiences because of their race or ethnicity. Examples included experiences of discrimination and bullying within the workplace and a lack of opportunities for promotion.¹⁰⁹

78. In Wales in 2008 and 2013, Muslims had the lowest employment rate of any religious group.¹¹⁰ Muslim women and men are less likely to be in employment and particularly full-time employment, than any other religious groups. After excluding students, Muslim women and men in Wales have the lowest economic activity in the 16-24 and 25-49 age groups (69% and 67% respectively). The figures are starker when broken down to explore the economic activity of Muslim women living in Wales. Fifty-nine per cent of Muslim women in Wales are economically inactive, compared with 20% of Muslim men.¹¹¹

79. The EHRC's Wales workplan for 2015/16 includes the priority to develop resources for Welsh employers on how to address under-representation of Muslim people in the Welsh workforce through lawful positive action and good employment practices.

PSED specific duties in Scotland and Wales

80. Scotland has distinct specific equality duties. Scottish organisations, such as Coalition for Racial Equality and Rights, have used the PSED and data from the responses of public bodies as a framework to further race equality, for example in identifying the lower success rate of ethnic minority candidates at interview, finding for example, 18% of non-white people interviewed for local authority jobs are appointed, compared to 32% for white interviewees.¹¹²

81. The Welsh Government PSED Equality Objectives 2012–16 included the objective to work with partners to identify and address the causes of ethnicity pay and employment differences. This objective is also reflected in its Equality Objectives for 2016–20.¹¹³ The Welsh Government previously supported a

¹⁰⁹ Race Council Cymru (2012), *A report on race equality and racism in Wales: An exploratory study*. Available at:

https://drive.google.com/file/d/1h63gd4YYVqq311wcV5BiR_QP9kPdaQTFpJvh107EELtOe4KqK4DITq4VNYidDVIGyEUsJdwMYaXVzyXp/view?pref=2&pli=1 [accessed: 20 June 2016].

¹¹⁰ EHRC Wales (2015), *Is Wales fairer?*. Available at: <http://www.equalityhumanrights.com/publication/wales-fairer> [accessed: 20 June 2016].

¹¹¹ EHRC Wales, *Is Wales fairer?*

¹¹² The State of the Nation: Race and Racism in Scotland 2nd Edition 2014 Vol. 3: Employment pp. 18, 26. Available at: <http://www.crer.org.uk/Publications/SOTN2Employment.pdf> [accessed: 20 June 2016].

¹¹³ Welsh Government, Equality objectives. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/equality-objectives/?lang=en> [accessed: 17 May 2016].

Minority Ethnic Achievement Grant to make funding available to support the educational attainment of certain ethnic minority groups in Wales (including asylum seekers, refugees, and the children of migrant workers). A new single grant funding stream, the Education Improvement Grant, was announced for introduction in 2015–16. This new funding stream draws together separate grant arrangements, including those for ethnic minority and Gypsy and Traveller attainment.¹¹⁴ Another objective – for both 2012–16 and 2016–20 – aims to improve the engagement and participation of under-represented groups in public appointments.¹¹⁵

82. Since 2012, the EHRC’s monitoring has shown that the PSED raised equality issues up the agenda in most public authorities. Many leaders began taking personal responsibility for driving the equality agenda forward. Public authorities told us it had begun to deliver benefits. The benefits identified included:

- an increase in engagement with people with protected characteristics leading to greater understanding of service needs
- changing the focus of delivery to begin allocating resources where they are most needed
- bringing separate initiatives together in a single action plan leading to an increase in momentum.¹¹⁶

Migrant workers

83. There are currently 2.64 million migrant workers who are legally allowed to work in the UK.¹¹⁷ Many migrants are vulnerable to exploitation and may not be able to enjoy the same economic rights as non-migrant workers. The EHRC has undertaken research and inquiries into the meat and poultry processing, home care and cleaning sectors, all of which have high numbers of migrant workers. This work demonstrated that migrant workers in some of these sectors are often

¹¹⁴ Welsh government, Education Improvement Grant: Equality Impact Assessments. Available at: <http://gov.wales/topics/educationandskills/publications/guidance/education-improvement-grant-equality-impact-assessments/?lang=en> [accessed: 20 June 2016].

¹¹⁵ Welsh Government, Strategic Equality Plan and Objectives 2012–16. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/?lang=en> [accessed: 20 June 2016].

¹¹⁶ EHRC (2015), EHRC Wales Monitoring of PSED Wales key findings, 2015. Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-wales/public-sector-equality-duty-wales/ehrc-monitoring-psed-wales> [accessed: 9 March 2016].

¹¹⁷ EHRC (2015), *Is Britain Fairer? Evidence Paper Series. Productive and Valued Activities*, p. 12. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/productive-and-valued-activities-domain> [accessed: 22 March 2016].

not aware of their employment rights, and do not have employment documentation (such as contracts or pay slips) in a language they understand.¹¹⁸

84. Where migrant workers are aware of their rights, reports indicate that they are often afraid of complaining in case they lose their job or are victimised. The EHRC's evidence suggests this risk could be exacerbated in sectors such as meat and poultry processing where gangmasters also provide accommodation and transport for migrant workers at an additional cost.¹¹⁹ The EHRC's research into the cleaning sector also found evidence of breaches of regulations on working hours, breaks and leave, where some workers felt pressurised to come into work when they were sick, breaks were often viewed as inadequate and some workers did not receive sick pay or holiday pay.¹²⁰
85. In 2012, the UK Government made changes to Overseas Domestic Workers visas with the result that ODWs may be tied to their employer, leaving them vulnerable to exploitation.¹²¹ S.53 of the Modern Slavery Act 2015 allowed those who were found to be victims of slavery to change employer and extend their visa by six months.¹²²
86. However, in December 2015, an independent review found that the tie increased the likelihood of exploitation and recommended that all ODWs be granted the right to change employer and apply for annual extensions totalling 2.5 years, provided they are in work as domestic workers in a private home.¹²³ In response, the UK Government stated in March 2016 that it would 'provide those admitted as ODWs with the ability to change employer during the six month period for which they are originally admitted. The ability to change employer only applies if they continue as a domestic worker but will not depend on whether or not they have

¹¹⁸ EHRC, Mid-Term Universal Periodic Review Report August 2014. Available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/UPR%20Mid-Term%20Report%20EHRCfinal210814_Web.pdf [accessed: 22 March 2016].

¹¹⁹ EHRC (2010), *Inquiry into recruitment and employment in the meat and poultry processing sector: Report of the findings and recommendations*. Available at: www.equalityhumanrights.com/sites/default/files/documents/Inquiries/meat_inquiry_report.pdf [accessed: 22 March 2016].

¹²⁰ EHRC (2014), *The Invisible Workforce: Employment Practices in the Cleaning Sector Findings Report*. Available at: www.equalityhumanrights.com/publication/invisible-workforce-employment-practices-cleaning-sector [accessed: 22 March 2016].

¹²¹ Gov.uk, Domestic Workers in a Private Household visa. Available at: <https://www.gov.uk/domestic-workers-in-a-private-household-visa/overview> [accessed: 9 March 2016].

¹²² Modern Slavery Act 2015, received Royal Assent on 26 March 2015. Available at: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> [accessed: 25 May 2016].

¹²³ Home Office and UK Visas and Immigration, Independent report: Overseas domestic workers visa: independent review, 17 December 2015. Available at: <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review> [accessed: 8 April 2016].

been found to be the victim of abuse.’ These changes have been implemented.¹²⁴ The UK Government also committed to increasing the period for which an extension of stay will be granted to an ODW, who has a positive conclusive grounds’ decision that they have been a victim of slavery under the NRM, from six months to two years.¹²⁵

87. If ODWs have suffered discrimination, for example on the grounds of their gender, age, or disability, they do have redress. As case law currently stands, however, ODWs cannot use the Equality Act to claim compensation if the treatment they encounter is due to the fact that they are vulnerable because of their immigration status. The EHRC provided assistance to a claim which was before the Supreme Court in April 2016 challenging this legal position.¹²⁶ EHRC’s submissions mentioned ICERD and the CERD general recommendation that differential treatment based on citizenship or immigration status will constitute discrimination. The ICERD and CERD provisions were used to support the argument that the immigration status of an ODW (which was found to be the reason for their vulnerability to exploitation) is inextricably linked to their nationality, so that they should be able to claim compensation under the Equality Act on grounds of nationality. The Supreme Court judgment held that neither appellant has suffered race discrimination because the reason for their abuse by the respondents was not nationality but their vulnerability as a particular kind of migrant worker.¹²⁷

Forced labour including trafficking and modern slavery

88. The UK uses the National Referral Mechanism (NRM) framework for identifying victims of human trafficking or modern slavery and ensuring they receive the appropriate support.¹²⁸ In 2014, the UK NRM received 2,340 referrals of potential victims of trafficking; this represents a 34% increase on 2013. Of these, 10%

¹²⁴ House of Commons Briefing Paper, Calls to change overseas domestic worker visa conditions, 13 May 2016. Available at: <http://researchbriefings.files.parliament.uk/documents/SN04786/SN04786.pdf> [accessed: 31 May 2016].

¹²⁵ James Brokenshire, Security and Immigration Minister, Hansard, 7 March 2016, written statement. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-03-07/HCW583/>

¹²⁶ The decision *Onu v Akwivu & Anor; Taiwo v Olaiye & Anor* [2014] EWCA Civ 279 was subject to appeal in the Supreme Court on 20 and 21 April 2016.

¹²⁷ Supreme Court, *Taiwo (Appellant) v Olaiye and another (Respondents)*, 22 June 2016. Available at: <https://www.supremecourt.uk/cases/uksc-2014-0105.html> [accessed: 22 June 2016].

¹²⁸ National Crime Agency, National Referral Mechanism. Available at: <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> [accessed: 3 February 2016].

were referred as a result of exploitation by way of domestic servitude. The potential victims were reported to be from 96 countries of origin, with approximately 95% from countries outside the UK.¹²⁹

89. In April 2014, the Home Secretary commissioned a review of the NRM to assess whether it provides an effective and efficient means of supporting and identifying potential victims of human trafficking and whether it can, or should, cover all victims of modern slavery. The review report made a number of recommendations focused on improving the experience of victims.¹³⁰
90. The Modern Slavery Act received Royal Assent on 26 March 2015. It consolidated current offences relating to trafficking and slavery, and introduced a mandatory requirement for large companies to annually report on efforts to identify and address slavery in their supply chains.¹³¹ In Scotland, the Human Trafficking and Exploitation (Scotland) Act 2015 replicates many provisions of the Modern Slavery Act at the devolved level, clarifying and consolidating devolved civil and criminal law to disrupt trafficking networks, prosecute offenders and support victims. Alongside the new legal framework in Scotland, the Scottish Government is developing a national human trafficking strategy to build expertise and awareness in relevant agencies, share learning, and ensure coherence in other devolved policy areas, such as child protection.¹³²
91. However, the EHRC considers there are a number of issues not covered in the Modern Slavery Act 2015 or sufficiently addressed in the Act. For example, whilst the offences in the Act largely reflect the definitions in the EU Directive and Council of Europe Convention against trafficking, the Act does not wholly do so and as a result may have missed opportunities to ensure all acts of trafficking, forced labour, slavery or servitude are criminalised. Additionally, the list of public authorities¹³³ with a statutory duty to notify the Secretary of State of suspected victims of trafficking does not currently include all relevant organisations that are likely to come into contact with potential victims. There are also weaknesses in the powers of the Anti-Slavery Commissioner and the resources available to

¹²⁹ However, the EHRC notes these figures may not be wholly representative and they may underestimate the scale of the problem in the UK, for example because trafficking is a covert crime, victims are hidden and child victims are particularly difficult to identify.

¹³⁰ Home Office, Interim review of the national referral mechanism for victims of human trafficking, 2 October 2014. Available at: <https://www.gov.uk/government/publications/interim-review-of-the-national-referral-mechanism-for-victims-of-human-trafficking> [accessed: 3 February 2016].

¹³¹ Modern Slavery Act 2015. Available at: <http://services.parliament.uk/bills/2014-15/modernslavery.html> [accessed: 3 February 2016].

¹³² Human Trafficking and Exploitation (Scotland) Act 2015. Available at: www.legislation.gov.uk/asp/2015/12/enacted [accessed: 3 February 2016].

¹³³ S 52 MSA 2015 and effective on 1 November 2015.

them. A number of the recommendations made in the UK Government's review of the National Referral Mechanism (NRM) in November 2014 are currently being piloted to test whether they are robust in practice.¹³⁴ The Modern Slavery Act makes provision for regulations to address the identification and support of victims of slavery or trafficking. The EHRC considers that the regulations should give effect to all of the recommendations of the NRM review. They should also address the need for a formal appeals process and clarify that only a credible suspicion is required to trigger the provision of support and assistance, including legal aid, to victims.¹³⁵ In addition to the UK-wide concerns regarding the working of the NRM, there remain questions on how the framework works alongside devolved agencies, policies and law.¹³⁶

92. The Gangmasters Licensing Authority (GLA) is currently limited to regulating businesses that provide workers to the fresh produce supply chain and horticulture industry, and therefore only covers employment agencies, labour providers or gangmasters that provide workers to agriculture, horticulture, shellfish gathering and any associated processing and packaging.

93. The Modern Slavery Act did not directly extend the remit of the GLA but it provided that the role of the GLA should be considered within 12 months of the Act coming into force. The UK Government published its response to the consultation on the reform of the GLA in January 2016.¹³⁷ The conclusions of this response led to provisions in the Immigration Act 2016, which will broaden the remit of the GLA to cover worker exploitation across all labour sectors. The Act doesn't at this stage require new sectors to be licensed like those within the GLA's current remit, but there is an ability to extend the GLA's licensing powers if needed. There will be a new Director of Labour Market Enforcement who is responsible for producing an annual labour market enforcement strategy and managing a new intelligence hub. It will also give the Authority's inspectors new powers akin to those of the police, allowing them to make arrests, search

¹³⁴ A disparity, in levels of positive decisions about whether an individual is a victim of slavery or not between EEA and non EEA nationals had been noted by GRETA, pp. 51–53, 12 September 2012 https://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf [accessed: 30 September 2015].

¹³⁵ EHRC, Children's Rights in the UK: Submission to the UN Committee on the Rights of the Child, pp. 82–86. Available at: <https://www.equalityhumanrights.com/en/file/4636/download?token=9fz57Alz> [Accessed 16 May 2016] [accessed: 3 February 2016].

¹³⁶ EHRC, Justice Committee: Human Trafficking and Exploitation (Scotland) Bill – Written Submission from the EHRC, February 2015. Available at: www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/HTE16EqualityandHumanRightsCommission.pdf [accessed: 3 February 2016].

¹³⁷ Home Office and Department of Business, Industry and Skills, Tackling Exploitation in the Labour Market, January 2016. Available at: <https://www.gov.uk/government/consultations/labour-market-exploitation-improving-enforcement> [accessed: 29 April 2016].

premises with a warrant, and confiscate assets gained through money laundering offences (Proceeds of Crime Act 2002).¹³⁸

94. The GLA has recently become part of the Home Office, with a renewed focus on identifying and tackling exploitation and trafficking, but with a further reduction in its budget.

Gypsy and Traveller economic exclusion

95. The 2011 census revealed that Gypsy or Irish Travellers (over the age of 16) had the highest proportion of no qualifications for any ethnic group at 60%, higher than for England and Wales as a whole (23%). Gypsy or Irish Travellers had the lowest proportion of economically active¹³⁹ at 47%, compared with 63% of the population of England and Wales as a whole. Equivalent figures for Scotland, from 2015, show that 50% of Gypsies and Travellers have no qualifications, compared with 27% for Scotland as a whole, and 49% of Gypsies and Travellers were economically active, compared with 63% for Scotland as a whole.¹⁴⁰

96. Just over half of Gypsies and Travellers in England, Wales and Scotland were economically inactive.¹⁴¹ Elementary occupations were the most common employment type for Gypsy or Irish Travellers. Gypsy or Irish Travellers (aged 16 and over) in employment were most commonly in elementary occupations (such as farm, process plant or service work): 22% of that group in England and Wales and 20% in Scotland).¹⁴²

¹³⁸ Immigration Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted> [accessed: 25 May 2016].

¹³⁹ Those defined as economically active are either employees, self-employed or unemployed.

Scottish Government (2015), Gypsy/Travellers in Scotland – a comprehensive analysis of the 2011 Census. Available at: <http://www.gov.scot/Resource/0049/00490969.pdf> [accessed: 20 June 2016].

¹⁴⁰ Scottish Government (2015), Gypsy/Travellers in Scotland – a comprehensive analysis of the 2011 Census. Available at: <http://www.gov.scot/Resource/0049/00490969.pdf> [accessed: 29 April 2016].

¹⁴¹ ONS (2014), Gypsy or Irish Travellers smallest ethnic minority at 58,000. Available at: <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/what-does-the-2011-census-tell-us-about-the-characteristics-of-gypsy-or-irish-travellers-in-england-and-wales/-sty-gypsy-or-irish-travellers.html> [accessed: 9 February 2016]; Scottish Government (2015), Gypsy/Travellers in Scotland – a comprehensive analysis of the 2011 Census. Available at:

<http://www.gov.scot/Resource/0049/00490969.pdf>.

¹⁴² ONS (2014), Gypsy or Irish Travellers smallest ethnic minority at 58,000. Available at: <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/what-does-the-2011-census-tell-us-about-the-characteristics-of-gypsy-or-irish-travellers-in-england-and-wales/-sty-gypsy-or-irish-travellers.html> [accessed: 9 February 2016]; Scottish Government (2015), Gypsy/Travellers in Scotland – a comprehensive analysis of the 2011 Census. Available at:

<http://www.gov.scot/Resource/0049/00490969.pdf> [accessed: 9 February 2016].

97. The EHRC recommends the UK Government, Welsh Government and Scottish Government:

- a) show their commitment to tackling racial inequalities by publishing cross-government race equality strategies with clear, measurable outcomes to address the most pressing issues in ways which will lead to effective and sustainable change**
- b) improve data collection to understand the prevalence and causes of pay gaps in relation to race.**

The EHRC recommends the Welsh Government take steps to address the employment challenges identified in the EHRC's *Is Wales Fairer?* report to:

- c) increase the employment rates of ethnic minority people**
- d) close pay gaps in relation to race**

The EHRC recommends the UK Government:

- e) actively monitors the Modern Slavery Act 2015 to ascertain whether it is functioning as intended and, if evidence suggests that gaps in compliance with the UK Government's international human rights obligations remain, brings forward amendments to the legislation**
- f) ensures the regulations detailing the provisions for the identification and support of victims of trafficking and modern slavery address the need for:**
 - a formal appeals process**
 - clarity that only a credible suspicion is required to trigger the provision of support and assistance, including legal aid, to victims, and**
 - a requirement for public authorities, including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, to record and report suspected victims of trafficking.**

Right to education (Article 5(e)(v))

98. In 2011, the CERD Committee encouraged the UK Government:

- a) to take all necessary steps to eliminate all racist bullying and name-calling in the State party's schools.¹⁴³

The CERD Committee also recommended that the UK Government:

- b) adopt 'an intensified approach towards preventing exclusion of Black pupils and to set out in detail its plans for addressing under-achievement for those groups which have been identified as most affected, notably Gypsy and Traveller children and African-Caribbeans'¹⁴⁴
- c) improve access to education for Gypsies and Travellers.¹⁴⁵

99. Education policy in Great Britain is devolved. The Department for Education (DfE) is responsible for education and children's services in England. The Scottish education system has always been distinct from the rest of the UK and education (primary, secondary, further and higher) is a devolved matter under the Scotland Act 1998. Education at all levels has been devolved to the National Assembly for Wales since it was formed in 1999, following the Government of Wales Act 1998. Implementation of Article 5(e)(v) in Great Britain will require the engagement of both the UK Government as the state party, and the devolved administrations.

100. This section of the report focuses on:

- prejudice-based bullying in schools
- disproportionate rates of school exclusions of ethnic minority children
- relative educational attainment of ethnic minority children, and
- Gypsy and Traveller education, including poor attendance.

¹⁴³ CERD (2011), Consideration of reports submitted by States parties under Article 9 of the Convention – Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland (14 September 2011), UN Doc CERD/C/GBR/CO/18-20, para. 23. Available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERDper cent2fCper cent2fGBRper cent2fCOper cent2f18-20&Lang=en [accessed: 23 November 2015].

¹⁴⁴ CERD Concluding Observation, para. 24.

¹⁴⁵ CERD Concluding Observation, para. 27.

Prejudice-based bullying in schools

101. Bullying can greatly impact on pupils' wellbeing,¹⁴⁶ affect their attendance and thus their educational attainment.¹⁴⁷ The evidence shows that children in England are increasingly victims of cyber-bullying from other pupils and that a large proportion will not report it.¹⁴⁸

102. In England, in response to the Stephen Lawrence Inquiry, schools were expected to record and report racist incidents to their local education authority.¹⁴⁹ In 2010/11, the DfE published new guidance¹⁵⁰ for schools on preventing and tackling bullying which removed these expectations. Therefore, no national statistics on the prevalence of racist or religiously motivated incidents in English schools have been available since 2010/11.¹⁵¹

103. Recent evidence suggests that:

- children are still victims of bullying because of their race, ethnicity or religion¹⁵²
- racist incidents are under-recorded and under-reported, partly due to a lack of leadership in engaging with the issue and a lack of training among staff in some schools¹⁵³
- racist incidents remain a common cause of permanent and fixed-period exclusion¹⁵⁴

¹⁴⁶ The Children's Society (2015), *The Good Childhood Report 2015*. Available at:<http://www.childrensociety.org.uk/what-we-do/resources-and-publications/the-good-childhood-report-2015> [accessed: 20 June 2016].

¹⁴⁷ See 'Gypsy and Traveller education' section below for instance.

¹⁴⁸ O'Brien, N. and Moules, T. (Anglia Ruskin University), 2010. The impact of cyber-bullying on young people's mental health. Available at: http://www.ncb.org.uk/media/111007/cyber-bullying_report.pdf [accessed: 20 June 2016]. Of those 188 young people who answered a question about whether they would seek help with cyberbullying, less than half (45 %) said they would look for support.

¹⁴⁹ Insted Consultancy, 2012. Equalities in education – paper 20. Recording and reporting racist incidents in schools – an update on requirements and good practice, autumn 2012. Available at:<http://www.insted.co.uk/recording-reporting-2011.pdf> [accessed: 20 June 2016].

¹⁵⁰ Department for Education, 2011. Preventing and tackling bullying: Advice for head teachers, staff and governing bodies. Available at:<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00062-2011> [accessed: 20 June 2016].

¹⁵¹ <http://www.bbc.co.uk/news/education-18155255>. The guidance was updated in 2014. Preventing and tackling bullying: Advice for headteachers, staff and governing bodies. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/444862/Preventing_and_tackling_bullying_advice.pdf

¹⁵² Ditch the label (2015), Annual Bullying Survey 2015. Available at:<http://www.ditchthelabel.org/annual-bullying-survey-2015/> [accessed: 20 June 2016].

¹⁵³ Show Racism the Red Card, undated. The Barriers to Challenging Racism and Promoting Race Equality in England's Schools. Available at: <http://www.theredcard.org/resources/publications?publication=2342> [accessed: 20 June 2016].

- racist language is still commonly used/heard in primary and secondary schools and it sometimes relates to religion¹⁵⁵
- requests for counselling from children and young people experiencing racist/religiously motivated bullying in schools have increased in recent years¹⁵⁶
- Islamophobic incidents in schools increase after specific events (e.g. the Paris attack).¹⁵⁷

104. The EHRC welcomes the fact that since 2012 the Ofsted inspection framework in England covers 'bullying' extensively and that the DfE has provided £4 million to charities to tackle bullying in schools in 2013–15 (although it is unclear how much of this was used to tackle racist/religiously motivated bullying).

105. One of the DfE's equality objectives¹⁵⁸ relates to 'improving the lives of the most vulnerable children, including those who experience bullying [...] particularly prejudice-based racist, sexist and homophobic bullying'. However, without robust baseline data, it will be difficult for the Department to measure progress in delivering this objective or the effect of the interventions it funds.

106. In Scotland, respectme, Scotland's anti-bullying service, carried out the research project *Bullying in Scotland 2014*, which found that 30% of children and young people surveyed reported that they have experienced some sort of bullying between August 2013 and June 2014. Of this 30%:

- 49% experienced bullying in person

¹⁵⁴ National Statistics: Permanent and fixed-period exclusions in England: 2013 to 2014. Available at: <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-in-england-2013-to-2014> tables 15 and 16 provide data on 'reasons' for exclusion. The data needs to be treated with caution because there are other 'reasons' (e.g. 'bullying' or 'verbal or physical abuse against a pupil/adult') which might relate to racist/religiously motivated incidents.

¹⁵⁵ Ofsted, 2012. No place for bullying. How schools create a positive culture and prevent and tackle bullying. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413234/No_place_for_bullying.pdf [accessed: 20 June 2016].

¹⁵⁶ See for instance Mend, Islamophobic bullying in schools spikes after Paris attacks. Available at: <http://mend.org.uk/islamophobic-bullying-schools-spikes-paris-attacks/> [accessed: 20 June 2016]; NSPCC, Can I tell you something? What's affecting children in 2013. Available at: <https://www.nspcc.org.uk/globalassets/documents/research-reports/childline-review-2012-2013.pdf> [accessed: 20 June 2016]. Childline reported that in 2012/13 over 1,400 young people told ChildLine that they were experiencing racist bullying – a 69 % increase in the last 12 months.

¹⁵⁷ See for instance Independent, British Muslim school children suffering a backlash of abuse following Paris attacks, 23 January 2015. Available at: <http://www.independent.co.uk/news/education/education-news/british-muslim-school-children-suffering-a-backlash-of-abuse-following-paris-attacks-9999393.html> [accessed: 20 June 2016]; Mend, Islamophobic bullying in schools spikes after Paris attacks. Available at: <http://mend.org.uk/islamophobic-bullying-schools-spikes-paris-attacks/> [accessed: 20 June 2016].

¹⁵⁸ Department for Education, 2014. Equality Objectives. Document published under the former Coalition Government. Available at: <https://www.gov.uk/government/publications/department-for-education-equality-objectives> [accessed: 10 March 2016].

- 41% experienced bullying both in person and online
- 10% experienced bullying online only.¹⁵⁹

107. An EHRC study from March 2015 found that one in four of the pupils surveyed said that they were aware of peers in their school experiencing prejudice-based bullying, while just over half of pupils who had themselves experienced bullying said they had reported it to their school. The most commonly experienced forms of prejudice-based bullying included race, disability, sexual orientation and perceived socio-economic status. Findings from the study of 1,250 pupils and 330 teachers concluded that procedures for supporting pupils being bullied could be improved.¹⁶⁰ The 'National Approach to Anti-bullying for Scotland's Children and Young People' is being updated and the recommendations from the EHRC's report are being considered as part of this process.

108. In Wales, between 20% and 50% of pupils in Wales are estimated to have experienced bullying at some point in their school lives. Bullying is a particular risk for certain groups including ethnic minority pupils.¹⁶¹ The Welsh Government has published 'Respecting others' – a series of anti-bullying materials that provide guidance and practical solutions on preventing and responding to incidents of bullying in schools'.¹⁶²

109. In 2015, the UK Government introduced a new legal duty¹⁶³ on public authorities in Great Britain to have due regard to prevent people from being drawn into terrorism. Under this duty, public authorities' staff who feel that a pupil/student might be vulnerable to radicalisation can refer them to 'Channel' – a multi-agency programme to identify and provide support to people at risk of radicalisation. To the EHRC's knowledge, no evaluation of the programme's effectiveness has been published. However, data from the National Police Chiefs'

¹⁵⁹ Respectme, *Bullying in Scotland*, 2014. Available at: <http://www.respectme.org.uk/about-news.html> [accessed: 20 June 2016].

¹⁶⁰ 112/681 and 123/569 recorded incidents of prejudice-based bullying, in Scottish Education Authorities who provided data for 2011–12 and 2012–13, were on grounds of race or ethnicity. However race or ethnicity also featured more frequently than other characteristics in policies on bullying, meaning that confidence in identifying and reporting incidents might be stronger for these grounds. Dennell, B. and Logan, C. (2015), *Prejudiced-based bullying in Scottish schools: A research report*, Equality and Human Rights Commission. Available at: <http://www.equalityhumanrights.com/publication/prejudice-based-bullying-scottish-schools-research-report> [accessed: 30 November 2015].

¹⁶¹ Estyn (2014), *Action on bullying - A review of the effectiveness of action taken by schools to address bullying on the grounds of pupils' protected characteristics*. Available at: <http://www.estyn.gov.wales/thematic-reports/action-bullying-june-2014> [accessed: 17 February 2016].

¹⁶² Welsh Government, *Respecting others: anti-bullying guidance*, 2011. Available at: <http://gov.wales/topics/educationandskills/publications/circulars/antibullying/?lang=en> [accessed: 17 February 2016].

¹⁶³ See section 26 (and Part 5) of the Counter-Terrorism and Security Act 2015. Available at: <http://www.legislation.gov.uk/ukpga/2015/6/contents/enacted> [accessed: 20 June 2016].

Council¹⁶⁴ shows that only 22% of those referred to Channel up to 2013 were assessed as needing its intervention. Some stakeholders¹⁶⁵ have raised concerns about its implementation leading to more Islamophobia and potential discrimination against Muslim children and young people.

School exclusions

110. The latest DfE report¹⁶⁶ shows a general decrease in the total number and rate of permanent exclusions in England since 2004/05 across all schools. Fixed-period exclusions in primary schools have however increased, with exclusion rates at their highest since 2007/08¹⁶⁷. Being excluded from school can have a significant impact on pupils' attainment.¹⁶⁸ Those pupils from ethnic minority groups who experience disproportionate rates of exclusions continue to be among the worst performers in achieving five or more GCSEs at a good grade.¹⁶⁹
111. The latest DfE report¹⁷⁰ shows that Black Caribbean, Mixed White/Black Caribbean, Gypsy/Roma and Irish Traveller children in England continue to experience disproportionate rates of exclusions. Gypsy/Roma and Irish Traveller children have the highest rates of both permanent and fixed-period exclusions.

¹⁶⁴ See Association of Chief Police Officers to Mr Whitehead, 24 January 2014. Available at: [http://www.npcc.police.uk/documents/Folper cent20publication/Disclosureper cent20Logs/Uniformedper cent20Operationsper cent20FOI/2013/117per cent2013per cent20ACPOper cent20Responseper cent20-per cent20Channelper cent20Projectper cent20Referrals.pdf](http://www.npcc.police.uk/documents/Folper%20publication/Disclosureper%20Logs/Uniformedper%20Operationsper%20FOI/2013/117per%2013per%20ACPOper%20Responseper%20-per%20Channelper%20Projectper%20Referrals.pdf) [accessed: 20 June 2016].

¹⁶⁵ Muslim Council of Great Britain (2015), Meeting between David Anderson QC and the MCB. Concerns on Prevent. Available at: <http://www.mcb.org.uk/wp-content/uploads/2015/10/20150803-Case-studies-about-Prevent.pdf> [accessed: 20 June 2016]; Institute of Race Relations, 2015. Seminar contributions. Prevent duty 'heavy-handed and discriminatory'. Available at: <http://www.irr.org.uk/news/prevent-duty-heavy-handed-and-discriminatory/> [accessed: 20 June 2016]; *Guardian*. (2015) 'You worry they could take your kids': is the Prevent strategy demonising Muslim schoolchildren? Available at: <http://www.theguardian.com/uk-news/2015/sep/23/prevent-counter-terrorism-strategy-schools-demonising-muslim-children> [accessed: 20 June 2016].

¹⁶⁶ Department for Education (2015), Statistical First Release. Permanent and Fixed Period Exclusions in England: 2013 to 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449433/SFR27_2015_Text.pdf [accessed: 20 June 2016].

¹⁶⁷ It is not possible to say how this increase affects pupils from different ethnic groups because a simultaneous breakdown by ethnicity and school type is not available in the DfE publications.

¹⁶⁸ Gillborn, D. and Drew, D. (2010), 'Academy Exclusions', *Runnymede Bulletin*, Summer edition 2010, pp. 12–13. Available at: <http://www.scribd.com/doc/35298622/Runnymede-Bulletin-Summer-2010-Final> [accessed: 20 June 2016]. The research found that excluded pupils are 4 times more likely to finish their education without having gained academic qualifications.

¹⁶⁹ 5+ A*- C GCSEs (or equivalent) grades including English and Mathematics.

¹⁷⁰ DfE (2015), Statistical First Release. Permanent and Fixed Period Exclusions in England: 2013 to 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449433/SFR27_2015_Text.pdf [accessed: 20 June 2016].

Black Caribbean and Mixed White/Black Caribbean children have rates of permanent exclusion around three times that of the pupil population as a whole.

112. The EHRC welcomes the commitment made by the DfE in its 2014 equality objectives¹⁷¹ to improve 'the lives of the most vulnerable children, including those who experience exclusion' by promoting the PSED further to schools in England and encouraging the use of early interventions.
113. The EHRC has published guidance for schools in England on the PSED¹⁷² which includes a section on 'exclusion' and real-life examples¹⁷³ demonstrating the positive impact of the PSED in targeting interventions to reduce exclusions and in monitoring progress.
114. In Scotland, during 2014/15, there were 18,430 exclusions from local authority schools in Scotland, a decrease of 16 % from 2012/13.¹⁷⁴ There were reductions in the exclusion rates for White, Mixed and Asian pupils between 2009/10 and 2014/15. There was no change in the exclusion rate for African/Caribbean/Black pupils.
115. In 2010/11, exclusion rates for Gypsy/Traveller pupils in Scotland (57 per 1,000 pupils) and Other Traveller pupils (175 per 1,000) were the highest of all ethnic groups. More recent publications do not provide data showing exclusions specifically for Gypsy/Traveller pupils or Other Traveller pupils. Those in Other ethnic groups saw a drop in exclusion rates between 2012/13 and 2014/15.¹⁷⁵
116. In Wales, from 2008/09 to 2012/13 there have been reductions in the exclusion rate amongst all ethnic groups. The rate for Black pupils has dropped

¹⁷¹ DfE (2014), Equality Objectives. Document published under the former Coalition Government. Available at: <https://www.gov.uk/government/publications/department-for-education-equality-objectives> [accessed: 20 June 2016].

¹⁷² EHRC (2012), *Public Sector Equality Duty for schools in England*.

¹⁷³ See the EHRC 'education case studies' first published in 2014 and particularly 'Reducing exclusions among Somali and African Caribbean boys – Preston Manor School'. Available at: <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-case-studies> [accessed: 20 June 2016].

¹⁷⁴ Scottish Government, High Level Summary of Statistics Trend: School Exclusions, 9 December 2015. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/TrendSchoolExclusions> [accessed: 21 June 2016].

¹⁷⁵ Scottish Government, Exclusions dataset 2014/15. Available at: <http://www.gov.scot/Topics/Statistics/Browse/School-Education/exclusiondatasets/exclusionsdataset2015> [accessed: 21 June 2016]. The Scottish Government has informed the EHRC that 'Due to changes in ethnic minority definitions, it is difficult to make comparisons with previous years, and in any case the numbers of pupils from ethnic minority backgrounds means that year on year fluctuations in numbers can have a huge impact on statistical rates. Therefore caution must be exercised in drawing conclusions related to progress for ethnic group.'

from 96.3 to 42.8 per 1,000 and the rate for Mixed has dropped from 55.6 to 37.7.¹⁷⁶

Educational attainment

117. An analysis of GCSE achievement patterns in England through time¹⁷⁷ shows that:

- Gypsy/Roma, Irish Travellers and Black Caribbean pupils are consistently the worst performers
- Pakistani, Mixed White/Black Caribbean, Other White and Other Black pupils perform consistently below the national average
- the performance of Black African pupils improved to above the national average to 2012/13 but is now back to under the national average
- Indian and Bangladeshi pupils have above-average levels of achievement in 5+ A*-C including English and maths.

118. There is a strong association between pupils' prior attainment and their subsequent attainment. The evidence shows how pupils with higher levels of attainment at the end of primary school (Key Stage 2)¹⁷⁸ are more likely to go on to achieve five A*-C GCSE grades, including English and mathematics.¹⁷⁹ The UK Government has announced a wide range of measures in England to further improve pupils' attainment in primary schools and the transition to secondary schools including plans to:

- bring back formal independent assessments for 7 year olds so primary schools can identify pupils falling behind and target appropriate interventions
- provide pupils who have not achieved a good level of attainment at the end of primary schools with an opportunity to resit tests during their first year in

¹⁷⁶ The overall average exclusion rate is 39.9. Welsh Government (2014), *Exclusions from Schools*. Available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Is_Wales_Fairer_2015_eng_w eb_32pager.pdf [accessed: 13 April 2016].

¹⁷⁷ DfE, 2016. Revised GCSE and equivalent results in England: 2014 to 2015. Main national tables: SFR 01/2016 –Characteristics summary table. Available at: <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2014-to-2015> [accessed: 13 April 2016].

¹⁷⁸ Key stage 2 SATS is a national independent test that evaluates pupils' abilities in English and Mathematics at the end of primary school at 11 years old.

¹⁷⁹ DfE (2014), 'Reforming assessment and accountability for primary schools'. Available at: <https://www.gov.uk/government/consultations/new-national-curriculum-primary-assessment-and-accountability> [accessed: 13 April 2016].

secondary schools. It is hoped that this will encourage secondary schools to take action to enable pupils to 'catch-up'.

119. It is possible that these proposals may lead to further 'streaming and setting'.¹⁸⁰ Recent research suggests that this may have negative consequences for the attainment, attitudes and engagement of pupils¹⁸¹ from ethnic minorities who have consistently been found not to be doing well in school.
120. There is a wide range of evidence¹⁸² pointing to the role of teachers' expectations and parents/pupils' aspirations as key drivers of educational attainment. The UK Government is currently considering measures to raise parents' and pupils' aspirations in England. For instance, the Prime Minister has announced his intention to expand parenting provision and to introduce new mentoring and work experience programmes in schools.¹⁸³
121. The UK Government has also published a Green Paper¹⁸⁴ putting forward proposals to further improve access and success in higher education for students from particular ethnic minority groups and intends to legislate to introduce a new transparency duty on universities under which they will be required to routinely 'publish admissions and retention data by gender, ethnic background and socio-economic class'.¹⁸⁵ The EHRC broadly welcomed such proposals and made a number of suggestions.¹⁸⁶

¹⁸⁰ Pupils with similar levels of current attainment are grouped together either for specific lessons on a regular basis (setting or regrouping), or as a whole class (streaming or tracking).

¹⁸¹ There is a wide range of evidence suggesting that such practices are counterproductive in reducing the attainment gap, particularly when it begins at an early age. See Education Endowment Foundation literature review at: <https://educationendowmentfoundation.org.uk/toolkit/toolkit-a-z/ability-grouping/> <https://educationendowmentfoundation.org.uk/toolkit/toolkit-a-z/ability-grouping/> [accessed: 13 April 2016].

¹⁸² See, for example, Runnymede (2015), *School Report. Race, Education and Inequality in Contemporary Britain*. Available at <http://www.runnymedetrust.org/uploads/Thepercent20Schoolpercent20Report.pdf> [accessed: 13 April 2016].

¹⁸³ Prime Minister Office (2015), Press release. PM: Time to tear down the barriers at elite universities. Available at: <https://www.gov.uk/government/news/pm-time-to-tear-down-the-barriers-at-elite-universities> [accessed: 20 June 2016].

¹⁸⁴ Department for Business, Innovation and Skills (2015), Fulfilling our potential. Teaching Excellence, Social Mobility and Student Choice. Available at: <https://www.gov.uk/government/consultations/higher-education-teaching-excellence-social-mobility-and-student-choice> [accessed: 20 June 2016].

¹⁸⁵ Prime Minister Office (2015), Press release. PM: Time to tear down the barriers at elite universities. Available at <https://www.gov.uk/government/news/pm-time-to-tear-down-the-barriers-at-elite-universities> [accessed: 20 June 2016].

¹⁸⁶ EHRC (2016), Response to Department for Business, Innovation & Skills (BIS): Fulfilling our potential. Teaching Excellence, Social Mobility and Student Choice. Available at: <http://www.equalityhumanrights.com/en/legal-responses/consultation-responses> [accessed: 20 June 2016]; EHRC, Updated submission of the Equality and Human Rights Commission to the UN Committee on Economic, Social and Cultural Rights in advance of the public examination of the UK's implementation of the International Covenant on Economic, Social and Cultural Rights – April 2016, p.

122. In Scotland, the picture across the educational outcomes measures for ethnic groups continues to be very mixed. Pupils from some ethnic groups perform well above the average.¹⁸⁷

- pupils with higher average tariff scores than White Scottish pupils (191 points) in 2012/13 included Asian-Chinese pupils (255 points), Asian-Indian pupils (211 points), Asian-Pakistani (206 points) and pupils from mixed or multiple ethnic groups (206 points).

123. Recent data shows that White Scottish pupils (around 91% of pupils) and those whose ethnicity is Not Known/Not Disclosed (around 1% of pupils) have the lowest rates for attainment and positive leaver destinations, namely those in training, education or work.¹⁸⁸ A significant challenge is to raise the attainment of the largest ethnic group, White Scottish pupils.¹⁸⁹

124. In Wales, the proportion of pupils achieving five or more GCSEs at grades A*-C including Maths and English or Welsh has increased from 47% in 2008/09 to 53% in 2012/13. Broadly similar improvements in attainment mean substantial gaps have remained between ethnic minority pupils and White pupils between 2008/9 and 2012/13. Gypsy/Roma children's attainment of five or more GCSEs at Grades A*-C, including Maths and English or Welsh remains strikingly low at 13% in 2013/14.¹⁹⁰

125. Evidence, including from our recent report on the state of equality in Great Britain, points to poor outcomes after schooling for many ethnic minority children:

- more school leavers from ethnic minorities went on to study at a higher education institution than did White school leavers in 2012/13. However, some ethnic groups such as Black pupils continue to be under-represented at universities ranked in the top third, with just over 13% of Black pupils,

64. Available at: <https://www.equalityhumanrights.com/en/socio-economic-rights-uk> [accessed: 31 May 2016].

¹⁸⁷ The 'tariff score' is the total number of tariff points for the awards a student achieves, taking account of only their latest and best attainment in each subject. The number of tariff points awarded depends on: the Scottish Credit and Qualifications Framework level of the course or unit; whether the full course has been undertaken and assessed; and the grade achieved for the course. Education Scotland, Glossary – Tariff scores. Available at:

<http://www.educationscotland.gov.uk/parentzone/myschool/glossary.asp> [accessed: 31 May 2016].

¹⁸⁸ Scottish Government, *Equality Outcomes and Mainstreaming Report 2015*. Available at:

<http://www.gov.scot/Publications/2015/04/7781> [accessed: 20 June 2016].

¹⁸⁹ The Scottish Government has a number of policies/activities to tackle this attainment gap. These include the Scottish Attainment Challenge; the introduction of a legal requirement for local authorities to introduce measures to reduce the attainment gap; the Raising Attainment for All Programme, and the Access to Education fund, which aims to reduce the barriers to learning experienced by pupils from disadvantaged backgrounds. Scottish Government, *Equality Outcomes and Mainstreaming Report 2015*. Available at: <http://www.gov.scot/Publications/2015/04/7781> [accessed: 20 June 2016].

¹⁹⁰ EHRC Wales, *Is Wales Fairer?* Available at:

<http://www.equalityhumanrights.com/publication/wales-fairer> [accessed: 17 February 2016].

compared with 15% of White and 19–20% of Mixed and Asian pupils attending.¹⁹¹ Just 6% of Black pupils, compared with 11% of White and 12% of Mixed and Asian pupils, went to a Russell Group university (including Oxford/Cambridge)¹⁹²

- Although the ethnicity degree attainment gap in 2013/14 was at its lowest since 2005/06, it remains considerable across some ethnic groups. For example the gap between white and black qualifiers (those who graduate from higher education) ranged from 19.1 percentage points in Scotland to 26.8 percentage points in England.¹⁹³

Gypsy and Traveller education

126. Since 2009/10, Gypsy/Roma and Irish Traveller pupils in England have consistently remained the lowest achieving ethnic groups in schools at all key stages.¹⁹⁴ Statistics also show that very few attend university, let alone one ranked in the top third of universities.¹⁹⁵

127. In 2010, the UK Government established a cross-government Ministerial Working Group on reducing inequalities experienced by Gypsies and Travellers in England. The working group acknowledged that 'bullying and prejudice against Gypsy, Roma and Traveller pupils are contributing to their poor attendance and behaviour – leading to disproportionately high levels of exclusion'. It committed to piloting a Virtual Head Teacher (VHT) scheme in four local authorities. This was delivered between 2012 and 2014.¹⁹⁶ To our knowledge, no independent impact

¹⁹¹ EHRC (2015), *Is Britain Fairer?* Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/great-britain-report> [accessed: 17 February 2016].

¹⁹² Department for Education (2015), *Destinations of key stage 4 and key stage 5 pupils: 2012 to 2013*. Available at: www.gov.uk/government/statistics/destinations-of-key-stage-4-and-key-stage-5-pupils-2012-to-2013 [accessed: 30 September 2015].

¹⁹³ ECU (2015), *Equality in higher education: statistical report 2015. Part 2: students*. Available at: <http://www.ecu.ac.uk/publications/equality-higher-education-statistical-report-2015/> [accessed: 20 June 2016].

¹⁹⁴ For example, in 2013/14, 8.2% of Gypsy/Roma pupils and 14% of Traveller of Irish Heritage pupils attained five or more GCSEs at a good grade compared to the national average for all pupils of 56.6%. Department for Education, National Statistics, *Revised GCSE and equivalent results in England: 2013 to 2014*. Available at: <https://www.gov.uk/government/statistics/revised-gcse-and-equivalent-results-in-england-2013-to-2014> [accessed: 13 April 2016].

¹⁹⁵ DfE, Official Statistics: *Destinations of key stage 4 and key stage 5 pupils: 2013*. Available at: <https://www.gov.uk/government/statistics/destinations-of-key-stage-4-and-key-stage-5-pupils-2012-to-2013> [accessed: 13 April 2016].

¹⁹⁶ Department for Communities and Local Government, *Progress report by the ministerial working group on tackling inequalities experienced by Gypsies and Travellers*, April 2012. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf [accessed: 13 April 2016].

evaluation of the scheme has been conducted. Statistics for 2014/15¹⁹⁷ show that Gypsy/Roma and Irish Traveller pupils still have:

- the highest rates of absences in primary and secondary schools and are far more likely to be persistent absentees than any other ethnic groups¹⁹⁸
- the highest rates of both permanent and fixed period exclusions.¹⁹⁹

128. In Scotland, White Gypsy/Traveller pupils continued to have the lowest educational attainment rates out of the recorded ethnic groups. Numbers of pupils recorded as White Gypsy/Travellers²⁰⁰ in Scotland in S4 at any one time is very small (typically fewer than 40 pupils).²⁰¹

129. The Scottish Government's Scottish Traveller Education Review Group is working to improve equality of access to education for all Traveller children, including, for example, European Roma People who have made their home in Scotland. The group's primary purpose is to develop guidance to help those working with all Traveller children and young people in Scotland's schools and communities to improve educational outcomes.

130. In Wales in 2013, only 12.3% of Gypsy/Gypsy Roma pupils achieved at the level 2 threshold compared with 51.5% of all pupils. In 2011/2012 Gypsy and Traveller pupils had the highest rates of absenteeism in both primary and secondary school.²⁰²

131. **The EHRC recommends that the Committee ask the UK Government, Scottish Government and Welsh Government to:**

- a) require schools in England, Scotland and Wales to collect qualitative and quantitative data on identity-based bullying across all the protected characteristics; and school exclusions and absences, disaggregated for**

¹⁹⁷ DfE, National Statistics: Pupil absence in schools in England: autumn 2014 and spring 2015. Available at: <https://www.gov.uk/government/statistics/pupil-absence-in-schools-in-england-autumn-2014-and-spring-2015> [accessed: 13 April 2016].

¹⁹⁸ Ten times more likely for Irish Travellers children and 8 times for Gypsy/Roma children than the average.

¹⁹⁹ The DfE states, however, that these figures need to be treated with caution as the population is relatively small.

²⁰⁰ The categories used to collect ethnicity and national identity data changed in the 2011 pupil census to agree with the categories used in the main population census. Since then educational outcomes for Gypsy/Travellers have been recorded under 'White-Gypsy/Travellers'. This data will not include Gypsy/Travellers who do not ascribe as White-Gypsy/Travellers.

²⁰¹ EHRC (2016), *Is Scotland Fairer?*, p. 26. Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/about-commission-scotland/scotland-fairer> [accessed: 15 March 2016].

²⁰² This included a GCSE grade A*-C in English and Maths at the end of Key Stage 4. Welsh Government, *Gypsy and Traveller Education: Engaging Families – A Research Report*. Available at: <http://gov.wales/statistics-and-research/gypsy-traveller-education/?lang=en> [accessed: 14 April 2016].

all ethnic groups, and use the data to develop strategies to protect pupils

- b) take action and publish progress on addressing persistent issues experienced by Gypsy/Roma, Irish Traveller, Scottish Gypsy Traveller, ethnic minority and poorer children (in receipt of free school meals), including bullying, disproportionalities in exclusion, absences and attainment rates at all key stages**
- c) investigate the causes and take actions to address the consistent underperformance of pupils from particular ethnic groups, for example the drop in performance of Black African/Caribbean and Mixed pupils in England.**

The EHRC recommends that the Committee ask the UK Government to:

- d) monitor the impact of the new measures on attainment and transition it wants to introduce in primary schools and at the beginning of secondary school in England to ensure that they do not disadvantage further the attainment of pupils from particular ethnic groups.**

Housing (Articles 2, 5(d)(i), 5(e)(iii))

132. The UK Government has obligations to guarantee the right of everyone, without distinction as to race, colour or ethnic origin, to exercise the right to housing and the right to freedom of movement and residence within the border of the state.²⁰³ In 2011 the CERD Committee recommended that the UK provide adequate accommodation, including transit sites, for Gypsies and Travellers.²⁰⁴
133. Gypsies' and Travellers' status is protected in England under the race characteristic in the Equality Act 2010, while the Town and Country Planning Act 1990 and the Criminal Justice and Public Order Act 1994 provide local authorities with powers to take action against breaches of planning control and occupation of land without the permission of the landowner.
134. Housing is a devolved matter in Scotland and Wales. Implementation of Articles 5(d)(i) and 5(e)(iii) in Great Britain therefore requires the engagement of both the UK Government as the state party, and the devolved administrations.
135. This section of the report focuses on:
- site provision for Gypsies and Travellers, including best practice, and limitations of the definition of Traveller in the planning system in England
 - sub-standard housing and overcrowded housing for ethnic minority groups across Great Britain
 - the Immigration Bill 2015–16, which applies across the UK.

²⁰³ International Convention on the Elimination of All Forms of Racial Discrimination, articles 2, 5(d)(i), 5(e)(iii). Also see: Committee on the Elimination of Racial Discrimination (1996), *General recommendation XX on article 5 of the Convention*, Forty-eighth session, para. 1. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7492&Lang=en [accessed: 3 December 2015].

²⁰⁴ Committee on the Elimination of Racial Discrimination (2011), *Consideration of reports submitted by States parties under article 9 of the Convention – Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland* (14 September 2011), UN Doc CERD/C/GBR/CO/18-20, para. 27. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f18-20&Lang=en [accessed: 23 November 2015].

Site provision for Gypsies and Travellers

136. In January 2015, 20,123 Traveller caravans were counted in England: 6,867 (34%) on socially rented sites and 10,585 (53%) on privately rented sites, with the remainder on unauthorised sites.²⁰⁵ Since 2010, the number on socially rented sites has remained relatively stable, the number on authorised private sites has increased and the number on unauthorised sites has decreased. There were 1,020 caravans in Wales in January 2015, of which 628 (62%) were on socially rented sites, a far higher proportion than in England, and 217 (21%) on privately funded sites. The remainder were on unauthorised sites.²⁰⁶
137. EHRC Scotland published research in January 2015 on how local authorities have successfully developed and maintained Gypsy and Traveller sites in Scotland. The research was commissioned in direct response to claims from some Scottish local authorities (LAs) that they were unable to secure land or planning permission to build new permanent or transit sites. An estimate of site provision found that there were 28 LA/Registered Social Landlord Scottish Gypsy/Traveller sites in 18 LA areas, and around 31 private sites. Together they provided around 763 pitches. The same survey found that two-thirds of all provision was centred on two council areas – Fife and South Lanarkshire. Significant numbers of local authorities did not respond, or responded with a figure of zero – this was particularly marked in South Central Scotland in the ex-Strathclyde area.²⁰⁷
138. The Scottish Parliament’s Equal Opportunities Committee found, in a reassessment of Gypsy Travellers accommodation in 2013, that ‘When we visited sites we saw some horrendous conditions for ourselves. We were deeply disturbed to see that families paying rent to their local council were expected to bathe young children in freezing cold amenity blocks with extortionate heating costs, and that elderly and disabled people might have to go outside to a toilet block in the middle of a cold, winter’s night... [One] site was barely lit at night, with appalling and tokenistic attempts to make adaptations for a profoundly

²⁰⁵ Department for Communities and Local Government (2015), *Count of Traveller caravans*. January 2015 England. Available at: <https://www.gov.uk/government/statistics/traveller-caravan-count-january-2015> [accessed: 7 September 2015].

²⁰⁶ Welsh Government (2015), *Gypsy and Traveller caravan count January 2015*. Statistics for Wales First Release SDR46/2015. Available at: <https://www.gov.uk/government/statistics/gypsy-and-traveller-caravan-count-january-2015> [accessed: 7 September 2015].

²⁰⁷ EHRC, Equality and Human Rights Commission publishes *Guide to Establishing Gypsy and Traveller Sites*. Available at: <https://www.equalityhumanrights.com/en/our-work/news/equality-and-human-rights-commission-publishes-guide-establishing-gypsy-and-traveller> [accessed: 21 June 2016].

disabled resident and sightings of prowlers in the woods which provided the only place for children to play. We even felt the fear ourselves of being able to safely access one site up a steep, potholed and gravelled path, only able to imagine the danger it could present in icy weather. Disturbingly this site was lacking in either a fixed phone line or stable mobile phone signal, leaving residents with medical conditions unable to easily seek emergency care'.²⁰⁸

139. In 2013, the OHCHR Special Rapporteur on adequate housing as a component of the right to an adequate standard of living officially visited the UK at the invitation of the UK Government. The Special Rapporteur noted the stigma and discrimination Gypsies and Travellers face and how this underpins their lack of residential and transit accommodation and a range of other problems, including access to education, work, healthcare and inclusion in community life.²⁰⁹ She also noted the EHRC's evidence that many Gypsies and Travellers did not have access to sufficient accommodation or sites and that using unauthorised sites could lead to evictions, or to violence and threatening behaviour.²¹⁰

140. The EHRC's research shows the most frequently cited barrier to the provision of Gypsy and Traveller sites is objections from councillors and local residents.²¹¹ This is echoed by the most recent Scottish Parliamentary Inquiry into the issue which stated 'The media, including "new media" such as blogs and comments boards, were cited in submissions as encouraging bad relations, primarily through the almost exclusively negative reporting of Gypsy/Traveller issues. There is an encouragement towards a 'not-in-my-backyard' attitude, and few examples of reporting from the Gypsy/Traveller perspective. Sections of the print media target criticism towards the planning for and establishment of private and

²⁰⁸ Equal Opportunities Committee, Scottish Parliament, 1st Report, 2013 (Session 4): Where Gypsy /Travellers Live. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61579.aspx> [accessed: 13 April 2016].

²⁰⁹ United Nations Human Rights Council (2013), *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Raquel Rolnik. Available at: <http://www.ohchr.org/EN/Issues/Housing/Pages/CountryVisits.aspx> [accessed: 7 September 2015].

²¹⁰ Equality and Human Rights Commission (2011), *Submission to the United Nations Committee on the Elimination of all Forms of Racial Discrimination on the UK's 18th, 19th and 20th periodic reports*. Available at: <http://www.equalityhumanrights.com/sites/default/files/documents/humanrights/cerd.pdf> [accessed: 7 September 2015].

²¹¹ EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20To%20DCLG%20planning.pdf> [accessed: 13 April 2016].

public sites and place a focus on the notional impact on house prices.²¹² In 2014 alone, the EHRC received complaints about remarks made by councillors from Warwick, Chorley, Westminster, Leeds, Burnley and Thurrock Councils.²¹³ The EHRC wrote to the relevant councillors to remind them of their duties under the Equality Act 2010. In 2014, Aberdeen City Council applied to the Scottish Government to be able to introduce a local by-law which would restrict Gypsy/Travellers access to public land in the city. The EHRC objected to this application which was later rejected by the Scottish Government. In the meantime no progress has been made in trying to secure other public land for a site in the city, or its environs.²¹⁴

141. The Welsh Government funded a programme of 10 training sessions for Elected Members to ensure Councillors understood their responsibilities under both the Housing (Wales) Act 2014 and the Equality Act 2010. The Welsh Government has also developed a new online system of monitoring unauthorised camping across Wales, including measures to assess compliance with the Welsh Government Managing Unauthorised Camping guidance, such as whether welfare assessments have been undertaken and basic services provided.

142. In 2015, the EHRC in Wales published a legal briefing note to set out the legal position in relation to disparaging comments about Gypsy Travellers and their sites, indicating the responsibilities of Councillors and County Councils. This followed instances in Wales where the search for possible sites had prompted negative comments from local Councillors and/or other council or public service staff such as school staff.²¹⁵ In Scotland, the EHRC has also published a guide for journalists and editors on reporting on Gypsy/Travellers stories particularly in the light of negative and offensive comments being posted on newspaper bulletin boards.

²¹² Equal Opportunities Committee, Scottish Parliament, 1st Report, 2013 (Session 4): Where Gypsy /Travellers Live. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/61579.aspx> [accessed: 13 April 2016].

²¹³ EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20to%20DCLG%20planning.pdf> [accessed: 13 April 2016].

²¹⁴ Letter to Councillor Jenny Laing from Minister for Housing and Welfare Margaret Burgess MSP, 31 October 2014.

²¹⁵ EHRC Wales, Legal Briefing on disparaging comments about Gypsy Travellers and their sites. Undated. Available at: http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/Word_docs/Legal%20Briefing%20on%20disparaging%20comments%20about%20Gypsy%20Travellers%20and%20their%20sites.docx [accessed: 13 April 2016].

143. The Welsh Government has allocated over £12.5m since 2011 for the refurbishment of existing and development of new LA sites in Wales. Additionally, the Housing (Wales) Act 2014 introduced a new statutory duty on LAs to develop new Gypsy and Traveller sites where there was unmet need, including need for both residential and transit sites.²¹⁶ The Welsh Government has revised guidance for LAs and stakeholders on managing unauthorised encampments in their local area, and on the design and management of sites, and implementation of the Mobile Homes (Wales) Act 2013 has led to improved security of tenure for those on LA owned Gypsy and Traveller sites. An All-Wales Gypsy and Traveller Accommodation Forum brings together LAs, police and organisations supporting Gypsy and Traveller communities to share good practice and consultation processes. Since 2011, the Welsh Government has spent £9.2m on supporting a number of refurbishment projects on LA owned sites, and the development of the first new site in Wales since 1997, which opened in 2014.²¹⁷

Definition of Travellers in the planning system in England

144. In August 2015, the UK Government changed the planning definition of who is a Gypsy or Traveller for planning purposes.²¹⁸ Those who have stopped travelling permanently are no longer classed as Gypsies or Travellers. The Department for Communities and Local Government recognised in its consultation paper that the change would impact on those Gypsies and Travellers who have given up travelling permanently for whatever reason, but in particular on ‘the elderly who no longer travel due to reasons related to ill health or disability. Similarly, it would also impact on children and young people including those with disabilities or special educational needs who use a settled base in order to access education; as well as women who have ceased to travel in order to care for dependents’.²¹⁹

²¹⁶ Welsh Government, Housing (Wales) Act 2014. Available at: <http://gov.wales/topics/housing-and-regeneration/legislation/housing-act/?lang=en> [accessed: 16 March 2016].

²¹⁷ Welsh Assembly, Assembly Cross Party Group for Gypsies and Travellers: Minutes of Meeting at the Media Briefing Room in the Senedd, 20 May 2015. Available at: <http://www.senedd.assembly.wales/documents/s42725/Minutes%20of%2020%20May%202015.html?CT=2> [accessed: 17 March 2016].

²¹⁸ Department for Communities and Local Government, Planning policy for traveller sites, August 2015. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457420/Final_planning_and_travellers_policy.pdf [accessed: 16 May 2016].

²¹⁹ Department for Communities and Local Government, Consultation: planning and travellers: Equalities statement, September 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354062/Equalities_Statement_publication_format_140905.pdf [accessed: 21 April 2016].

145. The EHRC considers that:

- the changes to the planning definition will have a very damaging effect upon the most vulnerable members of the Gypsy and Traveller communities
- the current definition of Gypsies and Travellers under the Planning Policy for Traveller Sites (PPTS) is restrictive and inconsistent with the stated aim of the policy 'to ensure fair and equal treatment for Travellers, in a way that facilitates the traditional and nomadic way of life of Travellers',²²⁰
- the proposal does not adequately take into account the fact that Gypsies and Travellers find it difficult to practice a nomadic way of life because of difficulties in accessing employment, education and health services.

Provision of Gypsy and Traveller sites

146. In March 2015, the UK Government submitted the UK's 4th State Report to the Council of Europe under the Framework Convention.²²¹ In that report, the UK Government confirmed its belief that LAs are best placed to assess the needs of their communities and so had placed responsibility for traveller site provision back with them. The UK Government provided funding from 2011 to 2015 as part of the Affordable Homes Programme for the provision of new and refurbished Traveller sites, and gave incentives to LAs through the New Homes Bonus Scheme to provide new housing, including Traveller sites.

147. The Scottish Government has also stated that decisions about Gypsy/Traveller sites are best made locally and has published guidance to help LAs in their decisions about sites, much of which was republished after a review in 2014. The aim is to close the gap in experience between LA housing tenants and LA site tenants by equalising rights, costs, rents and other facilities where possible. Guidance covers a range of topics including: conducting an assessment of current and future need for sites and pitches; ensuring Gypsy/Travellers needs are adequately covered by local housing strategies; the minimum quality standards that sites are expected to meet, and the rights and responsibilities of

²²⁰ EHRC, Response of the Equality and Human Rights Commission to the Department for Communities and Local Government's Consultation – 'Ensuring Fairness in the Planning System', November 2014. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/Consultations/consultation%20response%20%20To%20DCLG%20planning.pdf> [accessed: 7 September 2015].

²²¹ Council of Europe (2015), Fourth report submitted by United Kingdom pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities. ACFC/SR/IV(2015)004. Available at: http://www.coe.int/en/web/minorities/country-specific-monitoring#united_kingdom [accessed: 7 September 2015].

tenants. A national Gypsy/Traveller Site Working Group, which included representatives with close links to the Gypsy/Traveller community as well as those from LAs and the police, met throughout 2014, but has now finished its work.²²²

148. The EHRC is disappointed to note that the Scottish Government did not strengthen guidance towards those authorities who have made no progress in providing LA or private sites in their areas. At this stage the EHRC in Scotland feels that little progress can be made on the wider issues of discrimination against Gypsy Travellers unless and until an adequate network of sites – both temporary and permanent – has been established across Scotland.

Substandard and overcrowded housing

149. In England, a higher proportion of individuals in households where the household reference person (HRP)²²³ was from an ethnic minority lived in substandard housing²²⁴ in 2011/13 (27.9% of Black households and 26.3% of Pakistani/Bangladeshi households, compared with 20.5% of White households). The decrease in the percentage of Black and Indian adults living in substandard housing compared with 2007/09 was smaller than the decrease for White adults.²²⁵ Similarly, children from Pakistani/Bangladeshi and Black households were more likely to live in substandard accommodation than those in White

²²² Scottish Government, Improving Gypsy/Traveller Sites – Guidance on minimum sites standards, and site tenants' core rights and responsibilities, 29 May 2015. Available at: <http://www.gov.scot/Publications/2015/05/4938> [accessed: 14 March 2016].

²²³ The English Housing Survey defines the HRP as 'the person in whose name the dwelling is owned or rented or who is otherwise responsible for the accommodation. In the case of joint owners and tenants, the person with the highest income is taken as the HRP. Where incomes are equal, the older is taken as the HRP. This procedure increases the likelihood that the HRP better characterises the household's social and economic position'. Department for Communities and Local Government (2015), National Statistics: English housing survey 2014 to 2015: headline report, p. 48. Available at: <https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-headline-report> [accessed: 7 April 2016].

²²⁴ The fitness standard of a home in England has been assessed using the Housing Health and Safety Rating System (HHSRS) which assesses potential risks to the health and safety of occupants in residential properties in England and Wales (Office of the Deputy Prime Minister, Reducing the risks: the Housing Health and Safety Rating System, April 2006. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/8262/144527.pdf). All data are taken from the English Housing Survey (<https://www.gov.uk/government/collections/english-housing-survey>).

²²⁵ EHRC (2015), *Is Britain Fairer?* (IBF) *Standard of Living Domain Paper*, p 11. Available at: <https://www.equalityhumanrights.com/en/our-measurement-framework/briefing-papers-and-data/standard-living> [accessed: 20 June 2016].

households in 2011/13 (28.6% and 24.2% compared with 18.6% respectively in 2011/13).²²⁶

150. The number of adults living in overcrowded accommodation in England remained static between 2008/09 (4.4%) and 2012/13 (4.8%), but a higher percentage of individuals from Indian (13.4%), Pakistani/Bangladeshi (21.7%), Black (15.7%) and 'Other' (12.5%) households lived in overcrowded housing than those from White (3.4%) households in England in 2012/13.²²⁷ However, over time both Pakistani/Bangladeshi and 'Other' households saw a decrease in overcrowding.²²⁸ Similarly, children in Indian (21.1%), Pakistani/Bangladeshi (30.9%), Black (26.8%) or 'Other' households (23.6%) were more likely to live in overcrowded accommodation than White households (8.3%) in 2012/13.²²⁹

151. In Scotland, a higher proportion of individuals where the HRP was from an ethnic minority than White households lived in overcrowded housing (11.8% compared with 2.9%) in 2013.²³⁰ In Scotland, people from ethnic minorities were less likely to live in substandard accommodation compared to White people (in 2013 the figures were 38.9% and 50.7% respectively). Both had fallen since 2008 but the gap between the groups did not change. Children from ethnic minority households were less likely to live in substandard accommodation than children in White households (34.4% compared with 44.2%).

152. For Scotland, there was also no change in the proportion of adults living in overcrowded accommodation – 2.4% in 2008 and 3.1% in 2013. People from ethnic minorities were more likely to live in overcrowded households (11.8% compared to 2.9% for White people). Children from ethnic minority households were more likely to be living in overcrowded accommodation compared to children in White households (14.2% compared with 7.8% in 2013).²³¹

153. Equivalent data is unavailable in Wales.²³²

²²⁶ IBF *Standard of Living Domain Paper*, p. 40. In Scotland, a different measure is used which is not comparable with England. For adult households and those with children, there was no significant difference between white and ethnic minority households. Equivalent data is unavailable in Wales. IBF *Standard of Living Domain Paper*, pp. 43, 45.

²²⁷ IBF *Standard of Living Domain Paper*, pp. 11, 41 (see Table 2).

²²⁸ IBF *Standard of Living Domain Paper*, pp. 11-12.

²²⁹ IBF *Standard of Living Domain Paper*, p. 42.

²³⁰ The Scottish Housing Quality Standard (SHQS) dates from 2004 and is a set of five criteria that must all be met if the property is to 'pass'. Properties are measured against these criteria, which contain 55 elements and 9 sub-elements. IBF *Standard of Living Domain Paper*, pp. 42, 44.

²³¹ IBF *Standard of Living Domain Paper*, p. 23.

²³² IBF *Standard of Living Domain Paper*, p. 45.

Immigration Act

154. Section 13 of the UK Government's Immigration Act 2016 introduces the new criminal offence of renting accommodation to an individual disqualified from renting or occupying a property because of their immigration status. This Act applies across the UK.

155. At Commons Committee Stage, the UK Government published an equality statement in relation to the provisions regulating access to services, including this new criminal offence. However, the statement failed to explore whether the offence is likely to lead to discrimination by landlords (or their agents) against non-British nationals and British people with ethnic minority backgrounds. In our view, this is a serious omission.

156. A recent evaluation of the Right to Rent scheme²³³ found instances of potentially discriminatory behaviours or attitudes. For example: White British individuals posing as potential tenants were asked less often to provide references (7%), compared to BME individuals²³⁴ (20%). Also, BME people making enquiries were more likely to have been asked how long they had lived in the local area (11%), compared to White British enquirers (1%). This evaluation only covered a region in England and is not representative of Great Britain. The EHRC has called for a proper assessment of impact in Scotland.

157. **The EHRC recommends that the UK Government:**

- a) conducts a review of the adequacy of site provision for Gypsies and Travellers across all local authorities.**

The EHRC recommends that the Scottish Government:

- b) demonstrates leadership in the provision of an adequate network of sites in public, private and voluntary sector control, across Scotland, for example by strengthening guidance towards those authorities who have made no progress in providing local authority or private sites in their areas.**

The EHRC recommends that the UK Government, Welsh Government and Scottish Government:

²³³ Evaluation of the Right to Rent scheme, Home Office, October 2015. Available at: <https://www.gov.uk/government/publications/evaluation-of-the-right-to-rent-scheme> [accessed: 20 June 2016].

²³⁴ Black and minority ethnic.

- c) examine the causes for different ethnic groups living in substandard housing and overcrowded housing, and take forward strategies to address them in an effective way.**

Health (Articles 2, 5(e)(iv))

158. Article 5(e)(iv) of CERD requires the UK Government to ensure the right to public health and medical care without distinction as to race, colour, descent, or national or ethnic origin. The Committee on Economic, Social and Cultural Rights has held that ‘health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population’.²³⁵ In 2011, the CERD Committee recommended the UK take concrete measures to improve life outcomes for Gypsies and Travellers, including by focusing on improving access to healthcare and services.²³⁶

159. Since 1999, health has been a devolved matter in Scotland and Wales, with the Scottish Government and Welsh Government determining both the budget for most healthcare (within a block grant from the UK Government) and how services are organised.²³⁷ The full realisation of Article 5(e)(iv) will require the engagement of the UK Government as the state party, and the devolved administrations.

160. This section of the report refers to:

- health inequalities for ethnic minorities across England, Wales and Scotland
- evidence of particular health outcomes and needs for marginalised groups including Gypsies and Travellers, asylum seekers and refugees, and
- reform of the framework for health and social care partnerships in Scotland.

²³⁵ CESCR, General Comment No. 14, para. 12(b).

²³⁶ CO, para. 27.

²³⁷ Health policy in Scotland was, in the main, devolved to the Scottish Parliament under the Scotland Act 1998, while the current arrangements for healthcare provision were set out in the National Health Service Reform (Scotland) Act 2004. The Government of Wales Act 1998 provided for the establishment of the National Assembly for Wales, with responsibility for health matters passing to the Welsh Government under devolution in 1999. For further consideration of the differences between England, Scotland and Wales see: IBF *Health Domain Paper*, pp. 34–44.

Health inequalities in physical and mental health

161. In 2015, the EHRC published its comprehensive review on progress towards greater equality and human rights protections in Great Britain.²³⁸ The study assessed:
162. **Life expectancy** – Comprehensive data are not available about life expectancy across all ethnic minority groups.²³⁹ In particular, in Scotland there is little evidence about life expectancy for those who share protected characteristics other than gender.²⁴⁰
163. **Self-reported health** – 14.1% of Gypsies and Irish Travellers in England and Wales rated their health as bad or very bad.²⁴¹ The group with the second poorest self-rated health was White Irish (9.2%), followed by Black Caribbean (6.7%), White British (5.9%), 'Other' ethnic group (5.7%), Bangladeshi (5.6%) and Pakistani (5.5%).²⁴² Scottish Government analysis of the 2011 Census found that a greater proportion of Gypsy/Travellers rated their health as bad or very bad (15%) compared with the average for Scotland (6%). Additionally, older Indian, Pakistani and Bangladeshi women reported considerably worse health than older men in these ethnic groups. The majority of recent migrants (people born outside the UK and who had been living in Scotland for less than 10 years) report their general health was good or very good.²⁴³
164. **Infant mortality** – in England and Wales (combined), the infant mortality rate fell between 2007/08 and 2012 for White, Pakistani/Bangladeshi and African/Caribbean infants. The decrease was greater for the latter two groups than for White infants and the gap between these groups and the White group decreased over this period. However, in both periods, the rate was higher for

²³⁸ EHRC (2015), *Is Britain Fairer?* Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer-0> [accessed: 20 June 2016].

²³⁹ DCLG (2012), Progress report by the Ministerial working group on tackling inequalities experienced by Gypsies and Travellers. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6287/2124046.pdf [accessed: 20 June 2016].

²⁴⁰ EHRC (2016), *Is Scotland fairer?*, p. 12. Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/about-commission-scotland/scotland-fairer/scotland-fairer-report> [accessed: 13 April 2016].

²⁴¹ IBF *Health Domain Paper*, p. 68. Available at: <https://www.equalityhumanrights.com/en/britain-fairer/britain-fairer-report/supporting-evidence/health-domain> [accessed: 13 April 2016].

²⁴² ONS (2013), *Ethnic Variations in General Health and Unpaid Care Provision, 2011*. Available at: <http://www.ons.gov.uk/ons/rel/census/2011-census-analysis/ethnic-variations-in-general-health-and-unpaid-care-provision/rpt-ethnic-variations-in-general-health-and-unpaid-care-provision.html> [accessed: 13 April 2016].

²⁴³ Scottish Government (2014), Analysis of Equality Results from the 2011 Census, Chapter 1: Ethnicity. Available at: <http://www.gov.scot/Resource/0046/00460679.pdf> [accessed: 13 April 2016].

ethnic minority than for White groups.²⁴⁴ There is limited evidence on infant mortality by ethnic group in Scotland. Analysis of 2012 data by Healthcare Improvement Scotland²⁴⁵ found South Asian mothers and mothers from 'other' ethnic groups (not British, other European or South Asian) to be disproportionately affected by infant mortality. There is no formal evidence on infant mortality rates among Gypsy/Travellers.²⁴⁶

165. **Mental health** – In England, Pakistani/Bangladeshi adults and Black African/Caribbean adults were disproportionately at risk of poor mental health in 2012 (22.9% and 19.9% respectively compared with 14.6% of adults in White groups). The higher rate among Pakistani/Bangladeshi people was primarily among women, 28.2% of whom were at risk of poor mental health, compared with 17.4% of White women.²⁴⁷ In Scotland, although higher proportions of adults from ethnic minorities were at risk of poor mental health in 2008, as compared with White adults, this was not the case in 2012.²⁴⁸

166. Black African/Caribbean/Black British adults had the highest rate of contact with specialist mental health services. They also had the highest rate of time in hospital (12.7 people per 100 in contact with hospitals); this is higher than the figure for any of the other ethnic groups and more than double the figure for the White ethnic group²⁴⁹ and had the greater lengths of stay in hospital. They were also more likely to have been compulsorily detained under the Mental Health Act 1983 as part of an inpatient stay in a mental health unit and, one year after involuntary hospitalisation, being of African and/or Caribbean origin was

²⁴⁴ IBF *Health Domain Paper*, p. 56.

²⁴⁵ Healthcare Improvement Scotland is the national healthcare improvement organisation for Scotland and part of NHS Scotland working with staff who provide care in hospitals, GP practices, clinics, NHS boards and with patients, carers, communities and the public. Healthcare Improvement Scotland. Available at: http://www.healthcareimprovementscotland.org/about_us.aspx [accessed: 11 April 2016].

²⁴⁶ Healthcare Improvement Scotland (2014), Scottish perinatal and infant mortality and morbidity report 2012. Available at: <https://isdscotland.scot.nhs.uk/Health-Topics/Maternity-and-Births/Publications/2014-03-25/2014-03-25-SPIMMR2012-Report.pdf?1005190611> [accessed: 11 April 2016].

²⁴⁷ Vizard and Obolenskaya, (2015), *The Coalition's Record on Health: Policy, Spending and Outcomes 2010-2015*. Available at: <http://sticerd.lse.ac.uk/dps/case/spcc/WP16.pdf> [accessed: 11 April 2016].

²⁴⁸ EHRC (2015), *Is Scotland fairer?* Available at: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/about-commission-scotland/scotland-fairer/scotland-fairer-report> [accessed: 11 April 2016].

associated with a higher involuntary readmission rate.²⁵⁰ The use of psychological therapies is lower among people from ethnic minority groups.²⁵¹

167. The UK Government has acknowledged that in England people who use mental health services, and those who care for them, continue to report gaps in provision and long waits for services, and that there is still insufficient support within communities for people with mental health problems.

Access to healthcare

168. In 2010, the EHRC noted the physical and mental health of Gypsies and Travellers was poorer than that of the rest of the population and they experienced poorer access to GPs and other primary care services.²⁵²

169. A 2016 report by the National Inclusions Health Board in England²⁵³ found that:

- 66% of Gypsies and Travellers reported poor, bad, or very bad health
- the living conditions of Gypsies and Travellers significantly contribute to their physical and mental health
- the poor health of Gypsies and Travellers is made worse by their living environment, accommodation insecurity and community discrimination
- there needs to be closer partnership working across health and other interests to address these issues.²⁵⁴

170. The Department of Communities and Local Government's July 2015 count of traveller caravans indicated that 85% of traveller caravans in England were on

²⁵⁰ CAAPC (2016), *Old Problems, New Solutions: Improving Acute Psychiatric Care for Adults in England*. Available at: <http://www.caapc.info/#!/publications/cgbd> [Accessed 22 February 2016]

²⁵¹ DH (2014), *Closing the gap: priorities for essential change in mental health*, p. 13. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281250/Closing_the_gap_V2_-_17_Feb_2014.pdf [accessed: 11 April 2016].

²⁵² EHRC (2010), *How Fair is Britain?* Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain> [accessed: 11 April 2016].

²⁵³ The National Inclusion Health Board's responsibilities are to provide cross-sector and interdisciplinary leadership and ownership of the Inclusion Health agenda nationally; champion the needs of vulnerable groups and promote the principles of the Inclusion Health approach; provide direction, oversight and decision-making for the delivery of the Inclusion Health programme; provide evidence-based challenge across health and social care; work in partnership with Government to develop and drive innovative solutions. Gov.uk, National Inclusion Health Board. Available at: <https://www.gov.uk/government/groups/national-inclusion-health-board> [accessed: 11 April 2016].

²⁵⁴ National Inclusion Health Board (2016), *Impact of insecure accommodation and the living environment on Gypsies' and Travellers' health*. Available at: <https://www.gov.uk/government/publications/gypsy-and-traveller-health-accommodation-and-living-environment> [accessed: 11 April 2016].

authorised land and that 15% were on unauthorised land.²⁵⁵ It has been noted that improved life expectancy appears to be associated with the availability of established site provision and access to medical care.²⁵⁶

171. The Royal College of General Practitioners has noted that many Gypsies and Travellers remain unregistered with GPs for a variety of reasons, including being turned down as problematic users, a lack of cultural awareness on the part of healthcare professionals, and their nomadic lifestyle presenting barriers to registration.²⁵⁷

172. Scottish Government analysis shows that disadvantage for Gypsy/Travellers starts early. Both male and female Gypsy/Travellers in the youngest age group (0-15) had higher rates of 'health problems or disabilities' than any other ethnic group. Those aged 16-34, 35-49 and 50-64 were all more than twice as likely to have a 'health problem or disability' compared to men and women in the population in these age bands.²⁵⁸

173. In Scotland, the Scottish Parliament Equal Opportunities Committee heard from the Scottish Government that a range of approaches are being employed by health boards to improve services for Gypsy/Travellers, including outreach initiatives and health visits to sites, and linking patients directly to GP practices and dentists.²⁵⁹ However it also heard that some GP practices had refused to register Gypsies and Travellers on the grounds that they had no fixed address or photographic ID, or could not guarantee that they would stay in the area for at least three months.²⁶⁰

²⁵⁵ Department for Communities and Local Government (2015), Count of Traveller Caravans, July 2015 England. Available at: <https://www.gov.uk/government/statistics/traveller-caravan-count-july-2015> [accessed: 11 April 2016].

²⁵⁶ Cemlyn, S., Greenfields, M., Burnett, S., Matthews, Z. and Whitwell, C. (2009), *Inequalities experienced by Gypsy and Traveller communities: A review* (Research Report 12). Available at: http://www.equalityhumanrights.com/sites/default/files/documents/research/12inequalities_experience_d_by_gypsy_and_traveller_communities_a_review.pdf [accessed: 11 April 2016].

²⁵⁷ RCGP (2013), *Improving access to health care for Gypsies and Travellers, homeless people and sex workers*, p. 21. Available at: http://www.rcgp.org.uk/common-elements/rss/~/_media/Files/Policy/A-Z-policy/RCGP-Social-Inclusion-Commissioning-Guide.ashx [accessed: 11 April 2016].

²⁵⁸ Gypsy/Traveller health inequalities – Scottish Government (2014), *Analysis of equality results from the 2011 Census*. Available at: <http://www.gov.scot/Resource/0046/00460679.pdf> [accessed: 11 April 2016].

²⁵⁹ Scottish Parliament (2012), Equal Opportunities Committee. 3rd Report, 2012 (Session 4). Gypsy/Travellers and Care, p. 7. Available at: http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-12-03w-rev2.pdf [accessed: 13 April 2016].

²⁶⁰ Scottish Parliament (2012), Equal Opportunities Committee. 3rd Report, 2012 (Session 4). Gypsy/Travellers and Care, p. 6. Available at: http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Reports/eor-12-03w-rev2.pdf [accessed: 13 April 2016].

174. Practice guidance has also been produced for GPs on Gypsy/Traveller patients,²⁶¹ and a revised GP registration form includes explicit guidance that the 'regulations relating to GP registration apply equally to members of the travelling and settled populations' and 'there are no inherent obstructions which relate solely to the Gypsy/Traveller community.'²⁶² There is, however, no evidence as yet to show what impact these measures have had on the many health problems in Gypsy, Traveller and Roma communities.
175. In 'Travelling to a Better Future', the Welsh Government set out measures to improve the delivery of healthcare for Gypsies and Travellers.²⁶³ In July 2015, the Welsh Government published 'Travelling to Better Health: Policy Implementation Guidance for Healthcare Practitioners on working effectively with Gypsies and Travellers'.²⁶⁴
176. The 2015 guidance aims to 'assist healthcare practitioners in working effectively with Gypsies and Travellers and in so doing, assist Local Health Boards in meeting their existing statutory duty to advance equality for them'.²⁶⁵ The Welsh Government suggests the reasons for the comparatively poor access to health services for Gypsy, Traveller and Roma communities include 'a lack of knowledge about these communities and their culture, poor prior experience of health services, suspicion and mistrust of these services and a strong desire to be self-reliant'.²⁶⁶ The Welsh Government has informed the EHRC that it 'recognise[s] the need to update the list of ethnic categories in line with those used in the 2011 Census so as to capture the number of individuals who identify themselves as Gypsies and Irish Travellers. Work is ongoing to implement this

²⁶¹ NHS Health Scotland, Practice guidance – Gypsies/Travellers. Available at: <http://www.healthscotland.com/equalities/race/gypsytravellers/practice-guidance.aspx> [accessed: 13 April 2016].

²⁶² Scottish Government, Response to recommendations. Available at: http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/130129_Scottish_Government_response3rd_Report_2012.pdf [accessed: 13 April 2016].

²⁶³ Welsh Government (2011), Travelling to a Better Future: Gypsy and Traveller Framework for Action and Delivery Plan. Available at: <http://learning.wales.gov.uk/docs/learningwales/publications/121115gypsytravelleren.pdf> [accessed: 13 April 2016].

²⁶⁴ Welsh Government, Travelling to better health: Advice and guidance on culture and health needs for practitioners working with Gypsies and Travellers Available at: <http://gov.wales/topics/health/publications/health/guidance/travelling/?lang=en> [accessed: 13 April 2016].

²⁶⁵ Welsh Government, Consultation: travelling to better health, August 2014, p. 2. Available at: <http://gov.wales/consultations/healthsocialcare/travelling/?status=open&lang=en> [accessed: 13 April 2016].

²⁶⁶ Welsh Government, Consultation: travelling to better health, August 2014. Available at: <http://gov.wales/consultations/healthsocialcare/travelling/?status=open&lang=en> [accessed: 13 April 2016].

change across existing health datasets, this change will standardise the collection of this data and thus assist in the identification of inequalities’.

Asylum seekers and refugees

177. The EHRC noted in 2010 that evidence about the health of asylum seekers and refugees was limited. However, we noted that particular health concerns arise from the impact of relocation, possible past experience of trauma and the impact of detention, particularly on children, if they are detained.²⁶⁷

178. Refugees and asylum seekers are entitled to free healthcare until such time as an asylum application is refused. However, the EU Fundamental Rights Agency (FRA) noted in 2013 that people are sometimes refused access to healthcare due to providers' confusion over eligibility rules.²⁶⁸ Refugees and asylum seekers, including refused asylum seekers, are generally able to access free NHS healthcare in Scotland and Wales, but this is not the case for refused asylum seekers in England, other than in respect of immediately necessary treatment.²⁶⁹ In Scotland, the Scottish Refugee Council's Holistic Integration Service (HIS)²⁷⁰ found that just over 89% of refugees throughout the year were already registered with a GP. However, HIS beneficiaries and frontline staff consistently report concerns about refugees' undiagnosed poor mental health.²⁷¹

179. In 2013, the UN Committee on the Elimination of all Forms of Discrimination Against Women expressed concern that women seeking asylum in the UK faced obstacles in gaining access to healthcare.²⁷² Immigration status is not a reason

²⁶⁷ EHRC (2010), *How Fair is Britain?* Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/how-fair-is-britain> [accessed: 13 April 2016].

²⁶⁸ FRA (2013), *Inequalities and multiple discrimination in access to and quality of healthcare*. Available at: http://fra.europa.eu/sites/default/files/inequalities-discrimination-healthcare_en.pdf [accessed: 13 April 2016].

²⁶⁹ IBF *Health Domain Paper*, pp. 134–135.

²⁷⁰ The Holistic Integration Services offers up to 12 months support to people who have been granted Refugee Status, Humanitarian Protection, or Discretionary Leave to Remain following an asylum claim in Scotland. The HIS is led by Scottish Refugee Council in partnership with Bridges Programmes, British Red Cross, Glasgow Clyde College and Workers Educational Association Scotland.

²⁷¹ Strang, A. (2015), *Insights into integration pathways: New Scots & the Holistic Integration Service*. Available at: http://www.scottishrefugeecouncil.org.uk/what_we_do/policy_and_research/research_reports [accessed: 27 November 2015].

²⁷² UN (2013), *Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland*. Available at: <http://www.nawo.org.uk/wp-content/uploads/2012/07/Concluding-Observations.pdf> [accessed: 27 November 2015].

for refusing registration, but undocumented and documented migrants also face problems in registering with GPs.²⁷³

180. The EHRC recommends that the Committee ask the UK Government, Welsh Government and Scottish Government to:

- a) demonstrate the steps they have taken to improve health outcomes for Gypsies and Travellers and refugees, asylum seekers and migrants, in particular by:**
 - i. facilitating their registration with GPs**
 - ii. collecting and maintaining data on their access to, experience of, and outcomes from health services, and**
 - iii. ensuring that healthcare professionals receive the necessary training in order to be able to offer them appropriate and effective care.²⁷⁴**

²⁷³ Experiences among undocumented migrants accessing primary care in the United Kingdom: a qualitative study. Available at: <http://joh.sagepub.com/content/early/2015/02/12/0020731414568511.full.pdf+html> [accessed: 27 November 2015].

²⁷⁴ EHRC submission to ICESCR, August 2015. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-economic-social-and-cultural-rights> [accessed: 27 November 2015].

Representation in decision-making (Articles 2, 5(c))

181. In 2011, the CERD Committee recommended that the UK ‘vigorously pursue its efforts to close the existing employment gap in the personnel administration of the criminal justice system and other sectors between ethnic minorities and the wider population’.²⁷⁵

182. This section of the report refers to:

- representation in the criminal justice system
- judicial diversity, and
- representation in decision-making positions, including the political system and boards.

Representation in the criminal justice system

183. The proportion of police officers in England and Wales from an ethnic minority has risen from 3.6% in 2006 to 5.5% at 31 March 2015. There were 6,979 ethnic minority police officers in the 43 forces, an increase of 265 or 3.9% compared with a year earlier. Of the 43 forces, the Metropolitan Police had the largest proportion of ethnic minority officers (11.7%), followed by West Midlands (8.6%) and Leicestershire (7.2%). Cheshire had the lowest proportion of ethnic minority officers (0.6%), followed by Dyfed-Powys (0.7%) and North Wales (0.8%). Senior ranks, Chief Inspector or above, had a lower proportion of ethnic minority officers compared to constables across the 43 police forces. For example, 3.4% of chief inspectors or above were from an ethnic minority, compared with 6.0% at constable rank.²⁷⁶

²⁷⁵ CERD CO, para. 22.

²⁷⁶ Government National Statistics (2015), Police workforce, England and Wales: 31 March 2015. Available at: <https://www.gov.uk/government/publications/police-workforce-england-and-wales-31-march-2015/police-workforce-england-and-wales-31-march-2015> [accessed: 13 April 2016].

184. From October 2015, police forces in England and Wales have published diversity profiles, including of ethnicity, so that communities can see how representative their police force is of the local population.
185. In 2015, the UK Government also launched the College of Policing's Reverse Mentoring scheme, with four forces – Gloucestershire, Staffordshire, Sussex and West Midlands – already signed up to take part. The scheme will see senior police officers learn about the experiences of junior staff of all backgrounds.²⁷⁷
186. The 2011 Scotland Census data identified that 4% of the population identified themselves as coming from an ethnic minority background and 4% from a White minority background. Scotland's Asian population represented the largest ethnic minority group, accounting for 3% of the Scottish population. The percentage of ethnic minority police officers as of February 2013 was 1%. The percentage remained static as of March 2014.²⁷⁸

Judicial diversity

187. The latest data for England and Wales in 2015 shows that out of the 3,238 judges in the courts there are 2,686 (83%) judges whose ethnicity is known. Of the 2,686 judges who declared their ethnicity, 159 (5.9%) declared their background as Black or Minority Ethnic (BME).²⁷⁹
188. Out of the 2004 judges in the tribunals there are 1,868 (93.2%) judges whose ethnicity is known. Of the 1,868 judges who declared their ethnicity, 177 (9.5%) declared their background as Black or Minority Ethnic (BME). There is a higher percentage of tribunal judges in the younger age bands, with 14.8% of judges in the under 40 age band being BME, compared to 5.5% of judges in the over 60 age band who are BME.²⁸⁰

²⁷⁷ Police (2015), How diverse are the Police? Available at: <https://www.police.uk/news/how-diverse-are-police/> [accessed: 13 April 2016].

²⁷⁸ Police Scotland, *Police Scotland Mainstreaming Progress Report*. Available at: <http://www.scotland.police.uk/assets/pdf/138327/243045/equality-and-diversity-mainstreaming-progress-report-april-2015?view=Standard> [accessed: 13 April 2016].

²⁷⁹ The percentage of judges whose ethnicity is known is up from 81.3% in 2012, this is a result of the Judicial Office collecting ethnicity data on all new appointments from May 2009. Courts and Tribunals Judiciary (2015), *Judicial statistics 2015*, p. 6. Available at: <https://www.judiciary.gov.uk/publications/judicial-statistics-2015/> [accessed: 13 April 2016].

²⁸⁰ The percentage of judges whose ethnicity is known is up from 92.8% in 2012, this is a result of the Judicial Office collecting ethnicity data on all new appointments from May 2009. Courts and Tribunals Judiciary (2015), *Judicial statistics 2015*, p. 6. Available at: <https://www.judiciary.gov.uk/publications/judicial-statistics-2015/> [accessed: 13 April 2016].

189. From July 2014, the Judicial Appointments Commission has implemented an equal merit provision policy, which allows the selection of a candidate from under-represented groups in a tie-break situation.²⁸¹ No appointments round has since been completed so the JAC has yet to evaluate the policy's impact.²⁸²

190. The Judicial Appointments Board for Scotland (JABS) provides ethnicity data on appointments made, but not on those in post. Some actions to tackle barriers to appointments, such as encouraging part-time working, have been introduced.²⁸³ JABS has a statutory duty to have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to judicial office. In 2011, JABS published a diversity Strategy with three broad elements:

- fair and non-discriminatory selection processes
- outreach and awareness-raising
- working with others to break down barriers and remove misperceptions.²⁸⁴

Representation in decision-making positions, including the political system and boards

191. Between 2010 and 2015, there has been demonstrable progress in the diversity of Members of Parliament (MPs) in the House of Commons: non-white MPs now make up more than 6%, a 56% increase on 2010.²⁸⁵ In contrast, 11% of the general population are from an ethnic minority. Of the 129 MSPs elected to

²⁸¹ Section 159 of the Equality Act 2010 permits such treatment as a form of lawful positive action provided certain prescribed conditions are met. The Judicial Appointments Commission (JAC) was set up in 2006 to recommend candidates for judicial appointments independently of the executive. It has statutory responsibilities to select candidates on merit and encourage diversity in the range of candidates available for judicial selection. Judicial Appointments Commission, Equal Merit Provision Policy, July 2014. Available at:

https://jac.judiciary.gov.uk/sites/default/files/sync/basic_page/emp_policy_0.pdf [accessed: 13 April 2016].

²⁸² Judicial Appointments Commission, Response to judicial diversity report, 2015. Available at: <https://jac.judiciary.gov.uk/news/jac-publishes-response-judicial-diversity-report> [accessed: 13 April 2016].

²⁸³ Judicial Appointments Board for Scotland: Annual Report 2014–2015. Available at: http://www.judicialappointmentsscotland.gov.uk/Publications/Annual_Reports [accessed: 13 April 2016].

²⁸⁴ Judicial Appointments Board for Scotland, Diversity Strategy. Available at: http://www.judicialappointmentsscotland.org.uk/Diversity_Strategy [accessed: 13 April 2016].

²⁸⁵ EHRC, Smoothing the Pathway to Politics for Disabled People: EHRC response to the UN Special Rapporteur on the rights of persons with disabilities call for evidence on the right of persons with disabilities to participate in decision-making, September 2015. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/UNCRDP/Smoothing%20the%20Pathway%20to%20Politics%20for%20Disabled%20People.pdf> [accessed: 14 April 2016].

the Scottish Parliament in 2016, two (1.6%) are from an ethnic minority.²⁸⁶ The National Assembly for Wales election 2016 saw two ethnic minority candidates elected.

192. Section 106 of the Equality Act 2010, which would require registered political parties to publish data on the diversity of party candidates seeking selection, was proposed by the Speaker's Conference on parliamentary diversity, and enjoyed cross-party support. However, it was not enacted by the Coalition Government. That remains the case to date and, at the time of writing, the present Government has no plans to enact this provision.

193. Of the 63 appointments made since the establishment of the House of Lords Appointments Commission in 2000, 22% were from an ethnic minority. Overall, 5% of members of the House of Lords are from an ethnic minority background, although members are not required to provide information about their ethnicity or religion.²⁸⁷ The Appointments Commission actively seeks to appoint people on merit who are representative of the UK's diversity, and appointments to date suggest this is having the desired effect in the House of Lords, albeit slowly.

194. Data on the protected characteristics of elected representatives at national and local level show that ethnic minorities continue to be under-represented. A 2014 study of local councillors in England showed they are overwhelmingly white.²⁸⁸

195. In Wales, a diversity survey of Welsh councillors was carried out in 2012, which found that 99.4% of elected councillors were white.²⁸⁹ In March 2014, a report of the Expert Group on Diversity in Local Government made recommendations for the Welsh Government, local authorities, the Welsh Local Government Association, political parties, and councillors, to help improve the numbers of people from ethnic minorities standing for election to local government. The Welsh Government's Diversity in Democracy Programme, in

²⁸⁶ Scottish Parliament, *SB 16-34 Election 2016*. Available at:

<http://www.parliament.scot/parliamentarybusiness/99390.aspx> [accessed: 14 April 2016].

²⁸⁷ Hughes, D. (2015) *Women in the House of Lords*. House of Lords Library Note. LLN 2015/017.

Available at: <http://researchbriefings.files.parliament.uk/documents/LLN-2015-0017/LLN-2015-0017.pdf> [accessed: 14 April 2016].

²⁸⁸ Kettlewell, K. and Phillips, L. (2014), *Census of Local Authority Councillors 2013*.

National Foundation for Educational Research. Available at:

<http://www.nfer.ac.uk/publications/LGCL01/LGCL01.pdf> [accessed: 14 April 2016].

²⁸⁹ A total of 3,201 responses were collected in the study, from 21 local authorities, a response rate of 35%. Welsh Government, *Local Government Candidates Survey 2012*, p. 13. Available at:

<http://gov.wales/statistics-and-research/local-government-candidates-survey/?lang=en> [accessed: 14 April 2016].

which councillors mentor people from diverse backgrounds interested in becoming involved in public life, launched in September 2015.²⁹⁰

196. A survey of Scotland's councillors was carried out in 2013. The survey was online and the response rate was low at 26%. The survey found:

- 96.6% of councillors responding to the survey said their ethnic group was 'white', which is very similar to the Scottish population (96%) (*Scotland's Census, 2011*)
- 1.3% of the councillors that responded are Asian/Asian Scottish/Asian British which is less than half the Scottish demographic (2.7%) (*Scotland's Census, 2011*).²⁹¹

197. By the end of 2014, ethnic minority representation in FTSE 100 boardrooms was at around 5%, and further evidence from research by Green Park in 2014 suggested that all-White executive teams ran 69% of FTSE 100 companies and that 95% of FTSE 100 board directors were White.²⁹² There are currently just two FTSE100 companies with an ethnic minority person as a chair.²⁹³

198. In the public sector, ethnic minority representation in the civil service has also increased from 4% in 1988 to 10% in 2014. This is welcome, albeit still 2 percentage points below the overall percentage of the working population. Ethnic minority representation in the Senior Civil Service is lower still, 7% in 2014.²⁹⁴

199. **The EHRC recommends that the Committee asks the UK Government to:**

- a) enact s106 of the Equality Act 2010, so that political parties are required to publish diversity data about their candidates, with a view to ensuring that other initiatives to increase parliamentary diversity are evidence-based**²⁹⁵

²⁹⁰ EHRC, Smoothing the Pathway to Politics for Disabled People: EHRC response to the UN Special Rapporteur on the rights of persons with disabilities call for evidence on the right of persons with disabilities to participate in decision-making, September 2015. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/UNCRDP/Smoothing%20the%20Pathway%20to%20Politics%20for%20Disabled%20People.pdf> [accessed: 14 April 2016].

²⁹¹ Improvement Service (2013), Scotland's Councillors 2013 Research Report. Available at: <http://www.improvementservice.org.uk/documents/research/Councillor%20Survey%20Report%202013.pdf> [accessed: 14 April 2016].

²⁹² Green Park Executive Recruitment, Green Park Leadership 10,000. Available on request at: <http://www.green-park.co.uk/green-park-leadership-10000> [accessed: 14 April 2016].

²⁹³ Green Park Executive Recruitment, NEW Leadership 10,000 Spring 2015 Report. Available on request at: <http://www.green-park.co.uk/new-leadership-10000-report> [accessed: 14 April 2016].

²⁹⁴ National Audit Office (2015), *Equality, diversity and inclusion in the civil service*. Available at: <http://www.nao.org.uk/wp-content/uploads/2015/06/Equality-diversity-and-inclusion-in-the-civil-service.pdf> [accessed: 14 April 2016].

²⁹⁵ EHRC, Smoothing the Pathway to Politics for Disabled People: EHRC response to the UN Special Rapporteur on the rights of persons with disabilities call for evidence on the right of persons with disabilities to participate in decision-making, September 2015. Available at:

- b) consider the introduction of non-mandatory targets if there is no significant increase in the numbers of ethnic minorities in judicial appointments by 2017.**

Hate crime (Articles 2, 4, 6)

200. The CERD Committee recommended that the UK closely monitor the media with a view to combatting prejudice and negative stereotypes the unchecked expression of which may result in racial discrimination or incite racial hatred; and to withdraw its interpretative declaration on Article 4 of CERD.
201. Specific recommendations on hate crime made through the Universal Periodic Review process in 2012 included that the UK should:²⁹⁶
- take more effective measures to ensure that the perpetrators of acts of discrimination, hate crimes and xenophobia are adequately deterred and sanctioned
 - strengthen data collection and maintain disaggregated data to better understand the scale and severity of hate crimes towards women, immigrants, religious minorities, persons with disabilities, and children.
202. This section of the report refers to:
- media reporting and stereotyping of some isolated groups such as refugees and migrants
 - rates of hate crime in England, Scotland and Wales
 - government action including the UK Government's 'Challenge It, Report It, Stop it' plan, the Hate Crime Framework for Action and Hate Crime Criminal Justice Board in Wales, and Scotland's Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion
 - reports on high levels of anti-Semitism and Islamophobia, and
 - hate crime and aggravated offences.

²⁹⁶ Equality and Diversity Forum, The UK's Universal Periodic Review – Annex document, September 2012. Available at: <http://www.edf.org.uk/blog/uk-response-to-the-universal-periodic-review-recommendations/> [accessed: 17 March 2016]

Recording rates of hate crime

203. Recent Home Office statistics show an increase of 18% in the number of hate crimes recorded by the police in England and Wales in 2014/15 (52,528) compared to 2013/14 (44,471). ONS has indicated that greater awareness of hate crime and improved compliance with recording standards among the police is likely to be a factor in this increase.²⁹⁷ Race remains the most commonly recorded motivation for hate crime at 82% of recorded motivations. (It is possible for a hate crime offence to be recorded as having more than one motivating factor.)²⁹⁸ *Is Wales Fairer?* states that in Wales, just over three quarters of the 1,810 hate crimes reported to the Welsh police forces were racially motivated, with Black people being most likely to be the victim.²⁹⁹

204. In Scotland, racially motivated crime remains the most commonly reported hate crime recorded by the police, 3,712 charges³⁰⁰ reported in 2015–16, but this is the lowest number reported since 2003–04. Other Scottish Government surveys showed 'ethnic group' to be the most common reason that people gave for why they thought they had experienced harassment. Ten per cent of adult respondents to the Scottish Crime and Justice Survey said they had been insulted, pestered or intimidated, and of those who had experienced some form of harassment in the last 12 months, 8% felt they were harassed because of their ethnic origin or race.³⁰¹

205. In 2014, the UK Statistics Authority (UKSA) detailed an accumulation of evidence suggesting that police recorded crime data may not be reliable. UKSA removed the 'National Statistics' quality kitemark from crime statistics in England and Wales, and announced its intention to re-assess Scottish police recorded

²⁹⁷ Home Office, Hate Crime, England and Wales, 2014/15: Statistical Bulletin, October 2015. Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2014-to-2015> [accessed: 17 March 2016].

²⁹⁸ Home Office, Hate Crime, England and Wales, 2014/15: Statistical Bulletin, October 2015. Available at: <https://www.gov.uk/government/statistics/hate-crime-england-and-wales-2014-to-2015> [accessed: 17 March 2016].

²⁹⁹ EHRC (2015), *Is Wales Fairer?* p. 27. Available at: <https://www.equalityhumanrights.com/en/wales-fairer> [accessed: 17 May 2016].

³⁰⁰ Crown Office and Procurator Fiscal Service: Scotland's Prosecution Service. Hate Crime in Scotland, 2015–16. Available at: <http://www.crownoffice.gov.uk/media-site/media-releases/1329-hate-crime-in-scotland-2015-16> [accessed: 16 June 2016].

³⁰¹ Scottish Government, Scottish Crime and Justice Survey 2012/13, 2014. Available at: <http://www.gov.scot/Publications/2014/03/9823/downloads> [accessed: 17 March 2016]; Scottish Government, Scotland's People Annual Report: Results from 2014 Scottish Household Survey, August 2015. Available at: <http://www.gov.scot/Publications/2015/08/3720/downloads> [accessed: 17 March 2016].

crime statistics in March 2014.³⁰² An assessment by UKSA in July 2014 also concluded that the Scottish statistics did not comply with several elements of the Code of Practice.³⁰³

206. Research³⁰⁴ shows that victims of hate crime are still reluctant to report incidents to the police and those that do are less likely to be satisfied with police responses compared with victims of crime generally.³⁰⁵ Victims also often feel that officers will not believe them or that they will not be treated respectfully.³⁰⁶ Victims who have prior negative encounters with the police become far less likely to report any following incidents.³⁰⁷

Media reporting and stereotyping

207. The EHRC published legal guidance on freedom of expression in February 2015. This guidance set out that any restrictions on freedom of expression must always be: clearly set out in law; necessary in a democratic society for a legitimate aim; and proportionate. Freedom of expression does not protect statements that unlawfully discriminate against or harass, or incite violence or hatred against, other persons and groups, including by reference to their race, religious belief, gender or sexual orientation.³⁰⁸

³⁰² Public Administration Committee – Fourth Special Report (2014). Available at: <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpubadm/645/64502.htm> [accessed: 11 April 2016].

³⁰³ UK Statistics Authority, Assessment of compliance with the Code of Practice for Official Statistics: Statistics on Recorded Crime in Scotland, July 2014, p. 1. Available at: <https://www.statisticsauthority.gov.uk/archive/assessment/assessment/assessment-reports/assessment-report-288---statistics-on-recorded-crime-in-scotland.pdf> [accessed: 14 April 2016].

³⁰⁴ Walters, M. A. and Brown, R., EHRC Research report, *Interventions for Hate Crime: Emerging Best Practices*. Forthcoming.

³⁰⁵ Chakraborti, N. and Hardy, S.J. (2015), *LGB&T Hate Crime Reporting: Identifying Barriers and Solutions*. Available at: http://www.equalityhumanrights.com/sites/default/files/publication_pdf/EHRC%20LGB%26T%20hate%20crime%20reporting%20research%20report.pdf [accessed: 14 April 2016]; Corcoran, H., Lader, D. and Smith, K. (2015), *Hate crime, England and Wales, 2014/15*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467366/hosb0515.pdf [accessed: 14 April 2016].

³⁰⁶ British Deaf Association Scotland and the Scottish Government Equality Unit. (2015), Access and Inclusion: A Report on Hate Crime in Scotland's Deaf Community. Available at: http://old-bda.org.uk/uploads/BDA/files/BDA_Hate_Crime_Report-March_2015.pdf [accessed: 14 April 2016].

³⁰⁷ Wong, K. and Christmann, K. (2008), 'The Role of Decision-Making in Reporting Hate Crime', *Safer Communities*, vol. 7, no. 2, pp. 19–34. Available at: <http://www.emeraldinsight.com/doi/abs/10.1108/17578043200800015> [accessed: 20 June 2016].

³⁰⁸ EHRC (2015), Freedom of Expression Legal Framework, Legal Security and *Is Britain Fairer?* evidence paper series. <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/legal-security-domain> [accessed: 13 April 2016].

208. There is limited national level representative data relating to experience of stigma and stereotyping. The latest available data for experience of harassment because of skin colour, ethnic origin or religion is contained in the 2010–11 Citizenship Survey, focused on adults in England. 3.2% of the population in England had experienced harassment on grounds of skin colour, ethnic origin or religion in the previous 2 years in 2010–11. This type of harassment was more likely to be experienced by those from ethnic minorities (ranging from 9.3% for African/Caribbean/Black people to 16.7% of Indian people) compared to White respondents (2.1%).³⁰⁹
209. There is no specific data on harassment in Scotland. Analysis of the 2013 Scottish Household Survey however, carried out by the Scottish Government, shows that in Scotland over the previous three years, ethnic minorities were also more likely to report discrimination, at 24% compared to 6% in the White group.³¹⁰
210. Findings from the National Survey for Wales show that 7.2% of adults in Wales aged 16 or over reported that they had experienced discrimination, harassment or abuse for any reason in the previous 12 months. 19.5% of those in the ethnic minorities group reported discrimination compared to 6.8% of White people.³¹¹
211. The EHRC continues to share the concerns raised by CERD and the European Commission against Racism and Intolerance (ECRI) and more recently by the UN High Commissioner for Human Rights about the negative media portrayal of groups such as refugees and migrants.³¹²

³⁰⁹ EHRC (2015), *Is Britain Fairer? Identity, Expression and Self-respect Domain*, pp. 14–15.

Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/identity-expression-and-self-respect-domain> [accessed: 13 April 2016].

³¹⁰ EHRC (2015), *Is Britain Fairer? Identity, Expression and Self-respect Domain*, pp. 14–15.

Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/identity-expression-and-self-respect-domain> [accessed: 13 April 2016].

³¹¹ EHRC (2015), *Is Britain Fairer? Identity, Expression and Self-respect Domain*, pp. 14–15.

Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/supporting-evidence/identity-expression-and-self-respect-domain> [accessed: 13 April 2016].

³¹² EHRC, Submission to the United Nations Human Rights Committee on the UK's Implementation of the International Covenant on Civil and Political Rights, June 2015. Available at:

<http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 17 March 2016].

Government action

212. The UK, Scottish and Welsh Governments all have action plans to tackle the issue.³¹³ It is not yet clear what impact these have had on hate crime.
213. In 2012, the UK Government's plan to tackle hate crime in England, Wales and Northern Ireland was presented in 'Challenge It, Report It, Stop It'.³¹⁴ The policy details the UK Government's collaboration with local agencies, voluntary organisations and independent advisory groups to achieve three objectives: to prevent hate crime; to increase the reporting of hate crime; and to collaborate with criminal justice agencies to improve their responses to hate crime. A progress report, published in 2014, outlined actions taken to deliver the UK Government's hate crime action plan, and also identified there is still a need to tackle under-reporting. The progress report also identified a number of emerging challenges since the publication of the action plan: disability hate crime, online hate crime, extremism and hate crime, and anti-Muslim hatred.³¹⁵
214. After the EU referendum on 23 June 2016, there was a 57% increase in reporting of hate crime to the police online reporting portal, True Vision, compared with the same period in the previous month, with 85 reports made between Thursday 23 June to Sunday 26 June compared with 54 reports in the corresponding four days four weeks ago.³¹⁶ On 29 June 2016, Prime Minister David Cameron stated that the UK Government would 'soon publish a new action plan on tackling hate crime to step up our response', including 'new steps to boost the reporting of hate crime and to support victims, new CPS guidance to prosecutors on racially aggravated crime, a new fund for protective security

³¹³ UK Government, Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime, March 2012. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf [accessed 17 March 2016]; Welsh Government. Tackling Hate Crimes and Incidents: A Framework for Action, May 2014. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/hate-crime/?lang=en> [accessed: 17 March 2016]; Scottish Government, The Strategy for Justice in Scotland, September 2012. Available at: <http://www.gov.scot/Publications/2012/09/5924> [accessed: 17 March 2016].

³¹⁴ UK Government, Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime, March 2012. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf [accessed: 17 March 2016].

³¹⁵ HM Government, Challenge It, Report It, Stop It: Delivering the Government's hate crime action plan, 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307624/HateCrimeActionPlanProgressReport.pdf [accessed: 17 March 2016].

³¹⁶ True Vision is a third party hate crime reporting website supported by all Police forces in England, Wales and Northern Ireland. Karen Bradley, 29 June 2016. Available at: <https://hansard.parliament.uk/commons/2016-06-29/debates/1606296600002/HateCrime> [accessed: 30 June 2016].

measures in potentially vulnerable institutions, and additional funding for community organisations so that they can tackle hate crime'.³¹⁷

215. Police Scotland, a single police force for Scotland, was established in 2013. Police Scotland has adopted a consistent approach to race hate crime and works with partners to share trends and work jointly to tackle race crime and encourage reporting. In October 2015, the Scottish Government announced a new Independent Advisory Group on Hate Crime, Prejudice and Community Cohesion. Scottish ministers were due to receive an initial report in spring 2016.³¹⁸
216. In 2014, the Welsh Government published a framework for tackling hate crimes and incidents in Wales alongside a delivery plan.³¹⁹ The Welsh Government's 2015–16 annual delivery plan lists commitments such as the continuation of funding for Victim Support in 2014–17 to operate a unified, national 24 hour Hate Crime Report and Support Centre, providing a 'One Stop Shop' approach to support victim-led advocacy, support and advice.³²⁰ The new Equality Objectives for 2016–20 include an objective specifically on 'reducing the incidence of all forms of harassment and abuse including (but not limited to) violence against women, hate crime, bullying, child abuse, domestic abuse and abuse of older people'.

Reports on high levels of anti-Semitism and Islamophobia

217. A 2014 report by the Department for Communities and Local Government on Government Action on Antisemitism, outlined the UK Government's strategy to improve reporting and prosecution of hate crime in general, as well as the Cross Government Working Group on Antisemitism's aim to tackle fears of 'casual' anti-

³¹⁷ David Cameron, Hansard, 29 June 2016. Available at: <https://hansard.parliament.uk/commons/2016-06-29/debates/16062964000017/Engagements> [accessed: 30 June 2016].

³¹⁸ Scottish Government, Independent Advisory Group (IAG) On Hate Crime, Prejudice and Community Cohesion, 14 October 2015. Available at: <http://www.gov.scot/Topics/People/Equality/IndependentAdvisoryGroup> [accessed: 26 April 2016].

³¹⁹ Welsh Government, Tackling Hate Crimes and Incidents: A Framework for Action, May 2014. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/hate-crime/?lang=en> [accessed: 17 March 2016].

³²⁰ Welsh Government, Hate Crimes & Incidents Framework: 2014–15 Progress Report, 2015; Welsh Government, Hate Crimes & Incidents Framework: 2015–16 Delivery Plan, 2016. Available at: <http://gov.wales/topics/people-and-communities/equality-diversity/rightsequality/hate-crime/?lang=en> [accessed: 17 March 2016].

Semitism in schools and in football.³²¹ A 2015 inquiry report by the All-Party Parliamentary Group against Antisemitism called for further research into the scale of anti-Semitism in the UK.³²²

218. The coalition Government launched Tell MAMA, a third party reporting service to record incidents and support victims of anti-Muslim hatred in England.³²³ Tell MAMA's 2014/15 monitoring report of England found that online incidents make-up the majority of reported cases.³²⁴ In their latest report on experiences of anti-Muslim hostility, Tell MAMA include among their recommendations the need for media training to help the media to portray a balanced viewpoint when discussing news stories concerning Muslims which could impact upon the way they are viewed by wider society.³²⁵

219. In Scotland, research by the Universities of Newcastle, St. Andrews and Edinburgh in 2015 found widespread direct or indirect experience of anti-Muslim sentiment reported by pupils from Scottish schools.³²⁶

Aggravated offences

220. Criminal justice agencies record any offence as a hate crime when it is perceived by the victim or any other person to be motivated by hostility or prejudice based on a person's actual or perceived race, religion, sexual orientation, disability or transgender identity. There are enhanced sentencing powers for all five of these protected characteristics. The law only provides for specific 'aggravated' offences, however, if the defendant demonstrated or was motivated by hostility on the grounds of race or religion (Crime and Disorder Act,

³²¹ Department for Communities and Local Government, Government Action on Antisemitism, December 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/390904/Government_Action_on_Antisemitism_final_24_Dec.pdf [accessed: 17 March 2016].

³²² APPG against Antisemitism, Report of the All-Party Parliamentary Inquiry into Antisemitism, 2015. Available at: <http://antisemitism.org.uk/all-party-parliamentary-inquiry/> [accessed: 17 March 2016].

³²³ UK Government, Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime, March 2012. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf [accessed: 17 March 2016].

³²⁴ Littler, M. and Feldman, M. (2015), Tell MAMA Reporting 2014/15: Annual monitoring, cumulative extremism and policy implications. Available at: <http://tellmamauk.org/category/reports/> [accessed: 17 March 2016].

³²⁵ Awan, I. and Zempi, I. (2015), We fear for our lives: Offline and online experiences of anti-Muslim hostility, October 2015. Available at: <http://tellmamauk.org/category/reports/> [accessed: 17 March 2016].

³²⁶ Peter Hopkins et al. (2015), Faith, ethnicity and place: young people's everyday geopolitics in Scotland. Available at: <https://research.ncl.ac.uk/youngpeople/outputs/finalreport/> [accessed: 14 April 2016].

1998), and prohibits the stirring up of hatred only on grounds of race, religion or sexual orientation (Public Order Act, 1986). In 2013 the UK Government asked the Law Commission to consider whether these hate crime offences should be extended to all five protected groups in England and Wales.³²⁷

221. The Law Commission's recommendations included:

- a full-scale review of the operation and effectiveness of current hate crime provisions in order to determine how best to improve the provisions, the groups that should be protected by these provisions, and the basis for their inclusion
- that the Sentencing Council should issue guidance on the approach to sentencing for hate crimes.³²⁸

The UK Government is considering these recommendations.

222. The UK Government has promised that in 2016, UK police forces across England and Wales will record anti-Muslim hatred alongside other religious hate crime as a specific categorised offence. A new Cross-Government Hate Crime Action Plan is being developed by the Home Office in partnership with other UK Government departments, policing colleagues and external stakeholders.³²⁹

223. **The EHRC recommends that the Committee ask the UK and, where applicable, the Welsh and Scottish Governments to:**

- a) provide evidence of the impact of their hate crime strategies. Work with criminal justice agencies to build on the research on hate crime motivations and develop new preventative measures as a result.**

The EHRC recommends that the Committee ask the UK Government to:

- b) adopt the Law Commission's recommendations for a full-scale review of the operation and effectiveness of the aggravated offences and enhanced sentencing provisions for hate crimes.**

³²⁷ Law Commission (2014), Hate Crime: The case for extending the existing offences – a consultation paper. Available at: http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp213_hate_crime_amended.pdf [accessed 17 March 2016].

³²⁸ Law Commission, Hate Crime: Should the Current Offences be Extended? May 2014. Available at: <https://www.gov.uk/government/publications/hate-crime-should-the-current-offences-be-extended> [accessed: 17 March 2016].

³²⁹ Karen Bradley, Parliamentary Under-Secretary of State for the Home Department, 2 November 2015, Written statement. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-10-21/12800/> [accessed: 11 April 2016].

Caste discrimination (Article 2)

224. The CERD Committee has affirmed that discrimination based on ‘descent’ ‘includes discrimination against members of communities based on forms of social stratification such as caste’.³³⁰ Further, in its General Recommendation No. 29, the Committee has recommended that states should ‘enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention’.³³¹ In 2011, the Committee recommended that the UK Government invoke section 9(5)(a) of the Equality Act 2010 (EA2010) to provide for ‘caste to be an aspect of race’.³³² The current definition of race in section 9(1) of the Equality Act 2010 is non-exhaustive and includes colour, nationality and ethnic or national origins.

225. This section of the report focuses on:

- support for the enactment of section 9(5) Equality Act 2010, to provide for ‘caste to be an aspect of race’
- lack of government consultation on the statutory definition of ‘caste’.

³³⁰ CERD (2012), General recommendation 29 on article 1, paragraph 1 of the Convention (Descent), Sixty-first session, p. 1. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7501&Lang=en [accessed: 23 November 2015].

³³¹ CERD (2012), General recommendation 29 on article 1, paragraph 1 of the Convention (Descent), Sixty-first session, p. 2. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7501&Lang=en [accessed: 23 November 2015].

³³² CERD (2011), Consideration of reports submitted by States parties under article 9 of the Convention – Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland (14 September 2011), UN Doc CERD/C/GBR/CO/18-20, para. 30. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f18-20&Lang=en [accessed: 23 November 2015].

Section 9(5) of the Equality Act 2010

226. Since the last examination the UK Parliament has amended section 9(5) of the Equality Act 2010³³³ so that a Minister *must*, by order, amend the statutory definition of race to include caste and may provide for exceptions in the Act to apply or not to apply to caste. The EHRC supported this amendment.³³⁴ However, to date, the order has not been made to implement this amendment.
227. In July 2013, the UK Government's Government Equalities Office announced that before section 9(5) of the Equality Act was implemented, there would be a full public consultation in order to ensure the legislation was fit for purpose and that a draft order was to be introduced by the summer of 2015.³³⁵ To contribute to this process the EHRC produced two research reports examining how protection against caste discrimination should be implemented.³³⁶
228. The consultation was delayed by the outcome of an employment case that was going through the courts in 2014.³³⁷ In *Chandok v Tirkey*,³³⁸ the Employment Appeal Tribunal President found that a person could proceed with a claim for discrimination based on caste under the present law because, depending on the facts of each case, caste, despite not being an explicitly protected characteristic itself in the Equality Act 2010, is capable of falling within the scope of the race protected characteristic.³³⁹ This judgment considered existing case law which suggests that 'ethnic origin' for the purpose of section 9(1) of the Equality Act

³³³ Enterprise and Regulatory Reform Act 2013, s 97. Available at: <http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted> [accessed: 21 March 2016].

³³⁴ EHRC, Commission policy statement on caste discrimination. Available at: <http://www.equalityhumanrights.com/legal-and-policy/key-legislatures/equality-act-2010/commission-policy-statement-on-caste-discrimination> [accessed: 23 November 2015].

³³⁵ Government Equalities Office, Caste legislation introduction – programme and timetable, 29 July 2013. Available at: <https://www.gov.uk/government/news/caste-discrimination-consultation-programme-timetable-announced> [accessed: 23 November 2015].

³³⁶ Dhanda, M. et al. (2014), *Caste in Britain: Socio-legal review*, Equality and Human Rights Commission Research Report 91. Available at: <http://www.equalityhumanrights.com/publication/research-report-91-caste-britain-socio-legal-review> [accessed: 23 November 2015]; Dhanda, M. et al. (2014), *Caste in Britain: Experts' Seminar and Stakeholders' Workshop*, Equality and Human Rights Commission Research Report 92. Available at: <http://www.equalityhumanrights.com/publication/research-report-92-caste-britain-experts-seminar-and-stakeholders-workshop> [accessed: 23 November 2015].

³³⁷ CERD, Twenty-first to twenty-third periodic reports of States parties due in 2014: United Kingdom, 10 April 2015, UN Doc CERD/C/GBR/21-13, para. 10. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2f21-23&Lang=en [accessed: 23 November 2015].

³³⁸ *Chandok v Tirkey* [2014] Employment Appeal Tribunal UKEAT/0190/14/KN. Available at: http://www.bailii.org/uk/cases/UKEAT/2014/0190_14_1912.html [accessed: 23 November 2015].

³³⁹ *Chandok v Tirkey* [2014], [53] – [55].

2010 should be interpreted widely.³⁴⁰ However, the President was careful to say that his conclusion on this issue was fact-specific and he specifically declined the invitation to find that all caste-based claims would come within the definition of 'ethnic origins'.³⁴¹ This means that not all complainants of caste discrimination may find a remedy under existing law.

229. The appeal tribunal judgment in *Chandok v Tirkey* has left it open whether caste is part of the protected characteristic of race under the Equality Act 2010. Following that judgment, whether caste discrimination has occurred is to be decided on the particular facts of each case by the tribunals. What exactly does or does not constitute caste for the purposes of the Equality Act 2010 remains unclear, and, despite a legislative commitment by the Coalition Government in 2013, the UK Government has failed to exercise powers to definitively address this issue. In December 2015, Baroness Williams of Trafford, the Parliamentary Under-Secretary of State for Communities and Local Government stated that the UK Government was 'currently considering the conclusions and recommendations of the caste feasibility study as part of our wider consideration of the implications of the *Tirkey v Chandok* tribunal judgments'.³⁴²

230. **The EHRC recommends that the Committee ask the UK to:**

- a) exercise the order-making power in section 9(5) Equality Act 2010 to clarify that caste is an aspect of the race protected characteristic for the purposes of the Equality Act 2010.**

³⁴⁰ Following the judgment in *Chandok v Tirkey*, the decisions in these two leading cases remain fully applicable: *Mandla v Dowell Lee* [1983] ICR 385; R (*on the application of E*) (*Respondent*) v *Governing Body of JFS and the Admissions Appeal Panel of JFS (Appellants) and others R (on the application of E) (Respondent) v Governing Body of JFS and the Admissions Appeal Panel of JFS and others* (United Synagogue) (Appellants) [2009] UKSC 15.

³⁴¹ *Chandok v Tirkey* [2014], [53] – [55].

³⁴² Baroness Williams of Trafford, Hansard, 21 December 2015. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-12-14/HL4547/> [accessed: 20 June 2016].

Stop and search (Articles 2 and 5)

231. The CERD Committee recommended that the UK ‘review the impact of “stop and search” powers on ethnic minority groups’. It also recommended that the UK ‘ensure that all stops are properly recorded, whether or not leading to searches, and that a copy of the record is provided to the person concerned for all such incidents in order to safeguard the rights of those subject to these laws and to check possible abuse’.³⁴³

232. Policing in the UK is devolved in Scotland, and stop and search is the responsibility of Westminster for England and Wales and the Scottish Parliament for Scotland. The bulk of the concluding observations were directed at practice in England and Wales, which this section addresses specifically. Additional detail is offered about implementation in Scotland.

233. This section of the report refers to:

- the reduction in use of stop and search in England and Wales but its continued disproportionate impact on ethnic minorities
- ‘reasonable suspicion’ and the effectiveness of the powers
- an evaluation of the effectiveness of the UK Government’s action on stop and search including use of the ‘Best use of stop and search’ scheme
- the EHRC’s training programme partnership with the National College of Policing for England and Wales, and
- stop and search in Scotland, including the establishment of the Independent Advisory Group on Stop and Search.

³⁴³ CERD Concluding Observation, para. 11, 2011. Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.GBR.CO.18-20.pdf> [accessed: 17 March 2016].

Stop and search powers under Section 1 of the Police and Criminal Evidence Act (PACE) and Section 60 of the Criminal Justice and Public Order Act (CJPOA) in England and Wales

234. Under Section 1 of the Police and Criminal Evidence Act (PACE),³⁴⁴ police officers in England and Wales can stop and search a person in public when they have reasonable grounds for suspecting that they will find stolen or prohibited articles.³⁴⁵

235. Section 60 of the Criminal Justice and Public Order Act (CJPOA)³⁴⁶ enables a police officer of or above the rank of inspector in England and Wales to authorise police searches in a defined area for up to 24 hours, if there is:

- 'reasonable belief' that violence may occur, or
- a person in the area carrying a dangerous object or an offensive weapon without good reason.

236. Once authorised, powers under Section 60 CJPOA, and Schedule 7 to the Terrorism Act 2000³⁴⁷ require a lower standard of proof than the 'reasonable suspicion' required for PACE.

The EHRC's partnership with the National College of Policing in England and Wales

237. In March 2010, the EHRC published 'Stop and think', which showed that the police in England and Wales conducted about a million stops and searches of members of the public every year, the great majority under the Police and Criminal Evidence Act 1984 (PACE) and similar laws requiring officers to have 'reasonable grounds for suspicion'. The power has always been controversial, and when 'Stop and think' was published, Asian people were stopped and searched about twice as often as white people, and black people about six times as often. 'Stop and think' also identified geographical differences; for example,

³⁴⁴ Police and Criminal Evidence Act (PACE), 1984. Available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents> [accessed: 17 March 2016].

³⁴⁵ For further operational detail, see EHRC (2010), *Stop and think: A critical review of the use of stop and search powers in England and Wales*. Available at: http://www.equalityhumanrights.com/sites/default/files/documents/raceinbritain/ehrc_stop_and_search_report.pdf [accessed: 17 March 2016].

³⁴⁶ Criminal Justice and Public Order Act (CJPOA), 1994. Available at: <http://www.legislation.gov.uk/ukpga/1994/33/contents> [accessed: 17 March 2016].

³⁴⁷ Schedule 7 of the Terrorism Act, 2000. Available at: <http://www.legislation.gov.uk/ukpga/2000/11/schedule/7> [accessed: 17 March 2016].

little race disproportionality in much of the north of England, and relatively high levels in some southern forces.³⁴⁸

238. Following the report the EHRC identified five forces with particularly high rates of disproportionality for further inquiries.³⁴⁹ The EHRC's 2013 'Stop and think again' report concluded that where firm action had been taken to reduce race disproportionality, and/or overall usage of the power, it had succeeded, without prejudice to falling crime levels. Key steps taken to reduce disproportionality appeared to be:

- targets for reduction, and for reducing negative drug searches
- training in 'reasonable grounds' for, and proportionate use of, the power
- steps to ensure intelligence-led practice rather than practice-based on 'hunches' or generalisations about groups
- micro-monitoring to identify local or individual racially skewed patterns and challenging them, and
- senior level commitment and leadership.³⁵⁰

239. Her Majesty's Inspectorate of Constabulary (HMIC) 2013 inspection of stop and search, covering England and Wales, included a public survey of over 19,000 people, and found that:

- the majority of forces (30) had not developed an understanding of how to use the powers of stop and search so that they were effective in preventing and detecting crime, with too many forces not collecting sufficient information to assess whether or not the use of the powers had been effective
- Twenty-seven per cent of the 8,783 stop and search records examined by HMIC did not include sufficient grounds to justify the lawful use of the power. The reasons for this include: poor understanding amongst officers about what constitutes the 'reasonable grounds' needed to justify a search, poor supervision, and an absence of direction and oversight by senior officers.³⁵¹

240. In April 2014, the Home Secretary commissioned the College of Policing to review the national training on stop and search for all officers and introduce an

³⁴⁸ EHRC (2010), *Stop and think: A critical review of the use of stop and search powers in England and Wales*. Available at: <http://www.equalityhumanrights.com/publication/stop-and-think-critical-review-use-stop-and-search-powers-england-and-wales> [accessed: 8 April 2016].

³⁴⁹ Dorset, Leicestershire, the Metropolitan Police, Thames Valley, and West Midlands.

³⁵⁰ EHRC (2013), *Stop and think again*. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/past-projects/race-britain/stop-and-think-again> [accessed: 7 April 2016].

³⁵¹ HMIC, *Stop and Search Powers: Are the police using them effectively and fairly?* 2013. Available at: www.justiceinspectors.gov.uk/hmic/publication/stop-and-search-powers-20130709/ [accessed: 17 March 2016].

assessment of officers' fitness to use stop and search powers.³⁵² If they fail this assessment, they will not be allowed to use these powers.

241. The EHRC commends the Home Secretary for significantly raising the profile of stop and search and providing additional funding to enable the EHRC to work with the National College of Policing (NCOP) to produce new guidance for police forces on the proper use of stop and search powers.

242. In 2014, the EHRC developed a comprehensive programme of training for police forces, in partnership with the NCOP. As a result, the NCOP has completed a training needs analysis and is piloting a new training programme with six forces.³⁵³ This training is aimed at ensuring police officers have a proper understanding of their statutory duties in relation to stop and search and equality and human rights, with a particular focus on reducing unconscious bias and discrimination against young black and Asian men.³⁵⁴ Officers will be assessed before and after training to measure changes in their understanding. There will also be a survey of members of the public who have been stopped and searched to measure their experience.³⁵⁵

Reduction in use of stop and search but continued disproportionate impact on ethnic minorities in England and Wales

243. The Home Office has recently published stop and search data for 2014/15 for England and Wales.³⁵⁶ While there has been a significant reduction in the overall use of stop and search powers, the EHRC continues to be concerned about the rise in disproportionate use in relation to ethnic minorities. The EHRC believes these powers are an important means of tackling crime, but only if they are used

³⁵² Home Office, Stop and search: Theresa May announces reform of police stop and search, 30 April 2014. Available at: <https://www.gov.uk/government/news/stop-and-search-theresa-may-announces-reform-of-police-stop-and-search> [accessed: 17 March 2016].

³⁵³ College of Policing, New stop and search pilot, 18 September 2015. Available at: http://www.college.police.uk/News/College-news/Pages/stop_and_search_pilot.aspx [accessed: 7 March 2016].

³⁵⁴ EHRC, Commission to support Police with new Stop and Search training, 24 March 2015. Available at: <http://www.equalityhumanrights.com/commission-support-police-new-stop-and-search-training> [accessed: 8 April 2016].

³⁵⁵ EHRC, Commission to support Police with new Stop and Search training, 24 March 2015. Available at: <http://www.equalityhumanrights.com/commission-support-police-new-stop-and-search-training> [accessed: 8 April 2016].

³⁵⁶ Home Office, Police powers and procedures England and Wales year ending 31 March 2015: data tables. November 2015. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2015> [accessed: 17 March 2016].

legitimately and proportionately. If they are not, there is a risk they may contribute to tensions between communities and the police.³⁵⁷

244. Overall, the use of Section 1 of PACE powers has decreased from 1,229,324 searches in 2010/11, to 539,788 searches in 2014/15.³⁵⁸ However, overall race disproportionality in England and Wales has increased, making it up to five times more likely for a black person to be stopped and searched than a white person. Dorset had the highest disproportionality, with black people being 12.7 times more likely to be stopped than white people.³⁵⁹ There is still significant variation across all force areas.

The 'Best Use of Stop and Search' Scheme in England and Wales

245. The EHRC welcomes a range of initiatives from the Home Office to increase the transparency of the use of stop and search powers, through a Best Use of Stop and Search Scheme³⁶⁰ to which all England and Wales police forces have signed up. The Scheme includes:

- recording the outcome of searches in more detail to show the link – or lack of a link – between the object of the search and its outcome (such as penalty notices and cautions), allowing an assessment of how well forces interpret 'reasonable grounds for suspicion'
- sharing best practice amongst police forces
- allowing members of the public to apply to accompany officers on patrol to help improve the community's understanding of the police, and
- introduction of a stop and search complaints 'community trigger' so forces must explain to the public how powers are used if they receive a large volume of complaints.³⁶¹

³⁵⁷ See, for example, Riots Communities and Victims Panel, *After the Riots: The final report of the Riots Communities and Victims Panel*, 2012. Available at: <http://webarchive.nationalarchives.gov.uk/20121003195935/http://riotspanel.independent.gov.uk/> [accessed: 17 March 2016].

³⁵⁸ Home Office, *Police powers and procedures England and Wales year ending 31 March 2015: data tables*. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2015-data-tables> [accessed: 17 March 2016].

³⁵⁹ Home Office, *Police powers and procedures England and Wales year ending 31 March 2015: data tables*. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2015-data-tables> [accessed: 17 March 2016].

³⁶⁰ Home Office and College of Policing, *Best Use of Stop and Search Scheme*. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346922/Best_Use_of_Stop_and_Search_Scheme_v3.0_v2.pdf [accessed: 17 March 2016].

³⁶¹ Home Office, *Police Powers of Stop and Search Summary of Consultation Responses and Conclusions*, April 2014. Available at:

246. Her Majesty's Inspectorate of Constabulary's 'PEEL: Police legitimacy' report for 2015 found, however, that 13 of the 43 forces in England and Wales were not complying with three or more of the five requirements of the Best Use of Stop and Search Scheme. Furthermore, 15% of the stop and search records did not record reasonable grounds. While this is an improvement from the 2013 report where 27% did not record reasonable grounds, it was found that many of the failed records had been endorsed by a supervisor.³⁶²

Stop and search in Scotland

247. There are two types of police stop and search powers in Scotland. Statutory powers of search apply when a police officer believes someone to be committing a crime by carrying an item illegally. A variety of legislation confers statutory powers of search, and statutory powers to require the surrender of items. Second, across Great Britain, non-statutory stop and search requires a police officer to request someone to give their permission for a consensual search to take place.

248. Police Scotland instigated a high profile programme of stop and search of young people in 2013 with a view to reducing crime. As a result of the policy, the total number of stop and searches conducted in Scotland rose significantly. This policy attracted considerable criticism from communities, politicians and the SHRC.³⁶³

249. In 2014, the Scottish Police Authority (SPA) published 12 recommendations aimed at improving the targeting, effectiveness, and transparency of the use of stop and search tactics by Police Scotland. SPA highlighted a number of areas for improvement around targeting, proportionality, training, data gathering, transparency and consent.³⁶⁴

250. In March 2015, HM Inspectorate of Constabulary in Scotland published an 'Audit and Assurance Review of Stop and Search – Phase 1', finding a lack of

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/307545/StopSearchConsultationResponse.pdf [accessed: 17 March 2016].

³⁶² HMIC, PEEL: Police legitimacy 2015, February 2016. Available at:

<https://www.justiceinspectors.gov.uk/hmic/publications/police-legitimacy-2015/> [accessed: 17 March 2016].

³⁶³ BBC, Stop and searches 'four times more common in Scotland', 17 January 2014. Available at: <http://www.bbc.co.uk/news/uk-scotland-25774462> [accessed: 14 April 2016].

³⁶⁴ Scottish Police Authority, Scrutiny review – Police Scotland's Stop and Search Policy and Practice. 2014. Available at: <https://www.glasgowcpp.org.uk/index.aspx?articleid=11902> [accessed: 9 March 2016].

guidance and governance covering the use and recording of stop and search and an unreliable dataset held by Police Scotland. The report made a number of recommendations to address the issues it identified.³⁶⁵

251. The UN Human Rights Committee stated in July 2015 that it was ‘concerned about the use of stop and search powers in Scotland, particularly non-statutory searches undertaken on a large scale by Police Scotland, that appear to involve, inter alia, the selective application of such measures in a manner which is allegedly unlawful and disproportionate’.³⁶⁶

252. In August 2015, Police Scotland admitted that they could not rely on the ethnicity data and are now reintroducing a revised approach to all forms of data collection associated with stop and search, including the ethnicity data.³⁶⁷ Since then, the EHRC has been advising Police Scotland on their equality impact assessment of Stop and Search, and the ethnic data they are collecting seems to be more accurate than previously and does not indicate any ethnic disproportionality. Police Scotland are gathering and analysing this data on a monthly basis.

253. In March 2015, the Scottish Government established an Independent Advisory Group on Stop and Search to examine the use of stop and search powers in Scotland.³⁶⁸ On 21 March 2016, the Scottish Government launched two consultations on stop and search. One is on a draft Code of Practice for the use of stop and search,³⁶⁹ and the other is on whether the police should be given new powers to search children and young people for alcohol.³⁷⁰ Both consultations were recommended by the Independent Advisory Group and are linked to provisions in the Criminal Justice (Scotland) Act 2016.³⁷¹ The consultations will be open until 15 July 2016. Once the Code of Practice comes into effect early in 2017, non-statutory stop and search will end in Scotland.

254. The EHRC recommends that the Committee ask the UK Government to:

³⁶⁵ HMICS, HMICS – Audit and Assurance Review of Stop and Search – Phase 1, 30 March 2015. Available at: <http://www.hmics.org/publications/hmics-audit-and-assurance-review-stop-and-search-phase-1#sthash.N5e3BfGo.dpuf> [accessed: 14 April 2016].

³⁶⁶ ICCPR Concluding Observation, para. 11.

³⁶⁷ Advisory group on Stop and Search, The report of the Advisory Group on Stop and Search, 2015. Available at: www.gov.scot/Resource/0048/00484527.pdf [accessed: 9 March 2016].

³⁶⁸ Advisory group on Stop and Search, The report of the Advisory Group on Stop and Search, 2015. Available at: www.gov.scot/Resource/0048/00484527.pdf [accessed: 9 March 2016].

³⁶⁹ Scottish Government, Consultation on a Draft Code of Practice for Stop and Search. Available at: <http://www.gov.scot/Publications/2016/03/4064> [accessed: 20 June 2016].

³⁷⁰ Scottish Government, Police Powers to Search Children and Young People for Alcohol. Available at: <https://consult.scotland.gov.uk/organised-crime-and-police-powers-unit/under18search> [accessed: 20 June 2016].

³⁷¹ Criminal Justice (Scotland) Act 2016. Available at: <http://www.legislation.gov.uk/asp/2016/1/contents/enacted> [accessed: 20 June 2016].

- a) hold police chiefs and Police and Crime Commissioners in England and Wales to account for the scrutiny and oversight of stop and search by legislating for the Best Use of Stop and Search Scheme and/or by making the scheme a formal element of HMIC inspection**
- b) amend PACE³⁷² so that ‘more thorough searches’ under Code A be subject to supervisory authorisation.**
- c) where race disproportionality is high, the police force concerned should engage with all relevant stakeholders to work with the force to take appropriate action. This should include the appropriate level of governance and implementing programmes of monitoring, training and scrutiny to ensure they use the power in a lawful, non-arbitrary, non-discriminate manner and on the basis of reasonable suspicion.³⁷³**

³⁷² Police and Criminal Evidence Act (PACE), 1984. Available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents> [accessed: 17 March 2016].

³⁷³ EHRC, Response to the Home Office consultation on police powers of stop and search, September 2013. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/consultation-responses> [accessed: 17 March 2016].

Violence against women and girls (Articles 2, 5(b))

255. The CEDAW Committee (2013) recommended the UK increase its efforts to protect women, including ethnic minority women, against all forms of violence, including domestic violence and so-called 'honour killings'.³⁷⁴
256. The UN Human Rights Committee (2015) expressed concern about 'continued reports of violence against women, including domestic violence and rape ... affecting mainly black and ethnic minority women'. The Committee recommended the UK should strengthen measures aimed at preventing and combating violence against women, including by 'ensuring that all domestic violence cases, in all UK territories and dependencies, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions'.³⁷⁵
257. Efforts to tackle violence against women cover areas of devolved and non-devolved legislation.
258. This section of the report refers to:
- Violence Against Women and Girls (VAWG) strategies and action plans across England, Scotland and Wales, and
 - measures to address forced marriage and female genital mutilation.

VAWG strategies and action plans

259. In the Crime Survey for England and Wales (CSEW) in 2012/13, 4.6% of Black respondents had reported experiencing domestic violence compared to 3.2% of White respondents and 1.5% of Asian respondents. A lower percentage

³⁷⁴ CEDAW CO, para. 35.

³⁷⁵ Concluding Observations for the UK by the UN Human Rights Committee, July 2015, para. 13. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-civil-and> [accessed: 20 June 2016].

of ethnic minority respondents as a whole, however(1.4%), reported experiencing domestic violence, compared to White respondents (3.1%).³⁷⁶ Data disaggregated by ethnicity is not available for Scotland.

260. The UK Government has adopted the ‘Call to end violence against women and girls’ strategy to address VAWG in England and Wales, which is accompanied by an action plan. In March 2015, the UK Government published its progress report, outlining action that it has taken to implement the strategy. For example, in response to evidence of under-reporting of exploitation and abuse in ethnic minority communities, DCLG set up a £250,000 ‘Empowering Women’ fund. Voluntary and community sector groups were invited to bid for funding to support exemplary projects across the country that will help give women, especially in hard to reach groups, the confidence to challenge sexual abuse wherever it occurs. This new fund opened for applications in March 2015.³⁷⁷

261. In Scotland, the ‘Equally Safe’ Strategy sets out Scotland's strategy to take action on all forms of violence against women and girls. While the overarching aim is to prevent and eradicate violence against women and girls, it identifies key priority areas. The strategy sets out some early commitments, and explains how a phased approach will help ensure that the longer-term change is sustained.³⁷⁸ A March 2016 review of the strategy included adding a section on intersectionality.

262. The EHRC notes that the Welsh³⁷⁹ and Scottish³⁸⁰ Governments have developed their own separate VAWG strategies, and the Welsh Government has passed the Violence against Women, Domestic Abuse and Sexual Violence

³⁷⁶ CSEW is a self-reported victimisation survey in which people are asked about their experiences of crime. The overall sample size for the CSEW was reduced from 46,000 households per year in the year ending March 2012 to 35,000 households in the year ending March 2013. See User Guide to Crime Statistics for England and Wales, October 2015. Available at: <http://www.ons.gov.uk/ons/guide-method/method-quality/specific/crime-statistics-methodology/user-guide-to-crime-statistics.pdf> [accessed: 14 April 2016]; The CSEW employ the term ‘non-white’, meaning all ethnic groups excluding White ethnic groups as defined by the Office for National Statistics. EHRC, *Is Britain Fairer?* Physical Security Domain Paper, p. 98. Available at: <http://www.equalityhumanrights.com/about-us/our-work/key-projects/britain-fairer/britain-fairer-supporting-evidence> [accessed: 14 April 2016].

³⁷⁷ HM Government (2015), A Call to End Violence against Women and Girls Progress Report 2010 – 15. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/409510/VAWG_Progress_Report_2010-2015.pdf [accessed: 14 April 2016].

³⁷⁸ Scottish Government (2014), Equally safe. Available at: <http://www.gov.scot/Publications/2014/06/7483> [accessed: 20 June 2016].

³⁷⁹ Welsh Government (2010), The Right to be Safe. Available at: <http://gov.wales/topics/people-and-communities/communities/safety/domesticabuse/publications/besafe/?lang=en> [accessed: 20 June 2016].

³⁸⁰ The Scottish Government (2014), Equally Safe: Scotland’s strategy for preventing and eradicating violence against women and girls. Available at: <http://www.gov.scot/Resource/0045/00454152.pdf> [accessed: 20 June 2016].

(Wales) Act 2015. In March 2016, the Scottish Parliament passed the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.³⁸¹

263. In the report of her recent visit to the UK, the UN Special Rapporteur on violence against women noted areas for improvement and recommended that the UK Government develop, in consultation with women's organisations and experts, 'implementation plans directed at key governmental departments', in order to strengthen the VAWG strategy and related action plans.³⁸² In this context, the EHRC welcomes the UK Government's March 2016 Ending Violence against Women and Girls strategy 2016–2020, increasing the committed funding to £80 million in England and Wales to protect women and girls from violence.³⁸³ The Scottish Government also highlighted £12 million of funding to provide financial support to help with measures to tackle all forms of violence against women.³⁸⁴

Measures to address forced marriage³⁸⁵

264. The Forced Marriage Unit (FMU), a joint Foreign and Commonwealth Office and Home Office unit, was set up in 2005 to lead on the UK Government's forced marriage policy, outreach and casework.³⁸⁶

265. Forced marriage was made a criminal offence in England and Wales on 16 June 2014. The Anti-social Behaviour, Crime and Policing Act 2014, which applies to England and Wales, makes it a criminal offence to force someone to marry. This includes:

³⁸¹ Abusive Behaviour and Sexual Harm (Scotland) Act 2016. Available at:

<http://www.legislation.gov.uk/asp/2016/22/contents/enacted> [accessed: 20 June 2016].

³⁸² Manjoo, R. (2015), Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para. 107. Available at:

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx> [accessed: 20 June 2016].

³⁸³ HM Government (2016), Ending Violence against Women and Girls Strategy 2016–2020. Available at: <https://www.gov.uk/government/news/80-million-to-stop-violence-against-women-and-girls> [accessed: 13 April 2016].

³⁸⁴ This includes projects delivering frontline services or building capacity in local partnerships to strengthen responses to violence against women. Scottish Government, Violence Against Women Funding 2015/2016. Available at:

<http://www.gov.scot/Topics/People/Equality/Funding/funding/ViolenceAgainstWomenFunding> [accessed: 13 April 2016].

³⁸⁵ Family Life Briefing Paper, p. 48.

³⁸⁶ The FMU operates both inside the UK, where support is provided to any individual, and overseas, where consular assistance is provided to British nationals, including dual nationals Gov.uk, Law and the justice system – guidance: Forced marriage, 8 June 2015. Available at: <https://www.gov.uk/guidance/forced-marriage> [accessed: 20 June 2016].

- taking someone overseas to force them to marry (whether or not the forced marriage takes place)
- marrying someone who lacks the mental capacity to consent to the marriage (whether they're pressured to or not)
- breaching a Forced Marriage Protection Order. The civil remedy of obtaining a Forced Marriage Protection Order through the family courts will continue to exist alongside the new criminal offence, so victims can choose how they wish to be assisted.³⁸⁷

266. In Scotland, forced marriage protection orders were introduced in November 2011³⁸⁸ and, from 30 September 2014, forcing someone into marriage was made a criminal offence, under the Anti-social Behaviour, Crime and Policing Act 2014.

267. The Special Rapporteur on violence against women highlighted in her UK Country Report (2015) that 'forced and early marriage affects a wide range of communities in the United Kingdom, including the Irish Traveller community, as well as Afghan, South Asian, Kurdish, Iraqi Kurd, Arab and some African communities. Some interlocutors believe that only some of these communities are targeted by existing policy and service frameworks and other marginalised communities are not included in the discussions and efforts to address the problem'.³⁸⁹

Measures to address female genital mutilation (FGM)

268. The Special Rapporteur on violence against women conducted interviews in the UK in 2015, finding that 'women victims of harmful practices, especially from black and minority ethnic and refugee communities, are more likely to view their experience within the context of family or community expectation, rather than as a form of abuse. Socialisation, dependency and the "normalization" of certain practices contribute to the silence of young women and girls in particular'.³⁹⁰

269. The UK Government has taken steps to address FGM in England and Wales. FGM has been unlawful in England, Scotland and Wales since 1985. FGM is

³⁸⁷ Section 122, Anti-social Behaviour, Crime and Policing Act 2014. Available at: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted> [accessed: 20 June 2016].

³⁸⁸ Forced Marriage etc. (Protection and Jurisdiction)(Scotland) Act 2011. Available at: <http://www.legislation.gov.uk/asp/2011/15/contents/enacted> [accessed: 20 June 2016].

³⁸⁹ SR VAWG, para 107.

³⁹⁰ Report of the Special Rapporteur on violence against women, its causes and consequences: Mission to the United Kingdom of Great Britain and Northern Ireland, para. 107. Available at: <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx> [accessed: 13 April 2016].

criminalised in England and Wales by the Female Genital Mutilation Act 2003.³⁹¹ This law has been extended by the Serious Crime Act 2015 which introduced a power to make a protection order to protect potential or actual victims of FGM.³⁹² FGM is criminalised in Scotland by The Prohibition of Female Genital Mutilation (Scotland) Act 2005.

270. Offences under both Acts have extra-territorial effect. Section 70 of the Serious Crime Act 2015, amended the Female Genital Mutilation Act 2003 and the Prohibition of Female Genital Mutilation (Scotland) Act 2005, extending the extra-territorial offences in both Acts to apply to habitual (as well as permanent) UK residents.
271. In November 2012, the Crown Prosecution Service for England and Wales published an action plan on improving prosecutions for FGM following his roundtable meeting with experts in September 2012.³⁹³ In February 2016, the Scottish Government produced a National Action Plan to Prevent and Eradicate FGM.³⁹⁴
272. The Welsh Government has taken steps to tackle FGM through initiatives aimed 'to raise awareness, develop the knowledge of professionals and support communities to break down barriers'.³⁹⁵
273. The EHRC regards the existing international and domestic legal frameworks as being sufficient to tackle FGM. Action to tackle this human rights abuse would be more effective if there were a comprehensive and co-ordinated UK-wide

³⁹¹ This replaced the UK-wide Prohibition of Female Circumcision Act 1985. The Female Genital Mutilation Act 2003 applies to England, Wales and Northern Ireland. See Female Genital Mutilation Act 2003. Available at: <http://www.legislation.gov.uk/ukpga/2003/31/contents> [accessed: 13 April 2016].

³⁹² Serious Crime Act 2015, s 73. Available at:

<http://www.legislation.gov.uk/ukpga/2015/9/contents/enacted> [accessed: 13 April 2016].

³⁹³ CPS, Female Genital Mutilation action plan launched. 2012. Available at:

http://cps.gov.uk/news/latest_news/female_genital_mutilation_action_plan_launched/ [accessed: 20 June 2016].

³⁹⁴ Scottish Government, Scotland's National Action Plan to combat FGM (2016), Available at:

<http://www.gov.scot/Resource/0049/00493752.pdf> [accessed: 9 March 2016].

³⁹⁵ This has included funding an all-Wales service to provide specialist and holistic support to ethnic minority communities, which included providing training on the issue to frontline staff, as well as the production of an FGM toolkit for professionals and parents as a teaching aid. Available at:

<http://gov.wales/newsroom/educationandskills/2014/140310fgmletter/?lang=en> [accessed: 9 March 2016].

strategy in place which recognises the different legislation, policy, reporting and support systems across the countries.³⁹⁶

Ratification of the Istanbul Convention

274. The Council of Europe Convention on preventing and combating violence against women and domestic violence ('the Istanbul Convention') was adopted by the Council of Europe Committee of Ministers on 7 April 2011.³⁹⁷ In November 2015, the UK Government stated that it would only commit to ratification of the Istanbul Convention when it was 'absolutely satisfied' that it complied with all articles. The UK Government highlighted that primary legislation is required to comply with the extra-territorial jurisdiction provision set out in Article 44 of the Convention, and that it was liaising with the devolved administrations about ratification, including the further legislative steps required.³⁹⁸

275. **The Committee should ask the UK Government to:**

- a) make Personal, Social and Health Education (PSHE) a statutory subject, and part of the National Curriculum in England; and to improve the quality of PSHE and ensure that it promotes knowledge and understanding of human rights in relation to violence against women and girls**
- b) outline the extent to which UK, Scottish and Welsh law, policy and practice are compliant with the Istanbul Convention and what more needs to be done to enable the UK to ratify the Istanbul Convention and ensure its effective implementation. For example:**

³⁹⁶ EHRC, Children's Rights in the UK, August 2015, pp. 21–23. Further information on the EHRC's position can be found in our submission to the Home Affairs Select Committee inquiry on FGM. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/submission-home-affairs-select-committee-inquiry-female-genital-mutilation> [accessed: 11 April 2016].

³⁹⁷ Council of Europe, About the Convention: Historical background. Available at: <http://www.coe.int/en/web/istanbul-convention/historical-background> [accessed: 20 June 2016].

³⁹⁸ Parliamentary Under-Secretary of State Karen Bradley, Home Office, 23 November 2015. Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-11-17/16621/> [accessed: 20 June 2016].

- **improvements to data collection and analysis on all forms of VAWG, alongside population surveys to determine the prevalence of such crimes**³⁹⁹
- **addressing the systematic problems in the training of professionals who deal with VAWG cases,**⁴⁰⁰ and
- **the establishment of an adequately resourced full-time co-ordinating body with a UK-wide strategy and action plan.**

The Committee should ask the UK Government and Scottish Government to:

- c) supply information about monitoring of the delivery of VAWG strategies and services by local public agencies to ensure compliance with the UK's international human rights obligations.**⁴⁰¹

³⁹⁹ EHRC. Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights Inquiry into violence against women and girls, p. 5. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against> [accessed: 20 June 2016].

⁴⁰⁰ See, for example, HMIC (2013), Essex Police's Approach to Managing Cases of Domestic Abuse. Available at: www.hmic.gov.uk/publication/essex-polices-approach-to-managing-cases-of-domestic-abuse/ [accessed: 9 March 2016]; Government Equalities Office (2010), A Report by Baroness Vivienne Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales. Available at: http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf [accessed: 9 March 2016].

⁴⁰¹ EHRC Submission to the UN Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 69. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 20 June 2016].

Institutional detention (Articles 2 and 5)

276. The CERD Committee did not make a specific recommendation for the experiences of ethnic minorities in different types of detention, although immigration detention has been a priority in the EHRC's recent submissions to the UN.

277. Justice and policing is devolved in Scotland, but immigration detention is reserved to the UK Government.

278. This section of the report refers to:

- criminal justice statistics on prosecution and sentencing of ethnic minority groups including children
- use of immigration detention with no statutory time limit or judicial oversight
- detention of vulnerable asylum applicants, such as torture and trafficking victims, people with serious medical conditions or mental illness, and women, including pregnant women, and
- the continued detention of children in immigration facilities despite a UK Government policy outlawing it.

Criminal justice

279. In November 2015, the MoJ released statistics on race and the criminal justice system in England and Wales. Relative to the population, the rates of prosecution and sentencing for the Black ethnic group were three times higher than for the White group, while for the Mixed group they were twice as high, mirroring arrests. In contrast, White and Chinese and Other offenders had the highest conviction ratios, consistently for the past five years. The study found variation in custody rates across ethnic groups and offence groups.⁴⁰²

⁴⁰² Ministry of Justice, Race and the criminal justice system: 2014, 26 November 2015. Available at: <https://www.gov.uk/government/statistics/race-and-the-criminal-justice-system-2014> [accessed: 1 March 2016]. Comparable information for Scotland is unavailable.

280. In June 2015, Youth Justice Board (YJB) statistics for England and Wales showed that during 2014–15, 40% of prisoners aged under 18 were from black, Asian, mixed race or ‘other’ ethnicity backgrounds.⁴⁰³
281. The EHRC welcomes the UK Government’s announcement in January 2016 of the Lammy review of racial bias and black and minority ethnic representation in the criminal justice system in England and Wales. The UK Government stated that the review ‘will address issues arising from the point of arrest onwards, including through the court system, in prisons and during rehabilitation in the wider community, in order to identify areas for reform and examples of good practice from the UK and beyond’. The review will report back in spring 2017.⁴⁰⁴
282. Prison statistics for Scotland from 2013 found that the proportion of people from ethnic minority groups in prison is somewhat higher than the proportion in the overall population. Minority groups comprised almost 3.9% of the prison population in 2011–12, compared to an estimate of 3.2% of the population in the 2009–10 *Scottish Household Survey*.⁴⁰⁵

Immigration detention

283. The EHRC is not convinced that immigration detention is being used sparingly and for the shortest period possible,⁴⁰⁶ in line with Article 5 of the CERD, CERD’s General Recommendation XXX on discrimination against non-citizens,⁴⁰⁷ Article 9 of the ICCPR and Article 5 (right to liberty and security) of the ECHR. In the last six years, the number of people entering immigration removal centres (IRCs) has

⁴⁰³ The statistics cover young offender institutions, secure detention centres and secure training centres in England and Wales. *Guardian*, Sharp rise in the proportion of young black and ethnic minority prisoners, 24 June 2015. Available at: <http://www.theguardian.com/society/2015/jun/24/rise-proportion-black-ethnic-minority-young-prisoners-stop-and-search> [accessed: 8 March 2016].

⁴⁰⁴ UK Government, Press release: Review of racial bias and BAME representation in criminal justice system announced, 31 January 2016. Available at: <https://www.gov.uk/government/news/review-of-racial-bias-and-bame-representation-in-criminal-justice-system-announced> [accessed: 8 March 2016]. See also Ministry of Justice, Lammy Review of BAME representation in the Criminal Justice System: call for evidence. Available at: <https://consult.justice.gov.uk/digital-communications/lammy-review-of-bame-representation-in-cjs> [accessed: 14 April 2016].

⁴⁰⁵ Scottish Government, Scottish Government Equality Outcomes: Ethnicity Evidence Review. Available at: <http://www.gov.scot/Publications/2013/06/1953/0> [accessed: 13 April 2016].

⁴⁰⁶ UK Visas and Immigration (2013), Enforcement Instructions and Guidance. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf [accessed: 13 April 2016].

⁴⁰⁷ The Committee on the Elimination of Racial Discrimination, General recommendation XXX on discrimination against non-citizens, Sixty-fifth session (2005), in particular paragraphs 19 and 36. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7502&Lang=en [accessed: 13 April 2016].

increased by 71%, from 15,922 people in 2009 to 27,203 people in 2015.⁴⁰⁸ In 2015, 38% of detainees had been held between 29 days to over two years.⁴⁰⁹ The EHRC considers that there needs to be a presumption towards community-based resolutions rather than detention, and that the UK Government should learn from international best practice where alternatives to detention have been found to be an effective and more holistic solution.⁴¹⁰

Lengthy immigration detention

284. Contrary to the UNHCR Detention Guidelines,⁴¹¹ the UK has set no time limit to immigration detention and it has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months.⁴¹² During the year ending September 2015, 221 people had been in immigration detention between one and two years and 32 people for two years or longer.⁴¹³ The Home Office does not collect data on the length of time immigration detainees are held in prisons under immigration powers. Deprivation of liberty for extended periods can have a significant impact on the mental and physical health of those detained in the immigration system, many of whom live with the uncertainty of not knowing if they are about to be deported or released.⁴¹⁴

285. We agree with the recommendation from the All Party Parliamentary Group on Refugees and the All Party Parliamentary Group on Migration's 2015 inquiry

⁴⁰⁸ Home Office. Immigration Statistics October to December 2015, Table dt_01. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed: 13 April 2016].

⁴⁰⁹ Home Office. Immigration Statistics. October to December 2015, Table dt_06. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed: 13 April 2016].

⁴¹⁰ See, for example, A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration, 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. Available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> [accessed: 20 June 2016].

⁴¹¹ UNHCR (2012), Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention: www.unhcr.org/505b10ee9.html

⁴¹² European Returns Directive 2008. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF> [accessed: 20 June 2016].

⁴¹³ Home Office. Immigration Statistics. July to September 2015. Available at: <https://www.gov.uk/government/publications/immigration-statistics-july-to-september-2015/detention> [accessed: 20 June 2016].

⁴¹⁴ EHRC (2012). Human Rights Review, Article 5. Available at: <https://www.equalityhumanrights.com/en/our-human-rights-work/human-rights-review-2012> [accessed: 20 June 2016].

report on immigration detention that the maximum time limit should be set in statute at 28 days.⁴¹⁵

286. The new Immigration Act 2016 will introduce a statutory duty to refer an immigration detainee for a bail hearing if they have been detained for more than four months and have not applied for bail during that period, and every four months thereafter. However there are excluded groups, including those who have been sentenced to imprisonment for a term of 12 months or longer, or those whom the Secretary of State has decided to deport.⁴¹⁶

Detained Fast Track

287. The Detained Fast Track (DFT) was designed to detain asylum seekers in order to process their applications quickly. In 2012, the UN High Commissioner of Refugees (UNHCR) and CAT criticised the UK's use of the DFT for asylum applicants for administrative convenience rather than last resort, and the lack of adequate safeguards to guarantee fairness of procedure and quality decision-making.⁴¹⁷

288. The system was suspended following a Court of Appeal ruling in 2015 that the tight time limits for appeals in the DFT made the appeal scheme 'structurally unfair and unjust.'⁴¹⁸ The Court of Appeal had previously stated its view that the automatic detention of asylum seekers in the DFT system while their appeals were being processed and when they posed no risk of absconding could not be justified.⁴¹⁹

⁴¹⁵ A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. Available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> [accessed: 20 June 2016].

⁴¹⁶ Immigration Act 2016. Available at: <http://www.legislation.gov.uk/ukpga/2016/19/contents/enacted> [accessed: 19 June 2016].

⁴¹⁷ UN High Commissioner of Refugees, Statement, 2012. Available at: http://www.unhcr.org/fileadmin/user_upload/pdf/DFT_PressRelease.pdf [accessed: 9 March 2016]; Concluding Observations of the Committee Against Torture for the United Kingdom of Great Britain and Northern Ireland, May 2013, para. 30. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fGBR%2fCO%2f5&Lang=en [accessed: 20 June 2016].

⁴¹⁸ *The Lord Chancellor v Detention Action v Secretary of State for the Home Department* [2015] EWCA Civ 840, para. 45. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2015/840.html>

⁴¹⁹ *Detention Action v Secretary of State for the Home Department* [2014] EWCA Civ 1634 (16 December 2014), para. 96. Available at: <http://www.bailii.org/ew/cases/EWCA/Civ/2014/1634.html> [accessed: 20 June 2016].

289. The EHRC welcomes the suspension of the DFT system in July 2015, but notes that the UK Government intends to reintroduce a revised DFT system as soon as possible.⁴²⁰ The EHRC considers that fast tracking the processing of asylum claims entails an inherent risk that vulnerable applicants and complex cases will be inappropriately included in the system. Immigration detention should also only be used as a last resort, and not for administrative convenience.

Conditions of immigration detention

i. Immigration detention of people with serious medical conditions or mental illness

290. The current detention guidance states that persons with serious mental illness should only be detained in very exceptional circumstances unless their condition 'can be satisfactorily managed in immigration detention'.⁴²¹ However the EHRC notes there are still failings that prevent the most vulnerable detainees from being properly assessed and released when detention will be detrimental to their wellbeing.⁴²²

291. In January 2016, the UK Government published an independent review of the impact of immigration detention policies and operating procedures on the welfare of immigration detainees, which was conducted by Stephen Shaw, a former Prisons and Probation Ombudsman for England and Wales, and included 64 specific recommendations for improvements.⁴²³ Mr Shaw observed 'that people with serious mental illness continue to be held in detention and that their treatment and care does not and cannot equate to good psychiatric practice'.⁴²⁴

⁴²⁰ House of Commons Written Statement (HCWS83) made by The Minister of State for Immigration (James Brokenshire), 2 July 2015. Available at: <http://www.parliament.uk/documents/commons-vote-office/July%202015/2%20July/6-Home-Asylum.pdf> [accessed: 20 June 2016].

⁴²¹ UK Visas and Immigration (2013), Enforcement Instructions and Guidance, s.55.10 'Persons unsuitable for detention'. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf [accessed: 20 June 2016].

⁴²² HMCIP, July 2015. Annual Report 2014–15. Available at: <http://www.justiceinspectorates.gov.uk/hmiprison/inspections/annual-report-2014-15/> [accessed: 20 June 2016].

⁴²³ Shaw, S. (2016), 'Review into the Welfare in Detention of Vulnerable Persons: A report to the Home Office'. Available at: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed: 2 February 2016].

⁴²⁴ Shaw Report, January 2016, Recommendation 11, pp. 88–89. Available at: <https://www.gov.uk/government/publications/review-into-the-welfare-in-detention-of-vulnerable-persons> [accessed: 2 February 2016].

292. In May 2016, the UK Government announced new reforms relating to the detention of vulnerable people, including a new ‘adults at risk’ policy and new safeguarding teams to ‘provide an extra level of scrutiny of the cases of detained vulnerable people’. The UK Government also intends to ask Stephen Shaw to carry out a short review in order to assess progress against the key actions from his previous independent report.⁴²⁵

ii. Immigration detention of women

293. The EHRC notes that in 2015 4,634 women entered immigration detention.⁴²⁶ There is evidence that staff are failing to follow Home Office detention guidance that pregnant women should only be detained in exceptional circumstances,⁴²⁷ or to recognise survivors of rape and other forms of gender-related violence as being unsuitable for detention.⁴²⁸ The Immigration Act 2016 will introduce a detention time limit of 72 hours for pregnant women, extendable up to one week with ministerial approval.

294. The recent All Party Parliamentary Group (APPG) inquiry report into immigration detention highlighted a number of issues particular to the detention of women.⁴²⁹ Evidence provided to the inquiry indicates that the vast majority of women in immigration detention centres have been victims of gender-related persecution in their home countries. However, survivors of sexual violence are not explicitly included in the categories of people who are not suitable for detention as set out in the Home Office’s Enforcement Instructions and

⁴²⁵ Lord Keen of Elie, Lords Spokesperson, Home Office, Hansard, 10 May 2016. Available at: <https://hansard.parliament.uk/lords/2016-05-10/debates/16051037000419/ImmigrationBill> [accessed: 19 May 2016].

⁴²⁶ Home Office Immigration Statistics, October to December 2015, Table dt_01_q. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed: 19 May 2016].

⁴²⁷ Enforcement Instructions and Guidance. 55.10. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf [accessed: 19 May 2016].

⁴²⁸ HMCIP Report on an unannounced inspection of Yarl’s Wood, 12 August 2015, pp. 17 and 37. Available at: <https://www.justiceinspectorates.gov.uk/hmiprison/inspections/yarls-wood-immigration-removal-centre/>; APPG inquiry; A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. See e.g. pp. 60 and 63. Available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf>

⁴²⁹ A Joint Inquiry by the All Party Parliamentary Group on Refugees & the All Party Parliamentary Group on Migration. 2015, p. 64. The report of the inquiry into the Use of Immigration Detention in the United Kingdom. Available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> [accessed: 20 June 2016].

Guidance.⁴³⁰ This is contrary to guidelines from the UNHCR⁴³¹ and the Istanbul Convention.⁴³²

295. Yarl's Wood, an immigration removal centre for women, has faced a series of allegations of sexual abuse by staff against detainees, including a 2014 investigation by the Home Office's professional standards unit. Following the unit's investigation, two staff were dismissed for sexual relations with a detainee.⁴³³ Women for Refugee Women has reported that in June 2014, management of Yarl's Wood informed them that 31 allegations of sexual contact had been investigated and 10 staff had been dismissed.⁴³⁴

296. In March 2015, Channel 4 News broadcasted an undercover documentary on Yarl's Wood identifying staff racism, the high rate of self-harm, and a lack of decency and care for detained women.⁴³⁵ Following the documentary, Serco (the private company that manages Yarl's Wood on behalf of the Home Office) suspended one member of staff⁴³⁶ and commissioned an independent investigation of the IRC.⁴³⁷ The investigation report found serious concerns with staffing arrangements including capacity, training, and an inadequate proportion of female officers to care for women at Yarl's Wood.⁴³⁸

⁴³⁰ Enforcement Instructions and Guidance. 55.10. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf [accessed: 20 June 2016].

⁴³¹ UNHCR (2012), Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, p. 33. Available at: www.unhcr.org/505b10ee9.htm [accessed: 20 June 2016].

⁴³² Article 60, Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e> [accessed: 20 June 2016].

⁴³³ HMIP (2014), Annual Report. Available at: http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf [accessed: 20 June 2016].

⁴³⁴ Evidence to the Inquiry into the Use of Immigration Detention in the United Kingdom, p. 65. Available at: <https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf> [accessed: 20 June 2016].

⁴³⁵ Channel 4, Yarl's Wood: undercover in the secretive immigration centre, 2 March 2015. Available at: <http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation> [accessed: 22 March 2016].

⁴³⁶ Channel 4, Yarl's Wood: undercover in the secretive immigration centre, 2 March 2015. Available at: <http://www.channel4.com/news/yarls-wood-immigration-removal-detention-centre-investigation> [accessed: 22 March 2016].

⁴³⁷ Serco, Media Release: Yarl's Wood: Serco appoints Kate Lampard to carry out Independent Review, 2 March 2015. Available at: www.serco.com/Images/013_Yarl's%20Wood%20Serco%20appoints%20Kate%20Lampard%20to%20carry%20out%20Independent%20Review_tcm3-46380.pdf [accessed: 22 March 2016].

⁴³⁸ Independent investigation into concerns about Yarl's Wood immigration removal centre, Kate Lampard CBE and Ed Marsden, and Kate Lampard's statement on the report findings, 14 January

Immigration detention of children

297. Families who do not voluntarily leave the UK may be held for up to a week in a secure ‘pre-departure accommodation’ facility called Cedars, as a ‘last resort’.⁴³⁹ Over the past three full years since Cedars opened, there has been a decrease in the number of children and families held there: 121 children in 2012, reducing to 41 in 2015.⁴⁴⁰ In March 2015, the children's charity Barnardo's that provides the welfare and support services for Cedars, made seven recommendations for an incoming UK government in order to improve the pre-departure process, including that physical intervention should not be used with children or pregnant women except to prevent harm to self or others; and children should never be separated from their parents for the purposes of immigration control, but only if there is a safeguarding or welfare concern.⁴⁴¹

298. According to published official figures, 488 children were held in immigration detention between the start of 2013 and the end of 2015, including 215 at Tinsley House IRC Family Unit, and 172 at Cedars (80%).⁴⁴² Most of these children for were held for three days or less.⁴⁴³

299. **The EHRC recommends that the Committee asks the UK Government to:**

- a) address the recommendations of the current Lammy review, including recommendations that may be transferable to Scotland**
- b) commit to improving the timely processing of all asylum applications instead of reintroducing a detained fast track system**
- c) amend the detention guidelines to make it clear that women who are victims of rape and gender-based violence should not be detained in immigration detention**

2016. Available at: <https://www.serco.com/markets/homeaffairs/immigration/yarlswood> [accessed: 22 March 2016].

⁴³⁹ House of Commons Library, Standard Note, Ending Child Immigration Detention, 5 September 2014. Available at: www.parliament.uk/business/publications/research/briefing-papers/SN05591/ending-child-immigration-detention [accessed: 22 March 2016].

⁴⁴⁰ Home Office Immigration Statistics, October to December 2015, Table dt_02_q. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed: 22 March 2016].

⁴⁴¹ Barnardo's, Recommendations for a new government, March 2015. Available at: www.barnardos.org.uk/cedars_report_2015.pdf [accessed: 22 March 2016].

⁴⁴² Home Office Immigration Statistics, October to December 2015, Table dt_09: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/501999/detention-q4-2015-tabs.ods [accessed: 22 March 2016].

⁴⁴³ Home Office Immigration Statistics, October to December 2015, Table dt_09.

- d) commit to setting a maximum limit of 28 days to the length of time an individual can be held in immigration detention, to avoid the human and financial costs connected with long-term detention**
- e) only detain persons with mental health conditions in immigration detention under exceptional circumstances**
- f) take steps to ensure immigration detainees receive adequate healthcare services**
- g) take further steps to end the immigration detention of children.**

Annex: Equality and Human Rights Commission recommendations to improve implementation of the International Convention on the Elimination of All Forms of Racial Discrimination

Recommendation 1: Human rights framework (Articles 1, 1(4), 2, 2(2), 4, 5, 6)

The EHRC recommends that the Committee ask the UK Government to:

- a) implement outstanding provisions of the Equality Act 2010, including Section 14 on intersectional (dual) discrimination.

Recommendation 2: Access to justice (Articles 2, 5(a))

The EHRC recommends that the UK Government takes the following action in England and Wales:

- a) monitors the impacts of the LASPO reforms in England and Wales, particularly in cases of housing, debt and discrimination at work. The effectiveness of the mandatory telephone gateway should also be kept under review to ensure its accessibility and effectiveness, particularly for people with disabilities, those with limited English skills, and parents of children with special educational needs
- b) outlines a clear timetable for the review of the legal aid reforms
- c) ensures the review includes the commissioning of independent research on the actual equality and human rights impacts of the legal aid reforms on ethnic minorities and other groups sharing protected characteristics across England and Wales

- d) considers the equality and human rights impacts identified and takes steps to mitigate 1) any indirectly discriminatory effects arising from the reforms, and 2) any reduction in access to redress for human rights breaches
- e) monitors the effect of changes to legal aid for judicial review to ensure that challenges to unlawful administrative decisions relating to the rights under CERD are not being hindered
- f) withdraws proposals for a residence test for civil legal aid
- g) reviews the operation of the Exceptional Cases Funding scheme to address its shortcomings, including those identified by the High Court
- h) takes steps to address any disproportionate impacts on ethnic minorities arising from the employment tribunal fees as identified in its review.

The EHRC recommends that the Scottish Government:

- i) implements its proposal to abolish employment tribunal fees in Scotland and considers whether there are any specific steps it can take to ensure effective access to employment justice for people from ethnic minority backgrounds as part of its broader programme of work in this area.

Recommendation 3: Just and fair conditions at work (Articles 2, 5(e)(i))

The EHRC recommends the UK Government, Welsh Government and Scottish Government:

- a) show their commitment to tackling racial inequalities by publishing cross-government race equality strategies with clear, measurable outcomes to address the most pressing issues in ways which will lead to effective and sustainable change
- b) improve data collection to understand the prevalence and causes of pay gaps in relation to race.

The EHRC recommends the Welsh Government take steps to address the employment challenges identified in the EHRC's *Is Wales Fairer?* report to:

- c) increase the employment rates of ethnic minority people
- d) close pay gaps in relation to race.

The EHRC recommends the UK Government:

- e) actively monitors the Modern Slavery Act 2015 to ascertain whether it is functioning as intended and, if evidence suggests that gaps in compliance with the UK Government's international human rights obligations remain, brings forward amendments to the legislation

- f) ensures the regulations detailing the provisions for the identification and support of victims of trafficking and modern slavery address the need for:
- a formal appeals process
 - clarity that only a credible suspicion is required to trigger the provision of support and assistance, including legal aid, to victims, and
 - a requirement for public authorities, including health authorities, schools, prisons, probation services, competent authorities and voluntary organisations performing a public function, to record and report suspected victims of trafficking.

Recommendation 4: Right to education (Article 5(e)(v))

The EHRC recommends that the Committee ask the UK Government, Scottish Government and Welsh Government to:

- a) require schools in England, Scotland and Wales to collect qualitative and quantitative data on identity-based bullying across all the protected characteristics; and school exclusions and absences, disaggregated for all ethnic groups, and use the data to develop strategies to protect pupils
- b) take action and publish progress on addressing persistent issues experienced by Gypsy/Roma, Irish Traveller, Scottish Gypsy Traveller, ethnic minority and poorer children (in receipt of free school meals), including bullying, disproportionalities in exclusion, absences and attainment rates at all key stages
- c) investigate the causes and take actions to address the consistent underperformance of pupils from particular ethnic groups, for example the drop in performance of Black African/Caribbean and Mixed pupils in England.

The EHRC recommends that the Committee ask the UK Government to:

- d) monitor the impact of the new measures on attainment and transition it wants to introduce in primary schools and at the beginning of secondary school in England to ensure that they do not disadvantage further the attainment of pupils from particular ethnic groups.

Recommendation 5: Housing (Articles 2, 5(d)(i), 5(e)(iii))

The EHRC recommends that the UK Government:

- a) conducts a review of the adequacy of site provision for Gypsies and Travellers across all local authorities.

The EHRC recommends that the Scottish Government:

- b) demonstrates leadership in the provision of an adequate network of sites in public, private and voluntary sector control, across Scotland, for example by strengthening guidance towards those authorities who have made no progress in providing local authority or private sites in their areas.

The EHRC recommends that the UK Government, Welsh Government and Scottish Government:

- c) examine the causes for different ethnic groups living in substandard housing and overcrowded housing, and take forward strategies to address them in an effective way.

Recommendation 6: Health (Articles 2, 5(e)(iv))

The EHRC recommends that the Committee ask the UK Government, Welsh Government and Scottish Government to:

- a) demonstrate the steps they have taken to improve health outcomes for Gypsies and Travellers and refugees, asylum seekers and migrants, in particular by:
 - i. facilitating their registration with GPs
 - ii. collecting and maintaining data on their access to, experience of, and outcomes from health services, and
 - iii. ensuring that healthcare professionals receive the necessary training in order to be able to offer them appropriate and effective care.⁴⁴⁴

Recommendation 7: Representation in decision-making (Articles 2, 5(c))

The EHRC recommends that the Committee asks the UK Government to:

- a) enact s106 of the Equality Act 2010, so that political parties are required to publish diversity data about their candidates, with a view to ensuring that other initiatives to increase parliamentary diversity are evidence-based⁴⁴⁵
- b) consider the introduction of non-mandatory targets if there is no significant increase in the numbers of ethnic minorities in judicial appointments by 2017.

⁴⁴⁴ EHRC submission to ICESCR, August 2015. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-economic-social-and-cultural-rights> [accessed: 27 November 2015].

⁴⁴⁵ EHRC, Smoothing the Pathway to Politics for Disabled People: EHRC response to the UN Special Rapporteur on the rights of persons with disabilities call for evidence on the right of persons with disabilities to participate in decision-making, September 2015. Available at: <http://www.equalityhumanrights.com/sites/default/files/uploads/documents/UNCRDP/Smoothing%20the%20Pathway%20to%20Politics%20for%20Disabled%20People.pdf> [accessed: 14 April 2016].

Recommendation 8: Hate crime (Articles 2, 4, 6)

The EHRC recommends that the Committee ask the UK and, where applicable, the Welsh and Scottish Governments to:

- a) provide evidence of the impact of their hate crime strategies. Work with criminal justice agencies to build on the research on hate crime motivations and develop new preventative measures as a result.

The EHRC recommends that the Committee ask the UK Government to:

- b) adopt the Law Commission's recommendations for a full-scale review of the operation and effectiveness of the aggravated offences and enhanced sentencing provisions for hate crimes.

Recommendation 9: Caste discrimination (Article 2)

The EHRC recommends that the Committee ask the UK to:

- a) exercise the order-making power in section 9(5) Equality Act 2010 to clarify that caste is an aspect of the race protected characteristic for the purposes of the Equality Act 2010.

Recommendation 10: Stop and search (Articles 2 and 5)

The EHRC recommends that the Committee ask the UK Government to:

- a) hold police chiefs and Police and Crime Commissioners in England and Wales to account for the scrutiny and oversight of stop and search by legislating for the Best Use of Stop and Search Scheme and/or by making the Scheme a formal element of HMIC inspection
- b) amend PACE⁴⁴⁶ so that 'more thorough searches' under Code A be subject to supervisory authorisation.

The EHRC recommends that the Committee ask the UK Government to ensure the following:

- c) where race disproportionality is high, the police force concerned should engage with all relevant stakeholders to work with the force to take appropriate action. This should include the appropriate level of governance and implementing programmes of monitoring, training and scrutiny to ensure they use the power in a lawful, non-arbitrary, non-discriminate manner and on the basis of reasonable suspicion.

⁴⁴⁶ Police and Criminal Evidence Act (PACE), 1984. Available at: <http://www.legislation.gov.uk/ukpga/1984/60/contents> [accessed: 17 March 2016].

Recommendation 11: Violence against women and girls (Articles 2, 5(b))

The Committee should ask the UK Government to:

- a) make Personal, Social and Health Education (PSHE) a statutory subject, and part of the National Curriculum in England; and to improve the quality of PSHE and ensure that it promotes knowledge and understanding of human rights in relation to violence against women and girls
- b) outline the extent to which UK, Scottish and Welsh law, policy and practice are compliant with the Istanbul Convention and what more needs to be done to enable the UK to ratify the Istanbul Convention and ensure its effective implementation. For example:
 - improvements to data collection and analysis on all forms of VAWG, alongside population surveys to determine the prevalence of such crimes⁴⁴⁷
 - addressing the systematic problems in the training of professionals who deal with VAWG cases,⁴⁴⁸ and
 - the establishment of an adequately resourced full-time co-ordinating body with a UK-wide strategy and action plan.

The Committee should ask the UK Government and Scottish Government to:

- c) supply information about monitoring of the delivery of VAWG strategies and services by local public agencies to ensure compliance with the UK's international human rights obligations.⁴⁴⁹

⁴⁴⁷ EHRC. Response of the Equality and Human Rights Commission to the Joint Committee on Human Rights Inquiry into violence against women and girls, p. 5. Available at: <http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/parliamentary-briefings/response-equality-and-human-rights-commission-joint-committee-human-rights-inquiry-violence-against> [accessed: 20 June 2016].

⁴⁴⁸ See, for example, HMIC, 2013, Essex Police's Approach to Managing Cases of Domestic Abuse. Available at: www.hmic.gov.uk/publication/essex-polices-approach-to-managing-cases-of-domestic-abuse/ [accessed: 9 March 2016]; Government Equalities Office, 2010, A Report by Baroness Vivienne Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales. Available at: http://webarchive.nationalarchives.gov.uk/20110608160754/http://www.equalities.gov.uk/PDF/Stern_Review_acc_FINAL.pdf [accessed: 9 March 2016].

⁴⁴⁹ EHRC Submission to the UN Human Rights Committee on the United Kingdom's Implementation of the International Covenant on Civil and Political Rights, May 2015, p. 69. Available at: <http://www.equalityhumanrights.com/about-us/our-work/human-rights/international-framework/international-covenant-civil-and-political-rights> [accessed: 20 June 2016].

Recommendation 12: Institutional detention (Articles 2 and 5)

The EHRC recommends that the Committee asks the UK Government to:

- a) address the recommendations of the current Lammy review, including recommendations that may be transferable to Scotland
- b) commit to improving the timely processing of all asylum applications instead of reintroducing a detained fast track system
- c) amend the detention guidelines to make it clear that women who are victims of rape and gender-based violence should not be detained in immigration detention
- d) commit to setting a maximum limit of 28 days to the length of time an individual can be held in immigration detention, to avoid the human and financial costs connected with long-term detention
- e) only detain persons with mental health conditions in immigration detention under exceptional circumstances
- f) take steps to ensure immigration detainees receive adequate healthcare services
- g) take further steps to end the immigration detention of children.

Contacts

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